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English only

Open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption

Vienna, 12–14 June 2024

Item 3 of the provisional agenda¹**Status of implementation of joint investigations under article 49 of the United Nations Convention against Corruption****Conference Room Paper****I. Introduction and background****A. Introduction, scope and structure**

1. In accordance with paragraphs 35 and 44 of the terms of reference of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, the present conference room paper has been prepared to compile the most common and relevant information on successes, practices, challenges and observations with regard to the implementation of article 49 of the Convention by States parties. The analysis in part II is based on the information included in the 177 executive summaries and country review reports for the first review cycle that had been completed as at 15 May 2024.

2. Furthermore, in the annex, the information from the status of implementation of article 49 of the Convention is complemented by research conducted by the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network) on the principles of operating joint investigation teams. Material from official publications and scholarly literature have been analysed to inform the discussions of the open-ended intergovernmental expert meeting to enhance international cooperation under the United Nations Convention against Corruption.

3. Given that article 49 of the United Nations Convention against Corruption, entitled joint investigations, is identical to article 19 of the United Nations Convention against Transnational Organized Crime (Organized Crime Convention),² the two provisions are commonly understood and interpreted in the same manner. For

¹ CAC/COSP/EG.1/2024/1.

² See further, UNODC, *Travaux préparatoires of the negotiations of the United Nations Convention against Corruption* (2010), pages 423–425.



this reason, where relevant, the conference room paper includes references to the more extensive commentary on article 19 of the Organized Crime Convention.

B. Background

4. A joint investigation, in which law enforcement officials from two or more States work together, can be useful to investigate and prosecute complex corruption cases and can complement other types of mutual assistance. Joint investigations maximize direct personal contacts and address the practical problem when law enforcement officials and prosecutors usually cannot work across borders. Agreements and arrangements enabling joint investigations offer a solution insofar as they permit foreign officials to work alongside or on behalf of their local counterparts. The creation of joint investigative teams (commonly referred to as joint investigation teams or JITs) permits the direct transmission of information without the need to use formal mutual legal assistance channels.

5. Article 49 of the Convention³ encourages the use of joint investigations to investigate and prosecute corruption more effectively and exchange relevant information more swiftly across borders. It requires States parties to consider concluding bilateral or multilateral arrangements or agreements regarding the establishment of joint investigative bodies, mindful of the legal and sovereignty issues involved. If such agreements or arrangements do not exist, article 49 further encourages prosecutions and proceedings on a case-by-case basis. Article 49 promotes the use of joint investigations but is a non-mandatory provision and does not oblige States parties to engage in them leaving the legal and technical details to States parties.⁴

6. Given the identical provisions on joint investigations in the United Nations Convention against Corruption and the Organized Crime Convention, which have been ratified by a large number of States, some States parties may have already introduced legislation to enable participation in joint investigations.⁵ The term ‘joint investigation’ is, however, used differently around the world and encompasses a range of collaborative efforts in the investigation of crime. Such efforts may generally be classified as either joint parallel investigations, joint investigative teams, or joint investigative bodies. Article 49 does not specify the type and organization of a joint investigation and refers to ‘joint investigative bodies’ and ‘joint investigation’ but does not further define these terms.

7. Joint parallel investigations consist of two or more parallel, coordinated investigations with a common goal assisted by a liaison officer network or through personal contacts and supplemented by formal mutual legal assistance requests to obtain evidence which is then exchanged through formal mutual legal assistance channels. The evidence collected during parallel investigations will serve the purpose of separate criminal proceedings.⁶ The officials involved in this model are usually not located in the same jurisdiction and work together ‘on the basis of long-standing cooperative practices and/or existing mutual legal assistance legislation’.⁷

³ Article 49 of the United Nations Convention against Corruption: States parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States parties involved shall ensure that the sovereignty of the State party in whose territory such investigation is to take place is fully respected.

⁴ UNODC, *Legislative guide for the Implementation of the United Nations Convention against Corruption* (2nd rev. ed. 2012), p. 216.

