

JOINT INVESTIGATION TEAMS – POSSIBLE ANSWER TO CHALLENGES OF INVESTIGATIONS OF SERIOUS AND ORGANIZED CROSS-BORDER CRIME

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Introduction

It has been widely acknowledged on countless occasions that criminal activity and criminals do not stop at state borders as state jurisdictions do, and that a successful fight against crime, especially its organized forms, which almost always have cross-border character, is only possible through the coordinated cooperation of the judicial authorities of different states. More pressing challenges posed by rapidly developing complex forms of trans-border crime require faster and more efficient coordination of national authorities, as well as the development of new and improvement of existing instruments of cooperation of competent authorities in order to improve the effectiveness of the response against cross-border crime. In complex cases with an international element, i.e. in cases in which quick joint action, coordination of investigations or execution of a larger number of requests for international legal assistance is required in a short period of time, the need for fast and efficient action of the national authorities in gathering evidence is especially emphasized. In such circumstances, the traditional instruments of international legal assistance are not adequate, primarily as they neither enable direct communication between involved authorities and services, nor allow the competent authorities to react at the moment when the suspected criminal actions take place (Vinković, 2020:800). The traditional mutual legal assistance instruments may appear to be slow in urgent cases, in particular when letters rogatory - usually requiring translation, which is time-consuming process in itself, are sent through central bodies of the executive arm, rather than directly to the competent judicial authority. In addition, the limited reach of the traditional instruments of cooperation is apparent because a couple of letters rogatory may not be sufficient for undertaking concerted investigative actions in two or more countries (Spapens, 2011:239). Efforts to enhance the fight against cross-border crime over time led to the optimization and innovation of the instruments of international cooperation and eventually to the creation of new, advanced tools of cooperation.

The joint investigation team (hereinafter: the JIT) is an innovative and original *sui generis* tool of international cooperation in criminal matters. It enables a more flexible framework for action, allowing speed and efficiency of action, permitting to overcome common difficulties encountered by national authorities in the investigation and prosecution of the cross-border crime, in particular its serious and organized forms, as “experience has shown that where a state is investigating an offence with a cross-border dimension, particularly in relation to organized crime, the investigation can benefit from the participation of authorities from other states in which there are links to the offences in question, or where co-ordination is otherwise useful” (Explanatory Report, 2021:15). This tool of cooperation enables not only the presence and participation of national authorities of one state in the investigation led in another state, but indeed reunites competent authorities of two or more states in joint action.



Notion and Principal Advantages of Joint Investigation Teams

“A joint investigation team is an international cooperation tool based on an agreement between competent authorities - both judicial (judges, prosecutors and investigative judges) and law enforcement authorities - of two or more states, established for a limited duration and for a specific purpose that conducts criminal investigations in one or more of the states involved.”
(JITs: Practical Guide, 2017:9)

The innovative character of this tool lies primarily in the fact “that such a team is comprised of investigators from multiple jurisdictions, functioning as a single unit tasked with performing a criminal investigation” (Geelhoed, 2011:470). Team leaders are supervising and directing the investigation. Information and evidence are freely and directly shared between members of a team, without the need for exchanging mutual requests for legal assistance. In this way, representatives of various national authorities - prosecutors, judges, police officers – may function as one team and may exchange information faster and more efficiently, so that quick adaptation of investigation strategies is also made possible. “The JIT agreement can speed up the investigation process because instead of multiple letters rogatory, only one agreement needs to be concluded, which creates a common judicial space” (Block, 2012:84). As it was duly emphasized by C. Riehle: “while traditional mutual legal assistance as well as the EU’s European Investigation Order (Directive, 2014/41/EU) are limited to specific investigation measures that are requested, JITs grant the partners unlimited, real-time exchange of information” (Riehle, 2023:1). The JIT enables the operators and officers from different countries to be present during investigative measures, such as searches and hearings, on each other’s territories, providing added value with their knowledge of the facts of the case and of the relevant national legislation requirements, in particular with regard to the admissibility of evidence. One of the most original and advanced elements of the JIT is the possibility of the seconded members to request from their colleagues in their home country to undertake particular investigative measures, without the need of addressing a mutual legal assistance request, and such “measure shall be considered in this Member State/Party under the conditions which would apply if they were requested in the national investigation” (Article 13(7) 2000 EU MLA Convention). Besides its numerous advantages, the use of a joint investigation team indeed may require mobilisation of significant resources, both human and financial, in order to ensure its efficiency and successful results. The support of Eurojust in particular has shown to be of great added value, ensuring over time not only legal and operational support and access to the centre of expertise, but as well financial support, facilitating the access of the national authorities to this tool.

To enable the use of this very advanced cooperation tool, the first step was to provide the adequate legal framework for the formation and functioning of JITs on the international level, but national legislation was required to further implement or develop main lines set by the international framework. However, the existence of legal provisions permitting the formation of a JIT, as perfect as any provision might be, is not sufficient to guarantee that this tool will be widely used in practice or used in an efficient manner. Awareness of practitioners needed to be raised with respect to the existence of its tool and the best practice of its use needed to be shared. In addition, the main challenges or obstacles encountered by the practitioners during the first attempts of the use of this instrument needed to be efficiently acknowledged and addressed.

