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NOTE

from:	General Secretariat
to:	delegations
Subject:	Conclusions of the 7th Annual meeting of the National Experts on Joint Investigation Teams (26 - 27 October 2011, the Hague)

Delegations will find in the Annex the conclusions from the 7th Annual meeting of the National Experts on Joint Investigation Teams held on 26 and 27 October 2011 in the Hague.

Conclusions of the seventh meeting of National Experts on Joint Investigation Teams (26 and 27 October 2011, The Hague)

On 26 and 27 October 2011, the 7th annual meeting of the National Experts on Joint Investigation Teams was hosted by Eurojust in cooperation with Europol, and organised with the support of the JITs Network Secretariat established at Eurojust in early 2011.

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

The topic of the meeting was “JITs in operational focus”. The goal of the meeting was to encourage the sharing of practitioner expertise in the Member States and the use of Eurojust’s and Europol’s cross-border experience in supporting JITs.

Keynote presentations from JITs Network speakers on the first day dealt with JITs with third States, and concrete experiences of some Member States in running and developing JITs. Issues raised in the presentations were later discussed in depth in two workshops. Workshop A dealt with “Legal and practical obstacles when establishing and running a JIT and solutions concerning evidence”. Workshop B dealt with “JITs and their interactions with external partners” (such as OLAF, experts, financial investigators, social services and third States).

On the second day, delegates discussed the workshop conclusions and recommendations. They also were informed of the services at the disposal of the JITs Experts to facilitate their work. These included the newly established JITs Network Secretariat, the development of a web-based JITs platform to be operational in the first quarter of 2012, Eurojust’s JITs Funding programme, and Europol’s mobile office in support of JITs as exemplified with a concrete case.

The meeting of National Experts on Joint Investigation Teams continues to provide a valuable forum where practitioner insight on the operation of JITs across the European Union can be shared effectively, and where knowledge of available resources for using JITs as an important tool in fighting cross-border crime can be disseminated.

The outcome of the discussions held in the two workshops is found in the Annex.

Presentation of conclusions of two workshops

Workshop A - Legal and practical obstacles when establishing and running a JIT and solutions concerning evidence

Workshop A touched upon the legal and practical obstacles when establishing and running a JIT and solutions concerning evidence. The following issues were discussed in the workshop:

- Admissibility of evidence
- Disclosure of information related to JITs
- Drafting/content of JIT agreement; Operational Action Plan (OAP)
- Identification of best practices

The participants of workshop A reached the following conclusions:

Admissibility of evidence

Resulting from different criminal procedure codes in the Member States, the lawful gathering and subsequent use of evidence in national judicial proceedings rely on specific rules to be followed during investigative measures. In the context of JITs, the need to agree in advance on the specific requirements to apply investigative measures was acknowledged to ensure that the gathered evidence will be admissible in national courts.

In particular, the interception of telecommunications can be a very complex process, and sufficient time must be invested to avoid inadmissibility. Although no current indication exists that national courts would reject evidence on the basis of JIT involvement, Member States must continue exploring whether inadmissibility of any evidence resulted from the use of a JIT. In that respect, the JIT National Experts have a role to play by actively following up national cases with JIT involvement.

Another identified issue relates to evidence that is formally classified. Some jurisdictions require the classification of evidence if acquired by special investigative measures (e.g. interception of telecommunications). The exchange and admissibility of such evidence can be problematic, especially if no bilateral or multilateral agreement is in place to allow for the exchange of classified information. Issues relating to “classifying of evidence” appear to be little known and further awareness-raising and information-gathering may be necessary.

In addition, a clear understanding and adequate briefings of on procedural questions are particularly important when different judicial systems cooperate. In that respect, Eurojust can provide expert advice on procedural questions. The different legal requirements under national legislation must be clarified before the setting up of a JIT, so that the JIT makes all necessary efforts to comply with the rules applicable to the gathering and exchange of evidence. In this way, the evidence will be admissible in the national courts.

Participants stressed that, in certain circumstances, parallel investigations or mutual legal assistance procedures might prove more efficient if the national legal requirements for specific investigations do not fully support certain JIT activities. However, participants concluded that the inadmissibility of evidence is not limited to JITs, and can equally appear in traditional mutual legal assistance procedures.

Disclosure of information related to JITs

To avoid the risk of an unexpected disclosure of information related to the work of a JIT by one Member State, comprehensive briefings on the extent and timing of national disclosure rules are necessary at the earliest possible opportunity.

A clear understanding of national rules on disclosure can also encourage national authorities to exchange sensitive information.

Disclosure of the JIT agreement, its annexes and the Operational Action Plan depends largely on the applicable rules under national jurisdictions, which must be considered when those documents are drafted.

