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Subject:	Conclusions of the 14th Annual Meeting of National Experts on Joint Investigation Teams (JITs)

Delegations will find in the Annex the conclusions from the 14th Annual meeting of the National Experts on Joint Investigation Teams (JITs), which was held on 6 and 7 June 2018 at the premises of Eurojust in The Hague.

Conclusions of the 14th Annual Meeting of National Experts on Joint Investigation Teams (JITs)

6 and 7 June 2018, Eurojust, The Hague

The 14th Annual Meeting of National Experts on Joint Investigation Teams (JITs) - organised by the JITs Network Secretariat in close cooperation with Eurojust and Europol - took place at Eurojust in The Hague on 6-7 June 2018. The meeting brought together experts from Member States, representatives of EU institutions and agencies, as well as other practitioners and stakeholders involved in this area.

The main topic of this year's meeting was *Enhancing the use of JITs: faster, simpler and effective processes*. Through plenary sessions and workshop discussions, JITs practitioners and experts exchanged views on some of the most common practical and administrative difficulties encountered in the setting up and operation of JITs, which may still hinder their wider use. The meeting also offered the opportunity to evaluate existing tools to disseminate knowledge and exchange of best practice and lessons learned among JITs practitioners, and to consider the opportunity of developing new tools.

1. Latest developments in JITs practice

a. Shaping Internet Research Investigations Unified System (SIRIUS) Project

Europol presented the latest developments of the SIRIUS Project, a secure web platform for all relevant information related to how to retrieve information and data from online service providers, as well as a repository for guidelines, templates, and training tools to assist practitioners conducting Internet-based investigations. Participants were informed that the SIRIUS platform, originally accessible only to law enforcement officials, was also opened to judicial authorities (as of the day of the meeting), with the access procedure managed by Eurojust. The JITs Network was invited to promote the use of this platform among JIT practitioners.

b. E-evidence

The European Commission (DG Justice) presented the *Commission Security Package* of 17 April 2018, a comprehensive set of new rules to make obtaining electronic evidence necessary to investigate, prosecute and convict criminals and terrorists easier and faster.

As explained by the Commission, the Security Package consists of two legal instruments: the *Proposal for a Regulation on the EU Production and Preservation orders for electronic evidence in criminal matters*, and the *Proposal for a Directive laying down harmonised rules on the appointment of a legal representative for the purpose of gathering evidence in criminal proceedings*. The draft Regulation provides for new forms of judicial cooperation, the European Production Order and the European Preservation Order, which will allow EU judicial authorities to issue a mandatory order for the preservation and production of electronic evidence directly to a service provider active in the European Union or to its legal representative, regardless of the location of data. To ensure that all service providers are subject to the same obligations, the draft Directive requires them to appoint a legal representative in the European Union for the receipt of, compliance with and enforcement of decisions and orders issued by competent judicial authorities.

c. Comprehensive assessment of EU Security Policy

The European Commission (DG Home) gave a presentation on the main features of the *Comprehensive Assessment of EU Security Policy*, which provides a review of the EU's activities in the area of internal security. As emphasized in the document, many Member States consider JITs to be one of the most valuable judicial cooperation instruments, and refer to their practical benefits, including improved exchange of information, enhanced collection of evidence, and optimisation of procedures within the investigation by mutual recognition of the actions carried out by JIT parties. They also recognise the important role played by EU agencies, particularly Eurojust and Europol, in increasing the number of JITs by providing legal, financial and logistical assistance in the setting up and running of JITs, and by hosting the JITs Network Secretariat.

However, during the stakeholders' consultation, some Member States were of the opinion that JITs might not have been used to their fullest extent and made some suggestions to further promote their use by practitioners.