Before examining in more detail the formation of joint investigation teams and practical considerations to be taken into account when setting up a JIT and during its operations, the authors will first provide an overview of the international and national legal framework related to joint investigation teams. Subsequently, the attention of the authors will be paid to the role Eurojust may play in the joint investigation teams, with particular emphasis on the possible support of Eurojust to joint investigation teams in which Serbia is taking part.



Legal Framework for the Formation of a Joint Investigation Team – International Legal Framework

United Nations

Several key multilateral UN instruments addressing different forms of crime are focused on strengthening the international cooperation between law enforcement agencies and judicial authorities and provide a legal basis for the formation of joint investigative teams or bodies. Following examples should be noted - Article 9, paragraph 1 (c) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, Article 19 of the United Nations Convention against Transnational Organized Crime (hereinafter: UNTOC) of 2000 and Article 49 of the United Nations Convention against Corruption of 2003 which all prescribe the possibility of setting up a joint investigation team which is of a general nature, without regulating more in detail the establishment and functioning of a joint investigation team.

Notwithstanding the fact that the possibility to set up joint investigation teams based on the enumerated UN conventions is limited with respect to the scope, as it is applicable to the criminal offences covered by each respective treaty,¹ and although “the JIT provisions stemming from UN instruments are generally considered as ‘enabling clauses’ (...) and that they are far less detailed and leave open a number of issues, which will be regulated in the JIT agreement between the participating countries” (JITs: Practical Guide, 2021,16), they have been considered as a useful tool particularly in situations when no other legal grounds can be found for carrying out joint investigations.

Article 19 of UNTOC may have the potential to be the most referred to in practice, in particular bearing in mind the number of the parties to this treaty.² This Article establishes a possibility for its parties both to consider the establishment of joint investigative bodies, “distinct from both a JIT and a joint parallel investigation in that it is intended to be a more permanent structure formed on the bases of a bilateral agreement” (CTOC/COP/WG.3/2020/2:2, point 9) and to conduct joint investigation on case-by-case bases based on this provision. Conducting joint investigations based on Article 19 of UNTOC is possible at any stage of the criminal proceedings in the respective state, be it the stage of “investigation, prosecution or judicial proceedings”, but “experience has shown that it is prudent to make a decision to carry out joint investigations at the earliest opportunity so that sufficient evidentiary material can be gathered and shared” (CTOC/COP/WG.3/2020/2:4, point 15).

European Union

The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (hereinafter: 2000 EU MLA Convention) was the first legal instrument that provided fairly detailed provisions for the setting up of joint investigations teams, an achievement that was possible bearing in mind the attained level of integration and trust between Member States, requiring the development of more advanced and efficient tools to respond to the exploitation of the freedoms of movement by the criminals.

1 For instance, the United Nations Convention against Transnational Organized Crime applies to the prevention, investigation and prosecution of laundering of proceeds of crime, corruption, obstruction of justice, serious crime meaning an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty where the offence is transnational in nature and involves an organized criminal group.

2 Status of ratifications available at: <https://www.unodc.org/unodc/en/treaties/CTC/signatures.html>



The development of the legal framework enabling the formation of joint investigation teams on the European Union level was a response to the European Council meeting held in Tampere in 1999, which called “for joint investigative teams as foreseen in the Treaty to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism” (Tampere EC 1999: IX, 43).

Due to the slow process of the ratification of the 2000 EU MLA Convention, its provisions on joint investigation teams contained in Articles 1, 15 and 16 of the 2000 EU MLA Convention regulating setting up and operation of the JITs and criminal and civil liability of the officials, were reproduced in the Council Framework Decision of 13 June, 2002 on joint investigation teams³ (hereinafter: 2002 FD on JITs), requiring from the EU Member States to incorporate it into their national law by 1 January, 2003. The 2002 FD on JITs should cease to have effect once the 2000 EU MLA Convention has entered into force.⁴ Although Conclusions of the European Council in Tampere restricted the scope of JITs only to criminal offences mentioned above, neither the 2000 EU MLA Convention nor the 2002 FD on JITs have “limitations with respect to the area of criminality which would justify the setup of a JIT” (Rebecchi: 98).

To date, all Member States have implemented one or both of these legal bases (JITs: Practical Guide, 2021:12). Certain Member States implemented the framework on JITs in the form of the specific law on joint investigation teams,⁵ other Member States inserted the provision of the joint investigation teams in their respective criminal procedure codes,⁶ laws regulating mutual legal assistance in criminal matters⁷ or other domestic legislation,⁸ while several Member States referred to the direct applicability of the 2000 EU MLA Convention.⁹

The Network of National Experts on Joint Investigation Teams (the JITs network) was established in 2005 “with a view to encouraging the use of JITs and exchanging experience on best practice” (Council Document establishing the JITs Network, 2005:1) in line with the commitment in the Hague Programme endorsed by the European Council in November 2004, fixing the priorities for an area of freedom, security and justice for the next five years. The main purpose of this network, whose Secretariat is hosted and supported by Eurojust, is to facilitate the work of practitioners, promote the use of JITs, and provide a forum for exchanges of experience and challenges between the practitioners.¹⁰

In relation to the legal framework within the EU law, it is important to note that JITs fall in the realm of judicial cooperation in criminal matters and police cooperation. That is the area for which the Lisbon Treaty introduced the most flexible variety of “enhanced cooperation”, a mechanism allowing asymmetric enactment of legislative measures within the EU, provided that there are at least nine Member States participating in any given instance of enhanced cooperation (Lukić, 2016:146-148).

