

APPENDIX 4

Guidelines and model agreement on JIT

What is a Joint Investigation Team (JIT)?

Art. 20 of the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters (ETS No 182) regulates the creation between two or more Parties of Joint Investigation Teams (JIT). A JIT is an international team formed by mutual agreement by the competent authorities of two or more Parties to carry out criminal investigations in one or more of the Parties setting up the team for a specific purpose and limited duration.

JIT is an efficient tool of judicial cooperation in criminal cases with a cross border dimension where a State, which is investigating criminal offences, particularly in relation to the most serious forms of criminality, 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.

Setting-up a JIT can add value to practitioners in their investigations and help to develop international cooperation in criminal matters in general and share best practices and working experience. This would enable judicial and police authorities to gather good practice and improve cooperation in complex investigations.

As a flexible investigative tool, the JIT is based upon idea that a team of investigators and judicial authorities from two or more States working together with a clear legal authority and certainty about the rights, duties and obligations of the participants would improve the fight against organised crime.

A JIT enables its members to exchange information with each other and requests investigative measures between team members without a formal request of MLA; be present at house searches, interviews, etc. in all jurisdictions covered by the JIT as well as coordinate efforts and directly exchange knowledge. It is important to point out that JITs do not affect the application of national legislation.

When to establish a JIT?

A JIT may be considered most useful when;

- a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved

How is a JIT established?

The rules for establishing a JIT can be found in the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters (Article 20 paras 1 and 2, ETS No. 182)

A request to set up a JIT agreement can be made by any of the Parties concerned. The essential elements of the JIT agreement to carry out criminal investigations in one or more of the Parties setting up the team shall include:

- its specific purpose;
- the Parties where the JIT will operate
- a limited period
- the composition of the JIT

The terms of the agreement may be extended by mutual agreement.

Each Party may set specific conditions, such as: the participation of experts (non officials) , the carrying of arms, the use of force or powers of arrest by police officers operating outside of their original jurisdiction, and the use of special investigation techniques. The Party in which the team operates shall make the necessary organisational arrangements for it to do so.

A model agreement to set up a JIT, model agreements to amend/extend the JIT as well as a checklist for an operational action plan (OAP) are proposed in the appendices to this note.

Who participates in a JIT?

- “Members” from the jurisdiction of the Party in which the JIT operates;
- “ Seconded members” members from other jurisdictions
- Other participants (experts) if and as agreed.

How does a JIT function?

In conformity with Article 20 paragraph 3 of ETS No 182, the following general conditions apply:

- The leader of the JIT shall be an official involved in the criminal investigation of the Party in which the team operates and shall act within the limits of his/her competence under national law;
- All members of the team shall carry out their operations in accordance with the law of the Party in which it operates;
- All members of the team shall carry out their tasks under the leadership of the team leader, taking into account the conditions set by their own authorities in the agreement on setting up the JIT.

Due to the principle that the law of the party of operation always applies, seconded members have limited powers:

- Seconded members are entitled to be present when investigative measures are taken except when the leader of the team decides otherwise;
- Seconded members may take investigative measures only if:
 - asked by the team leader;
 - approved by the Party of operation
 - approved by the seconding Party.

For the purposes of the criminal investigations conducted by the JIT, seconded members may provide the team with information available in the Party which seconded them in accordance with their national law and competences.

How can information gathered be used?

In accordance with Article 20, paragraph 10 of ETS No 182, information lawfully obtained by a JIT may be used for:

- The purposes for which the JIT was set up
- Investigating other offences, subject to the prior consent of the jurisdiction concerned;
- Preventing an immediate and serious threat to public security, if subsequently a criminal investigation is opened
- Other purposes if agreed by the Parties setting up the JIT.

Advantages of using a JIT:

Ability to share information directly between JIT members without the need for formal requests

Ability to request investigative measures between team members directly, dispensing with the need for Letters Rogatory. This applies also to requests for coercive measures

Ability for members to be present at house searches, interviews, etc. in all jurisdictions covered, helping to overcome language barriers in interviews, etc.

Ability to co-ordinate efforts on the spot, and for informal exchange of specialised knowledge

Ability to build and promote mutual trust between practitioners from different jurisdictions and work environments.

A JIT provides the best platform to determine the optimal investigation and prosecution strategies

Participation in a JIT raises awareness of the management and improves **delivery of international investigations**

In a serious and ongoing investigation, the JIT:

- Allows for cooperation and evidence gathering at an informal/team level, without the requirement of Letters Rogatory.
- Allows investigators from your country to participate in an investigation within the country being investigated.
- Provides the best position when determining strategy and continuing investigation.

Appendices

A model agreement for setting up a JIT (Appendix 4. 1).

Model to extend/amend the agreement (Appendix 4.2 and 4.3).

A checklist for an operational action plan (OAP) (Appendix 4. 4)

APPENDIX 4.

MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

In accordance with Article 20 of the Second Additional Protocol to the Convention on Mutual Assistance in Criminal matters (ETS No.182)

1. Parties to the Agreement

The following parties have concluded an agreement on the setting up of a joint investigation team, hereinafter referred to as 'JIT':

1. (Name of the first competent agency/administration of a State as a Party to the agreement)

and

2. (Name of the second competent agency/administration of a State as a party to the agreement)

3. (Name of the last competent agency/administration of a State party to the agreement)

The parties to the agreement may decide by common agreement to invite other States' agencies/administrations to become parties to this agreement.

2. Purpose of the JIT

The agreement shall cover the setting up of a JIT for the following purpose:

Description of the specific purpose of the JIT. This should include the circumstances of the crime(s) being investigated (date place and nature).

The parties may redefine the specific purpose of the JIT by common agreement.

3. Approach

The parties to the agreement may agree on an operational action plan (OAP) setting out the orientations according to which the purpose of the JIT is to be achieved.

4. Period covered by the agreement

In accordance with, JITs shall be set up for a limited period of time. With respect to this agreement, this JIT may operate during the following period:

from

[insert date]

to

[Insert date]

The expiry date stated in this agreement may be extended by mutual consent of the parties in the form provided for in Appendix II to this model agreement.

5. State(s) in which the JIT will operate

The JIT will operate in the State(s) designated hereafter:

[Designate State or States in which the JIT is intended to operate]

In accordance with Article 20, paragraph 3b of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, the team shall carry out its operations in accordance with the law of the State in which it operates at any particular time. Should the JIT move its operational basis to another State Party, the law of this State shall then apply.

6. JIT Leader(s)

The parties have designated the following person, who shall be a representative of the competent authorities in the State(s) where the team is operating, as the leader of the JIT and under whose leadership the members of the JIT must carry out their tasks in the State to which he belongs:

State	On secondment from (name of body)	Name	Rank and affiliation (judicial, Police or other competent authority)
-	-	-	-
-	-	-	-

Should any of the abovementioned persons be prevented from carrying out their duties, a replacement will be designated without delay by mutual consent of the parties in an appendix to the agreement. In urgent cases, it will be sufficient for the parties to the JIT to give notification of the replacement by letter. Such notification shall subsequently be confirmed in an appendix to the agreement.

7. Members of the JIT

In addition to the persons referred to in Article 6, the following persons shall be members of the JIT:

State	On secondment from (name of body)	Name/identification number (1)	Rank and affiliation (judicial, Police or other competent authority)	Role
-	-	-	-	
-	-	-	-	

(1) If there are good grounds for protecting the identity of one or more members of the JIT, such as, in cases of covert investigations or in cases of terrorism that require maximum security, identification numbers must be assigned to those persons, as far as it is compatible with the national legislation of the State, party to the Second Additional Protocol. The numbers assigned must be included in a confidential document. Should it not be possible to assign an identification number, it may be agreed that the identity of the members is set out in a confidential document, which is attached to this agreement and which is made available to all parties thereto.

Should any of the above-mentioned persons be prevented from carrying out their duties, a replacement will be designated without delay in an appendix to this agreement or by a written notification sent by the competent leader of the JIT.

8. Participants in the JIT

The provisions on participants in the JIT are dealt with in the relevant appendix to this agreement.

9. Obtaining evidence

The parties entrust the leader or a member (s) of the JIT with the task of giving advice on the obtaining of evidence. His or her role includes providing guidance to members of the JIT on aspects and procedures to be taken into account in the taking of evidence. The person(s) who carry out this function should be indicated here.

In the OAP the parties may inform each other about giving testimony by members of the JIT.

10. General Conditions of the Agreement

In general, the conditions laid down in Article 20 of the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters shall apply as implemented by each State Party in which the JIT operates.

The agreement shall furthermore cover the issue of expenditures linked to the operation of the JIR.g o

11. Amendments to the agreement

Amendments to this agreement, including but not limited to the following:

- (a) the incorporation of new members of the JIT;
- (b) changes to the purpose provided for in Article 2 of this agreement;
- (c) additions or changes to the current articles.

shall take the form provided for in Appendix III to this model agreement, shall be signed by the parties and shall be attached to the original version.

12. Internal evaluation

The JIT leaders shall periodically evaluate the progress achieved as regards the general purpose of the JIT, while determining and addressing any problems thus identified.

After the operation of the JIT ends, the parties may, where appropriate, arrange a meeting to evaluate the performance of the JIT.

The JIT may draw up a report on the operation, which may show how the operational action plan was implemented and which results were achieved.

13. Specific arrangements of the agreement (in order to avoid making the agreement too cumbersome some or all points indicated under 13.1-13.11 may be located in OAP).