Against this background, participants were invited to participate in one of the workshops discussing whether additional measures should be introduced to further promote the use of JITs and reduce some of the practical difficulties still faced by practitioners when using JITs.

d. Case presentations

As usual, the meeting provided an opportunity to share and discuss some recent operational successes. The first presentation focused on one of the first JITs set up by Italy after the implementation of the FD on JITs in 2016. The JIT, which was supported by Eurojust and Europol, significantly contributed to the dismantling of an international criminal network of drug traffickers affiliated to an Italian mafia-type criminal group.

Participants also learned about the importance of an immediate coordinated response to a large-scale cyber-attack and the support that Eurojust can provide in setting up JITs in such cases.

2. Enhancing the use of JITs: faster, simpler and effective processes

Three workshops were held on this topic.

2.1 Using JITs to their full extent: what measures to reduce practical difficulties?

Discussion and conclusions:

- *Identification of a potential JIT at an early stage*

Participants emphasized the important role JITs national experts can play in identifying 'suitable JIT cases'. Depending on their position in the national system, they should take a pro-active role by approaching practitioners and discussing cases in an informal setting.

To improve the identification of relevant cases, participants suggested that awareness-raising activities, including trainings, should be further promoted, not only at EU level, but also at national level, e.g. for authorities responsible for deciding whether to set up a JIT.

During the workshop, participants mentioned that, while the notifications required by Article 13(5) Eurojust Decision could play an important role in identifying suitable cases, a number of cases are still not reported to Eurojust. In this context, participants agreed that after a case has been identified, the early involvement of Eurojust, Europol and OLAF may be beneficial.

Participants also underlined the importance of holding a first coordination meeting during which practitioners may consider the possibility to set up a JIT. Such meetings should allow for the identification and discussion of key factors for the setting up and future operation of the JIT, including national requirements for the signature of the JIT agreement, possible issues related to disclosure and admissibility of evidence, funding possibilities and logistics. The need to develop a checklist of elements to be taken into consideration during these meetings - and possibly also during other key meetings such as EMPACT meetings - was pointed out by participants.

- *Main practical and administrative constraints*

Participants particularly noted the following constraints, which may still hinder the wider use of JITs:

- assumption that JITs are only for high-profile cases;
- fear of potential challenges at court related to the evidence gathered in the framework of a JIT;
- reluctance to set up a JIT when investigations are not pending in all potential JIT parties or when the national investigations are at different stages; and
- differences in the national legislation of the involved JIT parties, e.g. in the field of interception of telecommunications, surveillance, rules on disclosure and confidentiality of documents.

- *Internal approval mechanisms, signature process and language issues*

The discussions showed that national rules related to the signature process, as well as the requirements for internal authorisation, differ significantly among Member States. Internal approval mechanisms required in some countries were considered particularly cumbersome and sources of delays in setting up JITs. The possibility for national authorities attending coordination meetings to sign the JIT agreement on behalf of their country was considered as greatly facilitating the setting-up phase.

As a best practice, some participants mentioned the use of English as a working language in drafting JIT agreements. Others, however, noted that the use of English is not always possible and translations might still be required.

- *JITs supporting tools: JITs Practical Guide, JITs model agreement and Fiches Espagnoles*

The participants emphasized the added value of the JITs Practical Guide, the updated JITs model agreement and the *Fiches Espagnoles* in facilitating the use of JITs. Participants stressed that more efforts should be made to promote these tools and to guarantee that they are available to competent national authorities dealing with JITs. For example, participants suggested that these documents should be sent in advance to attendees of coordination meetings at Eurojust whenever the setting up of JIT might be discussed.

Furthermore, in addition to the existing JITs Practical Guide, participants suggested developing a more concise document focusing on practical issues from a practitioner's perspective, such as steps to be taken to set up a JIT, issues to be considered during the first coordination meeting, basic funding rules, and other issues related to specific crime types to be considered when setting up a JIT.

The updated JITs model agreement, which is now regularly used by practitioners, was considered a good basis for drafting a JIT agreement. Participants mentioned that access to a collection of specific clauses (e.g. on surveillance) might facilitate the drafting process even further.