3 OJ L 162, 20.6.2002, 1–3. <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32002F0465>

4 Which was achieved on 23 August, 2005.

5 For example: Spain, Cyprus, Luxembourg.

6 Examples of France, the Netherlands, Bulgaria, Czech Republic, Estonia.

7 Examples of Austria, Belgium, Romania.

8 For instance, in Croatia, 2022 FD on JITS was firstly implemented by the Law on Public Prosecution. Since 2018, the provision regarding JITs have been contained in the Law on Judicial Cooperation in Criminal Matters with the EU Member States.

9 For example: Denmark and Norway.

10 For more information on JITs network, please refer to its website: <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/jits-network>.



Council of Europe

The Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters (ETS No 182, hereinafter: the Second Additional Protocol to CoE MLA Convention) signed in Strasbourg on 8 November, 2001 regulates the creation between two or more parties of joint investigation teams, reproducing in its Article 20 almost to the word the Article 13 of the 2000 EU MLA Convention.

In this way, setting up of joint investigation team based on an equally detailed framework, besides for the EU Member States, became an option opened for the states that ratified the Second Additional Protocol to CoE MLA Convention,¹¹ which increased substantially the possibilities of use of this advanced tool of international cooperation and became an important legal basis for joint investigations in particular in relations between EU and non-EU Member States.

Legal Framework of the Republic of Serbia

The Republic of Serbia has ratified all three abovementioned United Nations conventions providing the legal basis for setting up of a JIT and the Second Additional Protocol to CoE MLA Convention.¹² As pursuant to the Constitution of the Republic of Serbia, generally accepted rules of international law and ratified international treaties are an integral part of the legal system in the Republic of Serbia and are applied directly (Constitution of RS, Art. 16 and 194), these international treaties and their provisions regulating joint investigation teams constitute the legal basis for setting up of joint investigation teams. In addition to multilateral treaties, Serbia has signed and ratified a number of bilateral international agreements, some of which contain provisions on setting up of joint investigation teams, particularly with the following countries: Bosnia and Herzegovina (Agreement between Serbia and Montenegro and Bosnia and Herzegovina on Mutual Legal Assistance in Civil and Criminal Matters - MLACCM, Official Gazette RS, 13/2010, Articles 33 and 36a), the Republic of North Macedonia (Agreement between Serbia and Montenegro, and the Republic of Macedonia on MLACCM, Official Gazette RS, 5/2012, Articles 25 and 30) and Montenegro (Agreement between the Republic of Serbia and Montenegro on MLACCM, Official Gazette RS 1/2010, Articles 33 and 38).

Police Cooperation Convention for Southeast Europe (PCC-SEE) provides in its Article 27 another legal grounds for setting up JITs in a very similar way to the 2000 EU MLA Convention and Second Additional Protocol to the CoE Convention, which may find the application among the states that have ratified this Convention.¹³

In cases where no ratified international treaty exists or certain matters are not regulated by it, (Art. 1), the Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of RS, 20/2009) is applied to the procedure of provision of mutual legal assistance. As it has been noted by Grubač, Ilić & Majić, this legal provision should, besides the provision of mutual legal assistance, refer to requesting mutual legal assistance. Serbian Law on Mutual Assistance in Criminal Matters law contains only two specific provisions concerning the joint investigation teams, but classifying it by one of those provisions (Article 83) in the so-called other forms of international legal assistance (i.e. “minor” mutual legal assistance, which has been not entirely adequately labeled as “other forms of mutual legal assistance”) (Grubač et

11 Chart of signatures and ratifications available at: <https://www.coe.int/en/web/conventions/full-list?module=signatures-by-treaty&treaty=182>.

12 “Official Gazette of SCG” – International agreements No. 2/2006.

13 Please refer to: <https://www.pccseesecretariat.si/index.php?page=documentspcc&item=35>



al., 2009:167) actually classifies it in the regime provided for by the Law for those forms of legal assistance (Janićijević, Manojlović, Nedeljković, Milićević, 2019:51). The other provision is contained in Article 96 of this Law,¹⁴ which is, as professor A. Klip has noted “rather ambiguous as it merely states that joint investigative teams “may be formed” (Klip, 2014:153; Article 96).¹⁵ Serbian legislator provided in Article 96 of the Law on the Mutual Legal Assistance in Criminal Matters that the Minister of Justice of the Republic of Serbia is competent to conclude the agreement on formation of a JIT.

In view of scarcity of provisions of national legislation related to the formation and functioning of the joint investigation teams, it has been recommended (Handbook on JIT, 2014:41) that adoption of more elaborate regulation of this instrument be considered for the purpose of facilitating setting up and functioning of joint investigation teams.

Formation and Functioning of a Joint Investigation Team

The below analysis is made bearing in mind in particular the EU and Council of Europe framework, taking into consideration certain examples of national legislations with respect to JITs specific aspects.

Cases Suitable for Joint Investigations

Analyzed international conventions that may be used as legal basis for establishing a JIT does not limit the use of this instrument of international cooperation with respect to a certain type of criminal offences, its gravity or the complexity of the investigation. Therefore, as long as the criminal offence is sufficiently specified, a JIT may be used equally for joint investigations of smaller-scale cross-border cases, which can prove to be particularly useful because “a JIT can facilitate co-operation in the specific case and also prepare the groundwork for future JITs by building mutual trust and providing experience in cross-border co-operation” (JIT Manual, 2011: 7). However, national legislation may provide for the restrictions in this respect and therefore should be verified in each respective case when the formation of JIT is being considered.

