



Council of the
European Union

Brussels, 19 December 2022
(OR. en)

16201/22

COPEN 460
EUROJUST 114
JAI 1717

NOTE

From: General Secretariat of the Council

To: Delegations

Subject: Joint Investigation Teams
- Highlights of the Annual Meeting of the Network of National Experts on
Joint Investigation Teams (Eurojust, The Hague, 5 and 6 October 2022)

Delegations will find attached the above-mentioned document.



Highlights of the Annual Meeting of the Network of National Experts on Joint Investigation Teams

5 and 6 October 2022, Eurojust, The Hague

The 18th Annual Meeting of the Network of National Experts on Joint Investigation Teams (JITs) was organised by the JITs Network Secretariat in close cooperation with Eurojust and Europol on 5 and 6 October 2022 in The Hague.

The meeting brought together JIT National Experts from 21 EU Member States and representatives of EU institutions and agencies, as well as other practitioners and stakeholders.

The topic of this year's meeting was ***“Supporting JITs in Times of Conflict”***. Meeting participants looked at how JITs can be used to investigate crimes committed in conflict situations and discussed how to ensure that JITs can continue to be an essential tool to support investigations of alleged war crimes, crimes against humanity and other core international crimes committed in the framework of an armed conflict.

The meeting also offered an opportunity to review the JITs Network's ongoing projects and to put forward for discussion other pressing issues.

Ms Margarita Šniutytė-Daugėlienė, Vice-President of Eurojust and National Member for Lithuania, and Mr Claudio Galzerano, Head of Department of the European Counter-Terrorism Centre at Europol, opened the meeting.

Both speakers reflected on the ongoing war in Ukraine, which has deeply affected the security landscape in Europe and brought about a humanitarian catastrophe. This situation underscores the necessity of cooperation among different states to investigate alleged core international crimes committed in conflict settings.

The Eurojust Vice-President emphasised that the setting up of a JIT in record time to investigate the situation in Ukraine demonstrates that the international community stands united in its desire to gather evidence and bring those responsible to justice, in addition to the operational benefits brought about by the use of such teams.

The speakers highlighted the important contributions made by Eurojust and Europol to support investigations into alleged core international crimes committed in Ukraine. Eurojust's most visible contribution is its participation in the JIT from the outset. Following on from this, Eurojust maintains an overview of domestic proceedings related to the war in Ukraine, and the recent amendment to the Eurojust Regulation gives the agency a mandate to preserve, analyse and store evidence related to core international crimes.

Europol's contributions to the work of the JIT include supporting frontline Member States, monitoring threats to EU security and sharing its findings with Member States, and coordinating enforcement of the adopted sanctions against Russia. Europol's mandate covers core international crimes since 2017 and to this end, the agency has established an Analytical Project on Core International Crimes to support the investigations of national authorities; and Europol hosts a liaison police officer from Ukraine.

Mr Galzerano reaffirmed Europol's readiness to support the Ukraine JIT if the agency is requested to do so. Despite Europol's preparedness and willingness to participate in and support JITs, the agency is unfortunately facing a significant decrease in the number of JITs where Europol is formally involved as a supporting agency. Mr Galzerano expressed the hope on behalf of Europol that this is only a temporary trend, and upheld the agency's preparedness to provide support and services to JITs and Europol's continuous commitment to the work of the JITs Network.

1. Case Presentations – Practical experience in supporting a JIT in times of war

The liaison prosecutor for Ukraine at Eurojust presented the state play of the JIT established to investigate alleged core international crimes committed in Ukraine. This JIT was set up between Lithuania, Poland and Ukraine in March 2022; with Estonia, Latvia and Slovakia joining in May and Romania in October of the same year. Eurojust supported it since the beginning. Additionally, in April 2022 the International Criminal Court (ICC) joined the JIT as a participant. This is the first time that the Court has participated in a JIT.

