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**NOTE**

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From:	General Secretariat of the Council
To:	Police Cooperation Working Party (Mixed Committee EU/Iceland, Norway and Switzerland, Liechtenstein)
No. prev. doc.:	10505/4/09 REV 4
Subject:	Manual on cross-border operations

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Delegations will find attached the Manual on cross-border operations, as **updated on the basis of the discussion in the LEWP on 9 November 2020 and the request for contributions set out in CM 4704/20.**

**As a result of the above discussion, the Manual is now accompanied by an overview of existing bilateral and multilateral police cooperation agreements between Member States and Schengen associated countries, set out in the Addendum to this note.**

**The updated National Factsheets that also accompany the Manual are set out in 13920/20.**

Changes compared to 10505/4/09 REV 4 are indicated in **bold**. Any updates, corrections or completions should be sent to [lewp@consilium.europa.eu](mailto:lewp@consilium.europa.eu).

## **Content of the manual**

The Manual contains information on the different types of cross-border operations that are possible between law enforcement authorities of the Member States, based on different legal instruments (Schengen Convention, Prüm Decisions, **the EEA** and other).

Where possible, reference has been made to existing manuals and websites so as to avoid overlaps and repetition of existing information.

The national fact sheets (one per Member State) contain all the practical information necessary for carrying out cross-border operations, including:

- declarations required pursuant to the provisions of the Schengen Convention and those of the Prüm Decisions
- all the contact points relevant to the operational activity described in the manual.

By completing the fact sheets, the Member States **have complied** with the requirement set out in different provisions to provide declarations on these subjects. The fact sheets will therefore constitute (part of) the Manual referred to in Article 18 of the implementing Prüm Decision (2008/616/JHA).

## **Important notes**

- The provisions of Articles 39 and 46 are not included in this Manual but this does not exclude the possibility of using these Articles as a valid legal basis for cross-border operations as defined in this Manual.
- The Europol group of surveillance experts will regularly/annually review the relevant parts of this manual and the Member States' practices on surveillance and pursuit and identify good practices as well as lessons to be learned<sup>1</sup>. When necessary and appropriate, these should be transmitted to the Council (bodies) to be taken into account in legislation, manuals and/or policy documents.
- It is to be noted that some Member States (AT and EE) require an international letter of request in addition to the request for cross-border surveillance.

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<sup>1</sup> Europol's working group on cross border surveillance is willing to contribute to this review.

- The **addendum to the Manual now** includes information on agreements and arrangements **between Member States in the area of law enforcement cooperation.**
- The list of vehicle crime experts required in Article 5(3) of the Council Decision on tackling vehicle crime with cross-border implications<sup>2</sup> will be kept by the General Secretariat as a separate document.
- The list of crime prevention experts is kept by the EUCPN Secretariat on the EUCPN website: <http://www.eucpn.org>.
- The list of police training contacts has been deleted as CEPOL provides for such contacts, inter alia through the CEPOL website.
- No lists are kept of the private security contact points nor of the contact points regarding missing persons.

The Council Secretariat will provide an annual update of the Manual and the fact sheets and to this end send an annual reminder to delegations asking them to check the data. Exceptions could be made in case some major changes would occur.

In addition to the distribution of this Manual by the Member States, Europol and CEPOL are invited to ensure the appropriate distribution and "publication" of the Manual among law enforcement authorities.

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<sup>2</sup> OJ L 389, 30.12.2004, p. 28.

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The National fact sheets are contained in **13920/20**.

## 0. INTRODUCTION

The current handbook describes different kinds of cross-border operations that are and can be organised by law enforcement authorities on the basis of different legal instruments. For the purpose of this manual, "cross-border operations" are understood as law enforcement operations whereby officers from one Member State (co-)operate on the territory of another Member State.

It aims to provide guidance or at least indications on how to use these various tools, which ultimately should lead to a more uniform implementation across the EU and the Schengen territory. It should facilitate cooperation among the competent authorities in Member States by specifying the legal provisions with practical and more detailed guidelines, including identified best practices.

Apart from bilateral agreements, the first and main legal instrument regulating law enforcement cooperation, including cross-border operations, was the Convention implementing the Schengen Agreement of 19 June 1990 (CISA, "Schengen Convention<sup>3</sup>") which provides for the total, legally-binding abolition of checks on persons at the common borders of the Contracting Parties, thus creating an area of free movement of persons.

However, the Convention also includes a number of compensatory measures to safeguard against any possible shortcomings in security resulting from the abolition of border controls. Intensified police cooperation is one of the most important of these compensatory measures.

This police cooperation covers in particular:

- mutual assistance for the purposes of preventing and detecting criminal offences
- cross-border surveillance
- cross-border pursuit
- communication of information in specific cases for the purposes of preventing future crime and offences against or threats to public policy and public security
- exchanging information for the purpose of carrying out effective checks and surveillance at the external borders

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<sup>3</sup> The text of the CISA is published in OJ L 239 of 22.9.2000, p. 19.



- seconding liaison officers
- stepping up police cooperation in border regions through bilateral arrangements and agreements
- setting up and maintaining a joint information system, the SIS.

The current handbook only covers the cross-border operations but not the different forms of information exchange provided for under the provisions of the Schengen Convention as they are covered by the Manual on Information Exchange (**5825/20**).

Building upon several bilateral and multilateral agreements between certain Member States that had provided for further-reaching cooperation between their law enforcement authorities, the Council adopted in 2008 a Council Decision on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime<sup>4</sup>, also referred to as the "Prüm Decision" as it integrates part of the Prüm Treaty into the EU legal framework. Next to provisions on information exchange, this Decision provides for

- joint patrols and other joint operations in maintaining public order and security and preventing criminal offences
- assistance in connection with mass gatherings, disasters and serious accidents, which may include dispatching officers, specialists and advisers and supplying equipment on request.

There are also a number of other legal instruments that provide for the participation of law enforcement officials in operations of and/or in another Member State, such as the "MLA Convention"<sup>5</sup> and the Council Framework Decision on Joint Investigation Teams<sup>6</sup>, the "Naples II Convention on mutual

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<sup>4</sup> Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, published in OJ L210 of 6.8.2008, p. 1.

<sup>5</sup> Convention established by the Council in accordance with Article 34 TEU on Mutual Assistance in Criminal Matters between the Member States of the European Union, published in OJ C 197 of 12.7.2000, p. 1.

<sup>6</sup> Council Framework Decision 2002/465/JHA of 13 June 2002, published in OJ L 162 of 20.6.2002, p. 1.



assistance and cooperation between customs administrations"<sup>7</sup> and sometimes very far-reaching bilateral or multilateral agreements between a limited number of (mostly neighbouring) Member States.

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<sup>7</sup> Convention of 18.12.1997 on mutual assistance and cooperation between customs administrations, published in OJ C 24 of 23.1.1998, p. 1 and OJ C 165 of 30.5.1998, p. 24.

Finally, the current document refers to manuals, guidelines and best practices that have been drawn up to facilitate and improve cooperation between law enforcement authorities regarding operations that have cross-border aspects.

However, activities of the **European Border and Coast Guard teams**<sup>8</sup> are not included in this manual.

The current manual does not cover the measures that need to be taken to support cross-border operations, such as radiocommunication and communication in general (language skills, training on cooperation procedures, ...) nor does it include information on the use of special investigative policing techniques. Information about the possibility of using such techniques in cross-border operations can be obtained from the national central authorities.

