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Subject: Conclusions of the 12th Annual Meeting of National Experts on Joint Investigation Teams (15 - 16 June 2016, The Hague)

Delegations will find in the Annex the conclusions from the 12th Annual meeting of the National Experts on Joint Investigation Teams held on 15 and 16 June 2016 in the Hague.

**Conclusions
of the
Twelfth Annual Meeting of National Experts
on
Joint Investigation Teams(JITs)**

15 and 16 June 2016, Eurojust, The Hague

JITs in illegal immigrant smuggling cases: challenges and opportunities

The 12th annual meeting of the National Experts on Joint Investigation Teams (JITs) took place at Eurojust in The Hague on 15-16 June. The meeting, which gathered around 100 participants, was organised by the JITs Network Secretariat in close cooperation with Eurojust and Europol.

Over two days, experts from across Europe as well as other relevant practitioners and stakeholders - including Justice and Home Affairs Agencies - discussed concrete steps to enhance the use of JITS in illegal immigrant smuggling (IIS). In attendance were law enforcement and judicial practitioners with specific expertise either in JITs and/or the fight against IIS.

More than one million migrants were smuggled into Europe in 2015, which represents a 500 per cent increase over 2014. Criminal networks have quickly adapted to this development and significantly increased their involvement in IIS activities as a lucrative criminal enterprise. Access to the European Union by approximately 90 per cent of these irregular migrants is reported to have been facilitated by smuggling networks¹.

IIS often shows links with several other criminal activities such as trafficking in human beings or drug trafficking. Furthermore, as shown by the Paris attacks of November 2015, smuggling routes and networks may also be used to infiltrate potential terrorists into the European Union.

Illegal immigrant smuggling is high on the EU agenda and requires an enhanced law enforcement and judicial response². To step up the operational coordination in the Member States facing mixed and disproportionate migratory flows, which are largely linked to the smuggling of migrants, the Commission, with the endorsement of the **European Council**, committed itself to setting up the so-called Hotspot approach. This approach has already provided a platform for EU agencies (such as Frontex, EASO, Europol and Eurojust) to intervene, rapidly and in a coordinated manner, in frontline Member States such as Greece and Italy. This approach was launched in autumn 2015 and concentrates on the registration, identification, fingerprinting and debriefing of asylum seekers, as well as return operations, to help Italian and Greek authorities to fulfil their responsibilities under EU law. In each host Member State, joint operational headquarters have been set up, staffed by representatives of the Agencies (in particular Europol, Frontex and EASO) and the European Union Regional Task Force (EURTF) which coordinates the work of the support teams at the Hotspots and ensures close cooperation with the national authorities.

¹ See Europol Report ‘Migrant smuggling in the EU’ available at <https://www.europol.europa.eu/content/migrant-smuggling-eu>

² See EU Action Plan against migrant smuggling (2015-2020), COM (2015) 285 final (https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_action_plan_against_migrant_smuggling_en.pdf).

Following a decision of the Justice and Home Affairs ministers³, Europol launched the European Migrant Smuggling Centre (EMSC), in February 2016, to support Member States in targeting and dismantling organised criminal networks involved in IIS, by focusing on existing and emerging geographical criminal hubs and hotspots. One of the novelties proposed by the EMSC is the possibility of deploying specialised investigative and analytical support teams to any requesting party in a need of support, on both a short- and long-term basis⁴. In relation to the above-mentioned security threats associated with migratory flows, Guest Officers have also been deployed in different hotspots by Europol since March 2016 to perform secondary security checks and support Greek authorities.

In line with recommendations from the EU Action Plan against migrant smuggling 2015-2020, Eurojust also set up a Thematic Group on illegal immigrant smuggling, with three objectives: to support the needs of prosecution, to identify and analyse the obstacles regarding prosecution and to improve the use of the EU legal instruments, as well as address the shortcomings of these instruments.

On 4-5 February 2016, Eurojust organised a tactical meeting on judicial challenges in illegal immigrant smuggling⁵, one session of which was devoted to JITs. The annual meeting of JIT experts was intended to build up on the conclusions of this event and to contribute – in line with the Council conclusions on migrant smuggling⁶ – to enhancing the ‘*use of joint investigation teams (in this field) and the funding possibilities available within Eurojust*’.

³ See Council Conclusions 789/15 on Measures to handle the refugee and migration crisis (<http://www.consilium.europa.eu/en/press/press-releases/2015/11/09-jha-council-conclusions-on-measures-to-handle-refugee-and-migration-crisis/>).

⁴ Europol Mobile Investigation Support Teams (EMIST) and Europol Mobile Analysis Support Teams (EMAST).

⁵ See outcome report (<http://data.consilium.europa.eu/doc/document/ST-9456-2016-INIT/en/pdf>).