While acknowledging the usefulness of summaries on national legalisations related to JITs (*Fiches Espagnoles*), participants pointed out that an update of this tool would be required. A proposal was made to broaden its current content by including issues and requirements specific to each country that might be relevant when considering setting up a JIT with that specific country (e.g. use of intercept material as evidence, presence of defence lawyers during interviews).

- *Possible additional practical measures*

Participants discussed possible additional practical measures to overcome the identified obstacles. The following suggestions were made:

- enhancing the visibility and role of the JITs national experts;
- awareness-raising at national level of possible delays in setting up of JITs caused by lengthy authorisation processes;
- development of ‘national checklists’ with issues to be taken into consideration when deciding to set up a JIT with that particular country;
- enhancing cooperation between Eurojust, Europol and JITs national experts by updating each other when notified of a new JIT case; and
- evaluation of cases in which a JIT was discussed but not set up.

- *Support by JITs Network Secretariat, Eurojust and Europol*

Participants acknowledged the added value of the support provided by Eurojust and Europol to promote the use of JITs, particularly during coordination and operational meetings.

Eurojust and Europol may play an important role in finding tailor-made solutions to facilitate the setting-up process. For example, Eurojust and Europol can further promote interaction between Eurojust National Members and their counterparts at the national Liaison Bureaux at Europol to identify potential JIT cases and support practitioners in the development of their cases of common interest. Moreover, Europol should consider ways to enhance the link between the Europol Liaison Bureaux and the JIT national experts to provide assistance/guidance on national level.

Participants also underlined the important role Eurojust can play in promoting the use of JITs via roadshows and meetings with the Heads of Public Prosecution Offices (particularly when these PPOs are required to grant prior authorisation). Generally, Europol and Eurojust can promote the use of JITs by reaching out to practitioners and explaining the possibilities to receive support from Eurojust and Europol based on practical examples.

2.2 JITs evaluation process: how to increase the level of response?

Participants were invited to exchange views on the current evaluation process and consider possible ways to enhance and streamline the process to increase the level of engagement and response by practitioners.

Discussion and conclusions:

In general terms, while acknowledging its added value, participants confirmed the need to streamline and simplify the evaluation process. Practitioners perceive the evaluation as a time- and resource-consuming exercise, and experience difficulties in finding time to fill in the form or to participate in evaluation meetings. For instance, the length of the JIT evaluation form, the fact that the form is available only in English, and the lapse of time between the end of JIT activities and the evaluation were pointed out as obstacles. Participants agreed that JITs should be evaluated immediately after they end their activities, rather than at the completion of the trial phase.

- *Role of JITs national experts*

JITs national experts continue to play a key role in the evaluation process, as they often initiate the process directly or support competent national authorities during the evaluation exercise and liaise with the JITs Network Secretariat.

However, the role and experience of national experts can vary significantly among Member States due to differences in their respective national systems. While some national experts play a very active role, others reported that they had no experience or were not directly involved in the evaluation process. A suggestion was made to follow a proactive approach by contacting JIT leaders and recommending the evaluation: *'Don't sit and wait approach!'* Participants, however, noted that keeping statistics (overview) on JITs or having access to a national register is a prerequisite to playing such a proactive role.

- *Role of Eurojust's National Desks*

Participants agreed that Eurojust's National Desks could also further promote the engagement of practitioners in the evaluation process. For example, coordination meetings during which the setting up of a JIT is considered should be used as an opportunity to discuss the importance of evaluating the JIT, and the outcome of such discussion should also be reflected in the conclusions of the meeting. To keep accurate records, appointment of the JIT members responsible for the evaluation was also suggested.

- *Link between JITs funding and evaluation*

Participants agreed that the links between granting JIT funding and the opportunity to perform an evaluation of the JIT and to submit a completed JIT evaluation form to Eurojust should be further explored. The JITs that have received financial support should be encouraged by the JITs Network Secretariat to perform the evaluation at the end of their activities. One possibility would be to insert a reference to the need to perform an evaluation of the JIT after its closure directly in the award decision.