To avoid unexpected disclosure, participants concluded that awareness of the implication of different disclosure rules is crucial. Efforts should therefore be taken to ensure that all relevant elements of national disclosure rules are dealt with at the very beginning of the setting up of a JIT.

Drafting/content of JIT agreement; OAP

The workshop participants concluded that the legal nature and content of the OAP depend upon national legislation and the different legal “traditions” in the Member States; therefore, no uniform approach exists at EU level.

As a result of this situation, operational details should not be formalised in the OAP if the legislation of the involved Member State requires full disclosure. Equally important, tactical decisions are to be made by the JIT members during the investigation, rather than being included in the OAP.

In general, the OAP must be adjusted to the specific needs of a JIT; thus, if disclosure poses a risk, different solutions should be explored.

The level of detail of a JIT agreement as well as its purpose must reflect national requirements elaborated in prior discussions.

Participants in workshop A indicated the following best practices:

The need for a database on national case law related to JITs, managed by the JITs Network Secretariat (to include both positive and negative examples in this area).

The running of a JIT results in the “merging” of national procedures (for instance, the Member State to perform a specific investigative measure takes into account the legal requirements under the criminal procedure code of the requesting Member State), making the involvement of Eurojust and Europol in facilitating this process particularly important. Further assistance from Eurojust and Europol should also be sought concerning issues such as the drafting of the OAP and the different national approaches to this tool to avoid problems at a later stage in the proceedings.

A Guide to the most relevant legal requirements in the framework of JITs in the Member States (but also in mutual legal assistance procedures) at EU level would be useful, while duplication of *fiches belges* must be avoided.

An evaluation of JITs and their results are important; the possibility to perform this task via reporting forms, which could possibly be exchanged within the Network via the JIT Secretariat, was discussed.

Workshop B - JITs and their interactions with external partners

Workshop B approached the operational aspects of JITs and their interactions with external partners. The following issues were discussed in the workshop:

- Externals: who are they and in what ways do they provide support?
- Participation of EU agencies
- Participation of third States

The participants of workshop B reached the following conclusions:

Externals: who are they and in what ways do they provide support?

External participants, as referred to in paragraph 12 of article 13 of the Mutual Legal Assistance Convention of 29 May 2000, can and do assist in national investigations and JITs. External participants consist of EU agencies and also, depending on national and other relevant legislation, local NGOs (victim support, local expertise), non-competent authorities (e.g. tax authorities, social services), expert/sworn witnesses, specialists (e.g. accounting, IT), international organisations, and third States.

Moreover, externals can assist with non-investigative matters (e.g. involvement of social services is sometimes mandatory) but also importantly support the JIT in its investigative activities (e.g. sworn experts), even if EU agencies are the more common partners supporting the investigation.

Participants further observed that the involvement of externals, other than EU agencies, is largely on a short-term and *ad hoc* basis. Perhaps, as a result, their involvement is not formalised beyond assistance in national investigations.

Participants agreed that externals provide added value; however, apart from EU agencies, no added value is seen in formalising relationships with external parties.

Participation of EU agencies

The participation of EU agencies such as Europol, Eurojust, Frontex and OLAF (the European Anti-Fraud Office of the European Commission), is considered very valuable. Assistance, although usually formalised in an arrangement, is, however, naturally also possible in a less formal manner, specifically in respect of queries relating to whether or not to set up a JIT, as well as the technicalities involved, such as drafting of agreements, etc.

Europol can provide significant added value when considerable information management is required. Europol's facilities, such as the mobile office, its communication network and centralised access to different EU and non-EU databases, is particularly valuable to the activities of a JIT, as are special analytical and operational capabilities, including asset recovery and tracing expertise.

Eurojust is also a recognised provider of valuable assistance in the drafting of JIT agreements and the identification of suitable cases. Additionally, Eurojust provides added value by giving advice on legal frameworks and guidance in respect of questions about evidence.

OLAF provides its expertise according to its mandate of protecting the financial interests of the European Union against fraud and corruption. The added value of active OLAF participation in JITs consists of possibilities of cross-checking data available to the JIT with EU data and the results of OLAF administrative investigations.

Participation of third States

Participants considered the involvement of third States as useful, especially for JITs dealing with cross-border crime in neighbouring Member States.

Different options exist, ranging from full membership on the basis of a common legal instrument (party to the JIT agreement) to assistance from third States on the basis of traditional mutual legal assistance requests. Consideration could also be given to exploring the possibilities of involving representatives from third States as participants on the basis of paragraph 12 of article 13 of the Mutual Legal Assistance Convention of 29 May 2000 or of the Council Framework Decision of 13 June 2002 on Joint Investigation Teams.
