

I

(Resolutions, recommendations and opinions)

RESOLUTIONS

COUNCIL

COUNCIL RESOLUTION

of 26 February 2010

on a Model Agreement for setting up a Joint Investigation Team (JIT)

(2010/C 70/01)

THE COUNCIL OF THE EUROPEAN UNION,

HAVING REGARD to Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ (hereinafter referred to as 'the Convention') and to the Council Framework Decision of 13 June 2002 ⁽²⁾ on joint investigation teams (hereinafter referred to as the 'Framework Decision'),

HAVING REGARD to the Council Recommendation on a model agreement for setting up a joint investigation team ⁽³⁾, approved in 2003 to support experts in the initial implementation of JITs,

BEARING IN MIND that at that time it was not possible to base the model agreement on best practice derived from actual experience because of the limited number of JITs then in operation, although it did provide the basis for later JIT agreements,

AWARE that a significant number of JITs have been set up since 2003 and that there is now much greater readiness to set them up than there was a few years ago,

BEARING IN MIND that such a model agreement should be comprehensive but also flexible so as to ensure that the competent authorities may adapt it to the particular circumstances of each case,

CONVINCED that the practitioners need an updated model based on best practices where establishing JITs,

BEARING IN MIND the conclusions of the network of JIT experts set up in 2005 ⁽⁴⁾, particularly the conclusions reached at its third, fourth and fifth meetings held in November 2007 ⁽⁵⁾, December 2008 ⁽⁶⁾ and December 2009 ⁽⁷⁾, and Eurojust and Europol best practice and experience,

BEARING IN MIND that since practice in the establishment and operation of JITs developed and with due regard for the problems and difficulties encountered to date, it was found necessary to replace the Model agreement under Council Recommendation of 2003 with an updated one,

TAKING INTO ACCOUNT that this need is also recognised in the Stockholm Programme, point 4.3.1 of which states that the model agreement for setting up joint investigation teams should be updated,

TAKING INTO ACCOUNT that the main objective of a JIT is to obtain information and evidence about the crime for the investigation of which it has been established,

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

⁽³⁾ OJ C 121, 23.5.2003, p. 1.

⁽⁴⁾ doc. 11037/05 Crimorg 67 Enfopol 88.

⁽⁵⁾ doc. 5526/08 Crimorg 14 Enfopol 13 Eurojust 7 Copen 10.

⁽⁶⁾ doc. 17512/08 Crimorg 217 Enfopol 265 Eurojust 118 Copen 262.

⁽⁷⁾ doc. 17161/09 Crimorg 180 Eurojust 73 Enfopol 310 EJM 39 Copen 243 Enfocustom 137.

ENCOURAGES the competent authorities of the Member States that wish to set up a Joint Investigation Team in accordance with the terms of the Framework Decision and the Convention with competent authorities from other Member States, to use, where appropriate, the model agreement set out in the Annex to this Resolution in order to agree upon the modalities for the joint investigation team.

Done at Brussels, 26 February 2010.

For the Council
The President
F. CAAMAÑO

ANNEX

MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

In accordance with Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ (hereinafter referred to as the Convention) and the Council Framework Decision of 13 June 2002 on joint investigation teams ⁽²⁾ (hereinafter referred to as the Framework Decision)

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 Member State as a Party to the agreement)

and

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

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

The parties to the agreement may decide by common agreement to invite other Member States' agencies/administrations to become parties to this agreement. For possible arrangements with third countries, bodies competent by virtue of provisions adopted within the framework of the Treaties and international bodies involved in the activities of the JIT, see Appendix I.

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 ⁽³⁾.

4. Period covered by the agreement

In accordance with Article 13(1) of the Convention and Article 1(1) of the Framework Decision, JITs shall be set up for a limited period of time. With respect to this agreement, this JIT may operate during the following period:

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

⁽³⁾ In the light of the relevant national legislation and its disclosure requirements, the OAP could be included in the JIT agreement, or as an appendix to the agreement or treated as a separate confidential document. In all cases the competent authorities which sign the agreement shall be aware of the content of the OAP. The OAP must be a flexible document containing practical agreements on a common strategy and on how to achieve the purpose of the JIT set out in Article 2, including the practical arrangements not otherwise covered by this agreement.

A check list regarding the points related to the possible content of the OAP is set out in Appendix IV to this model agreement.

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

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

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

In accordance with Article 13(3)(b) of the Convention and Article 1(3)(b) of the Framework Decision, the team shall carry out its operations in accordance with the law of the Member State in which it operates at any particular time. Should the JIT move its operational basis to another Member State, the law of this Member State shall then apply.

