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NOTE

from : General Secretariat
to Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS)

Subject : Conclusions of the fifth meeting of National Experts on Joint Investigation Teams (30 November - 1 December 2009, The Hague)

On 30 November and 1 December 2009 Eurojust hosted the fifth meeting of National Experts on Joint Investigations Teams, organised in collaboration with Europol.

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

Practical experience of setting up and running JITs, including difficulties encountered and solutions found have been presented at the meeting. The general opinion about investigations involving JITs was very positive, while the particular circumstances of each case have to be considered individually.

The participants received an update on the JITs funding arrangements and were informed about the operational support that Europol could provide to JITs.

Central on the agenda were two workshops held simultaneously. The following subjects were discussed:

1. Future of the JIT Experts Network in view of the integration of the JIT Secretariat within the administration of the Eurojust
2. Review and Possible amendments of the Council recommendation on a Model Agreement on JITs.

During the first workshop the role of the JIT experts network was considered. The discussions showed scope for strengthening and expanding the original function of the network as set out initially. To this regard, the establishment of the JIT Secretariat as part of Eurojust administration under Article 25a(2) of the amended Eurojust Decision was deemed important for developing further its potential.

The second workshop provided concrete guidance on possible update of the Model Agreement on JITs, contained in the 2003 Council Recommendation. The points raised and recommendations made during the discussion could be directly applicable and relevant to all practitioners.

The conclusions drawn up in the workshops are enclosed in the ANNEX.

WORKSHOP TOPIC 1**Future of the JIT Experts Network (Role & Function) in view of the integration of JIT Secretariat within the Administration of Eurojust****Role of JIT Experts**

- ✓ To collect and receive information about best practices, as well as, obstacles and problems encountered in setting up and the organisation of the JIT
- ✓ To facilitate the setting up of JIT by disseminating information about the legal framework and the possibilities of setting up JITs (conferences, training sessions, seminars, etc.)
- ✓ To be national contact points which competent national authorities and authorities from other EU MS dealing with JITs could ask for expertise and information about the national legislative framework concerning JITs, information about competent authorities to contact, overcome linguistic problems, etc.

(Future/additional) Role of JIT experts

- ✓ To fulfill original expectations (slide 1), to act as a linking pin with practitioners at national level and define professional qualifications for the JIT experts
- ✓ Depending on the number of JITs already established at national level, to create a pool of national experts at law-enforcement and judicial level with its own dedicated common national mailbox
- ✓ To assess the potential possibility to be certified as an expert, including availability of relevant training
- ✓ To collect and exchange practical & legal information between each other in order to avoid re- inventing the wheel
- ✓ To collect all national JIT related experience and set up national regular training sessions for target audience (at least annually)

- ✓ To maintain at national level regular contacts between the national experts/contact points/units such as EJM, Eurojust, Europol and national AWF coordinator

All this is only possible with dedicated manpower and budget.

Role of Secretariat

A platform for exchange of non personal related information will be established.

Web based application hosted at Eurojust providing for:

- limited access rights for national nominated experts & Eurojust & Europol in order to exchange best practices.
- interoperability with other platforms (i.e. CARIN Network) needs to be assured.
- forum for quick question & answer possibility.

Secretariat to become a centre of information.

- ✓ To collect results of court decisions
- ✓ To prepare English speaking summaries of court decisions
- ✓ News letter
- ✓ Question & Answer log for frequently asked questions
- ✓ Funding of JITs
- ✓ Repository for basic JIT related information

In order to perform this tasks the Secretariat will receive relevant information primarily from national nominated experts, as well as, from Eurojust national members and Europol.

Secretariat to organize at least 2 annual meetings alternately in EJ/EP in order to share questions/problems/solutions from a practitioners' point of view.

- Relevant questions for the events will be obtained via national JIT experts and circulated prior to the meeting.
- Discussions during the meeting will be prepared on the basis of questionnaires circulated beforehand.

WORKSHOP TOPIC 2

“A new Model Agreement – review and possible amendment of the Council Recommendation on a Model Agreement on JITs”

1. Gathering and admissibility of evidence

- The participants agreed that the issue of the gathering and admissibility of evidence needs to be considered carefully when setting up a JIT. Possible restrictions and national requirements should be pro-actively discussed at the start-up phase of a JIT as well as during the JIT operation.
- The JIT Experts however did not see the need to formalize this issue in the model agreement but supported a more flexible approach, such as including best practice examples in the JIT Manual.
- The concept of an evidential expert in a JIT was considered as an interesting idea. The formal appointment of such an expert in the agreement was not deemed necessary since every JIT will include representatives from the judiciary and/or law enforcement agencies of each participating Member State. Moreover, the JIT leader is responsible to monitor the investigative activities of the members of the JIT.

2. Members versus Participants

- With a view to the required differentiation between *members* and *participants*, the status and tasks of EU bodies such as Europol, Eurojust and OLAF in a JIT should be formalised in a separate annex to the model agreement. This would provide clarification on their legal possibilities and prevent delays in the negotiation process of specific JIT agreements.
- Although the mandate and possibilities of Europol, Eurojust and OLAF are clearly determined in their respective legal framework, efforts should be undertaken at

national level to enhance the awareness of the added value of the services and products of these bodies in the setting up and functioning of JITs.

3. Operational Action Plan

- The concept of an Operational Action Plan was considered as a fundamental tool to support a JIT. It should be a flexible, living document containing practical arrangement on how to implement the main objectives of a JIT as described in the agreement. A reference to such Plan could be included in the model agreement. A first draft or rough outline of the OAP should be presented when signing the actual JIT agreement. Concerning the content of an OAP, a template might not provide sufficient flexibility but it should be rather a checklist. At a later stage, best practices could be reflected in the JIT Manual.

4. Disclosure requirements

- Disclosure requirements depend on the respective national legislation and cannot be overridden by JIT agreement. Issues of disclosure requirements should however be addressed when setting up a JIT. It is recommended to consider anonymising the members and participants of a JIT (e.g. by using identification numbers) within the legal possibilities.

5. Amendment procedures

- A flexible approach in the functioning of a JIT was deemed necessary. Regarding members and participants in JITs, a simply notification procedure between JIT leaders was considered as a possible solution. Practical issues should be dealt in a flexible manner e.g. in the Operational Action Plan.
- However, major amendments for a JIT such as its enlargement to other Member States as well as the extension of the agreement should be done by formal amendment of the JIT agreement. A regular periodic review mechanism was suggested to review the overall update of the JIT agreement.

6. Additional aspects

- Other aspects such as rights and duties of seconded members or costs for translation should also be considered when setting up a JIT. The reference of these issues in the JIT agreement depends upon the legal requirements. The Operational Action Plan or other tools should however provide clarification on the applicable legal regime.