The current manual also excludes the related issues following on from a cross-border operation such as the transmission of information or disclosure of evidence or intelligence nor does it cover the options available in respect of judicial cooperation provided by Mutual Legal Assistance, through Eurojust and other measures.

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<sup>8</sup> **Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ L 251, 16.9.2016, p. 1–76 .**

## Table of participation

Participation in the implementation of the cross-border cooperation covered by this manual varies between Member States depending on the time of participation and differences in the underlying legal basis.

The table below reflects the information provided by the Member States and associated countries by 15/12/2020.

MS	Schengen surveillance	Schengen pursuit	Prüm (Decision) <sup>9</sup> joint operations & assistance	Prüm Treaty <sup>10</sup> emergency assistance	Naples II
BE	X	X	X	X	X
BG	X <sup>11</sup>	(not yet)	X	X	X
CZ	X	X	X		X
HR	n.a.	n.a.	n.a.	n.a.	n.a.
DK	X	X	X		X
DE	X	X	X	X	X
EE	X	X	X	X	X
IE		---	X		X

<sup>9</sup> Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, published in OJ L 210 of 6.8.2008, p. 1.

<sup>10</sup> Prüm Treaty on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration. Only the Member States that have signed the Prüm Treaty are listed.

<sup>11</sup> **Based on the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**

MS	Schengen surveillance	Schengen pursuit	Prüm (Decision) <sup>9</sup> joint operations & assistance	Prüm Treaty <sup>10</sup> emergency assistance	Naples II
EL	X	X			X
ES	X	X	X	X	X
FR	X	X	X	X	X
IT	X	X	X	X	X
CY	(not yet)	---	X		X
LV	X	X	X	X	X
LT	X	X	X	X	X
LU	X	X	X	X	X
HU	X	X	X		X
MT	X	---	X		X

MS	Schengen surveillance	Schengen pursuit	Prüm (Decision) <sup>9</sup> joint operations & assistance	Prüm Treaty <sup>10</sup> emergency assistance	Naples II
NL	X	X	X	X	X
AT	X	X	X	X	X
PL	X	X	X		X
PT	X	X	X	X	X
RO	X	(not yet)	X	X	X
SI	X	X	X	X	X
SK	X	X	X	X	X
FI	X	X	X	X	X
SE	X	X	X		X
IC	X	X	(not yet) <sup>12</sup>	n.a.	n.a.
LI	(not yet)	(not yet)	n.a.	n.a.	n.a.
NO	X	X	(not yet) <sup>13</sup>	n.a.	n.a.
CH	X	X	n.a. <sup>14</sup>	n.a.	n.a.

<sup>12</sup> On the basis of a specific agreement to be concluded between the EU and Iceland and Norway.

<sup>13</sup> On the basis of a specific agreement to be concluded between the EU and Iceland and Norway.

<sup>14</sup> **On the basis of a specific agreement to be concluded between the EU and Switzerland.**

## 1. COOPERATION STRUCTURES

Many of the legal instruments dealing with law enforcement cooperation have called for the establishment of a central authority / body / bureau or a national contact point.

With a view to ensuring coordination and facilitating the contacts for the other Member States, it has been established as best practice that Member States should adopt the “one-stop-shop” principle for international law enforcement cooperation. This means that the different offices and contact points, in particular the main ones like the SIRENE Bureau, the Europol National Unit (ENU), the Interpol National Central Bureau (NCB), the office responsible for the liaison officers network, are integrated into one office. Guidelines and good practices for the establishment and organisation of such integrated offices are set out in the Manual of Good Practices concerning the International Police Cooperation Units at National Level (doc. 7968/08 + COR 1 and 2).

This does not preclude specific operations being handled by the relevant experts and these experts having direct contacts and creating networks. However, where local authorities do not know which experts to address for a specific case, a request should be sent to the integrated office, which can adequately forward it to the relevant authorities.

The existence and competences of the central authorities/integrated office do not imply that all activities have to be centralised. On the contrary, in accordance with the principle of subsidiarity, activities should be carried out at the level where they can best be handled. Direct contacts between experts in relevant cases represent an additional possibility of cooperation.

The activities of the Police and Customs Cooperation Centres (PCCCs) are, therefore, of paramount importance for cross-border cooperation in the regions along the internal borders. In that context, Member States can decide to designate their PCCC(s) as authority to which certain requests for cross-border cooperation (such as requests for surveillance or hot pursuit) can be submitted.

Document 13815/08 sets out guidelines for the establishment and functioning of such PCCCs.

Another type of “structure” for cross-border cooperation, which mainly concerns exchange of information but may also be used for organising and carrying out cross-border operations, is the secondment of liaison officers to other Member States. A separate document, the Compendium on law enforcement liaison officers (document **10095/1/18 REV 1**) explains the work and tasks of the liaison officers and contains lists of liaison officers.

## 2. CROSS-BORDER SURVEILLANCE

### 2.1 General provisions

#### Principle

A cross-border surveillance is an operation whereby a surveillance operation in one State (A - "requesting State") is continued onto the territory of another State (B - "requested State"). This can be done either by the officers having started the surveillance or it can be a continuation by officers of State B. The surveillance can cross several States.

The legal basis for such cross-border surveillance can be

- Article 40<sup>15</sup> of the Schengen Convention<sup>16</sup>, which distinguishes between
  - pre-planned surveillance, which means after authorisation of State B
  - urgent surveillance, which means without prior authorisation of State B
- Article 21 of the "Naples II Convention"<sup>17</sup>
- **Article 28 of the Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters**
- bilateral agreements: these mostly extend the possibilities for surveillance beyond the above EU provisions and/or where the criteria for such surveillance are not met.

Obviously, a cross-border surveillance is carried out subject to very strictly defined conditions, including the agreement of State B, and following standard procedures.

As the conditions differ from one legal basis to another, it is worthwhile checking the different regimes to find the most appropriate/advantageous one for the concerned case.

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<sup>15</sup> As amended by Council Decision 2003/725/JHA of 2.10.2003, published in OJ L 260 of 11.10.2003, p. 37.

<sup>16</sup> The text of the CISA is published in OJ L 239 of 22.9.2000, p. 19.

<sup>17</sup> Convention of 18.12.97 on mutual assistance and cooperation between customs administrations (OJ C 24, 23.1.98, p. 1 and OJ C 165, 30.5.98, p. 24).



In that sense, the cross-border surveillance pursuant to the Naples II Convention is limited to cases of customs infringements but the procedural conditions for carrying out such a surveillance may, depending on the case, be more effective/advantageous.

Practical arrangements, protection and liability

See the relevant paragraphs in chapter 4.1 of this manual.

**2.2 Conditions and procedures for surveillance pursuant to Article 40 of the Schengen Convention**

	<b>Pre-planned surveillance (Article 40(1))</b>	<b>Urgent surveillance (Article 40(2))</b>
<b>Conditions</b>	The surveillance must be part of a criminal investigation	
	The person under surveillance must be presumed of	
	having been involved in an extraditable offence <sup>18</sup>  OR  the person under surveillance can assist in identifying or tracing such a person	having committed one of the offences mentioned in Article 40(7), as amended by Council Decision 2003/725/JHA <sup>19</sup>
		There are "particularly urgent reasons" that made it impossible to request prior authorisation (e.g. when the authorities learn of the offence for which cross-border surveillance is required at such a late stage that the request for assistance could not be granted even if it was transmitted to the central authority)

<sup>18</sup> Pursuant to Article 2(1) of the European Convention on Extradition of 13.9.57, extraditable offences are: "*offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.*" Article 2(1) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States lists the offences that give rise to surrender pursuant to a European arrest warrant.

