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NOTE

from: General Secretariat
to: Article 36 Committee
Subject: Conclusions of the fourth meeting of National Experts on Joint Investigation Teams (15/16 December 2008, The Hague)

On 15 and 16 December 2008, the fourth meeting of National Experts on Joint Investigations Teams was organised by Europol in collaboration with Eurojust, the General Secretariat of the Council and the Commission.

The meeting was attended by experts and practitioners from 22 Member States, representatives from OLAF, Eurojust, Europol, the Commission and the General Secretariat of the Council as well as the USA.

After introductory speeches by Europol, Eurojust, the Council Secretariat General and two presentations by national JIT experts (police and judiciary), the meeting was split into two workshops:

1. Workshop on Experiences and awareness raising, led by Europol.
2. Workshop on Experiences and evidence gathering, led by Eurojust.
In both workshops lively discussions took place on the problems encountered by setting up a JIT, where both workshops came to the conclusion that it is of key importance to involve the police and the judiciary from the early planning and the decision-making of setting up a JIT. Also the facilitating role of Europol and Eurojust was acknowledged.

Awareness raising on the possible advantages of setting up a JIT in the EU member states could be further improved and the national JIT expert needs to play a key role in this area. For example, informing colleagues in the police and the judiciary of success stories, (legal) obstacles encountered as well as examples of how these have been solved. It is important to promote JITs and not to impose them. Although bilateral JITs have proven to be successful, the final aim should be the setting up of multilateral JITs.

Furthermore, the representatives of the Council Secretariat and the Commission pointed on possible synergies between the provisions of the framework decision on joint investigation teams and the provisions in the so-called Naples II Convention on customs cooperation and other relevant UN Conventions.

The outcome of the discussions held in the two workshops are enclosed (ANNEX A and ANNEX B).
KEY ISSUES:
- Practical experience in establishing and running a JIT.
- Experience in involving Eurojust and Europol.
- Awareness raising on JIT’s.

FINDINGS:

Strengthen the role of the national JIT experts:
- Clarification of the functions (and title) of national JIT experts.
- The national JIT expert should be fully committed to her/his role.

Further awareness raising:
- JIT training at a national level should be enhanced (including curricula).
- Law enforcement and judicial authorities should be involved, e.g. the EJN.
- JIT training should be clustered according to geographical or criminal market hubs following e.g. the OCTA.
- JITs should be promoted by publishing "success stories".
- Promote it - do not impose it.

Establishment of a protected JIT Webpage:
- Overview of European and national procedures.
- Model agreements.
- Best practice and experience, success stories.
- Support functions of Europol and Eurojust.

Clear and fast implementation procedures:
- National procedures should enable fast establishment of a JIT.
- Practical national guidelines should be available.
Eurojust and Europol should be involved from the outset:
- Involvement in the preparatory phase (agreement, best practice)
- Coordination and support when running the JIT
- Make full use of the facilitating role of both bodies.

Clear and fast implementation procedures:
- National procedures should enable fast establishment of a JIT
- Practical national guidelines should be available.

Common understanding of the objectives:
- Clear and common agreement on the priorities at an operational level before setting up a JIT.

Multilateral JITs provide the most potential added value:
- However bilateral JITs have its role to pave the way.
WORKSHOP TOPIC 2
Experiences and Evidence gathering

Introduction

- Growing experience with JIT’s, however JIT’s are not common knowledge amongst police and judicial authorities yet.

- There is a variety of rules in the Member States related to the gathering and admissibility of evidence. It is of importance that the JIT members discuss the essential procedural rules that might influence the admissibility of evidence before court.

- It would help if Member States create in their legislation possibilities to easily accept elements of proof that have been gathered according to foreign rules.

Exploration

- It first needs to be considered which PARTIES are possibly involved? This is not limited to EU-States but also third States, Eurojust, Europol and other organisations (e.g. OLAF, fiscal authorities).

- It is essential to establish what CRIMES are committed or about to be committed?

- Parties need also to think of what INSTRUMENTS are available, such as JIT’s parallel investigations, MLA, letters of request etc?

- It is essential to also take into account of who is responsible for the AUTHORISATION in regard of both the setting up of the JIT as well as leading the activities?
- Another important question is to assess which JURISDICTIONS are possibly involved and what the standards are regarding admissibility of evidence?

- When it comes to EVIDENCE GATHERING, parties should reflect on what types of evidence and (coercive) measures can be expected and what are the legal requirements of obtaining the evidence?

Anticipation of all possibilities

**Decision-making process**

- The choice of the PARTIES depends on the States in which joint action will be needed. However, multi-party JIT’s increase the complexity of a JIT. Moreover, parties have to check with which third States co-operations agreements are in place and if it is feasible to invite a third State to a JIT. The added-value and the subsequent clear role of a third party in the JIT needs to be explored. The participation of Europol, Eurojust and other participants to the JIT deserves due consideration, because of their experience based on their participation in previous JIT’s. All parties concerned need to sit around the table as soon as possible.

- The selection of the CRIMES very much depends on the objective of the JIT and the priorities of the parties. In case of several crimes, the setting up of a core JIT and a coordinated approach making use of traditional mutual legal assistance is also an option. JIT’s are a useful instrument for any type of crime.

- It should be assessed for each INSTRUMENT if a common legal basis exists between the parties and, in particular, what the legal basis for a JIT is. The level of coordination needed and the stage of the investigation will also influence the choice for a JIT. Some believe that a JIT can only be initiated if there is an investigation in both states, whilst others deem that it suffices if an investigation can be anticipated based on the information of the investigation in the other State.
**Decision-making process (cont.)**

- For successful AUTHORISATION it is important to have both law-enforcement and judicial authorities on board of the JIT, but the role of each differs in time and between the JIT members.

- It is of utmost importance that during the existence of a JIT technical, operational and legal issues are dealt with on the spot by both law-enforcement and judicial authorities in a **flexible** way. This will foster mutual trust between the cooperating parties.

- When it comes to the JURISDICTION & EVIDENCE GATHERING, the JIT parties can either opt for the highest standard of admissibility which allows some flexibility later or determine jurisdiction at an early stage. It is equally important to consider where and when different types of evidence will be obtained by the JIT members and what subsequent rules of disclosure might apply. The JIT parties have to also decide what legal tools are most suited for the different ways of collecting evidence such as controlled deliveries, interception of telecommunications, undercover operations etc.

The selection ultimately leads to an agreement on the *strategic* (JIT Agreement) and *operational* (Operational Action Plan) way forward.

**Evaluation**

- It is recommended to evaluate a JIT after the judicial proceedings have been finished. Positive, as well as negative experiences can help better setting up future JIT’s.

- Special attention should be given to the particularities regarding the application of coercive measures, procedural rules and the admissibility of evidence in the Member States.

- These evaluations should be made available to Eurojust and Europol and be disseminated in an appropriate way (e.g. JIT guide).