



Council of the
European Union

Brussels, 2 December 2021
(OR. en)

14451/21

LIMITE

JAI 1311
COPEN 423
EUROJUST 103

NOTE

From:	General Secretariat of the Council
To:	Delegations
No. prev. doc.:	5196/21
Subject:	Conclusions of the Annual Meeting of the Network of National Experts on Joint Investigation Teams (Eurojust, The Hague, 13 and 14 October 2021)

Delegations will find attached the above-mentioned conclusions.

Conclusions of the Annual Meeting of the Network of National Experts on

Joint Investigation Teams

13 and 14 October 2021, Eurojust, The Hague

The 17th Annual Meeting of the Network of National Experts on Joint Investigation Teams (JITs) was organised by the JITs Network Secretariat in close cooperation with Eurojust and Europol on 13 and 14 October 2021. The meeting was conducted in a hybrid format, with participants attending physically in The Hague, and remotely via the Cisco WEBEX videoconference platform.

The meeting brought together JIT National Experts from EU Member States and representatives of EU institutions and agencies, as well as other practitioners and stakeholders.

The topic of this year's meeting was "*Securing the EU Beyond its Borders: JITs with third countries. New trends, challenges and opportunities*". JIT practitioners looked at the growing demand for effective judicial and police cooperation beyond the European Union's external borders and discussed how JITs with third countries can continue to be an essential tool in addressing this need.

The meeting also offered an opportunity to review the JITs Network's ongoing projects and to put forward for discussion other pressing issues.

Mr Ladislav Hamran, President of Eurojust, and Mr Jean-Philippe Lecouffe, Deputy Executive Director Operations of Europol, opened the meeting.

Both speakers emphasised how – in a world where criminals increasingly benefit from globalisation, enhanced cross-border interactions and the limitless possibilities of the internet – the need for operational and strategic cooperation with third countries is of paramount importance, and the involvement of judicial and law enforcement authorities in the exchange of information and sharing of evidence is inevitable.

Practitioners from EU Member States increasingly see JITs as an invaluable tool in judicial cooperation, also in cases involving countries outside the European Union. As a result of this, the number of JITs with third countries continues to increase.

The Eurojust President highlighted that Eurojust brings together judicial practitioners from different countries in an effort to tackle all forms of serious cross-border crime. At Eurojust, prosecutors and investigative judges from 27 EU Member States work together on a daily basis alongside Liaison Prosecutors from 10 third countries. The crucial role played by the Liaison Prosecutors posted at Eurojust is also reflected in the number of JITs established so far with their respective countries.

Europol reiterated that remote coordination by key criminal actors in third countries generates significant challenges for law enforcement in terms of detection, information exchange, investigation and prosecution. JITs have proven to be an effective investigative tool at international level to counter these challenges, but there is a need to continue to strengthen the JHA agencies' mandates to facilitate cooperation.

Europol also reaffirmed its continuous commitment to the work of the JITs Network, and offered its services and expertise in the cooperation with third countries.

1. Eurojust's tools and experience in facilitating JITs with involvement of third countries

The Vice President of Eurojust opened the plenary session presenting an overview of the Agency's tools and experiences in JITs involving third countries. Such cases are steadily increasing in direct response to the rapid growth of criminality being conducted on a global scale. As a result, collaboration with third countries is now one of Eurojust's priorities, where JITs are increasingly recognised as a particularly efficient judicial instrument in cross-border investigations.

However, there remain certain issues that require attention when trying to facilitate judicial cooperation between both Member States and third countries, such as language barriers; legislative challenges regarding solid legal bases for judicial cooperation; a lack of compliance to, or differing standards regarding data protection. Eurojust provides assistance in terms of expertise and guidance in overcoming these obstacles.

From an operational perspective, Eurojust provides a range of resources, which can contribute significantly to productive cooperation with third countries. The presence of Liaison Prosecutors based at Eurojust, alongside negotiated international agreements and access to a network of Eurojust Contact Points, can greatly expedite and facilitate communication between EU Member States and third countries. The Agency actively brings together authorities within coordination meetings and coordination centres. Coordination meetings also provide an ideal forum for negotiating and drafting a JIT agreement in a common working language. In addition, to alleviate the financial burden of judicial cooperation, funding for JIT activities is available.

Strategic projects regarding JITs with third countries include the *Guidelines on JITs with involvement of third States*, jointly prepared by Eurojust and the JITs Network Secretariat (January 2019); and the *Third JITs Evaluation Report*, prepared by the JITs Network with a contribution from Eurojust (March 2020).

During the meeting, it was clarified that cooperation agreements with third countries concluded under the previous Eurojust legal framework (Council Decision) remain valid and so far, no new agreements were concluded under the new Eurojust legal framework (Regulation).