6. JIT Leader(s) ⁽¹⁾

The parties have designated the following person, who shall be a representative of the competent authorities in the Member 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 Member State to which he belongs:

Member 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 ⁽²⁾ shall be members of the JIT:

Member 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 Member State, party to the agreement. 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.

⁽¹⁾ Article 1(3)(a) of the Framework Decision shall apply, i.e. the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates.

⁽²⁾ The JIT may include representatives of judicial, police or other competent authorities with investigative functions.

Under this heading, it may also include members of Eurojust when they operate as competent national authorities as referred to in Article 9f of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime. These are the national members of Eurojust, their deputies and assistants — as well as other persons who, in line with their national legislation, are also members of the national office, i.e. seconded national experts.

The police authorities may comprise members of the Europol national units of the Member States. These national units are based in the Member States and are national police authorities. Also the liaison officers of the Member States at Europol retain their capacity to act as national police authorities.

8. Participants in the JIT

The provisions on participants⁽¹⁾ in the JIT are dealt with in the relevant appendix to this agreement.

9. 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 13 of the Convention and the Framework Decision shall apply as implemented by each Member State in which the JIT operates.

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

Every six months at least, the JIT leaders shall 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 may apply to this agreement (note that a number of these aspects are also regulated in the Convention and the Framework Decision):

(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.

⁽¹⁾ Participants in the JIT are designated by third countries, Eurojust, Europol, the Commission (OLAF), bodies competent by virtue of provisions adopted within the framework of the Treaties and international organisations which participate in the activities of the JIT, as parties to the agreement provided for in Appendix I to this model Agreement.

- 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 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 Convention and other arrangements may be given.
- 13.10. Specific data protection rules.
- 13.10.bis Confidentiality and use of information already existing and/or obtained during the operation of the JIT.
- 13.11. Conditions under which seconded members may carry/use weapons.

Done at (place of signature), (date)

(Signatures of all parties)

Appendix I

TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

Participants in a JIT

Arrangement with Europol/Eurojust/the Commission (OLAF), bodies competent by virtue of provisions adopted within the framework of the Treaties, other international bodies or third countries

1. Parties to the arrangement

Name of the first party to the agreement that is not a Member State

Name of the last party to the agreement that is not a Member State (if there is more than one)

and

Name of the first competent agency/administration of a Member State as a party to the agreement

and

Name of the second competent agency/administration of a Member State as a party to the agreement

(... and ...)

have agreed that the following persons from (*names of the parties to the agreement that are not Member States*) will participate in the joint investigation team, established by agreement on ... (*date and place of the agreement to which this appendix is attached*).

2. Participants in the JIT

The following persons will participate in the JIT:

State/Organisation	On secondment from (name of agency/body)	Name	Rank and affiliation	Role
—	—	—	—	—
—	—	—	—	—

The Member State ... has decided that its national members of Eurojust will participate in the joint investigation team as a competent national authority ⁽¹⁾.

Should any of the above-mentioned persons be prevented from carrying out their duties, a replacement will be designated in an appendix to this agreement. In urgent cases, it will be sufficient for the party to give notification of the replacement by letter. Such notification shall subsequently be confirmed in an appendix to the agreement.

⁽¹⁾ Delete this paragraph if not applicable.

3. Specific arrangements

The participation of the above-mentioned persons will be subject to the following conditions and only for the following purposes:

3.1. *First party to the agreement that is not a Member State*

3.1.1. Purpose of participation

3.1.2. Rights conferred (if any)

3.1.3. Provisions concerning costs

3.1.4. Specific provisions concerning or enabling achievement of the purpose of participation

3.1.5. Other specific provisions or conditions ⁽¹⁾

3.1.6. Specific data protection rules

3.2. *Second party to the agreement that is not a Member State (if applicable)*

3.2.1. ...

4. Specific arrangements related to the participation of Europol ⁽²⁾

4.1. *Principles of participation*

4.1.1. Europol staff participating in the JIT shall assist the members of the team in accordance with the Europol Decision and in accordance with the national law of the Member State where the team operates.

4.1.2. The Europol staff participating in the JIT shall work under the guidance of the leader(s) of the team as identified in point [...] of the Agreement and shall provide any assistance necessary to achieve the objectives and purpose of the JIT, as identified by the leader(s) of the team.

4.1.3. Europol staff has the right not to perform tasks which they consider to be in breach of their obligations under the Europol Decision. In that case, the Europol staff member shall inform the Director or his representative thereof. Europol shall consult with the leader(s) of the team with a view to finding a mutually satisfactory solution.

