



Guest Lectures Series of the Office of the Prosecutor

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“Joint Investigation Teams: Experiences and Challenges”

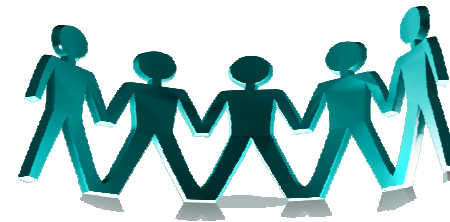
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Joint Investigation Teams

Experiences and challenges



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Several Legal Basis

- **Within the EU:**

Convention on Mutual Assistance in criminal matters
between Member States of the EU, 2000, article 13

- **Council of Europe:**

Second Additional Protocol to the European Convention on
mutual assistance in criminal matters 8.11.2001, article 20.

- **Other legal basis**

UN Convention on transnational crime, 2000, article 19

UN Convention against corruption, 2003, article 49

EU-US agreement on mutual legal assistance, 2003 article 5



Definition

A JIT is an investigation team set up by mutual agreement by competent authorities of two or more member states for a specific purpose and a limited period of time to carry out criminal investigations



Agreement

This agreement is the basis for the entire investigation.

It sets out:

- The length of the investigation
 - The identity of the persons involved in the team
 - The powers of those persons
 - The law applicable
 - Any specific confidentiality issues
 - The competent jurisdiction (who will hear the case?)
 - Other issues: costs, working language, translation issues etc.
- A model agreement for setting up a joint investigation team was issued in 2003 by a Recommendation of the EU Council



Scope

- **To investigate which crimes?**
- Usually set up to investigate the most serious crimes. e.g. terrorism, trafficking in human beings, drug trafficking
- Recommendations now within EU to use JITs for crimes considered less serious also (e.g. corruption, tax offences...)
- **When?**
- For instance when investigation shows tight connections with other Member States or when many investigations are opened on the same persons or relating to the same facts.
But those examples are not limitative.



Scope

- **By whom?**
- The EU and Council of Europe texts state “by competent authorities”, meaning generally judicial authorities (prosecutors, investigative magistrates) who are either members of the team or only coordinating action of the team
- **For how long?**
- Depending on the agreement signed between the different competent authorities (usually from 6 months to 1 year). Can be extended.



Participation to JITs

- 2 types of “participation”:
 - **members** of the JIT: Member States. Seconded members or members.
 - **other officials, “participants”**: for instance officials of international organisations (e.g. Europol, Interpol...) or of third countries
- Powers of “**seconded**” members: granted by their country of origin and within the limits of the applicable law
- Under the supervision of a “**team leader**” selected from the country where the team operates (can therefore change) and of the investigating magistrates who have set up the team.



The information gathered

- **The gathering process**
- Seconded members are permitted to be present when investigative measures are taken in the Member States but can exceptionally be excluded by the team leader.
- Seconded members may request their own competent authorities for intelligence or take the investigative measures needed by the team, *as if the team was another national body* of that country requesting information for a national investigation.



Comparison with International Rogatory Letters

Rogatory Letters:

- “Static” instrument
- Language difficulties
- Lengthy transmission procedure
- No time limit

JIT

- Flexible: can evolve with the findings of the investigation
- Less language problems
- Free transmission of information usable in court without any formal request needed
- Time limit



The use of the information gathered

- The European texts explain very clearly for which purposes the information gathered can be used:
 - For the purpose for which the team has been set up
 - For detecting, investigating and prosecuting other criminal offences (with consent of the State where the information became available)
 - For preventing immediate and serious threat to public security if a criminal investigation is opened
 - For any other purpose on the condition of consent by the States setting up the team



Additional information

- **JIT Experts** are meeting regularly
They aim at improve the knowledge of practitioners of this tool. For instance, they will guide set up a set of criteria to know when a JIT should be set up (complex case, avoidance of numerous formal request, cost analysis etc.)
- More information can be found on the **Europol and Eurojust web site/ special JIT project**



Relevance of JITs for the ICC

- JIT can be set up to investigate crimes falling within the jurisdiction of the ICC.
- Paragraph 10 of the Preamble of the Rome Statute: *the ICC shall be complementary to national criminal jurisdictions*
- 1. Participation of ICC officials within a JIT
- Possible according to EU and Council of Europe legal instruments
- Possible according to the Rome Statute? Article 93.10(a)
- Never tried (to my knowledge) but seems to be a real possibility



Relevance of JITs for the ICC

2. Setting up of a JIT

- European texts envisage the setting up of the JIT by competent authorities of the member States only and not by prosecutors of international criminal tribunals or courts.
- Article 54.3(d): the Prosecutor shall *enter into such arrangements or agreements not inconsistent with this Statute (the Rome Statute), as may be necessary to facilitate the cooperation of a State, intergovernmental organisation or person.*
- Article 87: requests for cooperation to State parties and invitation to provide assistance to non-State parties.



Relevance of JITs for the ICC

- Case being heard in front of the ICC?

Would the States setting up the JIT be able to decide that the judicial process would be heard *in fine* in front of the ICC?

- From a national or European point of view
- From the point of view of the ICC: would probably be contrary to article 17.1.(a) of the Rome Statute.



Role of Europol

Europol:

Article 3 of the Europol Convention which was inserted by the JIT Protocol (entered into force March 2007):

- assist in all activities and exchange information with all members of the JIT
- using the computerised system in Europol (Analysis Work Files, IS)
- possibility to request EU Member states to initiate, conduct or coordinate investigations in specific cases
- The new Europol decision which should enter into force in 2010 lists as a new competence the crimes falling within the jurisdiction of the ICC.



Role of Eurojust

Eurojust:

Article 6(a)(iv) of Council Decision of 28 Feb. 2002 setting up Eurojust with a view to reinforcing the fight against serious crime

Can make an official request to the competent authorities in the EU Member States to set up a JIT



European experience of JITs

- The experience of a French/Spanish JIT in 2006 on a drug case (SPES NOSTRA)
- April 2008: France participates 13 JIT with Spain (11 drugs and terrorism), Belgium (1 terrorism) and Germany (1 terrorism)
- Operational difficulties