<sup>19</sup> Murder, manslaughter, a serious offence of a sexual nature, arson, counterfeiting and forgery of means of payment, aggravated burglary and robbery and receiving stolen goods, extortion, kidnapping and hostage taking, trafficking in human beings, illicit trafficking in narcotic drugs and psychotropic substances, breach of the laws on arms and explosives, wilful damage through use of explosives, illicit transportation of toxic and hazardous waste, serious fraud, smuggling of aliens, money laundering, illicit trafficking in nuclear and radioactive substances, participation in a criminal organisation as referred to in Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, terrorist offences as referred to in Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism.

	<b>Pre-planned surveillance (Article 40(1))</b>	<b>Urgent surveillance (Article 40(2))</b>
		immediately)
	Permitted to take place on all types of border crossings, on land, in the air and at sea (subject to national law)	

	<b>Pre-planned surveillance (Article 40(1))</b>	<b>Urgent surveillance (Article 40(2))</b>
<b>Procedure</b>		The designated authority of state B is immediately notified that the border has been crossed
	<p>A request for assistance is first submitted via the designated (central) authorities of each state, using the standard form.</p> <p>The main role of the designated (central) authorities of state A is to make sure that all available information on the place where it is assumed that the surveillance will be conducted will come to state B in a correct way and to facilitate contacts between the officers in charge of the surveillance and the law enforcement authorities.</p> <p>The designated (central) authorities of state A must be able to forward the request on a 24/7 basis.</p>	<p>A request for assistance is submitted without delay to the designated authority using the standard form</p> <p>Even in cases of urgent or emergency surveillance the designated central authority should still be considered as the first route for the transmission of requests under Article 40. Even in particularly urgent cases their experience and structure should permit the best results for the prevention and detection of crime and maintenance of public policy and national security.</p> <p>In urgent cases a request can be received from the foreign authority on the telephone, but in that case the information shall be confirmed in writing as soon as possible.</p> <p>The designated central authority shall have updated telephone numbers of the law enforcement authorities which are the closest to the border.</p>
	The competent authorities in state B must be able to consider a request on a 24/7 basis.	
	In some Member States the carrying out of a cross-border surveillance necessitates a request for judicial assistance. Some Member States therefore require an additional request for judicial assistance, <b>for example a European investigation order.</b>	
	<p>State B can authorise the surveillance as requested, can attach conditions or can refuse the request</p> <p>State B replies on the same form as the one which was sent to it.</p>	

	<p style="text-align: center;"><b>Pre-planned surveillance</b> <b>(Article 40(1))</b></p>	<p style="text-align: center;"><b>Urgent surveillance</b> <b>(Article 40(2))</b></p>
	<p>Conditions that may be attached can e.g. relate to geographical limitations, the limitation of cars, the carriage of firearms, the use of photographic and audio equipment, the use of sensitive policing techniques, ...</p>	

	<b>Pre-planned surveillance (Article 40(1))</b>	<b>Urgent surveillance (Article 40(2))</b>
	State B can decide to grant the authorisation for a specific period of time (e.g. from a couple of days to a couple of months)	An urgent reply is necessary from state B as to whether the request is approved or rejected.  If state B remains silent, the urgent surveillance must stop 5 hours from the time of crossing the border
	The authorisation should clearly state the law enforcement agency in state B that will support the surveillance	
	Only officers from designated authorities are authorised to perform cross-border surveillance (see list in national fact sheets)	
<b>Over border</b>	The officers are subject to and must comply with the national law of the country in which they are operating (state B).	
	The officers must follow the instructions of the locally competent authorities, i.e. the authorities in the district where the surveillance takes place.	
	In general, these authorities must be notified before the start of the surveillance.	The officers must contact the nearest authority responsible for police tasks (e.g. a police station or a Police and Customs Cooperation Centre) when they cross the border or a national contact point, depending on national structures. (see national fact sheets)
	The officers carrying out the surveillance must at all times be able to give proof of their acting in an official capacity	
	and carry a document certifying the authorisation to carry out the surveillance.	
	Unless state B expressly objects, the officers may carry their service weapons; their use is prohibited except in cases of legitimate self-defence under the national law of the requested country. (The concepts of legitimate self-defence and service weapon in each state are defined in the national fact sheets.)	
	Entry into homes and places not accessible to the public is prohibited (see national fact sheets for definitions).	
	The officers carrying out the surveillance may neither challenge nor arrest the person under surveillance. This does not prevent in exceptional circumstances the	

	<b>Pre-planned surveillance (Article 40(1))</b>	<b>Urgent surveillance (Article 40(2))</b>
	officers' ability to intervene to prevent or stop a crime, as any citizen should do.	
		The surveillance must cease either: = at the request of state B, or = if no approval has been obtained from state B within 5 hours after the border was crossed

	<b>Pre-planned surveillance (Article 40(1))</b>	<b>Urgent surveillance (Article 40(2))</b>
<b>After operation</b>	<p>A report must be made, on the basis of the standard form, to the authorities of state B after completion of every operation.</p> <p>The officers who performed the surveillance may be required to appear in person.</p> <p>Consideration should be given to hold a joint de-brief between the agencies involved to ensure lessons are learned, including on procedures followed.</p>	
	<p>The authorities of state B may require the assistance of the seconded officers in the follow-up, investigations and judicial procedures after the operation.</p>	
	<p>All designated authorities shall report systematically to a central national unit, which shall have national statistics regarding reports on Article 40. These should provide reliable, general information on how often and how efficiently a surveillance operation is carried out and including on surveillance whereby in the end the border is not crossed.</p>	
	<p>Later on it can be of interest that the concerned authorities make a joint strategic assessment on the results of the operations and write a report on it. Then it is possible to consider obtained experience and to introduce improvements.</p>	



### **2.3 Conditions and procedures for surveillance pursuant to Article 21 of the Naples II Convention**

The principle and conditions for the ordinary and particularly urgent observation, provided for in Article 21 of the Naples II Convention, are set out in the Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations.

### **2.4 Conditions and procedures for surveillance pursuant to bilateral agreements**

All Member States have concluded bilateral or multilateral agreements with neighbouring States regarding cross-border surveillance. Such agreements very often specify the exact arrangements for cross-border surveillance between the States concerned, setting out the exact spatial and time conditions, conditions regarding the carrying of arms etc. In many cases, such bilateral agreements provide for a broader scope of cross-border surveillance than the EU provisions, e.g. by extending the scope of offences for which a cross-border surveillance may be carried out.

### **2.5 Controlled deliveries requiring surveillance**

#### Definition

A controlled delivery is a technique of allowing illicit or suspect consignments of substances or objects or substitutions for these to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of the competent authorities, with a view to establishing who is criminally involved.

There are different types of controlled deliveries, depending on national law. Not all types are known to all Member States:

- with undercover agents
- with physical control
- without physical control (sometimes called monitored delivery)
- with informants
- using substitutions.

A controlled delivery can be carried out with a partial replacement of the consignment. The advantage thereof is to minimise the risks of spreading the consignment if the operation fails and at the same time to leave a sufficient amount of the consignment in order to prosecute.