From the wording of the 2000 EU MLA Convention, the 2002 FD JITs, and the Second Additional Protocol to CoE Convention on MLA, which is substantially the same in this respect in all three instruments, it may be deduced that a joint investigation team may be particularly suitable tool for cooperation in two following situations: in a “demanding investigation”, i.e. an investigation into criminal offences requiring difficult and demanding investigations with links to other Member States/Parties; and in cases of “connected investigations”, i.e. in cases in which several Member States/Parties are conducting investigations into criminal offenses in which the circumstances of the case(s) necessitate coordinated and concerted action in the Member States/Party involved.

Practical considerations to be taken into account prior to setting of a JIT

The team is set up in the state in which investigations are expected to be predominantly carried out. The states concerned will have to take into account the question of costs, including the daily allowances for the members of the team (Explanatory Report, 2001:15). A JIT carries out its operations in accordance with the law of the state in which it operates.

14 Article 96 reads: “If the circumstances of the case justify it, joint investigative teams may be formed by an agreement between the Minister in charge of the judiciary in the Republic of Serbia and the competent authority of a foreign country.”

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Eurojust Guidelines on Joint Investigation Teams Involving Third Countries (Guidelines on JITs Involving Third Countries, 2022) contain an overview of the practical issues identified from an analysis of Eurojust casework, suggesting their consideration when assessing whether in a particular case a JIT would be the adequate tool for cooperation or other modalities of cooperation (such as parallel investigations or mutual legal assistance requests) might be a more adequate choice. These considerations are equally applicable to JITs between the EU Member States and to JITs between the EU Member States and non-EU countries and include: the existence and stage of investigations in the countries involved; the number of potential JIT partners; the urgency of action; the estimated time frame for finalizing the JIT agreement; and the availability of resources in the countries involved (Guidelines on JITs Involving Third Countries, 2022:6). Involvement of both Europol and Eurojust is often recommended at the earliest stage possible, as both Europol and Eurojust can provide various types of support to national authorities.

Agreement on Setting Up of a Joint Investigation Team

A joint investigation team is established by the signature of a written agreement between the competent authorities of the concerned states. The work of a JIT may be substantially simplified if the most important arrangements between the parties are regulated in detail in advance. To facilitate the work of the practitioners, various models and templates of the JIT agreement have been developed, the most notable one being the model agreement adopted by the Council of the European Union for the first time in 2003 by the Recommendation,¹⁶ subsequently amended by a Resolution adopted in 2010¹⁷. The consolidated text of the model agreement on the establishment of a joint investigation team, following the approval of the Council Resolution of 22 December, 2021 on a revised Appendix I¹⁸ is available in all EU languages on Eurojust website and may serve as non-mandatory starting point for the negotiations, as guide encompassing all the elements of importance to be agreed upon before starting joint investigations, such are in particular purpose and duration of the JIT, its composition and leadership, operational action plan and gathering of information and evidence and their exchange. This revised model agreement no longer refers specifically to the 2000 EU MLA Convention or to the 2002 FD on JITs and includes a non-exhaustive list of international agreements enabling the setting up of JITs with non-EU Member States (Guidelines on JITs Involving Third Countries, 2022:7).

In addition, it is worth noting the existence of other templates of the agreement for setting up a JIT such as the model agreement developed by the Council of Europe (Guidelines and model agreement on JIT, Appendix 4, 4) or the bilateral models developed by certain countries. The French Ministry of Justice has for example negotiated and concluded model bilateral agreements based on the EU template with several EU Member States to address in a “standardized manner legal issues with a specific country to facilitate and accelerate the signing of the JIT agreement”. The Republic of Serbia is the first non-EU Member State with which France established such a model agreement on the formation of a JIT, by signing a Memorandum of understating between the French Ministry of Justice and the Republic Public Prosecution Office on 6 October, 2016.¹⁹

16 Council Recommendation of 8 May, 2003 on a model agreement for setting up a Joint Investigation Team (OJ C 121 of 23.05.2003, p.1). The consolidated text of the model agreement on the establishment of a Joint Investigation Team, following the approval of the Council Resolution of 22.12.2021 on a revised Appendix I (OJ C 44, 28.1.2022, p. 1.) 2022/C 44/02.

17 Council Resolution of 26 February, 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT) (OJ C 70 of 19.03.2010)

18 (OJ C 44, 28.1.2022, p. 1.) 2022/C 44/02

19 See more on: <https://www.rts.rs/lat/vesti/drustvo/2478440/srpsko-francuski-istrasni-timovi-u-borbi-protiv-kriminala.html> or <http://www.rjt.gov.rs/sr/aktivnosti/republi%C4%8CKo-javno-tu%C5%BDila%C5%A0tvo-i-ambasada-republike-francuske-organizuju-konferenciju-srpsko-francuske-saradnje-na-temu-borbe-protiv-nedozvoljene-trgovine-oru%C5%BDjem-i-terorizma>.