⁶ <http://www.consilium.europa.eu/en/press/press-releases/2016/03/10-council-conclusions-on-migrant-smuggling/>

1. JITs in illegal immigrant smuggling cases – towards a more proactive approach?

An efficient response to illegal immigrant smuggling (IIS) – which is by definition a cross-border activity - requires a comprehensive and multidisciplinary response involving all Member States (be they entry, transit or destination country) and key operational partners. In the main EU entry points, national authorities are facing a huge challenge in providing a functioning border control mechanism and maintenance of public order in a situation in which thousands of migrants of mixed backgrounds and nationalities arrive simultaneously at a certain point of the border. The practical and organisational difficulties encountered in border control (e.g registration, identification and debriefing of migrants, asylum support, coordination of return activities) are a burden to the concerned authorities, and also present a challenge in initiating and carrying out criminal investigations against networks of smugglers.

The organised crime groups (OCGs) involved in IIS are structured, but their *modi operandi* are flexible. Routes, means of transport and camouflage techniques used can vary widely. Victims can be reluctant to cooperate, making investigations particularly cumbersome. A major challenge is also posed by the difficulty in identifying and/or tracing the leaders of the OCGs, as they are often situated outside the EU's borders.

While key entry points might have a huge amount of information, sometimes difficult to filter and analyse in a timely fashion, places of transit or destination do not always have in their possession the data that would enable a complete picture to be assembled. This problem of 'asymmetric information' may hinder operational analysis, as delays or irregularities in the normal cycle might affect possible cross-matches, having a negative impact on the outcome of investigations. Europol is committed to tackling these challenges, in particular through the introduction of the Mobile Investigation Teams (EMIST) and the Analysis Teams (EMAST) to better and proactively support Member States.

Having in mind this difficult context, participants were invited in a first workshop to consider which strategy would enable practitioners to make more proactive use of JITs in IIS cases. Such a proactive approach would in particular enable an early detection of links, analysis of *modi operandi* and identification of key suspects, thus bringing necessary information to initial cross-border investigations suitable for the setting-up of JITs.

Certainly relevant and promising in this respect is the recent adoption of the Italian legislation implementing the Framework Decision on JITs⁷, which was presented during the meeting.

Conclusions

Experts agreed that the number of JITs (and more generally of convictions) in IIS cases should increase, taking into account that a significant amount of intelligence and information is now being exchanged at law enforcement level.

Specific challenges were identified in this respect:

- time needed to agree on the establishment of a JIT, taking into account the fast evolution of *modi operandi* as well as the applicable internal processes;
- coordination at national level of investigations and their management, including international connections, to identify suitable cases;
- sharing of information on the law enforcement and judicial levels and their interaction;
- lack of experience with the crime area and its specifics, where usual investigative techniques (e.g. controlled deliveries) are not relevant;
- difficulty in reaching out to source countries and countries hosting facilitation networks.

To respond to these challenges, the following suggestions were made:

- in accordance with applicable instruments (Article 7 of 2000 EU MLA Convention) and if permitted by national legislation, cooperation should be initiated prior to the signature of the agreement ('virtual' JIT) with findings to be included only after signature;
- raise awareness about JITs at the national level and once gained, share experience with IIS cases to other practitioners, in particular via JITs experts;
- involve Europol at an early stage to perform analysis and give direct support through EMSC in the relevant regions and investigations;
- Improve national coordination through Eurojust National coordination system (ENCS) to channel more information to Eurojust (Articles 12 and 13 of Eurojust Decision⁸);

⁷ Legislative Decree No 34 of 15 February 2016 implementing Council Framework Decision of 13 June 2002 on Joint Investigation Teams, Official Gazette of the Italian Republic, N. 157, 10 March 2016.

⁸ Council Decision 2002/187/JHA on Eurojust as amended by Council Decision 2009/426/JHA

- implement more joint training between law enforcement and judiciary on JITs and international cooperation in IIS investigations (on the model developed by CEPOL and EJTN), especially for the most affected countries (e.g. Member States which are entry points of victims in Europe);
- identify dedicated investigators and prosecutors to tackle international IIS cases and identify ‘local’ cases that can be turned into international/wider cases; (e.g. use of liaison prosecutors looking into IIS cases);
- coordinate with law enforcement and prosecution services in regional operational platforms to identify suitable cases and agree on a joint way forward. In this respect the ‘Joint Operational Office’ established in Vienna⁹ and the ‘Task force on illegal migrant smuggling in the North Sea region’¹⁰ (France, United Kingdom, Belgium and the Netherlands), were mentioned as promising examples. In the Western Balkans region, it was suggested to review the routes used in other crime areas (drugs, firearms) and to make use of established bilateral prosecutorial arrangements;
- involve Eurojust closer in EMPACT, in particular in IIS field; and
- explore within Eurojust the possibility of a dedicated call for proposals to finance JITs in IIS.