Even if the main focus has been on controlled deliveries of narcotic drugs, it should be noted that similar operations in most Member States are allowed for the control of other goods.

Conditions and handling

	<b>Controlled delivery</b>
<b>Conditions</b>	Controlled deliveries are carried out on the basis of bilateral or multilateral agreements between the States concerned and/or national legislations involved (see Article 11 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances <sup>20</sup> , Article 12 of the Convention on Mutual Assistance in Criminal Matters <sup>21</sup> , Article 22 of the Naples II Convention <b>as well as Directive 2014/41/EU of the European Parliament and the Council of April 3 2014 regarding the European Investigation Order in criminal matters where applicable</b> )
	A controlled delivery can be carried out if permission was granted in advance. Where the controlled deliveries involve more than 2 States, authorisation must be obtained from the transit and destination State(s).
	The special conditions and approval procedures for authorising a controlled delivery differ between Member States. (see Europol manual, which can be obtained from the Europol National Units and Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations)
	Special techniques may be used provided that the method is legal in the requested state.

<sup>20</sup> <http://www.unodc.org/unodc/en/treaties/illicit-trafficking.html>

<sup>21</sup> Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, published in OJ C 197, 12.7.2000, p. 1.

<b>Procedures</b>	Due to the fact that the handling of controlled deliveries is a complicated task, both from a practical and a legislative point of view, these cases ought to be handled by specialised contact points and units.
	Fundamental information that is required from the State that carries out a controlled delivery:
	<ul style="list-style-type: none"> <li>• the reason and the background for the operation;</li> <li>• statement of facts justifying the operation;</li> <li>• type of products, quantity;</li> <li>• other goods;</li> <li>• expected place of entry to the requested state. When appropriate, information about the exit from the requested state;</li> <li>• expected transportation and route;</li> <li>• the suspect's identity (name, birth, residence, citizenship, physical description);</li> <li>• indication of who has authorized the operation;</li> <li>• indication of the name of the competent officer in charge of the operation and the way of contacting (communication, transportation, ...);</li> <li>• where necessary, indication of the customs authorities involved;</li> <li>• information about specialist policing techniques.</li> </ul>
<b>Operation</b>	The host state shall be responsible for leading and monitoring the operation on its territory and shall have the authorisation to intervene.
<b>Follow-up</b>	<p>It could be of value for the concerned law enforcement agencies to jointly evaluate and submit a report on the result of the operation. This report will be drafted under the responsibility of the leading/requesting state.</p> <p>Based on the acquired experience it would then be possible to make actual improvements and at the same time gain knowledge of each other's legislation, methods and priorities.</p>

### 3. HOT PURSUIT (Schengen Convention, Article 41)

#### 3.1 General provisions

##### Principle

A cross-border pursuit is the continued pursuit of subjects suspected of or caught when committing a specific crime type crossing a national border into another Member State (State B).

The legal basis for such cross-border pursuit can be

- Article 41<sup>22</sup> of the Schengen Convention<sup>23</sup>, which allows officers in pursuit of a person caught in the act of committing certain offences to continue pursuit on the territory of a Schengen State with which their State has a common land border.
- Article 20 of the "Naples II Convention"<sup>24</sup>. Hot pursuit under the Naples II Convention can be carried out on both land and sea borders.
- bilateral agreements: these mostly extend the possibilities for pursuit beyond the above EU provisions and/or where the criteria for such pursuit are not met.

This operation, which due to its very nature does not require prior authorisation, is subject to very strict conditions and precise arrangements. Some of these conditions and arrangements are of a general nature, others are specific to each country and have been laid down in unilateral declarations.

According to the Schengen Convention, each State is free to choose between two options concerning the offences which may give rise to pursuit and is free to restrict the powers of the pursuing officers (whether or not they have the power to stop and question, restrictions on the scope and duration of the pursuit).

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<sup>22</sup> As amended by Council Decision 2003/725/JHA of 2.10.2003, published in OJ L 260 of 11.10.2003, p. 37.

<sup>23</sup> The text of the CISA is published in OJ L 239 of 22.9.2000, p. 19.

<sup>24</sup> Convention of 18.12.97 on mutual assistance and cooperation between customs administrations (OJ C 24, 23.1.98, p. 1 and OJ C 165, 30.5.98, p. 24).

As the conditions differ from one legal basis to another, it is worthwhile checking the different regimes to find the most appropriate/advantageous one for the concerned case.

In that sense, the cross-border hot pursuit pursuant to the Naples II Convention is limited to cases of customs infringements but the procedural conditions for carrying out such a pursuit may, depending on the case, be more effective/advantageous.

### Protection and liability

See the relevant paragraphs in chapter 4.1 of this manual.

## **3.2 Conditions and procedures for pursuit pursuant to Article 41 of the Schengen Convention**

	<b>Pursuit</b>
<b>Conditions</b>	Pursuit may only be performed across the land borders.
	Only officers from the designated authorities may exercise the power of pursuit (see national fact sheets)
	Conditions tied to the type of offence: each State has the choice between two options for the types of offence allowing the power of pursuit to be exercised: either the restrictive list of offences listed in Article 41(4)(a) or extraditable offences <sup>25</sup> .
	Reference must be made to the national fact sheets to find out which option has been chosen by an individual State. However, the following conditions apply in all the States: <ul style="list-style-type: none"> <li>= the person concerned must have been caught in the act of committing or participating in one of the offences</li> <li>= pursuit is also authorised where the person concerned is under provisional arrest or serving a custodial sentence.</li> </ul>

<sup>25</sup> Pursuant to Article 2(1) of the European Convention on Extradition of 13.9.57, extraditable offences are: "*offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.*" Article 2(1) of the Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States lists the offences that give rise to surrender pursuant to a European arrest warrant.

	<p>Conditions for hot pursuit: hot pursuit requires that</p> <ul style="list-style-type: none"> <li>= it has not been possible to advise the requested authorities in advance owing to particular urgency</li> <li>= or the authorities have been advised but have not been able to take up the pursuit in good time themselves</li> <li>= the pursuing officers consult the authorities of the requested State at the latest upon crossing the border</li> <li>= the pursuit cease at the first request of the requested State.</li> </ul>
	<p>There are three types of restriction which may be imposed on the power of pursuit, which each individual State is free to choose:</p> <ul style="list-style-type: none"> <li>- territorial restriction: some States authorise pursuit on their entire territory, others only authorise it for a certain number of kilometres after the border</li> <li>- time restriction: pursuit may have to be suspended after a certain amount of time has lapsed</li> <li>- a restriction on the powers of the pursuing agents: some States authorise them to stop and question, others do not. This does not affect the right to make a citizen's arrest in the State on whose territory the pursuit is carried out when an offender is caught in the act. The different legal situations and restrictions set by each State are set out in the national fact sheets.</li> </ul>
During pursuit	<p>It is mandatory to inform the authorities of the State B (State on the territory of which the pursuit is being carried out) at the latest upon crossing the border. This must be done by contacting</p> <ul style="list-style-type: none"> <li>= either the first police authority of the State concerned</li> <li>= or one of the liaison authorities designated by the State concerned (see chapter 5 in each national fact sheet)</li> </ul> <p>Best practices would be that as soon as the pursuing officers realise that a border crossing is possible, they should inform their central authorities who will then contact their counterpart.</p>
	<p>The officers must act in compliance with the national law of the state in which they are operating and must follow the instructions of the locally competent authorities.</p>
	<p>The power to exercise road traffic privileges during pursuit is granted to the pursuing officers in accordance with the national law of State B (where applicable,</p>

	see national fact sheets for the legal situation).
	The pursuit must be stopped at the request of the authorities of State B.
	The officers must be in possession of their service badge or pass and be easily identifiable (uniform, armband, vehicle, etc.)
	The officers may carry his service weapon; its use is forbidden apart from in self-defence under the national law of State B (see definitions in the national fact sheets).
	Entry into homes and places not accessible to the public is forbidden (see definitions in the national fact sheets).
	The arrested person should be given into the custody of the locally competent authorities.