The liaison prosecutor noted that the speed with which the JIT was established was a major contributing factor to the current successes of the investigation. She also highlighted how important preservation of evidence is to ensure future prosecutions, particularly in a conflict situation; when witnesses, victims and perpetrators may move abroad, and coordination between countries is essential to gather and preserve testimonies. At the same time, she also mentioned a risk of over-documentation when both state authorities and non-state actors, such as civil society organisations, are involved in the collection of information.

Another challenge identified is the scope of the proceedings, since the conflict has already given rise to thousands of individual cases. Within such a complex situation, it is impossible to investigate all alleged criminal conducts; therefore, choices must be made on which cases to include within the scope of a JIT. However, national authorities are registering as many cases as possible to avoid impunity.

She also expressed gratitude to Eurojust and the ICC for their proactive roles, which for Eurojust included the facilitation of coordination meetings, support in drafting the JIT agreement and its amendment, and provision of financial and technical support.

2. Case Presentations – Evidence gathering by the JIT in a conflict zone

The second case presentation focused on the experience gathered by investigators during a JIT set up between Australia, Belgium, Malaysia, the Netherlands, and Ukraine to enhance investigations into the downing of flight MH-17 in 2014. One Dutch prosecutor involved in the case addressed a number of practical issues encountered during the cooperation, in particular challenges related to the collection of (forensic) evidence in a conflict zone.

The speaker focused on the international cooperation within the JIT, certain specifics of the criminal investigation, and the JIT's efforts to validate the findings of the investigation. The investigation and resulting proceedings were complex and based on a wide variety of types of evidence, including forensic evidence from the wreckage of the plane, telecommunications, and photo and video evidence. The collection of evidence from the conflict zone, and their subsequent validation process, presented particular challenges to investigators.

The investigation was successfully concluded in the Netherlands and the indictment is subject to a pending court assessment.

3. Open discussion

After the case presentations, a discussion took place on the use of JITs in conflict situations.

Challenges that were identified by JIT National Experts include issues such as:

- coordination of a prosecution strategy, particularly in a JIT involving more than two States;
- how to deal with the possible need for prosecution of suspects *in absentia*;
- admissibility of evidence;
- evidence collected by the JIT and challenged by defence.

Best practices that were mentioned include:

- agreeing at an early stage where prosecutions should take place, taking into consideration factors such as experience with the types of crimes under investigation and the possibility of conducting a trial *in absentia*;
- coordinating with the prosecution service in the designated country of prosecution as early as possible, particularly so that investigators are aware of the types and standard of evidence required by that system;
- putting in place an extensive validation procedure for evidence, to pre-empt possible challenges during a trial.

4. JITs in times of conflict: current situation and future developments at Eurojust

Eurojust presented an overview of the Agency's tools and experiences in supporting JITs in times of conflict. Eurojust's mandate includes core international crimes; and there already was some experience with such crimes prior to the establishment of the JIT on core international crimes committed in Ukraine. Further, in cooperation with the Genocide Network and the Office of the Prosecutor (OTP) at the ICC, Eurojust has contributed to the preparation of a guidance document for the identification of victims and witnesses and for civil society organisations on documenting core international crimes.

Key ways were outlined in which Eurojust is supporting the investigation in Ukraine. The Agency also highlighted several operational challenges in relation to the investigation into core international crimes in Ukraine, including the volume and variety of data sources, the involvement of multiple actors, the scattering of evidence across various locations, different legal bases for cooperation, and the need to ensure security and traceability of the information and evidence exchanged. In such complex investigations, there is a need for an agreed coordination strategy, particularly concerning the identification of victims and witnesses, keeping an overview of evidence and production of evidence reports, and judicial cooperation to exchange evidence and solve issues of jurisdiction. This is where Eurojust can play a key role.

Further, it was explained that Eurojust is in the process of establishing a database for core international crimes evidence (CICED) in accordance with its expanded mandate. As mentioned in the amendment to the Regulation, the extended mandate will ensure that “*Eurojust can support case building in national and international investigations and provide additional support to the competent national authorities and international judicial authorities*”.