The issue of the authority competent to conclude the agreement on the formation of a JIT has an important practical bearing on the procedure and time needed for the setting up of a JIT and has to be considered at the earliest possible stage of negotiation. This issue pertains to national legislation (2000 EU MLA Convention, Article 13) which varies in solutions, ranging from the competence attributed to prosecution service (examples of Croatia, the Netherlands, Austria, Slovenia, Romania) to the Minister of Justice (as provided for by the Serbian legislation) (Law on mutual Legal Assistance in Criminal Matters of the RS, Article 96). In France for instance, the Minister of Justice is the authority competent to authorize the setting up of a JIT, while the agreement itself is signed by the prosecutor or investigative judge in charge of the case (depending on the stage of the investigation and the complexity of the case). Bugarski has remarked that although the formation of JITs takes time, the flexibility of this team once established significantly contributes to the speed of the investigation, which rebuts the claim that the time for the formation of the JITs is considered as lost time in the investigation (Bugarski, 2017:471).

Participants of Joint Investigation Teams

Every JIT has a team leader, “representative of the competent authority participating in criminal investigations from the Member State/Party in which the team operates” (Article 13 and Article 20). Article 13 of the 2000 EU MLA Convention and Article 20 of the Second Additional Protocol to CoE Convention do not precise whether the leader should be the public prosecutor, a judge or a police officer, thus leaving the decision up to the national authorities. The practice has shown the preference in appointing representatives of judicial authorities as team leaders.

The team is composed of the “members” and “seconded members.”²⁰ Prosecutors, judges and police officers from the state in which the team operates are referred to as “members”, while members from states other than the states in which the team operates are referred to as “seconded members” (2000 EU MLA Convention, Article 13 and Article 20). Seconded members of the joint investigation team may, in accordance with the law of the country in which JIT operates and the JIT agreement, be allowed to be present when operational activities such as searches of premises or hearings are carried out. “Where the JIT needs investigative measures to be taken in one of the Member States, members seconded to the team may request their own competent authorities to take those measures” (Paragraphs 7 and 9 of Article 13, Article 20 of the Second Additional Protocol to CoE MLA Convention). This prerogative conferred to seconded members of a JIT is being labeled by many authors as one of the most innovative and important elements of this cooperation tool. Its purpose is to avoid sending mutual legal assistance requests (even in cases of need for coercive investigative measures such as for instance house search). The relevant measures will be considered in accordance with the conditions that would apply had they been sought in national investigations, which also means, as noted by Conny Rijken, “that a check for ground for refusal will not take place” (Rijken, 2006:103).

It may be envisaged by the agreement on the formation on JIT, “to the extent that the laws of the Member State/Parties concerned or the provisions of any legal instrument applicable between them permit” (2000 EU MLA Convention, Article 13 and Article 20) that persons other than representatives of the competent authorities of the parties to a JIT take part in the activities of the team, primarily in an advisory role. What the drafters had in mind was that additional assistance and expertise could be provided to a joint investigation team by appropriate persons from other states or international organizations (e.g. Europol, Eurojust, OLAF), (Explanatory Report, 2001:16).

20 Pursuant to terminology of Articles 13 of 2000 EU MLA Convention and Article 20 of the Second Additional Protocol to CoE MLA Convention.



The Use of Information Obtained within a JIT

The information lawfully obtained by a JIT may be used for the purposes for which the JIT was set up, for the investigation of other offences (subject to the prior consent of the jurisdiction concerned), for the prevention of an immediate and serious threat to public security, if subsequently a criminal investigation is opened and for other purposes if agreed by the parties setting up the JIT (Article 13(10) of MLA 200 and 20(10) of Second Additional).

Role of Eurojust in JITs

What is Eurojust

Eurojust is the European Union Agency for Criminal Justice Cooperation, “a unique hub based in the Hague, the Netherlands, where national judicial authorities work closely together to fight serious organized cross-border crime.”²¹ Created in 2002 as the EU Judicial Cooperation Unit operating on the basis of Council Decision 2002/187/JHA, Eurojust has gone through significant strengthening of its role and scope of its action over the years. Eurojust performs its functions on the basis of Article 85 of the Treaty of Lisbon (OJ C 306, 2007) and Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation, replacing and repealing Council Decision 2002/187/JHA adopted on 6 November, 2018 (OJ L 295, 2018), which regulates Eurojust mandate, governance structure, data protection regime and the framework for establishing agreements with non-EU countries. Pursuant to the Lisbon Treaty (Article 85), Eurojust mission is “to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States or requiring a prosecution on common bases, on the basis of operations conducted and information supplied by the Member State’ authorities and by Europol”. Eurojust works with national authorities to combat a wide range of serious cross-border crimes²² involving two or more countries, with a principal mission to coordinate their efforts in investigation and prosecution. Each participating EU Member State second, in accordance with its own legal system, its National Member a prosecutor, a judge or a representative of a judicial authority with competencies equivalent to those of a prosecutor or judge under national law. The College of Eurojust, which is responsible for the Agency’s operational work, is formed by National Members seconded to Eurojust. M. Helmberg has pointed out that “the advantage of this concept is that experts from all Member States work together in the same building, next to each other, so that they can communicate spontaneously and informally without any bureaucratic obstacles” (Helmberg, 2007: 246).

It seems particularly important to note that the coordination of efforts of national authorities includes both the EU Member States and non-EU Member States. Although being an EU Agency with a focus primarily on the EU Member states, Eurojust has developed over the years a wide international network of countries with judicial contact points and the countries with “privileged” relations with Eurojust, having signed cooperation agreements and/or having seconded liaison prosecutors to Eurojust.