After pursuit	If the person is arrested, he may be held for questioning by the competent local authorities- whatever his nationality.
	If the person is arrested and is not a national of the country where the arrest was made, he must be released six hours after arrest if no provisional arrest warrant for extradition is forthcoming (the hours between midnight and 9.00 do not count).
	The persons arrested may only be subjected to a security search for the purpose of bringing them before the local authorities. They may be hand-cuffed and objects on their person may be seized.
	The officers involved must appear before the locally competent authorities to make a report after every pursuit, no matter what the outcome; if the latter so wish, the officers must remain available and provide assistance, if requested, with the follow-up, investigations and judicial procedures.

### **3.3 Conditions and procedures for pursuit pursuant to Article 20 of the Naples II Convention**

The principle and conditions for the pursuit provided for in Article 20 of the Naples II Convention, are set out in the Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations.



## 4. JOINT OPERATIONS

For the current manual, "joint operations" are understood to cover actions in the field of public order and security and crime prevention, jointly carried out by two or more Member States, whereby officers from one Member State act on the territory of another Member State.<sup>26</sup>

It does not include or concern criminal investigations.

As the organisation of joint operations depends very much on the national legislation and local operational needs, the current document only provides guidelines on the most typical joint operations but does not exhaustively lists all kinds of joint operations that Member States can decide to set up.

Cooperation shall not be confined to neighbouring States, but may also take place between States which do not have a common border and/or States of transit.

### 4.1 General provisions

Article 17 of the Prüm Decision<sup>27</sup> provides that *"in order to step up police cooperation, the competent authorities (...) may, in maintaining public order and security and preventing criminal offences, introduce joint patrols and other joint operations in which designated officers or other officials (officers) from other Member States participate in operations within a Member State's territory."*

Article 17 has a very wide scope, so operations can be carried out on land, water and in the air.

These provisions still leave a lot of freedom to the Member States to define the scope, subject and conditions of their joint operations and to decide whether such operations will be carried out at all.

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<sup>26</sup> Sometimes, the terms "joint actions" and "high impact operations" are used, generally to indicate coordinated actions and operations whereby in two or more Member States a specified kind of unlawful behaviour and/or criminal activity is targeted during a specific period. Such actions are not considered in this handbook as they usually do not imply that officers from one Member State act on the territory of another Member State.

<sup>27</sup> Council Decision 2008/615/JHA of 23 June 2008, published in OJ L 210 of 6.8.2008, p. 1.

As examples, the following kinds of operations can be done on the basis of Article 17 of the Prüm Decision, depending on the decision of the individual Member States:

- joint patrols
- assistance to tourists on the street and at police stations, security of tourist sites
- common traffic controls
- accompanying supporters
- personal and document checks
- assistance during short period detentions for identification at specific events
- use of dogs and dog handlers for security sweeps
- accompanying dangerous (such as nuclear) transports
- (mutual) support during major events (G8 summit, world football championship)
- sending material together with operators (e.g. water cannon)
- setting up on-site Joint Command and Coordination Centres on an ad hoc basis
- joint exercises for the kind of operations covered by Article 17.

With a view to maximising the benefits of the cooperation, it is recommended that the host Member State provides to allow (in national legislation and/or complementary bilateral agreement) that the seconding Member States' officers are competent for carrying out autonomous police measures. In accordance with Art. 17(2) of the Prüm Decision "such executive powers may be exercised only under the guidance and, as a rule, in the presence of officers from the host Member State".

Each Member State needs to specify in its national fact sheet the national procedure required for setting up joint operations. Member States can choose how to agree on the modalities of the joint operation, i.e. this can be done via oral or written arrangements in accordance with national legislation and taking into account bilateral agreements. It is recommended that such procedures are as practical and pragmatical as possible.



Generally, the following issues (set out in Article 17 (3) of the Prüm implementing Decision<sup>28</sup>) should be agreed upon between the competent authorities:

- (a) the competent authorities of the Member States for the operation;
- (b) the specific purpose of the operation;
- (c) the host Member State where the operation is to take place;
- (d) the geographical area of the host Member State where the operation is to take place;
- (e) the period covered by the operation;
- (f) the specific assistance to be provided by the seconding Member State(s) to the host Member State, including officers or other officials, material and financial elements;
- (g) the officers participating in the operation;
- (h) the officer in charge of the operation;
- (i) the powers that the officers and other officials of the seconding Member State(s) may exercise in the host Member State during the operation;
- (j) the particular arms, ammunition and equipment that the seconding officers may use during the operation in accordance with Decision 2008/615/JHA;
- (k) the logistic modalities as regards transport, accommodation and security;
- (l) the allocation of the costs of the joint operation if it differs from that provided in the first sentence of Article 34 of Decision 2008/615/JHA;
- (m) any other possible elements required.

### **Practical arrangements**

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<sup>28</sup> Council Decision 2008/616/JHA of 23 June 2008, published in OJ L 210 of 6.8.2008, p. 12.

Agreement has to be found between the concerned Member States on the practical arrangements.

Article 34 of the Prüm Decision sets out that in general each Member State bears its own costs but Member States may agree to diverge from these arrangements.

It is common practice that accommodation and catering is provided by the host Member State, who should provide for the necessary budget.

Depending on the kind of operation and activities to be carried out, training and briefing should be provided. This can be done through common training, or upon arrival of the officers in the host State or by sending officers of the host State to the supporting State(s) to provide such training. This covers especially the national legislation of the host country, in particular the use of arms, the organisational structures of the host Member State, any operational details regarding their tasks as well as rights, obligations and tasks of the officers.

Officers operating within another Member State's territory shall remain subject to the employment law provisions applicable in their own Member State, particularly as regards disciplinary rules. This is set out explicitly in Article 23 Prüm Decision but the same rule is generally applied to all kinds of joint operations.

### **Protection and liability**

The State where the joint team operates shall provide the officers of the other State acting on its territory with the same protection and assistance as the one it gives its own officers.

This is specifically provided for in Article 20 of the Prüm Decision.

Unless otherwise agreed between the concerned Member States, officers acting on another Member State's territory shall be treated in the same way as officers of the host Member State with regard to any criminal offences that might be committed by, or against them.

This is specifically provided for in Article 42 of the Schengen Convention<sup>29</sup> and Article 22 of the Prüm Decision.

All officers are submitted to the rules of civil and criminal liability in force on the territory in which they act.

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<sup>29</sup> The text of the CISA is published in OJ L 239 of 22.9.2000, p. 19.