4.1.4. Europol staff participating in the JIT shall not be involved in the taking of any coercive measures. However, participating Europol staff can, under the guidance of the leader(s) of the team, be present during operational activities of the JIT, in order to render on-the-spot advice and assistance to the members of the team who execute coercive measures, provided that no legal constraints exist at national level where the team operates.

4.1.5. Article 11(a) of the Protocol on the Privileges and Immunities of the European Union shall not apply to Europol staff participating in the JIT ⁽³⁾.

⁽¹⁾ For example, references to basic or applicable legal frameworks, etc.

⁽²⁾ To be included only where Europol is a participant to the JIT. These rules were adopted by the Europol Management Board on 9 July 2009 (file No 3710-426r6) and a model JIT arrangement was adopted by the Europol Management Board on 18 November 2009 (file No 2610-74r2), as required under Article 6(2) of the Europol Decision. For updated information please refer to the Europol's website: <http://www.europol.europa.eu>

⁽³⁾ Protocol on the Privileges and Immunities of the European Union (consolidated version) (OJ C 115, 9.5.2008, p. 266).

4.1.6. During the operations of the JIT, Europol staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.

4.2. *Type of assistance*

4.2.1. Participating Europol staff will provide full range of Europol's support services, in accordance with the Europol Council Decision as far as required or requested. Those will include, inter alia, operational and strategic analytical support, in particular through the analysis work file(s) (AWF) (name(s) of the work file(s) and related projects). Where required and when requested by the leader(s) of the team, Europol may support the JIT by deployment of a Europol 'mobile office' or of other technical equipment, if available and in compliance with Europol's security standards.

4.2.2. Europol staff participating in the JIT may assist in all activities, in particular by providing a communication platform, strategic, technical and forensic support and tactical and operational expertise and advice to the members of the JIT, as required by the leader(s) of the team.

4.2.3. Europol shall, within the boundaries of its legal framework facilitate the secure exchange of information between the parties of the JIT and non-participating States and/or EU bodies and international organisations, if requested by the leader(s) of the team.

4.3. *Access to Europol information processing systems*

4.3.1. Europol staff participating in the JIT shall have access to Europol's information processing systems, referred to in Article 10 of the Europol Decision. This access shall be in accordance with the provisions of the Europol Decision and in line with the applicable security and data protection standards for the duration of their membership of the JIT.

4.3.2. Europol staff may liaise directly with members of the JIT and provide members and seconded members of the JIT, in accordance with the Europol Decision, with information from any of the components of the information processing systems referred to in Article 10 of the Europol Decision. The conditions and restrictions on the use of this information must be respected.

4.3.3. Information obtained by a Europol staff member while part of the JIT may be, with the consent and under the responsibility of the Member State which provided the information, included in any of the components of the information processing systems referred to in Article 10 of the Europol Decision, under the conditions laid down therein.

4.4. *Costs and equipment*

4.4.1. The Member State in which investigative measures are taking place is responsible for providing the technical equipment (office accommodation, telecommunication etc.) necessary for the accomplishment of the tasks and shall pay the costs incurred. The respective Member State shall also provide office communication and other technical equipment necessary for the (encrypted) exchange of data. The costs are to be paid by that Member State.

4.4.2. Europol shall cover the costs incurred as a result of the participation of Europol staff in the JIT, in particular concerning insurance and salaries for staff as well as accommodation and travel costs. Europol shall also bear the costs for the special equipment mentioned in points 4.1 and 4.2 above.

Date/signatures ⁽¹⁾

⁽¹⁾ Signatures of the parties to this arrangement.

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

In accordance with Article 13(1) of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ and Article 1(1) of the Council Framework Decision of 13 June 2002 on joint investigation teams ⁽²⁾:

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

⁽¹⁾ OJ C 197, 12.7.2000, p. 3.

⁽²⁾ OJ L 162, 20.6.2002, p. 1.

Appendix IV

Proposal for a check list for the Operational Action Plan (OAP) ⁽¹⁾

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 (EU MS, Europol, Eurojust, OLAF) 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

Information exchange and communication — describe how information will be exchanged and the procedures for communication and identify competent partner or agency e.g. Europol, Eurojust, OLAF, SECI, Interpol; it may be necessary to agree upon a language of communication; consider the use of Europol's secure means of communication (SIENA) and the Analytical Work Files (AWFs) as a means for a secure environment to store sensitive information

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

Financial investigations — consider the need for following the 'money trail'

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 including the role of Eurojust 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. should be dealt with here:

— Translation

— Office accommodation

— Vehicles

— Other technical equipment

⁽¹⁾ The content of the OAP is a living document reflecting the practical issues of a JIT. The OAP should be coherent with section 13 'Specific arrangements' of the JIT Agreement. Some elements of section 13 may be located in the OAP.