“Eurojust evolution has been as rapid and significant as that of JITs” (Da Mota, 2009:88). Pursuant to Eurojust Annual Report for 2022, in one year only “Eurojust contributed to the arrest of more than 4000 suspects, the seizure and/or freezing of criminal assets worth almost EUR 3 billion and the

21 https://www.eurojust.europa.eu/sites/default/files/assets/2021_09_eurojust_factsheet_practitioners_en.pdf

22 Please refer to Article 3 of the Eurojust Regulation in its Annex I for more details on the competence of Eurojust with respect to the forms of serious crime.



seizure of drugs worth almost EUR 12 billion” (Eurojust Annual Report, 2022:11). In 2022, Eurojust provided support in 11,544 cases across 13 categories of serious cross-border crime, ranging from trafficking in human beings and drugs to terrorism and cybercrime (Report 2022:11), which represents 14% increase in caseload compared to the previous year.²³ If we go back only half a decade in time, and compare the number of cases in which support was provided in 2018 – 6,654 and 2017 – 5,608 (Eurojust Annual Report, 2022:12), we may establish that the number of cases supported by Eurojust has increased by over 100% since 2017, evidencing the strengthening of its role and support over time.

Most of the cases Eurojust has dealt with over the years concern the facilitation of judicial cooperation, i.e. assistance when it comes to the execution of requests for judicial cooperation, i.e. European arrest warrant, European investigation orders and mutual legal assistance requests. However, Eurojust is also providing support in relation to complex and sophisticated forms of assistance and cooperation between national authorities, such as in particular coordination meetings, coordination centers, i.e. joint planning of action days and joint investigation teams. As a tool for coordination of investigations and prosecutions led by national authorities in cross-border cases, the coordination meetings are designed to bring together the “prosecutors, investigative judges and law enforcement representatives (...) to share information and agree on the next steps – how to resolve legal and practical issues, what actions to take and which measures to apply”²⁴. Held in Eurojust premises in the Hague or via secure video-conference, these meetings of national authorities are facilitated by Eurojust which, besides practical and logistical aspects such as ensuring simultaneous interpretation - enabling for the national authorities to explain subtitle details of their respective cases in their own language – and ensuring the coverage of travel expenses, assist national authorities by providing its expertise in judicial cooperation in criminal matters.. Just for the purpose of illustration, we note that 528 coordination meetings have been organized by Eurojust in 2022 (Eurojust Annual Report, 2022:68). These meetings are very often an opportunity for the involved national authorities to assess the adequacy of a case for joint investigation team, guided by Eurojust know-how and vast experience. Coordination meetings have as well great importance for further functioning of a JIT as they represent an opportunity for enabling regular exchanges between its participants during the entire lifespan of a JIT.

Support of Eurojust to JITs

One of the key roles of Eurojust is providing operational, legal and financial support to joint investigation teams, together with enabling access to the expertise of the JITs Network. Starting from allowing direct contact between involved national authorities, providing the possibility of identification of linked or parallel investigations that would benefit from joint action, through providing guidance on types of cases in which a JIT can be a suitable tool of cooperation and advising on the steps to be taken for the purpose of setting up of a JIT, facilitation of negotiation of a JIT agreements and drawing attention on potential issues to be timely dealt with, Eurojust expertise and assistance have been proven to be of great added value to the use of this instrument of international cooperation.

Various supporting tools developed by JITs Network, Eurojust and Europol are at the disposal of the national authorities, such as in particular JITs Practical Guide, published in 2017 and updated in 2021, as one of the most notable example (Practical Guide, JITs Network, 2021). This guide was developed by the JITs Network in cooperation with the Eurojust, the European Union Agency for Law Enforcement Cooperation (Europol) and the European Anti-Fraud Office (OLAF).

²³ In which support was provided in relation to 10,105 cases according to Eurojust Annual Report 2022.

²⁴ Eurojust website: <https://www.eurojust.europa.eu/judicial-cooperation/tasks-and-tools/coordination-meetings>



Participants of a JIT, especially of the JIT benefiting from financial support from Eurojust, are requested to perform an evaluation of a JIT once finalized, with the assistance of an evaluation form developed by the JIT Network. The results of such evaluations are included in the periodic reports published since 2014 by the Secretariat of JITs Network, “summarizing the practical findings, lessons learned and best practices from the JIT evaluation project” (Riehle, 2023, 164). The most recent, Fourth evaluation report, was published in June 2023 and is available at the Eurojust website.²⁵

“Financial support provided by Eurojust and/or other EU agencies to JITs is another important benefit to national authorities, reducing the impact on national budgets of costs incurred due to the transnational dimension of cross-border cooperation” (Supporting judicial authorities in the JITs, 2020:2). Eurojust funding is available upon request and according to specific funding scheme.²⁶ Eurojust assists national authorities in reimbursing the costs of travel and accommodation of a JIT participants, interpretation and translation, transfer of items²⁷ and specialized expertise costs. In addition, in an attempt to provide support to national authorities in enabling secure communications among JIT participants, a loan of IT equipment is possible to national authorities or financial grants to enable JITs to purchase their own low-value equipment (such as hardware or software) for use within the JIT operational activities, facilitating significantly the exchange of information between a JIT members and increasing the security of the communication.