⁵ UNODC, *Legislative guide for the Implementation of the United Nations Convention against Corruption* (2nd rev. ed 2012) p. 217.

⁶ CTOC/COP/WG.4/2020/3, p. 5.

⁷ CTOC/COP/2008/CRP.5, p. 10.

8. Joint investigative (or investigation) teams (JITs) - which are the main focus of this paper – involve integrated teams comprising officers such as law enforcement personnel, prosecutors, judges, or investigative judges from multiple jurisdictions. Generally, JITs are established pursuant to an agreement between the competent authorities of two or more States for a limited duration and for the specific purpose of carrying out criminal investigations in one or more of the States involved.

9. The term ‘joint investigative body’ refers to a concept first introduced by article 19 of the Organized Crime Convention. It has been interpreted to mean a more permanent structure, usually formed on the basis of a bilateral agreement.⁸ A 2020 background paper presented to the Working Group on International Cooperation established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime notes that: “A joint investigative body (JIB) is distinct from both a joint investigative team (JIT) and a joint parallel investigation in that it is intended to be a more permanent structure formed on the basis of a bilateral agreement. Whereas JITs are more likely to be formed for the investigation of particular criminal cases within a limited (although extendable) period of time (usually 6–18 months), JIBs would be more suitable for investigating certain types of crime (e.g. trafficking in persons) and not just isolated cases over a longer period of time (e.g. five years or more).”⁹

10. Depending on the extent of law enforcement powers available to officers participating in these teams, joint investigations can further be characterized as either passive or active.¹⁰ ‘Passive integration’ refers to the involvement of a foreign law enforcement or judicial official in an advisory, consulting, or supporting role capacity into a team of officers in the host State. This is usually based on technical assistance agreements or domestic laws enabling the foreign officer to be appointed or designated. ‘Active integration’ refers to a team of officials from multiple jurisdictions (such as JITs) in which foreign law enforcement officials can exercise some operational powers under the authority of the host State where the team operates. This requires the existence of adequate national legislation.¹¹

II. Status of implementation of article 49 of the United Nations Convention against Corruption (‘joint investigations’): Outcomes of the Implementation Review Mechanism

11. Approximately one third of the States parties that finalized the first cycle of the Implementation Review Mechanism had provisions in their domestic law, had adopted agreements or could directly apply the provisions of the United Nations Convention against Corruption for the purpose of conducting joint investigations. Thirty-eight States parties mentioned that their legal systems and practice enabled them to conduct joint investigations on a case-by-case basis, and a few of them had experience in conducting joint investigations in corruption cases. Fifteen States parties had adopted agreements or arrangements allowing for the establishment of joint investigative bodies. Eleven States parties noted that they could use the Convention as legal basis for the implementation of joint investigations.

12. Four States parties referred to the use of the Organized Crime Convention as a legal basis for JITs. Others expressly noted that they cannot use the Convention as a legal basis for these purposes. Some States mentioned that they had no such experience in the context of corruption investigations. Three States referred in their response to the possibility of conducting joint investigations through the International Criminal Police Organization (INTERPOL). Three States informed that they could establish joint investigations without further specification about the legal basis. Some States reported examples of parallel investigations with one or more jurisdictions.

⁸ CTOC/COP/2008/CRP.5, p. 7, 13.

⁹ CTOC/COP.WG.3/2020/2, p. 2–3.

¹⁰ CTOC/COP/2008/CRP.5, p. 5; CTOC/COP/WG.4/2020/3, p. 5.

¹¹ CTOC/COP/2008/CRP.5, p. 11; CTOC/COP.WG.3/2020/2, p. 2 10–11.

13. Twenty-two States parties had neither concluded bilateral nor multilateral agreements with a view to carrying out joint investigations nor had undertaken such investigations on an ad hoc basis. In some States, this situation may have already evolved, because it was indicated that draft legislation was under consideration at the time of the review, or a different consideration came as a result of the recommendations done at the end of the first cycle. Ten States parties stated that they did not have domestic provisions allowing them to carry out joint investigations.