2. JITs in illegal immigrant smuggling cases – specific challenges and solutions

During the tactical meeting hosted by Eurojust¹¹, JITs were mentioned as an effective tool in dismantling IIS networks and several examples of successful cases were presented during the JITs meeting, involving entry and transit countries (Serbia, Hungary, Czech Republic, Austria) or destination countries (France, Belgium, United Kingdom).

On the other hand, the fast-evolving nature of IIS may impact law enforcement and judicial authorities’ ability to carry out comprehensive cross-border investigations. JITs’ practice may require certain adjustments to meet the specific requirements or constraints of IIS cases (e.g. JITs with a shorter operational phase to cope with rapid evolution of *modi operandi* and routes).

⁹ See <https://www.europol.europa.eu/content/joint-operational-office-opened-vienna>

¹⁰ See <http://www.eurojust.europa.eu/press/PressReleases/Pages/2016/2016-05-19.aspx>

¹¹ See above footnote 4

In this workshop, experts were invited to share views and experience in relation to the specific features, challenges and best practice of JITS established in IIS cases.

- **Conclusions**

JITs are perceived by experts as an effective tool for cooperation in IIS cases, with *inter alia* the following benefits: ability to target and dismantle the entire criminal network, clear identification and commitment of cooperation partners, strengthening of mutual trust, resolution of potential *bis in idem* situations, fast and direct exchange of information/evidence, support offered by Eurojust and Europol (both technical and financial) etc.

Furthermore the use of JITs may contribute to overcoming a number of challenges encountered in IIS cases:

- Collection of evidence : problems with the admissibility of evidence (e.g statements from migrants) can be anticipated and prevented; gathering of evidence may be agreed upon and carried out only once, to prevent duplication of efforts (for the benefit of all partners);
- Translation and interpretation: the JIT framework enables a better selection of documents to be translated and reduces the costs; it also allows benefits from the financial support of Eurojust's JIT funding;
- Financial dimension of investigation: in this respect as well, the JIT option is cost effective and once trust is built, facilitates informal communication (*e.g.* skype, email...)
- Differences in progress of domestic investigations: according to the experts, this element should not necessarily prevent the setting up a JIT, since it is always possible to share information/evidence collected prior to the JIT; in addition, JITs make it possible to coordinate, prepare a common strategy, share responsibility and agree on disclosure processes.
- Cooperation with non-EU States, which are now increasingly involved in JITs.

As possible obstacles to the use of JITs in this area however, participants pointed out:

- the length of procedures for negotiating/signing the agreement;
- the different understandings of the JIT concept at national levels;
- the insufficient legal basis for setting up JITs with third States; and
- different stages of domestic criminal investigations.

Participants did not see a need to develop a JIT model agreement specific to IIS, though standardisation might be sought for certain aspects/articles (i.e. protection of victims/witnesses).

Discussions on the agreement should be conducted swiftly and smoother signing processes should be implemented at the national level.

Another key element is to find clarity on the purpose of the JIT, having in mind two specific considerations:

- avoiding a too narrow focus (JITs should be ‘OCG-focused’, not ‘person-focused’); and
- including associated crimes (e.g. money laundering).

In terms of best practice, the following elements were underlined:

- early police-to-police cooperation is a prerequisite for a successful JIT;
- early and continuous exchange of information with the Europol Focal Points is needed;
- the JIT should be set up as soon as possible;
- prosecution strategies should be developed from the beginning, tailored to the needs of each domestic investigation;
- the collaboration of JITs partners should be extended beyond the action day (e.g. the joint assessment of the evidence collected within the JIT framework); and
- a consistent media communication strategy should be agreed upon (clarity on when and what to communicate to the press for every JIT partner).

3. **Enhancing supporting tools : JITs practical guide and model agreement**

As a follow-up to the conclusions of the 11th meeting¹², the JITs Network has also finalised this year the revision of the JITs supporting tools.

In the first years of implementation of JITs, Eurojust, Europol and the JITs Network jointly developed several tools to facilitate effective access to JITs by all practitioners: the JITs Manual, the JIT model agreement and the Operational Action Plan (OAP). These tools have proved to be useful in practice, but needed to be revised to bring their content in line with the experience acquired in the last years.

In accordance with the conclusions of last year's meeting, the manual has been thoroughly revised and enhanced to serve as a **comprehensive JITs practical guide** for law enforcement and judicial authorities.