2. Role of a Liaison Prosecutor posted at Eurojust in facilitating JITs

The Ukrainian Liaison Prosecutor posted at Eurojust gave an insight into her own experiences since joining Eurojust, with a view to demonstrating the possible advantages of involving Liaison Prosecutors in JITs with participation of a third country.

Liaison Prosecutors can facilitate cooperation throughout the different stages of a JIT. At the setting-up stage, a Liaison Prosecutor can raise awareness with their national authorities of the added value of a JIT as a judicial cooperation tool for cases involving EU Member States and third countries. Furthermore, Liaison Prosecutors can help identify the relevant national authorities involved in the investigation; ease the communication between the JIT partners; support national authorities in the drafting and signing of the JIT agreement; and be involved in Joint Action Days.

To further illustrate the benefits of including Liaison Prosecutors in JITs involving third countries, the Liaison Prosecutor shared with the meeting participants a case example of a JIT set up between an EU Member State and Ukraine in order to dismantle an organised crime group network trafficking drugs. She reinforced the message of cooperation at Eurojust; being in one room, overcoming language difficulties, circumventing customs- and borders blocks when organising a controlled delivery in order to track substances; all contributed to the eventual successful outcome of the investigations.

3. Europol cooperation with third countries in the framework of Operational Task Force and Joint Investigation Teams

Europol provided a brief overview of the characteristics of organised high-risk criminal networks and explained how the Operational Task Force initiative can help fighting these groups.

According to Europol's EU SOCTA 2021, criminal networks are resilient: 25% of criminal networks have been active for more than ten years. More than 180 different nationalities are involved in criminal networks, while 65% of such networks are composed of members of multiple nationalities. Seven out of ten criminal networks are typically active in more than three countries.

High-risk criminal networks are global, violent, involved in various crimes, and often use encrypted communication. Europol is using the concept of High Value Target (HVT) to characterise a person whose criminal activity fulfils specified risk criteria and therefore constitutes a high risk of serious and organised crime to two or more EU Member States.

Europol's Operational Task Force (OTF) initiative focuses on enabling coordinated, expanded and EU-wide investigations targeting HVTs. An OTF is a temporary group of representatives of Member States, third countries, and Europol running a specific multinational/disciplinary project consisting of intelligence- and investigative activities against selected HVT.

Future challenges and opportunities for OTFs lie in the processing and accessing of data, using a joint platform at Europol for the real-time exchange and processing of case-specific data; involving financial experts in all high-risk organised crime investigations, and; establishing Task Forces with Member States and ensuring operational cooperation with third countries.

4. Case presentations

The meeting provided an opportunity to share information and exchange views on operational issues stemming from practical experience gained in the scope of JITs with the involvement of third countries. This year, the case presentations focused on best practises, as well as obstacles identified in this context.

Practitioners involved in two bilateral JITs with Italy and Albania presented the first case. Both JITs were set up between Albania and Italy on the basis of an international agreement between these two countries, to fight against organised crime groups involved in drug trafficking. Europol participated in the JITs, as well as Eurojust, by providing legal and operational assistance through the organisation of coordination meetings. The JITs also benefited from Eurojust's financial assistance by way of the JITs Funding Programme (11 Awards for regular funding, and 1 for urgent funding).

During the presentation, several JIT-related aspects that contributed to the successful outcome of the investigations were highlighted; including, but not limited to, close and swift cooperation based on mutual trust, informal ways of communication, the possibility to use one working language, real-time and swift exchange of information and evidence, and coordinated investigative measures.

The second case demonstrated a number of challenges related to cooperation with third countries in a multilateral JIT between Austria, France and Germany. The JIT was set up to enhance investigations into CEO fraud and money laundering. The case presentation addressed a number of issues identified throughout the lifecycle of the cooperation. From the offset, there were problems to involve the third countries concerned because of the lack of a common legal basis to set up a JIT. In addition, there were difficulties to persuade the third countries to initiate an investigation; difficulties to find the competent authorities to facilitate cooperation; language- and cultural barriers; divergent human and data protection standards; and so on. Ultimately, the third countries did not become parties to the JIT.

Directly after the case presentations, the host opened the floor for a discussion on JIT cooperation with third countries.

Challenges that were identified by JIT National Experts include issues such as:

- a certain reluctance to cooperate on the basis of a JIT;
- obstacles to identify the competent authorities to set up a JIT;
- a lack of trust between Member States and third countries; and
- an insufficient level of the protection of human rights.