As the answer to the challenge of ensuring secure electronic exchange of information and evidence and secure electronic communication with other JIT members and JIT participants such as Eurojust, Europol and OLAF, on 1 December, 2021, the European Commission adopted a new initiative²⁸ establishing a collaboration platform to support the functioning of JITs, with the aim of “increasing the efficiency and effectiveness of investigations and prosecutions carried out via JITs in cross-border cases, by facilitating communication and collaboration among JIT parties through a dedicated digital tool”. The Regulation (EU) 2023/969, establishing a collaboration platform to support the functioning of Joint Investigation Teams and introducing amendments to Regulation (EU) 2018/1726, was adopted on 10 May, 2023 (Regulation (EU) 2023/969, 1-20), establishing a voluntary dedicated IT collaboration platform to facilitate the cooperation of competent authorities participating in JITs established on the basis of the EU frameworks and to increase further the security of the exchanges of information and communication between a JIT members and participants. The platform is currently developed by the EU Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (EU-LISA) and it is expected to be operational no later than 7 December, 2025.

Statistical information of the JITs supported by Eurojust demonstrates a clear increase of the use of this advanced cooperation tool among EU Member States and consequential increase of Eurojust support contributing to successful results in a wide range of cases, including priority crime areas as defined by the Council of the European Union, such as terrorism, cybercrime, migrant smuggling, drug trafficking and trafficking in human beings. In 2021, Eurojust supported financially and operationally 254 JITs, representing an increase of more than 200% compared with 2015. Pursuant to the Eurojust Annual Report for 2022, a slight but certain increase in the number of supported JITs was noted in 2022 (265).

25 Available at: <https://www.eurojust.europa.eu/publication/fourth-jits-evaluation-report>

26 For more information please refer to the Eurojust website: <https://www.eurojust.europa.eu/judicial-cooperation/instruments/joint-investigation-teams/jits-funding>

27 Such as procedural documents, evidence or items seized during a JIT operations.

28 For more information please see: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/digitalisation-justice/joint-investigation-teams-jits-collaboration-platform_en



Support of Eurojust to JITs with Non-EU Member States

Although Eurojust is an EU Agency and its assistance is primarily oriented towards the EU Member States, non-EU Member States may benefit from its expertise and support under certain conditions. Besides the network of judicial contact points, to date in 60 non-EU Member States²⁹ devoted to strengthening and facilitating cooperation between judicial authorities, 13 countries signed a cooperation agreement with Eurojust³⁰ enabling the participation of the non-EU countries in the work of Eurojust and their access to the practical operation tools offered by Eurojust. Ten³¹ out of these thirteen countries have seconded the liaison prosecutors to Eurojust headquarters, possibility envisaged under the Cooperation Agreement, enabling more direct contact and cooperation between practitioners.

As it was acknowledged in the Third JIT Evaluation Report published by the JITs Network in 2020, “JITs are increasingly seen as a valuable tool of judicial cooperation with third states” (Third JIT Evaluation Report, 2020:4). Coordination meetings attended as well by the practitioners of the non-EU countries with links to a particular case have been recognized as a “valuable platform to deliberate on the suitability of a case to set up a JIT, to draft the JIT agreement and decide on the operational way forward” (Third JIT Evaluation Report, 2020:4). A significant increase of newly established JITs involving non-EU Member States supported by Eurojust may be noted, rising from 3 in 2016 to 21 in 2019, 36 in 2020 and 32 in 2021 (Guidelines on JITs Involving Third Countries, 2022, 37). To respond to the increased interest and to facilitate further the work of the practitioners, new support material was developed, to address specific issues raised in the framework of cooperation between the EU and non-EU Member States within a JIT, with particular emphasis on Guidelines on Joint Investigation Teams Involving Third Countries prepared by JITs Network and Eurojust and published on Eurojust website on 17 June, 2022 (Guidelines, 2022) and Checklist for Practitioners on Joint Investigation Teams Involving Third Countries published on the same day (Guidelines on JITs Involving Third Countries, 2022).

The legal basis for setting up a JIT between countries that are not members of the EU and between the EU and non-EU Member States depends on the partners of a particular JIT and may include Article 20 of the Second Additional Protocol to CoE MLA Convention, Article 19 of the UNTOC or a number of other international multilateral and bilateral treaties, with the possibility to combine the legal bases in a multilateral JIT in case not all the participants to JIT are parties to the same international instrument used as a legal basis for setting up of a JIT.

The flexibility of a JIT as a tool of international cooperation enables its adaptation to the needs of practitioners and allows to respond to varied legal frameworks, differences in requirements of national legislation and the needs of the specific case to adequately perform its functions.

Cooperation Between Eurojust and Serbia

After a long-lasting successful cooperation between the Republic of Serbia and Eurojust that was ongoing through contact points in the Ministry of Justice of the Republic of Serbia and the Republic

29 For more information, please refer to the Eurojust website: <https://www.eurojust.europa.eu/states-and-partners/third-countries/contact-point-network>

30 Albania, Georgia, Iceland, Liechtenstein, Moldova, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States.

31 Albania, Georgia, Montenegro, North Macedonia, Norway, Serbia, Switzerland, Ukraine, the United Kingdom and the United States.



Public Prosecution Office, the Republic of Serbia signed the Agreement on Cooperation with Eurojust on 12 November, 2019.³²

As stated in the preamble of this agreement, it established a basis for facilitation of the coordination of investigations and prosecutions covering the territory of Serbia and one or more Member States of the European Union, and has as a purpose “to enhance the cooperation between Eurojust and Serbia in combating serious crime, particularly organized crime and terrorism” (Agreement on cooperation between Eurojust and Serbia, Article 2), which is of particular importance for the negotiations between the Republic of Serbia and the European Union, within Chapter 24: Justice, Freedom and Security (Report on the work of public prosecutor’s offices for 2020, 145).