5. Europol’s support to JITs in times of conflict

Europol presented its Analysis Project on Core International Crimes (AP CIC), which was established in 2017 largely in connection with the conflicts in Syria and Iraq. These conflicts confronted countries with the situation that their own nationals became perpetrators of core international crimes, as well as with an influx of refugees from the region that included victims, witnesses and perpetrators. Member States and Europol therefore established AP CIC as a central analysis platform to aide in the investigations of these crimes and the streamlining of information.

AP CIC can be used to collect, store, analyse and share data relating to core international crimes, as well as to link information and intelligence from different sources to support cooperation amongst states. These functionalities are particularly useful due to the complexity of core international crimes investigations, where information and evidence is often scattered throughout different states. The use of AP CIC has led to the identification of perpetrators in different cases, with a wide geographical and temporal scope, and it is actively being used to assist ongoing war crimes investigations in Ukraine and other countries.

6. Update on the JIT Collaboration Platform

The European Commission presented a short update on the JIT Collaboration Platform.

The main goals of this new tool are to enhance the cooperation within a JIT, and to offer a means for the secure exchange of information and evidence for JIT parties.

The European Commission pointed out that negotiations with the Council resulted in a general approach reached in June 2022. Discussions with the European Parliament are ongoing, and a plenary vote on the platform was expected in November 2022.

7. Workshop 1: Relationship between JITs and structural investigations

The workshop “*Relationship between JITs and structural investigations*” was chaired by the Head of the Genocide Network Secretariat and aimed to discuss the possible approaches to effectively investigate and prosecute core international crimes, including the possible use of so-called ‘structural investigations’ and how cooperation in a JIT can further upgrade and facilitate these efforts.

The majority of participants reported that they have no practical experience with ‘structural investigations’, but would like to learn more about this concept. It was emphasised that ‘structural investigation’ is not a legal term; but rather an approach to investigating core international crimes, over which the majority of the participants’ countries have already established jurisdiction to prosecute.

Structural investigations can be used when, for example, victims or evidence are present on the territory of a state and it is clear that there is a structure or organisation involved that has committed several linked offences, even if these structures have not yet been identified. Structural investigations are not directed against specific persons, but rather focus on the structures and context within which crimes were perpetrated. In other words, they concentrate on ‘contextual elements’ and ‘structural aspects’ of a specific situation. These investigations can function as a “container” for large amounts of information, which can then be linked to individual cases.

Several participants stated that their national laws do not regulate structural investigation, and would in principle require at least knowledge of an offence having been committed, to open an investigation. However, it may still be possible to open a structural investigation in these countries when the crime is known and only the perpetrator is unknown.

Participants discussed the possible aims of structural investigations, in particular prevention of re-victimisation by avoiding that national authorities from various states interview victims or witnesses more than once. They also considered in which stage of the proceedings a structural investigation could be opened in their legal system, if at all, and in this context they also considered the roles of law enforcement and judicial authorities in relation to the gathering of information and evidence.

So far, in three cases where structural investigations were opened in several states, JITs were set up to facilitate cooperation between these states. There was discussion amongst participants related to their experiences with such JITs. Some participants reported very positive experiences and an interest in establishing more JITs linked to structural investigations in the future. The following advantages were highlighted: joining efforts; planning future steps; a common approach to victims; Eurojust's operational support; spin-off cases where other countries that opened investigations in individual cases may approach the JIT and request collected evidence; and cooperation with investigative mechanisms (UNITAD, IIM).

Other participants expressed doubts about whether JITs are the best mechanism for cooperation in this context, since not all countries would be able to join such a JIT due to limitations in their national legal framework related to the possibility to open structural investigations. Alternative solutions were proposed to be able to involve more countries, including the creation of a new tool for cooperation based on information exchange ('Joint Team').

