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**NOTE**

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from : General Secretariat  
to : Article 36 Committee

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Subject : Conclusions of the third meeting of National Experts on Joint Investigation  
Teams (29/30 November 2007, The Hague)

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On 29 and 30 November 2007, the third meeting of National Experts on Joint Investigation Teams was organised by Eurojust in collaboration with Europol, the General Secretariat of the Council and the Commission.

The meeting was attended by experts and practitioners from 25 Member States, representatives from OLAF, Eurojust, Europol, the Commission and the General Secretariat of the Council.

The discussions took place both in plenary sessions and in two workshops. The agenda focused on the following issues: role and participation of Eurojust and Europol to JITs, practical experiences of JITs, including the setting up and running of a JIT.

As regards the practical experiences, the meeting has been the occasion for experts to discuss legal and practical difficulties encountered and solutions found.

At the end of the meeting, the general *rapporteur* has drawn up conclusions (ANNEX I).

The outcome of the discussions held in the two workshops are also enclosed (ANNEXES II and III).

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Conclusions of the general *rapporteur*

- The overall picture is extremely positive. It is a fact: investigations carried out with JITs are successful.
- It was clearly stated during this and the previous meetings of the Network how many people were arrested, how many tons of drug seized, how much crime rate decreased following to investigations carried out with JITs.
- This does not mean that it is appropriate to set up JITs in any case of transnational crime. There are cases in which results can be better realised with a JIT and there are offences which may be better investigated with JITs but this must be assessed on a case by case base.
- JITs had a difficult start: 2000 Convention has not yet been ratified by all MSs and the Framework Decision did not receive prompt and proper implementation.
- Nevertheless, things are going better and better: when the network met for the first time, in 2005, there were just 3 JIITs set up. In 2006 the number increased to 11. Now, according to information gathered during the experts' meeting, they are around 35. In addition, we have information on ongoing "light" JIITs and "permanent" JIITs which are not among the 35 JIITs just mentioned. By now, most of them involve just 2 MSs but COM is confident that they will soon start to involve a higher number of MSs.
- The experts' Network itself does better and better: the impression is that every year the outcome of the meeting is more fruitful. The more the Network gains experience, the more it is possible to share best practices and to learn from the other experts.
- Nevertheless, there is still a lot of work to do, from several points of view:
  - (1) *Lack of implementation*: 5 MSs have not ratified the 2000 Convention so far and 4 of them have not otherwise implemented the Framework Decision: EL, IT, LU and MT. They should adopt needed legislation as soon as possible.

- (2) *Awareness rising*: training for practitioners should be enhanced and improved. COM's financial programmes consider judicial training as a priority and should be exploited at the maximum. Initiatives such as the joint Eurojust/CZ/SK seminar are extremely useful.
- (3) *Linguistic training* should also be a priority as it is essential that members of JITs are able to easily communicate between themselves.
- (4) *Coordination by Eurojust and Europol is essential*. Eurojust and Europol can offer support at many levels. Therefore it is fundamental to inform them about trans-national cases which appear to be suitable for the setting up of JITs as soon as possible. The idea, launched during the meeting, of imposing on national investigative authorities to inform EJ and EP in any occasion they envisage setting up a JIT should be taken in serious consideration.
- (5) The work done by the *joint EJ/EP team* is remarkable: the manual collects all implementing legislation, the handbook will offer practical guidelines, and the webpage is easily accessible and gives a number of useful information. There is room for further action by the team:
  - The guide might be updated focusing on evidence: a section explaining in depth how and at what conditions evidence gathered through JITs is admissible at trial in each MSs should be added.
  - All agreements should be collected and, once cleaned of all personal/restricted information; they should be published in the webpage at the disposal of the experts.
  - The handbook should be finalised as soon as possible and experts should be asked for their contributions and suggestions.
  - One meeting a year is perhaps not enough for this Network. It might be envisaged to start having meetings every 8/10 months.

## Report on Workshop 1

**DELETED****Topic 1: When to set up a JIT**

- No restrictions for type of offence, until now mainly: Drugs trafficking, THB and terrorism
- Investigation must be already opened in all participating MSs, important: investigation must also be at the same stage
- Costs are not decisive element IF to set up a JIT, but rather HOW, i.e. by which means/tools
- JIT has to provide added value (compared to traditional MLA procedure)
- Letter of request needed for establishment of JIT in most of the MSs
- Authorisation procedure required in some MSs, but not in all

**Topic 2: Who are the parties concerned**

- Number of team members should be as small as possible, further operational support by colleagues in each participating MS always possible
- Experts: possible, has to be assessed on a case-by-case basis
- Eurojust: can give useful assistance, e.g. conflict of jurisdiction, drafting of agreement, funding possibilities, should be involved at an early stage (before signature of agreement), coordination and organisation of follow-up meetings in and outside The Hague
- Europol: operational assistance, e.g. exchange of information, analysis, drafting of agreement. Important: timely delivery of analysis reports
- Collaboration between Eurojust and Europol of added value (coordination efforts), contacts can be established with other MSs outside the JIT