14. Regarding experiences of joint investigations for the investigation of corruption offences, some States expressly noted that they have not yet been involved in any JITs involving allegations of corruption. Most responses did not expressly make such statements; some noted that JITs had been set up for the investigation of other crime types but not (yet) for corruption-related cases. A small number of States expressly noted that they have participated in JITs in cases involving corruption. Thirteen States parties mentioned the formation of a team in relation to an offence established in accordance with the Convention. One of the States with the most experience of using joint investigation teams reported a total of 29 such investigations, including investigations into cases related to corruption offences. The investigative authorities of one State made frequent use of joint investigations to bridge the problems of receiving intelligence and investigative cooperation from countries having a different legal system.

15. From a regional perspective, twenty-six States parties reported that joint investigations were frequently established in the framework of regional organizations and networks, such as Eurojust and the system of Nordic joint investigations. Among the agreements cited were the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and the International Conference on the Great Lakes Region Protocol on Judicial Cooperation.¹²

16. Member States of the Council of Europe pointed to their ability to establish JITs under article 20 of the Council of Europe's Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which provides detailed guidance and requirements for the setting up and use of JITs among States parties to this Protocol.¹³

17. For Member States of the European Union, article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union provides the legal basis for creating and operating JITs. On 13 June 2002, the Council of the European Union adopted a Framework Decision on joint investigation teams to provide a legal framework for the establishment of JITs among EU Member States for the period until the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union would enter into force (which would subsequently supersede the Framework Decision). For cooperation between customs authorities of EU Member States, article 14 of the Convention on Mutual Assistance and Cooperation between Customs Administrations provides a basic framework for the creation of 'joint special investigation teams' comprising officials from two or more Member States.

18. States from the Latin American Group noted their ability to establish JITs under the Framework Agreement for Cooperation among the States Parties to the Southern Common Market (MERCOSUR) and Associated States for the Establishment of Joint Investigation Teams (Acuerdo Marco de Cooperación entre los Estados Partes de MERCOSUR y Estados Asociados para la Creación de Equipos Conjuntos de

¹² The regional information contained in this section of the conference room paper is based on the Implementation Review Mechanism and expanded on the basis of the research provided by the GlobE team.

¹³ The Protocol was opened for signature on 8 November 2001 and entered into force on 1 February 2004. As of 1 May 2024, the Protocol had 46 States parties (including three non-Member States of the Council of Europe).

Investigación). This Agreement provides extensive guidance on joint investigation teams. It sets out the entire process from requesting the formation of a JIT, the acceptance of that request, the role of central authorities, the operational plan, powers of JIT leaders, liability for JIT personnel, costs, and sharing of evidence. One Latin American State also reported that the Cooperation Agreement between the Member States of the Conference of Ministers of Justice of the Ibero-American States (COMJIB) concerning Joint Investigation Teams (Convenio de Cooperación entre los Estados Miembros de la Conferencia de Ministros de Justicia de los Países Iberoamericanos en Materia de Equipos Conjuntos de Investigación) set out comprehensive provisions regarding the creation, organization, mandate, and operation of JITs.

19. Some States from the African Group pointed out that the International Conference on the Great Lakes Region (ICGLR) had adopted the Protocol on Judicial Cooperation. Articles 17 to 20 of this Protocol permit them to set up ‘joint investigation commissions’. These provisions set out a basic framework for the initial request for the creation, the mandate and power of such commissions and the admissibility of evidence.

20. Member States of the Commonwealth of Independent States (CIS) noted that article 63 of the CIS Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002 (‘Chisinau Convention’) enabled them to set up joint investigative teams.

21. Two legal instruments that stand out in this respect are the Council of the European Union framework decision 2002/465/JHA on joint investigation teams and the Framework Agreement for Cooperation among the States Parties to the Southern Common Market and Associated States for the Establishment of Joint Investigation Teams¹⁴, which expressly refers to the Convention and to corruption in general as an offence that requires the use of enhanced investigative tools in order to combat it.¹⁵ The possibility of conducting joint investigations is provided for in domestic law and article 63 of the Chisinau Convention in two States.