The main concerns identified regarding JITs based on structural investigations were admissibility of evidence, the potential need to disclose the JIT agreement to the defence, and the possible need to produce all material from the JIT's files at trial. If the JIT agreement or JIT files contain information relating to a structural investigation, disclosure could lead to sensitive information about other ongoing cases becoming public. On another note, the coordination of a multi-party JIT was expressed as challenging; though some participants proposed that hosting smaller meetings with relevant parties could be a solution to this issue.

Finally, participants discussed how the JITs Network Secretariat and the Genocide Network Secretariat could assist them in exploring the possibilities to engage in a structural investigation. Participants expressed that both Secretariats could be of particular help by raising awareness, building and sharing expertise, and providing case studies based on past cases.

8. Workshop 2: Evidence gathering by JITs in times of conflict

The workshop “*Evidence gathering by JITs in times of conflict*” was chaired by the JIT National Expert for Poland. The investigations into alleged core international crimes in various conflict zones, including Ukraine, have shown that obtaining evidence from war zones is particularly challenging compared to domestic or standard cross-border cases. Workshop participants discussed how JITs can assist in evidence collection in conflict areas.

The workshop started with a presentation by a national practitioner who is a member of the JIT on alleged core international crimes committed in Ukraine. The presentation aimed to share experience related to the cooperation between JIT partners on the ground, as well as practical challenges faced while conducting investigative measures in Ukrainian territory.

Participants confirmed that, even in war zones, JITs are the best legal platform to enable parties to enhance their investigations and to identify the jurisdiction best placed for prosecution. The latter seems crucial in situations where alleged perpetrators are still at large and trials are therefore conducted *in absentia*. Furthermore, based on the JIT agreement, information and evidence can be exchanged swiftly between JIT parties.

JITs also enable the development of investigation plans and strategies that can help JIT parties to determine which investigative measures are to be conducted. Furthermore, distribution of tasks may help avoiding duplication of efforts and fragmentation of evidence, specifically dispersed in different jurisdictions (for example due to witnesses’ migration). Thus, analyses and validation of evidence can be shared between JIT parties by using their forensics and expertise to overcome limited capacities of local authorities in that respect.

The involvement of various specialists in a team of experts not always available in all concerned countries (such as IT technicians, interpreters, and forensic scientists) raises the effectiveness of evidence collection in war zones. The presence of seconded experts and the involvement of JIT participants (e.g. Europol, Eurojust, ICC) strengthens the JIT capacity by providing legal and financial support, specialised equipment to enable secure communication in war zones, access to data, and other support.

Participants emphasised that the presence of JIT seconded members can be particularly beneficial in investigating crime scenes located in war zones. They can provide professional experience and expertise to conduct complex investigations at the crime scenes. The involvement of JIT seconded members may contribute to assuring that the evidence was collected in an objective and impartial manner, thereby avoiding challenges in court.

Apart from JIT participants, a variety of other actors present in war zones may contribute to evidence gathering, such as military forces, intelligence, law enforcement or private actors (e.g. media, private companies, NGOs). Information is the key to finding evidence of core international crimes.

Workshop participants identified certain threats and precautionary measures to be taken into account while investigating crime scenes in conflict zones, such as logistical challenges, communication with local societies, the threat of being targeted by an armed attack, and the need for close cooperation with local authorities. Access to evidence is not always possible because of the ongoing conflict. To overcome this challenge, investigators need to use all sources of information, including information from civil society organisations, and make sure that information can be used as evidence in criminal proceedings.

Participants considered that the JITs Network can be a centre of expertise of best practices derived from JITs on alleged core international crimes committed in war zones. The Secretariat can also collect and share information on legal frameworks and best practices to collect evidence in war zones (e.g. via checklists, *Fiches*).

In addition, participants acknowledged the need for training of JIT members before entering conflict zones (such basic training organised by military forces or security companies).