The document endorsed by the experts has the following features:

- it includes references to the JITs network and its projects and activities;
- it follows the different phases of the JIT (setting-up, operation, closure and evaluation);
- the cross-cutting issues (financial support, Eurojust and Europol support...) are addressed in annexes;
- it incorporates a list of fifteen frequently asked questions (FAQs) which reflect lessons learnt and best practice identified in the context of the JIT evaluation project (*see supra*);
- it now includes specific developments on OLAF's involvement in a JIT; and
- the section concerning operational planning (ex 'OAP') has been simplified on the general aspects and supplemented by a 'crime-specific' approach.

The suggested new **JITs model agreement** was drafted with the objective of simplifying the existing model and incorporating several amendments derived from the analysis of existing agreements.

¹² See <http://data.consilium.europa.eu/doc/document/ST-11992-2015-INIT/en/pdf>.

Over the last number of years the JITs Network Secretariat has developed a database containing a representative sample of JIT agreements (approximately 140 agreements processed so far), which helped to identify the main areas in which practitioners identified the need to deviate from or add to the existing model.

Based on this analysis, the proposed new JIT model agreement includes suggestions on the following topics:

- disclosure;
- gathering and access to information and evidence;
- exchange of information and evidence obtained prior to the setting up of the JIT;
- sharing of evidence obtained from States not parties to the JIT;
- financial support;
- consultation and coordination;
- communication with the media; and
- evaluation.

The revision also takes into account the outcome of meetings held in previous years in relation to JITs with non-EU States and therefore:

- no longer refers specifically to the 2000 EU MLA Convention or to the 2002 Framework Decision on JITs; and
- includes a non-exhaustive list of legal instruments enabling the setting up of JITs with non-EU States.

In this respect, the suggested model is a concrete response to several of the challenges identified during the meeting in the field of IIS cases: with the revision undertaken, the model agreement would also be applicable to JITs with States located outside the EU; clearer and concise, the new model should contribute to speeding up the drafting of future agreements.

4. Other developments

a. 'Fiches espagnoles'

This project was initiated on the suggestion of the Spanish experts, during the 9th annual meeting. The purpose is to collect and make available to practitioners, via the *JITs Network restricted area*, summaries of the national legislation of Member States that are relevant to the setting-up and operation of JITs.

Eight new summaries (FI, DK, HU, IT, LV, PL, PT and UK) had been published before this annual meeting. In total, 20 *fiches espagnoles*¹³ are now available for practitioners, the aim being to complete the project at the end of 2016.

b. JITs evaluation:

In 2015 this project reached an important milestone, with the release of the first *JITs evaluation report*. This document consolidates quantitative and qualitative findings resulting from the self-assessment of 42 JITs, received by the Secretariat between April 2014 and October 2015. It outlines the main benefits, best practices and challenges experienced by practitioners in using JITs.

The annual meeting provided an opportunity to discuss the way forward in relation to this project (e.g. new evaluation forms received, monitoring of ongoing JITs by National Experts to trigger new evaluations, format of future reports...).

c. Eurojust JITs funding

Eurojust has continued providing financial support to JITs. In 2015 the useful role played by this programme in support of JIT operations was confirmed with a total of 144 applications received for Eurojust funding (some of them relating to the same JIT, for operations spread over subsequent actions periods).

68 JITs have received financial support (through one or several grants), 36 of which for the first time in 2015.

¹³ BE, BG, SE, ES, RO, LT, EE, AT, FR, CZ, SK, NL, FI, DK, HU, IT, LV, PL, PT and UK.

Since 2013 – when Eurojust decided to provide financial support to JITs under its regular budget – JITs grant processes have been regularly reviewed to respond to operational needs. In 2016, to gain efficiency and speed-up the settlement of claims, several measures were introduced:

- Introduction of a new cost category (cross-border transfer of evidence/seized items).
- Extension of financial support to persons contributing to cross-border operational activities of the JIT without being formally appointed as members (e.g. interpreters, forensic experts...).
- Introduction of unit costs for one cost category (travel and accommodation) to speed-up reimbursement.
- Implementation of budget differentiated appropriations, to gain flexibility in using and re-using released funds.
- simplification regarding supporting documents for reimbursement (proof of payment no longer required at claim stage).

To assist JIT practitioners in navigating the funding process, Eurojust has published two useful documents¹⁴:

- an infographic showing the main features and steps of the procedure; and
- a JITs funding guide, which presents the main terms and conditions of the funding programme and provides practical advice to make efficient and effective use of it.

The JITs funding guide will be made available in all EU official languages in the coming weeks and several JITs experts have offered to review the accuracy of the translation in their native language.

¹⁴ See http://www.eurojust.europa.eu/Practitioners/JITs/Eurojust-JITsFunding/Pages/News/2016-03-03_New-support-tools-for-JITs-funding.aspx