22. As an example of implementation of this provision of the Convention, the police of one State party had established joint investigative teams with foreign law enforcement authorities in more than 15 cases relating to organized crime, drugs and Internet-based crimes. One of the reviewed States parties indicated that draft legislation was under consideration at the time of the review.

23. Regarding technical assistance needs, less than ten per cent of States parties requested technical assistance to support the implementation of article 49 of the Convention. The reason for this low number could be a larger number of requests for the implementation of articles 44, 46 and 48 of the Convention. The types of technical assistance requested were model agreements or arrangements; capacity-building programmes; a summary of good practices and lessons learned; on-site assistance by an anti-corruption expert and other assistance in the form of capacity-building through informal interactions networks, as well as training (i.e. expertise, foreign language) for public officials and, in particular, public security forces. Individual requests were received for legal advice; technological assistance; and the development of an implementation action plan.

A. Good practices in the implementation of article 49 of the Convention

24. Approximately 10 per cent of the reviewed States parties under the first cycle had good practices in the implementation of article 49 of the Convention. Those good

¹⁴ The agreement was approved on 2 August 2010 and entered into force on 22 May 2020.

¹⁵ UNODC, *State of Implementation of the United Nations Convention against Corruption: Criminalization, Law Enforcement and International Cooperation*, 2nd ed. (Vienna, 2017), p. 254.

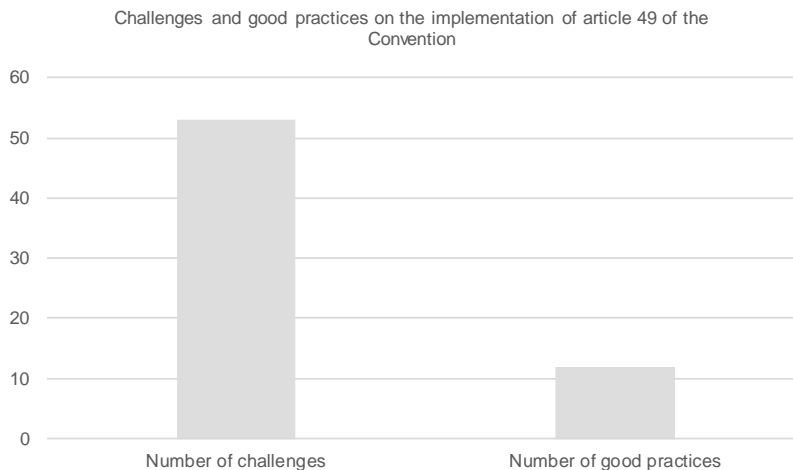
practices can be summarized as follows: Domestic legislation provides for the possibility of joint investigative bodies for the investigation of crimes.

25. While some States set out detailed regulations of joint investigations in their domestic frameworks that was praised by the review team, in other cases, the reviewers observed that national authorities have an effective cooperation framework in place to facilitate international cooperation. Given that law enforcement authorities have established a record of collaborating with foreign counterparts, experts believed that there is no demonstrated need for formal cooperation mechanisms in this area. The flexible approach on cooperation, on the basis of ad hoc arrangements even in the absence of legislation or pre-existing agreements, was considered a success. In the same vein, participation in various platforms for international cooperation that facilitate intelligence-sharing, mutual assistance and joint investigations was praised as well as the establishment of a protocol for the exchange of evidence and the sharing of forensics with a neighbouring country to facilitate cooperation. A guidance manual for police and prosecution services from both countries was issued to streamline cooperation.

26. One State party reported that the establishment of a joint team to dismantle a network of fuel traffickers was carried out on the legal basis of the United Nations Convention against Corruption. Another State party informed of the adoption of a flexible approach to the establishment of joint investigations with law enforcement bodies from other States parties and had conducted such joint investigations in practice.