### **Topic 3: Content of the Agreement**

- Agreement is a contract between judicial authorities, lots of flexibility possible
- Precise and well defined in scope
- Clear time limits (possibility of extension)
- Regulate the organisational arrangements, especially in view of seconded members
- Working language, translation arrangements
- Possible other clause: asset sharing

#### Valuable suggestions

- Europol/Eurojust should be central point for the collection of existing JIT agreements
- Guidelines on JITs should include guidance on the use of the model agreement
- Publication on website

### **Topic 4: Structure and operation of a JIT**

- Leader of the team: Because of legal realities, leadership will in most cases change, i.e. one leader in each acting state, leader loses authority once the JIT acts in the other country
- Dialogue between the leading parties absolutely critical, has to be clarified from the outset
- If JIT has to act on the territory of a 3<sup>rd</sup> country: traditional MLA request

### **Topic 5: Practical experience: JITs set up during last year**

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## **Topic 6: Key issues encountered**

### Request to set up a JIT

- Most countries require a letter rogatory (UK has no possibility to do so, no need in FR and ES)

### Admissibility of evidence

- Differs very much from MS to MS (see also JIT Guide), many nat. laws require a letter rogatory
- Serious discussions needed from the outset between participating MSs
- In some cases it will assist if certain evidence gathering measures are covered already in the initial letter rogatory
- Distinction needed: collection of evidence and use of evidence
- Possibility that national law regulates the use of evidence (see example of CZ), however, many MSs are not aware of the problem/do not regulate the question in nat. law
- We have to wait now for Court decisions

## **Topic 7: Problems/benefits/suggestions**

### Problems

- Jurisdiction issues, early discussions between members on the issue needed
- Use of evidence

## Benefits

- Facilitation of information exchange, reduced amount of letters of request
- One team, with one goal across the borders, success of the JIT will be success of all the members
- Practical possibility to build Europe
- Enhanced judicial cooperation

## Suggestions

- Cross-country training between lawyers and police officers
- Early + systematic involvement of Europol and Eurojust
- Review and up-date of the JIT Guide on the question of the use of evidence



## Report on Workshop 2

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### Topic 1: When to set up a JIT

- When coordinated action is needed from outside a Member State's own jurisdiction, meriting giving foreign nationals competence to participate in a JIT in a Member State's jurisdiction for a certain period of time
- When there is a clear aim and mutual interest in doing so
- If so, do so as early as possible
- In order to speed up information exchange
- Experience so far has been in bilateral cases and has mainly concerned armed robberies, terrorism including Islamic terrorism, drugs trafficking and trafficking in human beings
- JITs have been greatly facilitated in practice where there is already a close constructive relationship between judicial authorities e.g. France and Spain, but setting up a JIT also creates this relationship

### Topic 2: Who are the parties concerned

- Competent authorities of the Member States e.g. police, prosecutors, customs, coastguard agencies
- No experience of third parties (e.g. USA) participating in JITs
- DE has a 'reporting obligation' to Eurojust regarding JITs
- Experience of problems in identifying competent authorities, especially if more than one at a national level; and of non-acceptance of a police authority as part of a JIT (bad implementation?)

### **Topic 3: Content of the Agreement**

- Keep it short and simple (KISS) e.g. following the Council Model Agreement with some modifications as appropriate
- Joint Nordic Model – approx 3 pages long. Based on general framework + operational plan
- No checklist – flexibility, detail may hamper

### **Topic 4: Structure and operation of a JIT**

- JIT considered to be ‘operating’ in the MS in which in the team operates at any one time
- Should have as many leaders as there are countries operating. e.g. Spanish experience of JITs – 2 leaders both of whom give instructions in their respective MSs; observer
- Powers for seconded members of a JIT varies between MSs as a matter of practice e.g. in ES – could be problematic for ES police to participate in searches in FR but could still be useful for them to participate actively and fully in other activities e.g. telephone tapping

### **Topic 5: Practical experience: JITs set up during last year**

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## Topic 6: Key issues encountered

- Exchange of information
  - Preliminary exchange of information
  - Risk that it would be inadmissible as evidence, e.g. experience of IE that in one particular case the main reason for a JIT not going ahead was that the AG's office considered that MLA requests would still be required in certain instances
  
- Admissibility of evidence
  - Use of covert measures, e.g. intercept evidence obtained in the UK is not currently admissible in a UK court. This evidence would however, be admissible e.g. by SE in a Swedish court
  
- Duration of a JIT
  - Is there a need for JITs to be "time limited" as required by the 2000 Convention?

## Topic 7: State of play ratification of 2000 Convention

- Not yet ratified by Greece, Italy, Luxembourg and Malta
- In Bulgaria and Romania, it will enter into force on 1 December 2007
- All other Member States have ratified this Convention
- The FD on JITs (2002/465/JHA) shall cease to have effect when the 2000 Convention has entered into force in all Member States (article 5)

## Topic 8: Benefits of JITs

- Information can be exchanged much more quickly within a JIT
- Possibilities of Community funding for JITs