9. Workshop 3: New partners in JITs: the International Criminal Court

The workshop “*New partners in JITs: the International Criminal Court*” was chaired by a representative of the Office of the Prosecutor and a former JIT National Expert and now trial lawyer of the ICC. The workshop focused on participants’ views on the involvement of the ICC in JITs and the potential benefits thereof.

Participants noted the following possible benefits of ICC involvement in JITs:

- ability to use the experience of the ICC in relation to investigating core international crimes and in collaborating with civil society organisations;
- the ICC’s field-based presence and the opportunity to use its investigative ability on the ground;
- the acceleration of cooperation and the prevention of duplication of work;
- ensuring that evidence collection is in line with ICC standards for an eventual prosecution by that Court; and
- creating links between the community of national authorities on the Rome Statute and the community of national authorities on JITs.

Further, the ICC involvement could be of value also outside of situations where the ICC has jurisdiction. The Court may be able to contribute thematic knowledge or provide assistance without actively investigating. The ICC can also share information about serious crimes, which are not core international crimes, with national authorities.

Participants suggested that the JITs Network Secretariat, in cooperation with the ICC, should develop a checklist to provide guidance to JIT national practitioners interested in cooperating with the ICC, or a simple brochure with FAQs on ICC-OTP cooperation. In addition, workshop participants mentioned that the Secretariat could develop a short overview of domestic legislation of the EU Member States on ICC cooperation in JITs, touching upon aspects such as the legal basis and potential benefits.

Overall, workshop participants were positive about a closer association between the ICC and the Network. They also support exploring the possible involvement of other international organisations (such as UNITAD and IIM) where relevant.

10. JITs Network: Update on ongoing Projects and Activities

The Head of the JITs Network Secretariat outlined the state of play of the Network's relationship with Observer States, the possible benefits of involving third countries in the activities of the Network, and the applicable procedure to invite new third countries.

The Network agreed to invite four new Observers, namely Albania, Georgia, Serbia, and United States. It was agreed that the Secretariat will follow up with these countries on behalf of the Network.

As agreed in 2021, the Secretariat continues to facilitate the update of existing *Fiches Espagnoles* and assists in the preparation of new ones. Fiches are now available for all EU Member States and nine third countries. Five updates to the Fiches are still ongoing.

The Project Group on JITs in times of conflict was concluded with the distribution of a compilation of replies to a questionnaire on this topic. The compilation will be made available in the JITs Restricted Area.

The Project Group on the assessment of the JITs Network and its activities is ongoing. After collecting feedback through the questionnaire, the JITs Network Secretariat is now focusing on organising discussion sessions with JITs National Experts to gather some additional input. The aim of this exercise is to improve the overall level of engagement and functioning of the Network and to further strengthen its position as a key player in the area of JITs. It was decided that this project will be finalised for the next annual meeting in 2023.

The collection of JIT evaluation forms for the *Fourth JIT Evaluation Report* has been concluded. In addition to reporting on the findings from JIT evaluations, it was agreed that the content of the evaluation report will be enhanced by including other relevant information on recent developments in JITs and relevant JIT case law. Eurojust's contribution to the report will focus on Eurojust's experience with multilateral JITs. The report will be finalised by the end of the year and published at the beginning of 2023.

The development of a model case scenario (MCS) for various JIT training purposes has been completed by the Project Managers and the JITs Network Secretariat. The MCS identifies specific learning objectives for each of the training sessions, and the methodologies that could be applied to achieve these objectives. The MCS is now available to JIT National Experts and training institutions upon request.

Post-COVID-19, there has been an increase in training activities, seminars, and roadshows. The JITs Network Secretariat has organised and participated in a number of such activities in collaboration with CEPOL, UNODC and other actors. In addition to this, several JIT National Experts represented the Secretariat in some of these trainings. JIT National Experts interested in joining the pool of trainers are invited to contact the JITs Network Secretariat.