27. In another State, the adoption of amendments to the Code of Criminal Procedure that promoted a more complete and detailed regulation of the provision of international legal assistance in criminal matters was considered a success. This detailed regulation included matters affected by the Convention, in particular the identification, freezing, tracing and confiscation of the proceeds of crimes, the possibility of conducting by video link procedural actions requested in legal assistance requests, and the establishment of joint investigation teams. In another case, the use of joint investigations and an operational working group were considered good examples of law enforcement cooperation among countries at the policy and operational level.

Figure I
Challenges and good practices identified in the implementation of article 49 of the Convention



B. Challenges in the implementation of article 49 of the Convention

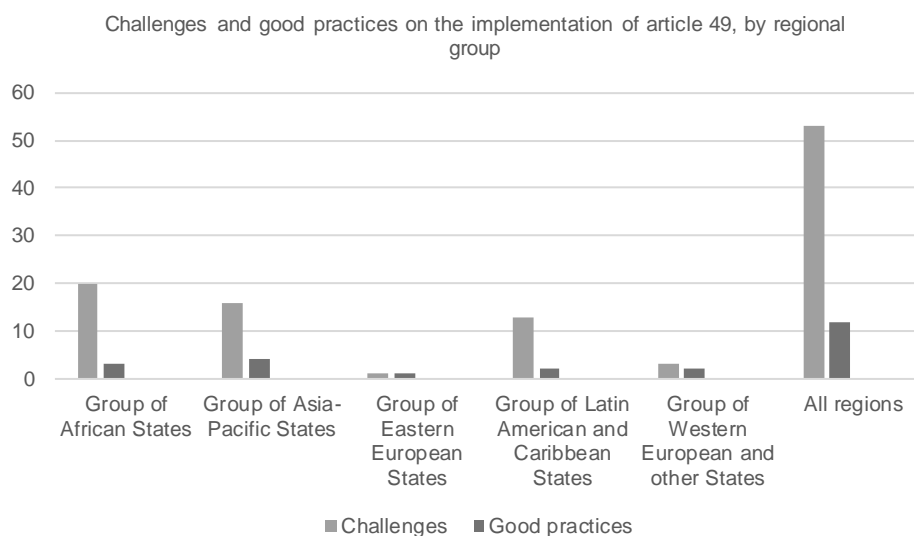
28. Less than one third of the States parties reviewed in the first cycle had challenges with the implementation of article 49 of the Convention. About half of the States that had not (or not sufficiently) implemented article 49 had issues with the

recommendation to seek to conclude agreements or arrangements with other States, including issues with the costs of such teams. Only a few countries were asked to introduce legislation or keep statistics on the matter.

29. Moreover, for this article of a non-mandatory nature, when gaps were identified, States parties were encouraged to systematize and make better use of information on joint investigations, including gathering information on the means employed and the criteria used in the establishment of joint investigation teams. The scope of recommendations issued for article 49 of the Convention in the States parties under review are consistent despite the more than ten years that elapsed since the beginning of the first cycle in 2010. The scope of recommendations made in the country review reports to address identified implementation gaps and challenges was consistent. While some degree of variance was to be expected, owing to the different degrees of implementation of the Convention and the terms of reference of the Implementation Review Mechanism, which in paragraph 8 state that the Mechanism shall take into account differences in legal traditions and the diversity of judicial, legal and political systems, the recommendations issued also varied to some extent across comparable situations.

Figure II

Challenges and good practices identified in the implementation of article 49 of the Convention, by region



30. This conference room paper has used the outcomes of the Implementation Review Mechanism to provide an update on the status of implementation of the Convention. Joint investigative teams are an innovative and promising tool to exchange information and effectively cooperate in the fight against corruption and other cross-border crimes. They overcome the long-standing practical problem that criminal elements can operate across borders, whilst investigators and prosecutors cannot.

Annex

An overview of principles of operations and obstacles and benefits of using joint investigative teams

1. The information from the status of implementation of article 49 of the Convention from the previous conference room paper is complemented in this annex by research conducted by the Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE Network) focusing on the principles of operating joint investigation teams, as well as obstacles and benefits of using them.

