

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL RECOMMENDATION

of 8 May 2003

on a model agreement for setting up a joint investigation team (JIT)

(2003/C 121/01)

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 on joint investigation teams ⁽²⁾ (hereinafter referred to as the Framework Decision),

RECALLING the outcome of the conference on 'A Strategic European Initiative on the development of policy and legislation covering joint investigation teams' (7 to 9 October 2002 Dublin) organised by the Irish Police (An Garda Síochána) with the support of the European Community under the Grotius programme,

CONVINCED of the need for a model agreement to facilitate the setting up of joint investigation teams in order to implement swiftly the Framework Decision, which has brought forward the implementation of Article 13 of the Convention,

BEARING in mind that such a model agreement should be comprehensive but also flexible so as to ensure that the competent authorities may adapt it to the particular circumstances of each case,

MINDFUL of the fact that Eurojust and Europol will conclude an agreement on cooperation, which will be of importance to the participation of both bodies in joint investigative teams,

HEREBY RECOMMENDS Member State Governments:

to encourage those of their competent authorities that wish to set up a Joint Investigation Team in accordance with the terms of the Framework Decision and the Convention with competent authorities from other Member States, to use the model agreement where appropriate set out in the Annex to this Recommendation in order to agree upon the modalities for the joint investigation team.

Done at Brussels, 8 May 2003.

For the Council

The President

M. CHRISOCHOÏDIS

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

ANNEX

MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

In accordance with Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000⁽¹⁾ (hereinafter referred to as the Convention) and the Council Framework Decision of 13 June 2002 on joint investigation teams⁽²⁾ (hereinafter referred to as the Framework Decision)

1. Parties to the Agreement

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

1. (Name of first agency/administration of a Member State as a party to the agreement)

and

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

(...)

(Name of the last agency/administration of a Member State as a party to the agreement)

The Parties to the agreement may decide by common agreement to invite other Member States' agencies/administrations to become Parties to this agreement. For possible arrangements with third countries, bodies competent by virtue of provisions adopted within the framework of the Treaties and international bodies involved in the activities of the JIT, see the Appendix.

2. Purpose of the JIT

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

(Description of the specific purpose of the JIT) The Parties may by common agreement redefine the specific purpose of the JIT.

3. Period covered by the Agreement

In accordance with Article 13(1) of the Convention and Article 1(1) of the Framework Decision, JITs shall be set up for a limited period of time. With respect to this agreement, this JIT may operate during the following period:

from

(insert date)

to

(insert date)

The expiry date stated in this agreement may be extended by mutual consent of the parties. In such case, the Agreement shall be updated.

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

4. Member State(s) in which the JIT will operate

The JIT will operate in the Member State(s) designated hereafter.

(Designate Member State or States in which the JIT is intended to operate)

In accordance with Article 13(3)(b) of the Convention and Article 1(3)(b) of the Framework Decision the team shall carry out its operations in accordance with the law of the Member State in which it operates. Should the JIT move its operational basis to another Member State, the law of this Member State shall then apply.

5. JIT Leader(s) ⁽¹⁾

The parties have designated the following person who shall be a representative of the competent authorities in the Member State(s) where the team is operating as the leader of the JIT and under whose leadership the members of the JIT must carry out their tasks in the Member State to which he belongs:

MEMBER STATE	NAME	RANK	ON SECONDMENT FROM (NAME OF AGENCY)

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

6. Members of the JIT

The following persons will be members of the JIT:

6.1. Judicial Authorities

NAME	RANK	FUNCTION	ON SECONDMENT FROM (NAME OF AGENCY)

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

6.2. Police Authorities ⁽²⁾

NAME	RANK	FUNCTION	ON SECONDMENT FROM (NAME OF AGENCY)

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

⁽¹⁾ Article 1(3)(a) of the Framework Decision shall apply, i.e. the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates.

⁽²⁾ These police authorities may also comprise members of the Europol national units of the Member States. These national units are based in the Member States and are national police authorities. Even the liaison officers of the Member States at Europol in principle retain their capacity to act as national police authorities.

6.3. National members of Eurojust acting on the basis of their national law ⁽¹⁾

NAME	ROLE: OPERATIONAL OR SUPPORTIVE	MEMBER STATE

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

7. Participation by officials from Europol/Eurojust/the Commission (OLAF) or other bodies set up under the Treaty on European Union as well as officials of third countries

The Parties to this agreement, agree to request/accept the proposal for ⁽²⁾ ⁽³⁾ participation by Europol/Eurojust/the Commission (OLAF) according to the arrangements set out in the Appendix to this agreement.