The civil liability for any damages generally lays with the Member State for which the operation is being carried out, i.e. mostly the Member State whose officers have caused the damage. However, where officers act on the territory of another Member State to assist the latter (e.g. at major events), this Member State will carry the costs for any damage done by the other Member State's officers. This is specifically provided for in Article 43 of the Schengen Convention and Article 21 of the Prüm Decision.

## **4.2 Joint patrols**

Joint patrols aim at facilitating access to law enforcement by citizens from the different Member States concerned, improving general cooperation between the authorities and officers involved, providing practical and linguistic assistance to the officers of the host State, facilitating communication with the national authorities of the supporting State etc.

Joint patrols can take place on land, water and in the air.

There are typically two kinds of joint patrols

### **- joint patrols in the border areas between Member States**

It is recommended that local authorities are empowered to set up such joint patrols in a very quick, pragmatic and efficient way, depending on operational needs so that each command level can take all the necessary contacts with its counterpart in order to organise common activities or joint patrols.

Such patrols can take place on the territory of one of the Member States involved or (repeatedly) cross the border(s).

### **- joint patrols in the framework of specific events or periods**

This kind of joint patrols are, on the one hand, part of the measures provided for in the "football manual" and the "major events manual" but covers also the examples described above of assistance to tourists on the street and at police stations, security of tourist sites or common traffic controls, or also patrols on international trains.

Where no local arrangements have been specified, the procedure to be followed and relevant contact points can be found in the national fact sheet.

### **4.3 Assistance in case of disasters and serious accidents**

A particular kind of “joint operation” is set out in Article 18 of the Prüm Decision<sup>30</sup>, which provides that

*“Member States' competent authorities shall provide one another with mutual assistance, in compliance with national law, in connection with mass gatherings and similar major events, disasters and serious accidents, by seeking to prevent criminal offences and maintain public order and security by:*

- (a) notifying one another as promptly as possible of such situations with a cross-border impact and exchanging any relevant information;*
- (b) taking and coordinating the necessary policing measures within their territory in situations with a cross-border impact;*
- (c) as far as possible, dispatching officers, specialists and advisers and supplying equipment, at the request of the Member State within whose territory the situation has arisen.”*

This provision will be most relevant between neighbouring States.

It obliges the competent authorities to agree on practical arrangements for cooperation in case of disasters and serious accidents, i.e.:

- exchange of contact points
- procedures to contact each other
- notification procedures on situations with a cross-border impact
- definition of security plans/disaster plans

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<sup>30</sup> Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, published in OJ L 210 of 6.8.2008, p. 1.



- arrangements for the dispatching of officers, specialists and advisors
- arrangements for supplying equipment

Ideally, the necessary training should be organised as part of the coordination of the policing measures between the concerned authorities.

#### **4.4 Cooperation in the framework of international football matches**

An extensive set of measures has been agreed for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved.

In every Member State, a National Football Information Point has been set up to carry out this kind of cooperation, which extends beyond the exchange of information to assistance during football matches.

The detailed measures are based on the Council Decision of 25 April 2002 concerning security in connection with football matches with an international dimension<sup>31</sup> and more extensively in the **2016 Council Resolution concerning an updated handbook with recommendations for these situations<sup>32</sup>**.

#### **4.5 Cooperation at major events**

Law enforcement authorities in a Member State dealing with a major event with an international dimension need to ensure the security of the event both from a public order perspective and a counter-terrorism perspective.

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<sup>31</sup> Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension, published in OJ L 121 of 8.5.2002, p. 1.

<sup>32</sup> **Council Resolution concerning an updated handbook with recommendations for international police cooperation and measures to prevent and control violence and disturbances in connection with football matches with an international dimension, in which at least one Member State is involved ('EU Football Handbook'), published in OJ C 444 of 29.11.2016, p. 1.**

Cooperation with authorities from other Member States is an important part of the security policy surrounding such events.

The legal basis for more or less extensive cooperation was usually provided for in bilateral agreement or arrangements but is now included in Article 18 of the Prüm Decision<sup>33</sup>, which provides that

*“Member States' competent authorities shall provide one another with mutual assistance, in compliance with national law, in connection with mass gatherings and similar major events, disasters and serious accidents, by seeking to prevent criminal offences and maintain public order and security by:*

- (a) notifying one another as promptly as possible of such situations with a cross-border impact and exchanging any relevant information;*
- (b) taking and coordinating the necessary policing measures within their territory in situations with a cross-border impact;*
- (c) as far as possible, dispatching officers, specialists and advisers and supplying equipment, at the request of the Member State within whose territory the situation has arisen.”*

More practical recommendations on how to organise such cooperation are set out in the Handbook for police and security authorities concerning cooperation at major events with an international dimension<sup>34</sup>.

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<sup>33</sup> Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, published in OJ L 210 of 6.8.2008, p. 1.

<sup>34</sup> Council recommendation of 6 December 2007 concerning a Handbook for police and security authorities concerning cooperation at major events with an international dimension, published in OJ C 314 of 22.12.2007, p. 4.

#### **4.6 Protection of public figures**

The specific measures to be taken for the protection of public figures and the cross-border cooperation in these cases are based on the Council Decision setting up a European Network for the Protection of Public Figures<sup>35</sup>, as amended by Council Decision 2009/796/JHA of 4 June 2009.

The competent authorities have drawn up a handbook with practical information for their cooperation, setting out per Member State the relevant contact points, national regulations on protection and threat levels as well as on executive measures and weapons.

#### **4.7 Cooperation between special intervention units**

The Council Decision on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations<sup>36</sup> sets out general rules and conditions to allow for special intervention units of one Member State to provide assistance and/or operate on the territory of another Member State.

Such assistance or operations are always done on a voluntary basis between the concerned Member State: there is no legal obligation to either request or provide such assistance. The competent national authorities which may make requests and give authorisations regarding the deployment of the special intervention units are set out in the national fact sheets.

The practical details and implementing arrangements complementing this Decision shall be agreed directly between the requesting Member State and the requested Member State.

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<sup>35</sup> Council Decision 2002/956/JHA of 28 November 2002 setting up a European Network for the Protection of Public Figures, published in OJ L 333 of 10.12.2002, p. 1, as amended by Council Decision 2009/796/JHA of 4 June 2009 amending Council Decision of 28 November 2002 setting up a European Network for the protection of Public Figures, published in OJ L 283 of 30 October 2009, p. 62.

<sup>36</sup> Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations, published in OJ L 210 of 6.8.2008, p. 73.

The Council Decision also provides that the special intervention units shall meet regularly with a view to exchanging best practices and organising joint training exercises. This is organised in the so-called "Atlas network", which gathers representatives of the intervention units of all Member States and some third States.

For specific crisis situations such as kidnapping and hostage-taking, relevant EU and international expert networks have been set up to support these operations/investigations. Access to these is via the national central authorities.

#### **4.8 Conditions and procedures for joint operations pursuant to bilateral agreements**

Most if not all Member States have concluded bilateral or multilateral agreements with neighbouring States concerning joint operations.

Where these arrangements and agreements are not incompatible with the Prüm provisions or where they extend or enlarge the objectives of the Prüm provisions, they can be used as a basis for joint operations as well.

Very often, these agreements or arrangements will specify the scope and conditions for the joint operations and thereby complement the Prüm provisions.

## 5. JOINT INVESTIGATIONS

### 5.1 Joint Investigation Teams (JITs)

Article 13(1) of the 2000 Mutual Legal Assistance (MLA) Convention and the Council Framework Decision on joint investigation teams<sup>37</sup> provide for the setting up of Joint Investigation Teams (JITs).