I. Principles of operation of joint investigative teams

2. The life of a JIT is commonly separated into the planning, setting up, operation, and evaluation stage.

A. Planning

3. Two types of circumstances usually warrant the creation of a JIT: where difficult and demanding investigations having links with other States are ongoing, or when several States are conducting investigations in which the circumstances of the case necessitate coordinated and concerted action, in particular with a view to the number and complexity of investigative measures to be carried out in the States involved, and the extent to which investigations in the States involved are interconnected.¹⁶

4. One essential element for JITs is the transnational dimension of the case in question, which means that suspects and offenders, organized criminal groups, or the offending, proceeds or instruments of the crime may be found in, or may affect two or more States.

5. Generally, the creation of a JIT is considered in the early stages of an investigation.¹⁷ JITs are usually established where investigations are already ongoing (parallel or linked) in the relevant States.¹⁸ The respective stage of national investigations may be a decisive factor for considering the establishment of a JIT. National authorities may be more inclined to engage in a JIT when the respective investigations being carried out in the other countries are at an equivalent stage.¹⁹ For these reasons, it is unusual for JITs to be established in the advanced stages of an investigation, for instance, after charges have been laid and the cases presented to the court.²⁰ Sometimes, though less commonly, a State after receiving relevant information on the case may first commence its own investigations and then, in a second step, join a JIT.²¹

¹⁶ [CTOC/COP.WG.3/2020/2](#), p. 11–12; Eurojust JITs Network, ‘Guía práctica de los equipos conjuntos de investigación’, Council of the European Union Doc 6128/1/17, p. 6–7.

¹⁷ Eurojust JITs Network, *Fourth JITs Evaluation Report* (2023), p. 11.

¹⁸ Eurojust JITs Network, ‘Guía práctica de los equipos conjuntos de investigación’, Council of the European Union Doc 6128/1/17 (14 February 2021), p. 7.

¹⁹ Eurojust JITs Network, *Fourth JITs Evaluation Report* (2023) p. 11; [CTOC/COP.WG.3/2020/2](#), p. 11; *Best practices in joint investigations and specialized prosecutions*, [CTOC/COP.WG.4/2020/3](#), p. 11.

²⁰ Eurojust JITs Network, *Fourth JITs Evaluation Report* (2023), p. 11.

²¹ Eurojust JITs Network, *Fourth JITs Evaluation Report* (2023), p.11; [CTOC/COP.WG.3/2020/2](#), p. 11; Eurojust JITs Network, ‘Guía práctica de los equipos conjuntos de investigación’, Council of the European Union Doc 6128/1/17, p. 7.

B. Setting up

6. In setting up joint investigations, the cooperating authorities need to address a variety of issues: the appropriate location and duration, the composition of the team, the involvement of other participants, and questions relating to liability and compensation.²² Some jurisdictions have rules for setting up joint investigations that need to be observed, including formal authorization procedures.²³

7. The specific terms and conditions of operating a JIT are negotiated and laid out in a mutual agreement between the States involved in accordance with their domestic laws (the ‘JIT agreement’). Generally, the agreement states the parties, purpose, duration and place of the investigation, the composition of the team, contains some information about operational details, and stipulates the conditions regarding access to and exchange of information, along with other coordination issues.²⁴

8. JITs comprise representatives of law enforcement agencies or other competent authorities of the States involved. Depending on the jurisdiction and the nature of the facts under investigation, JIT members can include prosecutors, judges, law enforcement officers and other experts.²⁵ The idea is to assemble the most suitable range of professional backgrounds and mandates to work together for a common investigative purpose.²⁶

9. The JIT leader supervises the JIT members and their operations in the territory where the JIT is located. For this reason, the JIT leader is a designated representative of that jurisdiction (‘the host State’).²⁷ The JIT leader is usually a representative of the (main) agency participating in the investigation and must act within the limits of his or her competence under national law. In some jurisdictions, domestic laws specify which agency is authorized to act as a JIT leader.²⁸ States differ in their requirements as to who can be a JIT leader: a law enforcement official, an investigating judge, or a prosecutor.²⁹ In general, it is desirable if a participating State only appoints one JIT leader. Where JITs are located or operate in more than one State, having additional JIT leaders from and for each State can be useful.³⁰ Alternatively, the leadership may (need to) change or alternate between the participating States if the investigation (or the location of the entire team) moves from one jurisdiction to another.³¹

²² CTOC/COP.WG.3/2020/2, p. 12.