The Cooperation Agreement regulates the scope of the cooperation (Agreement on cooperation between Eurojust and Serbia, Article 3) and confers the competency for the execution of this Cooperation Agreement to the Republic Public Prosecutor’s Office of the Republic of Serbia for Serbia and to the National Members concerned and the Eurojust College within Eurojust (Article 4). Based on the Cooperation Agreement (Article 5), with the purpose of strengthening and facilitating cooperation, Serbia seconded a Liaison Prosecutor to Eurojust. The office of the Liaison Prosecutor was opened in Eurojust premises in the Hague in March 2020 (Eurojust – Annual Report 2022).

The results of the cooperation between Serbia and Eurojust qualified Serbia among the top three non-EU Member States with the highest casework load in 2020 (Eurojust – Annual Report 2020: 27). In 2022 only, according to the Eurojust Annual Report, Serbia participated in 181 cases, 22 coordination meetings, and one action day. Providing assistance in forwarding, monitoring of the execution and informing the requesting state of the status of execution of the request for mutual legal assistance was the dominant of assistance provided by the Office of the Liaison Prosecutor in 2022, (Report on the work of public prosecutor’s offices for 2022, 132) and in previous years, but the number of coordination meetings within Eurojust attended by Serbia has been significantly increasing over time.

More particularly with regard to joint investigation teams, it is worth noting that Serbia has so far acquired certain experience in the use of this advanced cooperation tool. In the previous year only, Serbia participated in four joint investigation teams enjoying the support of Eurojust (Report for 2022, 132), while in 2021 Serbia took part in three such joint investigation teams, the same as in 2020 (Report for 2021, 146), some of which yielded significant results, such as joint investigation team with Spain leading to dismantling large scale drug trafficking network and arrest of 43 members of a Serbian organized criminal group for their involvement in the production and distribution of marijuana and hashish, mainly destined for sale in Germany (Eurojust, July 22, 2021)³³ or a joint investigation team enabling the authorities in Austria, Bulgaria, Germany and Serbia to successfully carry out operations against two organized criminal groups suspected of large-scale investment fraud in cyber-trading (Eurojust, April 7, 2020).³⁴

32 <https://www.pravno-informacioni-sistem.rs/SlGlasnikPortal/eli/rep/mu/skupstina/zakon/2019/14/1>. https://www.eurojust.europa.eu/sites/default/files/InternationalAgreements/Eurojust-Serbia-2019-11-12_EN.pdf

33 For more information please refer to: Eurojust coordinates dismantling of Serbian marijuana trafficking network operating from Spain. (2021, July 22). *Eurojust*. Accessed on August 25, 2023. <https://www.eurojust.europa.eu/news/eurojust-coordinates-dismantling-serbian-marijuana-trafficking-network-operating-spain>

34 See more in: Action against large-scale investment fraud in several countries. (2020, April 7). *Eurojust*, Accessed on August 25, 2023. <https://www.eurojust.europa.eu/news/action-against-large-scale-investment-fraud-several-countries>



Conclusion

JITs were envisaged as an innovative and very advanced tool of international cooperation in criminal matters. Their use was expected to produce important results in strengthening international cooperation in the fight against serious cross-border crime. More than two decades have lapsed since this tool was introduced by virtue of the EU law and Council of Europe treaties. In these two decades, many success stories have taken place, and this instrument has been increasingly used by law enforcement officials and prosecutors in the investigation of serious cross-border crime.

It has been noted that according to available statistical information, in 2022 Eurojust provided its support to 265 JITs. Underlining that this statistics provides only a partial illustration of the overall use of its instrument as it encompasses only the JITs supported by Eurojust, we must note that what remains under the radar of statistics are the best practices developed in response to various challenges by the practitioners supported by the expertise of Eurojust, Europol and JITs Network. What escapes to quantification is the value of experiences exchanged between judicial and law enforcement authorities in view of resolving various issues encountered during joint investigations, caused by the great variety of contemporary forms of crime and complexities resulting from differences between national systems. What the overall number of joint investigation teams formed in twenty years of the existence of this tool, even if known, would not tell us is the widespread of the network the practitioners created as the outcome of joint actions and the extent to which mutual trust has been developed over the years between the practitioners that have had the opportunity to be a part of a joint investigation team and to work united in a common goal to jointly fight against trans-border crime.

Over the years, the JITs Network, Eurojust and Europol have developed a great amount of material containing extremely useful guidance to the competent national authorities in relation to both setting up of a JIT and participating in one. Diverse types of support have been put in place in particular by Eurojust, “to encourage and enable setting up of JITs in a swift, efficient and effective manner” (Da Mota, 2009:88) and to assist the national authorities in practically every step of such process, starting from the noticing an actual opportunity to put this very advanced tool of cooperation into work.

Raising awareness of the national authorities in charge of investigation and prosecution, not only with respect to the existence of this innovative tool of cooperation that would enable them to join forces in the fight against cross-border crime, but also with respect to a great variety of useful material and guidelines and a vast array of available expertise and support throughout the lifetime of a JIT, might greatly contribute to even more efficient and effective use of joint investigation teams by the competent national authorities and lead to an even greater number success stories.

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