Positive experiences were reported in relation to non-EU countries that have posted Liaison Prosecutors at Eurojust. Best practices that were mentioned include:

- the application of UN Conventions (UNCAC, UNTOC) or bilateral agreements as a common legal basis to set up a JIT;
- the involvement of diplomatic channels in countries with which no direct legal cooperation exists;
- the involvement of JIT National Experts from the participating EU Member States; and
- the involvement of central authorities to assess whether it would be appropriate to cooperate with third countries where protection of human rights could be at stake. On the other hand, it was mentioned that there are also occasions when the involvement of central authorities can delay the setting up of a JIT.

5. JITs with third countries: ensuring appropriate data protection safeguard

In the context of the topic of this year's meeting, one of the identified challenges in JITs with third countries is that of sufficient data protection provisions in order to ensure the successful exchange of personal data. Eurojust provided a presentation on this subject in order to facilitate discussions amongst the meeting participants.

The exchange of information in JITs between EU Member States and third countries is subject to the application of the EU rules on the transfer of personal data to third countries. This entails compliance with common standards in the field of data protection and data, as introduced by the [Directive \(EU\) 2016/680 of the European Parliament and of the Council](#),¹ both adopted on 27 April 2016².

When EU agencies need to transfer or facilitate the transfer of personal data to third countries, they are required to apply the highest standard in data protection as regulated in the above mentioned documents, as well as in the [Regulation 2018/1725](#)³, which sets forth the rules applicable to the processing of personal data by European Union institutions, bodies, offices and agencies and agencies' specific legislation.

In the context of the new legal framework composed of the Eurojust regulation 2018/1727, Chapter IX of Regulation 2018/1725 and the aforementioned general data protection rules, five legal grounds are available to transfer operational personal data to third states. Consequently, Eurojust must first check whether there is a cooperation agreement in place with a relevant third country. If such is not the case, Eurojust must then check whether there is an international agreement. If such is not the case, the existence of an adequacy decision from the European Commission must be checked in turn. If such is not the case, Eurojust may examine appropriate safeguards in accordance with Article 58 of the Eurojust Regulation. If the latter do not exist, Eurojust may then turn to derogations.

As the list of cooperation agreements concluded by Eurojust with third countries is quite limited and only one adequacy decision is currently available, ensuring that the transfer of operational personal data to third countries complies with the appropriate safeguards has become increasingly important.

¹ While the Regulation lays down general rules to protect natural persons with regards to the processing of personal data and to ensure the free movement of personal data within the Union, the Directive lays down the specific rules for the protection and the free movement of personal data processed for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, including the safeguarding against and the prevention of threats to public security.

² The regulation entered into force on 24 May 2016 and applies since 25 May 2018. The directive entered into force on 5 May 2016 and EU countries had to transpose it into their national law by 6 May 2018.

³ It entered into force on 11 December 2018.

Consequently, for cases supported by Eurojust with participation in JITs involving third countries, JIT National Experts debated which options included in Article 58 of the Eurojust Regulation could be relevant, in particular those included in Article 58(1)(a) (legally binding instrument) or 58(1)(b) (assessment of all circumstances surrounding a transfer) which could lead to appropriate safeguards. For that purpose, appropriate safeguards with regard to the protection of operational personal data would need to be included in the clauses of the JIT agreement.

As was highlighted during the meeting, the existing JIT model agreement does not include model provisions on the protection of operational personal data. However, the JIT parties might need to consider the extent to which data protection concerns can be addressed within the specific framework of the JIT agreement to ensure that appropriate safeguards are in place, in accordance with EU standards.

Against this background, participants expressed their interest in the topic, in particular on the question as to whether a JIT agreement could contribute to the existence of appropriate data protection safeguards; as national authorities involved in judicial and police cooperation are also obliged to ensure that international data transfers of the personal data of EU citizens comply with the applicable EU standards.

In this context, participants appealed to the European Commission to consider pursuing adequacy decisions with more (specific) third countries.

Due to the importance of the topic, participants agreed that the JITs Network Secretariat will establish a dedicated Project Group consisting of JIT National Experts and, representatives of Eurojust to continue discussions, exchange views and deliberate on possible solutions. Other relevant stakeholders, including the supporting Agencies, might be invited to join at a later stage.

6. Update on the JIT Collaboration Platform

The European Commission presented a short update on the JIT Collaboration Platform.

The main goals of this new tool are to enhance the cooperation within a JIT, and to offer a means for the secure exchange of information and evidence for JIT parties.

The European Commission pointed out that it is anticipated that it will take approximately two years to finalise and launch the platform.

7. JITs Network activities and projects

In the past few months, the JITs Network Secretariat initiated an update of the existing **Fiches Espagnoles**. Fiches are now available for all EU Member States and nine third countries (namely, Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine and the United Kingdom).

At the beginning of 2021, the JITs Network Secretariat launched a new working methodology for the **JIT Evaluation Project**, allowing for a more pro-active approach in obtaining JIT evaluations. A new and more streamlined JIT evaluation form was introduced mid-2021, and is now being used for evaluations.