- *Dedicated evaluation meetings*

Taking into account the limited availability of practitioners to attend the evaluation meetings, participants discussed the possibility of using a video-link, to be implemented and managed by the JITs Network Secretariat. However, while video-links could indeed save time and resources, participants raised some concerns related to the lack of interpretation, different technical capabilities in the involved countries, as well as the time needed to set them up.

Organising dedicated face-to-face meetings in one of the JIT parties, particularly for JITs set up between neighbouring countries, could also be considered.

- *Evaluation form*

With regard to the evaluation form, participants favoured a shorter and simpler document, focusing mainly on best practice and challenges encountered. For example, Part 5 (*Follow-up of the JIT*) of the current form was considered not useful. Participants suggested deleting it.

A short checklist including only the most relevant topics to evaluate was considered a favourable solution. A similar document (informal evaluation checklist) already proved to be a useful tool in supporting informal discussions during dedicated evaluation meetings.

Most participants underlined the need to translate the evaluation form into all official EU languages, to be used at a minimum as a reference by practitioners when filling in the English version.

- *Enhancing the value of the evaluation process*

The added value of the evaluation process is not always clear to practitioners. Participants pointed out that practitioners might be more engaged if they could see the added value of the whole exercise (for example, if they could receive feedback reports).

Participants also noted that the visibility of the two JIT Evaluation Reports should be increased. The findings of the reports on best practice and challenges encountered could also be included in the JITs Practical Guide, or presented in the format of FAQs or another short document.

JITs national experts should promote the evaluation project whenever approached by practitioners for advice with regard to setting up a JIT, as well as by disseminating the JIT Evaluation Reports.

2.3 Dissemination of best practice in JITs: how to reach out to practitioners

Participants were invited to evaluate the existing tools for disseminating best practice, discuss whether a need is present to adapt their content/format and consider the opportunity to develop additional tools.

Discussion and conclusions:

In general terms, practitioners recognised the added value of the various tools that have already been developed, particularly the JITs national experts annual meetings, the JIT Evaluation Reports, the JITs restricted area of the Eurojust website and the training activities jointly organised by CEPOL and the EJTN for JIT practitioners supported by Eurojust, Europol and the JITs Network Secretariat.

- *Raising awareness and building mutual trust*

Participants agreed that raising awareness and building trust are still key factors to tackle the reluctance of national competent authorities to use and promote the use of JITs.

Awareness should be raised at national level of the added value of a JIT and the support offered by Eurojust and Europol in its setting up and functioning, ideally using practical case examples. Furthermore, the role and visibility of JITs national experts should also be raised at national level, for example by publishing their contact details in the intranets of their respective national administrations and explaining the support they can provide.

- *National guidance on JITs*

To further raise awareness at national level, as well as to overcome possible language barriers, participants discussed the possibility to develop ‘national JIT practical guides’ or other national tools designed to facilitate the use of JITs. National guides could include, for example, the steps to be taken (from a national perspective) to set up a JIT, best practice and possible challenges. Their content could be supplemented by the results of evaluations of JITs set up by the respective country, including best practice and lessons learned. These national guides could be published on the intranet of competent national authorities and preferably also in the JITs restricted area.

- *Sharing knowledge/trainings*

Efforts to share knowledge and engage practitioners in JITs trainings are still required. JITs national experts can play an important role in promoting CEPOL-EJTN trainings, CEPOL webinars, CEPOL online training module on JITs, training movies and videos, as well as by participating directly in training activities organised at national level. Again, to overcome the language barrier, some webinars could be developed in all EU official languages, as has already been done for the CEPOL webinar on JITs.