A JIT is an investigation team set up on the basis of an agreement between two or more Member States and/or other parties, for a specific purpose and limited duration. The concept of a JIT has been approached not so much from the seriousness of a crime but rather from the crime's international and cross-border dimension. JITs will usually be limited to the more serious forms of criminality and national legislation or operational instructions should be checked to see if there is a seriousness threshold or other qualifying criteria.

There are many practical instances where a JIT might be the right tool, but at least two crime areas can be mentioned by way of example:

- Drug investigations in which it is known from the outset that the residence of the trafficker differs from the final destination of the drugs, and
- Terrorism cases in which the venues of a planned attack differ from the locations where the first intelligence will be gathered.

The Joint Investigation Team manual<sup>38</sup> sets out in detail the conditions for establishing a JIT, the structure and mode of operation of a JIT and provides information on the relevant national legislation in different Member States.

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<sup>37</sup> Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams, published in OJ L 162 of 20.6.2002, p. 1.

<sup>38</sup> doc. 13598/09 + COR 1

A model agreement<sup>39</sup> is available to facilitate the work of competent authorities wishing to set up a Joint Investigation Team.

Moreover, national JIT experts have been designated to facilitate the use of JITs by disseminating information and providing advice on national procedures and legislation.

The advantage of using a JIT are (depending on and in accordance with the law of the Member State where the team operates):

- 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 mutual trust between practitioners from different jurisdictions working together and deciding on investigative and prosecution strategies.
- Ability for Europol and Eurojust to be involved with direct support and assistance.
- Ability to secure potentially available funding.

The JIT team is set up in the Member State in which investigations are expected to be predominantly carried out. Although one fixed ‘headquarters’ should be agreed upon, it is not necessary for all members of the JIT to be located in the same place.

The powers of the JIT members can differ, depending on national legislation, e.g. some Member States will allow executive powers for coercive measures to be given to the foreign officers

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<sup>39</sup> **Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT) OJ C 18 of 19.1.2017, p. 1-9.**

(interrogation, house search). The same applies to the use of force that is allowed, this depends on national legislation and, if allowed under national legislation, on the decision of the team leader.

## **Participation of Eurojust and Europol**

As both institutions have been created to support Member States in their fight against organised serious cross-border crime, their respective competences and tasks imply that Eurojust and Europol play an important role in Joint Investigation Teams.

In accordance with Article 12 of the Framework Decision, as well as provisions in the 2000 MLA Convention, Eurojust and Europol can participate in JITs, separately as well as jointly. Further, Article 6 of the Co-operation Agreement between Europol and Eurojust, enables both parties together, at the request of one or more Member States, to participate in the setting up of JITs and support national judicial and law enforcement authorities in the preliminary discussions concerning the setting up of JITs.

Whilst it is not mandatory to involve Eurojust and Europol when establishing and operating a JIT, both could play an important role in ensuring the efficiency and operational capacity of the JIT and the overall success of the investigation. Both organisations can also assist in the administrative management of the JIT. Both parties can also act as an intermediary in the obtaining as well as advice on the current availability, of any funding.

### **5.2 Joint special investigation teams**

The principle and conditions for the joint investigation teams provided for in Article 24 of the Naples II Convention<sup>40</sup>, are set out in the Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations.

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<sup>40</sup> Convention of 18.12.97 on mutual assistance and cooperation between customs administrations (OJ C 24, 23.1.98, p. 1 and OJ C 165, 30.5.98, p. 24).



### **5.3 Mirror or parallel investigations**

A mirror or parallel investigation is an investigation established in separate EU Member States which focuses upon a crime group or crime type which similarly affects each Member State. The investigations, which although separate in their management structure and terms of reference seek to collectively disrupt or dismantle the crime group or crime type affecting both of their national jurisdictions.

They are not necessarily a cross-border operation as defined for this manual with officers acting on the territory of other Member States.

The intelligence and/or evidence obtained in each of these individual investigations can be shared or exploited in other EU Member States judicial processes but only through the approved channels of **the European Investigation Order (EIO) or International Letters of Request (ILOR)** between the competent judicial authorities.

### **5.4 Use of undercover officers and informants**

The use of undercover officers and informants depends on the national legislation of the different Member States. International cooperation in this field is regulated, in particular by Article 14 of the Convention on Mutual Assistance in Criminal Matters<sup>41</sup>, **or, where applicable, Article 29 of the Directive 2014/41/EU** Article 23 of the Naples II Convention<sup>42</sup>, Article 20 of the United Nations Convention against Transnational Organized Crime<sup>43</sup>, and bilateral agreements and national legal acts. While such techniques may be deployed in national investigations, the need has been recognised for these techniques to be used on the territory of other Member States in the framework of the national investigation or of joint investigations.

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<sup>41</sup> Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, published in OJ C 197, 12.7.2000, p. 1.

<sup>42</sup> Council Recommendation of 8 May 2003 on a model agreement for setting up a joint investigation team (JIT), published in OJ C 121 of 23.5.2003, p. 1.

<sup>43</sup> <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>

The national central authorities and Europol have identified experts and advice to support the use of these techniques.

<b>Request for assistance for cross-border surveillance (Article 40 Schengen Convention)</b>		
<b>Details of the request</b>		
- Requesting State	010.	To be filled in as accurately as possible, especially with information about weapons, police personnel, vehicles and use of specialist policing techniques.
- Requested State	011.	
- Sender	012.	
- Addressee	013.	
- Date and time of the request	014.	
- Name of the person under surveillance or, if unavailable, name or no. of the case	015.	
- Cross-border surveillance: ordinary or urgent	016.	
- If ordinary, date and time of crossing the border	017.	The general rule is that all requests should be sent to the central national unit.
- If urgent, grounds for urgency	018.	
<b>Details of the investigation</b>		
- Competent judicial authority	020.	
- File no.	021.	
- Name and position of competent magistrate Telephone Fax	022.	Inform the requested state as soon as possible
Competent police force Person in charge, tel, fax	023.	
Legal classification of the acts:  (a) Ordinary :    – Offence – Liable penalty  (b) Urgent:	024.	

- Murder	025.1.	Full explanation of the reason justifying the request should be included
- Manslaughter	025.2.	
- A serious offence of a sexual nature	025.3.	
- Arson	025.4.	
- Counterfeiting and forgery of means of payment	025.5.	
- Aggravated burglary and robbery and receiving stolen goods	025.6.	
- Extortion	025.7.	
- Kidnapping and hostage taking	025.8.	
- Trafficking in human beings	025.9.	
- Illicit trafficking in narcotic drugs and psychotropic substances	025.10.	
- Breach of the laws on arms and explosives	025.11.	
- Wilful damage through use of explosives	025.12.	
- Illicit transportation of toxic and hazardous waste	025.13.	
- Serious fraud	025.14.	
- Smuggling of aliens	025.15.	
- Money laundering	025.16.	
- Illicit trafficking in nuclear and radioactive substances	025.17.	
- Participation in a criminal organisation as referred to in Council Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union	025.18.	
- Terrorist offences as referred to in Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism	025.19.	
- Date of the acts	026.	
- Scene of the acts	027.	
- Description of the acts	028.	
- Role of the implicated party	029.	