Furthermore, it was decided that the publication of the **fourth JIT Evaluation Report** would be postponed to 2022 due to the negative impact of the COVID-19 pandemic on JIT cooperation in 2021.

The Network also discussed its relationship with Observer States. Currently, the JITs Network includes five third countries with **Observer Status** (namely, Montenegro, North Macedonia, Norway, Switzerland and Ukraine). Once granted Observer Status, the third country is then required to appoint a Contact Point to the JITs Network. The Contact Point will be invited to participate in the projects and activities of the Network including the annual meetings, and whose contact details will be included in the Contact List of the Network. Upon request, Contact Points from third countries with Observer Status may also be granted access to the JITs Restricted Area.

Third countries may be invited to join the Network and be granted Observer Status, based on either the submission of a request from the third country itself, or upon an invitation from the Network. Because of the growing importance of ensuring good operational cooperation with third countries in JITs, the National Experts suggested to extend an invitation to those third countries that currently have a Liaison Prosecutor posted at Eurojust, but have not yet been granted the Observer Status. (Albania, Georgia, Serbia, the United Kingdom and the United States). Consequently, the JITs Network Secretariat will follow up on suggestions to invite other third countries.

Upcoming projects for the JITs Network and the Secretariat include the update of the Guidelines for JITs with third countries; the publishing of a JITs Network newsletter; collecting and sharing operational successes of JIT funding; drafting a leaflet on the cooperation with OLAF; and the setting up of the organisation of online induction trainings for newcomers to the Network.

Another possible project for the JITs Network and the Secretariat concerns an idea to conduct a **“peer-to-peer evaluation”** exercise.. This suggestion was originally put forward during the JITs Network Working Group meeting, as a way to improve the overall level of engagement within and functioning of the Network. The Network agreed that this exercise could be useful in the form of a friendly “fact finding mission”.

Following the Conclusions of the 16th Annual Meeting of the JITs Network, the **JITs Practical Guide** has been updated, based on the operational experience of JIT practitioners since March 2017. The JITs Network Secretariat presented the updated Practical Guide during the meeting.

The JIT National Experts expressed their appreciation for the work done and adopted the revision of the JITs Practical Guide by consensus. The new version – now containing seven chapters (including new chapters on financial support to JITs and essential tools for practitioners) – will be printed by the end of 2021/beginning of 2022.

The JITs Network Secretariat also shared several **novelties that have been introduced to the JITs Funding Programme** throughout 2021 to date. These include the **possibility to apply for funding outside the calls for proposals** as of 15 April 2021, as well as the introduction of the following **additional cost categories** for specialist expertise, purchase of low-value equipment, and costs for victims and witnesses (in existing cost categories).

Additionally, the JITs Network Secretariat informed the Network that the Europol-Eurojust Funding Schemes Flyer has received an update.

Summary of main meeting conclusions:

- This was the first hybrid annual meeting of the JITs Network, with the majority of the JIT National Experts present in The Hague and other Network stakeholders connected via videoconference, due to the persisting restrictions caused by the COVID-19 pandemic.
- JIT National Experts recognised the increasing importance of JITs with third countries and exchanged views on new trends, challenges and opportunities in this field.
- Two JIT cases were presented: one between Italy and Albania, as an example of successful JIT cooperation; and one between Austria, France and Germany, where cooperation with third countries was still positive, but a JIT could not be established.
- Eurojust and Europol gave an overview of their tools to support JITs with third countries, with the Secretariat notifying the JIT National Experts once the latest version of the Funding Flyer is available.
- Liaison Prosecutors from third countries posted at Eurojust explained how they can be instrumental in ensuring smooth operational cooperation with their respective country, also within the framework of a JIT.
- Eurojust and the JITs Network Secretariat will update the *Guidelines on JITs with involvement of third States* based on the experience gathered by practitioners in the past 2 years.
- The JIT National Experts suggested inviting third countries with a Liaison Prosecutor posted at Eurojust and not having the status yet, as Observers to the Network. The Secretariat will follow up on this request.
- To ensure continued appropriate data protection safeguards in JITs with third countries, the Network decided to set up in 2022 a Project Group to discuss this issue.
- The Network adopted by consensus the updated version of the JITs Practical Guide and the amended version of Annex I to the JIT Model Agreement.

- The fourth JIT Evaluation Report will be postponed to 2022 due to the negative impact of the COVID-19 pandemic on JIT cooperation in 2021.
 - The JIT National Experts decided to launch a peer-to-peer evaluation of the Network.
 - The JITs Network Secretariat shared several novelties that were introduced to the JITs Funding Programme, including the possibility to apply for funding outside the calls for proposals, and the introduction of new cost categories.
-