²³ R. Zaharieva, ‘The European Investigation Order and the Joint Investigation Team—which road to take’ (2017) volume 18 *ERA Forum*, p. 397, 399.

²⁴ CTOC/COP.WG.4/2020/3, p. 5; A. Weyembergh, I. Armada, and C. Briere, ‘The Cooperation Between Police and Justice at the EU Level: The Representative Example of Joint Investigation Team’ in C Briere and A Weyembergh (eds), *The Needed Balances in EU Criminal Law* (Hart, 2018), p. 355, 369.

²⁵ CTOC/COP.WG.3/2020/2, p. 12; Council of Europe, *Explanatory Report to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters* (8 November 2001), p. 15.

²⁶ A Weyembergh, I Armada, and C Briere, ‘The Cooperation Between Police and Justice at the EU Level: The Representative Example of Joint Investigation Team’ in C Briere and A Weyembergh (eds), *The Needed Balances in EU Criminal Law* (2018), p. 355, 361–362.

²⁷ CTOC/COP.WG.3/2020/2 (12 May 2020), p. 12; C Gualtieri, ‘Joint Investigation Teams’ (2007), volume 8 *ERA Forum*, p. 233, 235.

²⁸ V Terziev, M Petkov and D Krastev, ‘Concept of Joint Investigation Teams’ (2021) VII(19) *IJASOS – International E-Journal of Advances in Social Sciences*, p. 324, 326.

²⁹ N Long, *Implementation of the European Arrest Warrant and Joint Investigation Teams at EU and National Level*, Study (2009), p. 30–31.

³⁰ R Riegel, ‘Gemeinsame Ermittlungsgruppen’ [2009], issue 3 *eucri*, p. 99, 101.

³¹ G Gesk, ‘Transnationale Strukturen im Strafprozessrecht – das Beispiel der gemeinsamen Ermittlungsgruppen’ in G Gesk and A Sinn (eds), *Organisierte Kriminalität und Terrorismus im Rechtsvergleich* (Vandenhoeck & Ruprecht, 2019), p. s 237, 248; Council of Europe, *Explanatory Report to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters* (8 November 2001), p. 15; C Rijken, ‘Joint Investigation Teams: principles, practice, and problems. Lessons learned from the first efforts to establish a JIT’ (2006) p. 2 *Utrecht Law Review*, p. 99, 103; Jagy, ‘About joint investigation teams in a nutshell’ (2009) p. 4;

10. The ‘regular’ JIT members comprise members from the participating jurisdiction in which the team operates (domestic members) as well as members from the other participating jurisdiction(s) (seconded members). While the JIT team is usually located in one jurisdiction, it is not always necessary that all team members work in the same place and the same country; some JIT members may be working from their home country without physically working in the field with the rest of the team.³²

11. JITs may involve other participants who are not representatives or officials of the authorities that set up the JIT. Such participants may, for instance, be officials of States that are not party to the JIT agreement. The involvement of such additional participants requires a legal basis in domestic law or another instrument and is usually captured in a specific clause of the JIT agreement or additional arrangements between the parties.