The following special arrangements shall apply to this agreement (note that a number of these aspects are also regulated in the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters (ETS No. 182):

(To be inserted, if applicable. The following sub-chapters are intended to highlight possible areas that need to be specifically described).

13.1. Terms under which seconded members of the JIT may be excluded when investigative measures are taken.

13.2. Specific conditions under which seconded members may carry out investigations within the MS of operation.

13.3. Specific conditions under which a seconded member of a JIT may request his/her own national authorities to take measures which are requested by the team without submitting a letter of request.

13.4. Conditions under which seconded members may share information derived from seconding authorities.

13.5. Provisions concerning the media, in particular the need for consultation prior to the presentation with the other Party of press releases and official information briefings.

13.6. Provisions concerning the confidentiality of this agreement.

13.7. The language to be used for communication must be defined.

13.8. Specific provisions on expenditure :

13.8.1. Provisions on insurance for seconded members of the JIT;

13.8.2. Provisions concerning expenditure on translation/interpreting/telephone tapping, etc.

13.8.3. Provisions on the translation of, for example, the documents obtained into the language of other members of the JIT, as well as into the official language of communication (if different), since this can entail considerable (unnecessary) expenditure;

13.8.4. Provisions concerning expenses or income arising from seized assets.

13.9. Conditions under which assistance sought under the European Convention on Mutual Legal Assistance and its Additional Protocols and other arrangements may be given.

13.10. Specific data protection rules.

13.10.bis The preliminary investigation is subject to confidentiality regards all measures and actions taken inand and the reports concerning the actions taken unless the parties agree otherwise.

13.11. Conditions under which seconded members may carry/use weapons.

Done at (place of signature), (date)

(Signatures of all parties)

*Appendix 4.2***TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM****Agreement to extend a joint investigation team**

In accordance with Article 20 of the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters (ETS No. 182) on joint investigation teams:

The parties have agreed to extend the joint investigation team (hereinafter ‘JIT’) set up by agreement of *[insert date]* done at *[insert place of signature]*, a copy of which is attached hereto.

The parties consider that the JIT should be extended beyond the period for which it was set up *[insert date on which period ends]* since its purpose as established in Article *[insert article on purpose of JIT here]* has not yet been achieved.

The circumstances requiring the JIT to be extended have been carefully examined by all the parties. The extension of the JIT is considered essential to the achievement of the purpose for which the JIT was set up.

The JIT will therefore remain in operation until *[insert date on which new period ends]*. The above period may be extended further by the parties by mutual agreement.

Date/Signature

*Appendix 4.3***TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM****Suggested wording for changes other than the period for which a JIT is set up**

In accordance with Article 20 of the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters (ETS no. 182) on joint investigation teams, under which the present joint investigation team was set up:

The parties have agreed to amend the written agreement setting up a joint investigation team (hereinafter 'JIT') of [*insert date*], done at [*insert place*], a copy of which is attached hereto.

The signatories have agreed that the above agreement should be amended as follows:

1. (Amendment ...)
2. (Amendment ...)

The circumstances requiring the JIT agreement to be amended have been carefully examined by all the parties. The amendment(s) to the JIT agreement is/are deemed essential to achieve the purpose for which the JIT was set up.

Date/Signature

*Appendix 4.4***Check list for the Operational Action Plan (OAP)**

The following points may be addressed by the parties:

Introduction — describe the purpose of the JIT. The text used under ‘purpose of the JIT’ in the JIT agreement would normally be sufficient

Operational procedure — identify the location(s) where the JIT is likely to operate, describe how the JIT will be managed and the investigation conducted, taking note of national legislation, guidelines and procedure

Role of members and/or participants of the JIT — identify and describe the different operational roles and tasks of each member and/or participant in the JIT () if not yet described in the JIT agreement

Special or specific measures to be implemented — identify and describe investigative activity that requires special measures or procedure e.g. child suspects, victims, dangerous/hostile working environment

Operations and investigative powers — identify and describe special operations/investigative techniques that will be employed during the investigation e.g. intrusive surveillance, informants, undercover officers, communication intercepts etc. and related legislation/procedure

Intelligence assessment and tasking — describe the process of intelligence collection and development and any related guidelines

Evidence gathering — identify according to the jurisdiction(s) any legislation, guidelines, procedure etc. which must be taken into account including responsible agency/individual, requirement to translate evidence

Prosecution — identify the competent authority in each country/jurisdiction and any guidelines related to decisions to prosecute in this respect

Testimony — identify the likelihood and procedures in place for each jurisdiction in respect of the requirement for JIT members to give evidence

Disclosure — describe the rules and procedures for all jurisdictions where the JIT is likely to operate

Operational and strategic meetings — identify and describe the meetings that will take place, their frequency and participants

Administration and logistics — any issues concerning administration, equipment (such as office accommodation, vehicles, IT equipment or any other technical equipment), resources, personnel, media, confidentiality issues, etc. sho