Participants also underlined the importance of training activities on JITs for law enforcement authorities, as they are in a position to identify cases suitable for JITs at an early stage. More domestic trainings are needed, which could be organised with the support of CEPOL-EJTN and the involvement of Eurojust and Europol.

The appointment of JITs national experts also from law enforcement authorities should be further encouraged to promote and share knowledge on JITs between law enforcement authorities. The role of the Liaison Bureaux at Europol could be enhanced.

Participants also agreed that further efforts are needed at national level to ensure sharing of information and knowledge of JITs and building of mutual trust, which can also be attained via training events jointly organised for both law enforcement and judicial authorities.

- *JITs Evaluation Reports*

Participants agreed that JIT Evaluation Reports should be further shared at national level among judicial and law enforcement authorities to take note of best practice, lessons learned and legal issues.

Enhancing the role of the JITs national experts in the evaluation of JITs, either via their direct involvement in evaluation meetings or by sharing with them the results and learning points to be used at national level, should also be considered.

- *Make use of existing tools*

Participants agreed that many instruments have already been developed to share best practice and promote the use of JITs by competent national authorities. However, practitioners do not seem to be sufficiently familiar with the already existing tools. Therefore, participants agreed that, before developing more tools, efforts should be invested in promoting the already existing tools.

3. JITs and EIO

The meeting also offered an opportunity for participants to discuss the possible impact of the implementation of Directive 2014/41/EU of the European Parliament and of the Council regarding the European Investigation Order (EIO) (the EIO Directive) on the use of JITs.

The deadline for implementation of the EIO Directive by the Member States was 22 May 2017. So far, the vast majority of Member States have implemented this instrument, which will replace mutual legal assistance instruments in the relations between the Member States to which it is applicable. Even though drawing final conclusions might be premature, practitioners agreed that, considering the different nature of these two judicial cooperation instruments, the expected impact of the implementation of EIOs on JITs might be rather limited.

4. JITs Network Guidelines

During the 13th JITs Annual Meeting, the JITs national experts agreed on the need to develop the principles set out in Council Document 11037/05, *Joint investigation teams – Proposal for designation of national experts*, into non-binding guidelines. Participants particularly emphasized that a more detailed framework would be beneficial for the work of JITs national experts and could bring clarity on issues such as the involvement of external partners and third States, the level of engagement of the JITs national experts in the JITs Network projects, and access to the restricted area.

Against this background, the draft *Guidelines on the Network of National Experts on Joint Investigation Teams*, which were prepared by the JITs Network Secretariat in close cooperation with the JITs national experts, were unanimously adopted during the meeting. The JITs national experts also agreed to have the final version of the Guidelines published as a Council document.

5. Network projects and JITs funding

Eurojust and Europol jointly presented JITs funding opportunities offered by both organisations, including updates on the respective funding procedures. In particular, Eurojust introduced its new tool for online submission of JITs funding applications, the JITs Portal, also with the help of a tutorial video available on the Eurojust website. Europol explained the funding mechanism, which allows for funding of JITs activities either via Europol's direct financial support to operational meetings or via the EU Policy Cycle for organised and serious international crime (European Multidisciplinary Platform Against Criminal Threats (EMPACT) grants).

Participants were also informed about the *Memorandum of Understanding on the joint establishment of rules and conditions for financial support to JIT activities between Eurojust and Europol* (MoU), which was signed on 1 June 2018 by the Executive Director of Europol and the President of Eurojust. This MoU, which represents an important step towards even closer cooperation between Eurojust and Europol in the field of financial assistance to JITs, lays down rules for the financial support of joint investigations by the two organisations. In particular, the MoU seeks to ensure compliance with the principle of non-cumulative awards (by avoiding the possibility to award funding for the same individual activity), sets up a framework of preventive and evaluation measures (by establishing an obligation for both organisations to exchange relevant documents in the field of funding), and foresees that Europol and Eurojust will endeavour to ensure that information is provided to national authorities on the financial support they can offer (including by way of joint communication) to facilitate their submission.