The JITs Network Secretariat is working on a new and more user-friendly version of the JITs Restricted Area, to be launched in 2023.

The JIT National Experts were made aware of an upcoming task related to checking the translation of the JIT Model Agreement in their native language. The JITs Network Secretariat will contact the JIT National Experts about this task after the meeting.

11. JITs Network: Update on JITs funding

The JITs Network Secretariat shared several novelties that have been introduced to the JITs Funding Programme from 2021 to date. These include new cost categories within the urgent funding scheme as of 1 October 2022, namely car rental and loan of equipment.

Finally, the JITs Network Secretariat gave an insight into funding-related tasks and changes it is currently working on, including a claims module, updated guides and documentation, equipment needs, and possible new cost categories.

Summary of the main meeting conclusions “Supporting JITs in Times of Conflict”

- Meeting participants recognised the significance of JITs to investigate crimes committed in conflict situations and discussed how to ensure that JITs can continue to be an essential tool to support these investigations.
- The state play of the JIT established to investigate alleged core international crimes committed in Ukraine was presented, highlighting the benefits and challenges experienced so far in this ongoing JIT.
- The second case presentation focused on the experience gathered during a JIT set up between Australia, Belgium, Malaysia, The Netherlands, and Ukraine to enhance investigations into the downing of flight MH-17. This investigation was successfully concluded in the Netherlands.
- Subsequently, the participants identified some challenges (i.e. scope of the investigations, coordination of prosecution strategy in multilateral JITs, admissibility of evidence) and best practices (i.e. agreeing at early stage on jurisdiction, validation process for collected evidence) related to JITs set up to investigate in conflict situations.
- Eurojust and Europol presented an overview of the Agencies’ tools and experiences in supporting JITs in times of conflict and key ways in which they are aiding the UA investigation.

- The European Commission gave a short update on the state of play of the JIT Collaboration Platform draft Regulation. A plenary vote is expected in the European Parliament in November 2022.
- In the workshop “*Relationship between JITs and structural investigations*”, some participants reported very positive experiences with this new concept and an interest in establishing more JITs linked to structural investigations. Others expressed doubts on whether JITs are the best mechanism for cooperation in this context. According to the participants, the JITs Network Secretariat and the Genocide Network Secretariat could help by sharing awareness, building expertise, and providing case studies based on past cases.
- In the workshop “*Evidence gathering by JITs in times of conflict*”, participants confirmed that, even when operating in war zones, JITs continue being the best tool of judicial cooperation. However, certain logistical challenges, risks, and precautionary measures must be taken into account by the JIT parties. Participants suggested that the Secretariat should collect and share information on legal frameworks and best practices to collect evidence in war zones (e.g. via checklists, Fiches).
- In the workshop “*New partners in JITs: the International Criminal Court*”, participants were very supportive to promote a closer association between the ICC and the Network. Participants suggested that the JITs Network Secretariat should develop a checklist to provide guidance to JIT practitioners interested in cooperating with the ICC, or a simple brochure with FAQs on ICC-OTP cooperation in JITs. The Secretariat should also develop an overview of domestic legislation of the EU Member States on ICC cooperation in JITs. Exploring the possible involvement of other international organisations was also supported.
- The Network agreed to invite Albania, Georgia, Serbia, and United States to join the Network as Observers. The Secretariat will follow up with these countries on behalf of the Network.

- The Project Group on the assessment of the JITs Network and its activities is ongoing. The JITs Network Secretariat is organising bilateral meetings with JITs National Experts to gather additional input. This project will be finalised for the next annual meeting in 2023.
 - The Fourth JIT Evaluation Report will be finalised by the end of the year and published at the beginning of 2023.
 - The JITs Network Secretariat is currently working on a new and more user-friendly version of the JITs Restricted Area, to be launched in 2023. Furthermore, the Secretariat will contact the JIT National Experts to check the translation of the JIT Model Agreement in their native language.
-