(Should officials from Europol/Eurojust/the Commission (OLAF) participate in the JIT, this could be mentioned in this chapter. As far as Eurojust is concerned this relates to the participation by Eurojust acting as a college, not acting through the national members. The Parties agree that the exact arrangements under which Europol/Eurojust/Commission (OLAF) officials will participate in the JIT, will be the subject of a separate arrangement ⁽⁴⁾ with Europol/Eurojust/the Commission (OLAF) annexed to this agreement.)

8. General Conditions of the Agreement

In general the conditions laid down in Article 13 of the Convention and the Framework Decision shall apply as implemented by each Member State in which the JIT operates.

9. Specific Arrangements of the Agreement

The following special arrangements may apply in this Agreement (note that a number of these aspects are also regulated in the Convention and the Framework Decision):

(To be inserted, if applicable. The following subchapters are intended to highlight possible areas that need to be specifically described).

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

9.2. Specific conditions under which seconded members may carry out investigations within the Member State of operation

9.3. Specific conditions under which a seconded member of a JIT may request his/her own national authorities to take measures which are requested by the team without submitting a letter of request

⁽¹⁾ It flows from Article 9(3) of the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1) that national members of Eurojust may act in relation to foreign judicial authorities (i.e. also take part in JITs) as defined by each Member State.

⁽²⁾ Eurojust, in accordance with Article 7(a) of the Eurojust Decision, may *proprio motu* propose the setting up of a JIT. Also, the future Article 3b of the Europol Convention, which will be inserted upon the entry into force of the Protocol amending the Europol Convention, drawn up by the Council Act of 28 November 2002 (OJ C 312, 16.12.2002, p. 3), will allow Europol to make a request to Member States to initiate or coordinate criminal investigations.

⁽³⁾ Note that such participation is not mandatory but depends of the circumstances of the investigation and the competence of each body to participate in the activities of a JIT.

⁽⁴⁾ This separate agreement will, amongst other things, have to specify whether the rights conferred upon the members and seconded members by virtue of the Framework Decision or by Article 13 of the Convention, will also apply to the officials from this body that participate in the JIT.

- 9.4. Conditions under which assistance to be sought under the Convention and other arrangements may be given
- 9.5. Conditions under which seconded members may share information derived from seconding authorities
- 9.6. Specific data protection rules
- 9.7. Conditions under which seconded members may carry/use weapons
- 9.8. Reference to any other already existing provisions or arrangements on the setting up or operation of JIT's.

10. Organisational Arrangements

The competent authorities of (insert Member State) shall make the necessary organisational arrangements for enabling the JIT to carry out its work.

Those areas that are subject to an exclusive competence either on behalf of (insert Member State) or the other parties or to a burden sharing between the competent authorities of (insert Member State) and the other parties are described below.

(The following list should just serve as an example for fields that may have to be described)

- 10.1. Cost for the JIT during its operation
- 10.2. Office accommodation
- 10.3. Vehicles
- 10.4. Other technical equipment
- 10.5. Allowances for seconded members of the JIT
- 10.6. Insurance for seconded members of JIT
- 10.7. Use of liaison officers
- 10.8. Use of the European judicial network
- 10.9. Language to be used for communications

Done at (place of signature), (date)

(Signatures of all parties)

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

Arrangement with Europol/Eurojust/the Commission (OLAF), bodies competent by virtue of provisions adopted within the framework of the Treaties, other international bodies or third countries

1. Parties to the arrangement

Eurojust/Europol/ the Commission (OLAF) . . . and the (name of the first agency/administration of a Member State as a party to the agreement), the (name of the second agency/administration of a Member State as a party to the agreement) and the (name of the . . . agency/administration of a Member State as a party to the agreement) have agreed that the officials of (Eurojust)/(Europol)/(the Commission (OLAF)) ⁽¹⁾ will participate in the joint investigative team, that they have agreed to set up by agreement of . . . (date and place of the agreement, to which this arrangement is annexed). This participation will take place under the following conditions.

2. Participating Officials

The following Europol/Eurojust/Commission (OLAF) /officials will participate in the JIT

NAME	RANK	FUNCTION	ON SECONDMENT FROM (NAME OF BODY)

Should any of the abovementioned persons be prevented from carrying out his duties, his superior will inform the other parties by letter of the name of his replacement.

3. Specific Arrangements

3.1. Type of assistance

3.2. Technical equipment provided.

4. Rights conferred upon the officials from Eurojust/Europol/the Commission (OLAF)/bodies competent by virtue of provisions adopted within the framework of the Treaties, other international bodies or third countries that participate in the JIT.

5. Arrangements for the participation of third countries in the JIT.

Date/signatures

⁽¹⁾ Delete if not applicable.