<b>Information available on the ground:</b>		
<b>Dept. responsible for surveillance</b>		
- Person in charge on the ground	030.	
- Telephone		
Mobile phone		
Radio (optional)		
Call code		
- Surveillance forces	031.	
- Police vehicles		
Registration no.		
Vehicle make		
Service weapons		
- Alternate use of registration plates requested	032.	
- Estimated time of surveillance (day, month, year, time, duration of the operation, statement)	033.	
- Estimated area of the operation	034.	
- Estimated location of crossing the border	035.	
<b>Person(s) observed</b>		
- Name	040.	
Given name, Date of birth		
- Nationality	041.	
- Male / female	042.	
- Estimated age	043.	
- Description (size, build, hair colour etc.)	044.	
- Address (postal code, location, street, and dwelling no.)	045.	
- Telephone	046.	
Mobile phone		
- Personal information (armed, violent, drug user)	047.	

- Photo and / or finger prints	048.	
- Vehicle (manufacturer, type, colour, registration no.)	049.	
- Use of specialist policing techniques	050.	Where available, the aim of the surveillance could be added and/or the need for the requested State to take over.
- Other pertinent information Persons in contact with the suspect meeting point	051.	
- Other persons accompanying the suspect	052.	
<b>Miscellaneous</b>	053.	

<b>Final report on a cross-border surveillance operation</b>		
<i>(Article 40 Schengen Convention)</i>		
- Requesting State	100.	To be filled in by the lead operational officer within 7 days
- Requested State	101.	
- Date	102.	
- Sender	103.	
- Addressee	104.	
- Name or no. of the case	105.	
<b>Name of the dept. (on the ground) which carried out the surveillance</b>		
- Name and grade of the person in charge on the ground	110.	
- Address	111.	
- Telephone no.	112.	
- Fax no.	113.	
<b>Circumstances surrounding the operation</b>		
- Information on the offence	120.	
- Information on the implicated party	121.	
<b>Means used</b>		
- No. of vehicles 1- Make 2- Type 3- Colour 4- Registration no.	130.	
- No. of persons	131.	
- Miscellaneous	132.	
<b>Account of the action taken</b>		
- Start	140.	

-	Route and border crossing points	141.	
-	Time of arrival	142.	
-	End of surveillance: date and time	143.	
-	Local authorities that afforded assistance	144.	
-	Miscellaneous	145.	
<b>Noteworthy events</b>			
-	Incidents involving the authorities of the requested State	150.	
-	Incidents involving the implicated party	151.	
-	Other incidents	152.	
<b>Elements observed during the operation</b>			
-	Place(s)	160.	Including any use of firearms by the officers
-	Vehicles		
-	Persons		
<b>Follow-up given to the case</b>			
-	In respect of the implicated party	170.	
-	Jurisdiction(s) or magistrate(s) contacted in the requested State	171.	
<b>Miscellaneous</b>		172.	

Please note: This is an administrative document which should not be used as legal evidence.



To be filled in as accurately as possible, especially with information about weapons, police personnel, vehicles and use of specialist policing techniques.

<b>Request for cross-border controlled delivery</b>		
<b>Details of the request</b>		
- Requesting State	010.	
- Requested State	011.	
- Sending unit	012.	
- Forwarding unit	013.	
- Receiving unit	014.	
- Date and time of the request	015.	
- Name of the person under surveillance or, if unavailable, name or no. of the case	015.	
- Cross-border surveillance: ordinary or urgent	016.	
- If ordinary, date and time of crossing the border	017.	
- If urgent, grounds for urgency	018.	
<b>Details of the investigation in requesting state</b>		
Competent judicial or other authorising authority	020.	
Reference	021.	
Name and position of competent magistrate	022.	
Telephone		
- Mobile phone		
- Fax		
- E-mail address		

The general rule is that all requests should be sent to the central national unit.

Inform the requested state as soon as possible.

Competent police force	023.	
- Person in charge		
- Telephone		
- Mobile phone		
- Fax		
- E-mail address		
Legal assessment of case:	024.	
- Offence		
- Liable penalty		
Time or period of the acts	025.	
Place or area of the acts	026.	
Facts of case	027.	
Part played by sender/carrier/recipient of goods in offence	028.	
<b>Explanation of need for operation</b>		
Investigation findings warranting operation	030.	
Steps already taken to identify recipients of delivery or other participants and organisers	031.	
<b>Details of planned operation</b>		
- Type and quantity of illegal goods/other goods	040.	
- Probable time and place of import (crossing of border) into requested state	041.	
- Probable route in requested state	042.	
- Details of any time and place of export from requested state	043.	
- Probable means of transport (for vehicles: make, model, colour and registration number)	044.	
- Means of transport with a direction-finding transmitter or GPS	045.	

Personal particulars of suspects involved in transport <ul style="list-style-type: none"> <li>- Name and given name</li> <li>- Male / female</li> <li>- Given name</li> <li>- Date and place of birth</li> <li>- Estimated age</li> <li>- Place of residence/address</li> <li>- Nationality</li> <li>- Physical description (height, build, hair colour etc.)</li> <li>- Phone and mobile phone numbers</li> <li>- Photo/fingerprints</li> <li>- Armed/violent</li> </ul>	046.	
Details of any others involved in transport (including non-participants)	047.	
Any other information (contacts, rendezvous etc)	048.	
Any time and place of transfer of controlled delivery to requested state's authorities	049.	
<b>Details of implementing unit in requested state</b>		
Person in charge of operation <ul style="list-style-type: none"> <li>- Phone number</li> <li>- Mobile phone number</li> <li>- Radio frequency (optional)</li> <li>- Calling code</li> </ul>	050.	
Surveillance officers <ul style="list-style-type: none"> <li>- Numbers of officers</li> <li>- Vehicles</li> <li>- Registration numbers</li> <li>- Type of vehicles</li> </ul>	051.	
Other officers (including undercover investigators) or technical resources used	052.	
<b>Special requests</b>		

- Request for goods substitution	060.	
- Request for use of special investigation techniques	061.	
- Request for permission to carry a duty weapon	062.	
- Request for use of exchangeable number plates	063.	
- Special requirements for customs formalities	064.	
- Request for participation after transfer of controlled delivery to requested state's officers	065.	
<b>Additional comments/observations</b>		

<b>Final report on a cross-border controlled delivery</b>		
- Requesting State/authority		To be filled in by the lead operational officer within 7 days
- Central authority		
- Date and time of submission of evaluation report		
- Requested State and requested authority	1	
- Date and time of request	2	
- Receiving unit	3	
- Name or reference	4	
- Was the controlled delivery approved?	5	
- Approving authority and reference	6	
- Was the controlled delivery carried out? If not, why not?	7	
<b>To be completed if the controlled delivery was carried out</b>		
<b>Circumstances of controlled delivery</b>		
Details of offence	8	
Type and quantity of illegal goods	9	
<b>Means used by requesting and requested states</b>		
- Type and number of means of transport/vehicles involved	10	
- Number of police officers used	11	
- Technical resources or special investigation methods used	12	
- Miscellaneous	132	
<b>Noteworthy events</b>		
- Incidents involving the authorities of the requested State	150	
- Incidents involving the implicated party	151.	
- Other incidents	152	
<b>Results of controlled delivery / problems arising and any solutions</b>		

Results of controlled delivery		
Any language problems	170	
Any coordination problems	171	
Any other problems	172	

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