12. Questions about liability and compensation arise in situations where, for instance, property damage occurs or where JIT members violate their code of conduct and, perhaps, engage in criminal activities. A JIT agreement should stipulate clear rules for the civil and criminal liability for action taken by the team and its members, especially in relation to seconded JIT members who are operating in the territory of the host State.³³ Parties to a JIT should also consider including a dispute resolution mechanism in the JIT agreement.³⁴

C. Operation

13. One of the main purposes of JITs is the ability of JIT members from multiple States to cooperate in one jurisdiction. For members from the State where the JIT is located, this means that they can use the investigative powers commonly available to them as set out in domestic laws and regulations. One major innovation of JITs is the ability of JIT members from other States to participate in and carry out investigative measures in the State where the JIT is located whilst at the same time requesting investigative measures to be taken in their home jurisdiction. This closes a gap that is commonly exploited by criminal elements.³⁵

14. The scope of the investigative powers available to seconded JIT members are determined by the JIT agreement and subject to the conditions of the domestic law of the host State.³⁶ The parties to the JIT are free to determine and negotiate which investigative powers can be conferred on seconded JIT members and which limitations may apply. While it may be tempting for host States to limit the role of seconded JIT members to be present during investigative measures, this approach may be counterproductive, undermine the purpose of the JIT, and play into the hands of criminal activities.

15. Because of the sovereignty principle, all investigative measures must be carried out under the supervision of the relevant authority of the host State and the guidance of its representatives. The JIT leader can decide to entrust a seconded JIT member with a particular investigative measure in accordance with the domestic law of the host State.

Current Issues of Business and Law, p. 141, 151; T Schalken and M Pronk, ‘On Joint Investigation Teams, Europol and Supervision of Their Joint Actions’ (2002) p. 10 *European Journal of Crime, Criminal Law and Criminal Justice*, p. 70, 71.

³² N Long, *Implementation of the European Arrest Warrant and Joint Investigation Teams at EU and National Level*, Study (2009), p. 30.

³³ CTOC/COP/WG.4/2020/3, p. 11.

³⁴ CTOC/COP/2008/CRP.5, p. 22.

³⁵ G Gesk, ‘Transnationale Strukturen im Strafprozessrecht – das Beispiel der gemeinsamen Ermittlungsgruppen’ in G Gesk and A Sinn (eds), *Organisierte Kriminalität und Terrorismus im Rechtsvergleich* (2019), p. 237, 247.

³⁶ B de Buck, ‘Join Investigation Teams: The participation of Europol officials’ (2007), volume 8 *ERA Forum*, p. 253, 255–256.

16. At a minimum, seconded JIT members are entitled to be present during any investigative measure taken by the JIT in the host State. Furthermore, they may be authorized to carry out specific investigative measures, such as a search, taking witness testimony, examining a crime scene etc. This will be done on the instruction of the JIT leader and in accordance with the domestic laws of the State where the JIT operates. The investigative measures must be approved by the competent authorities of that State and the home jurisdiction, which means it may be pre-approved by the JIT agreement or, if not, approved at a later stage. The approval may be granted in general terms or in relation to specific cases or circumstances. Whether the investigative powers of seconded members include, for instance, the power to arrest suspects and to carry and use weapons, including firearms, will thus vary from JIT to JIT, depending on the JIT agreement and the domestic laws in place.

17. In addition to any investigative measures that team members can take in the host State, JITs enable seconded members to request investigative measures required by the JIT to be taken by the competent authorities in their home jurisdiction. This can be done without the need for any formal mutual legal assistance request; requests from seconded JIT members stationed abroad are treated in the same manner as requests made within the jurisdiction in the context of a domestic investigation.³⁷ It enables the seconded member to provide the JIT with information available in their home jurisdiction, such as, for instance, criminal records, or car registrations for the purpose of the investigations conducted by the JIT.³⁸

18. A critical point of JITs is the sharing of information within and beyond the team. Because the information exchange must comply with certain legal requirements, all JIT partners should carefully assess which documents and information in their possession can and needs to be shared with whom.³⁹ It is, of course, prohibited to share information that was obtained unlawfully (under the domestic laws of the jurisdiction where the information was obtained).⁴⁰

19. One of the purposes of JITs is the gathering of evidence in different jurisdictions in a manner that it can be used for future prosecutions.⁴¹ The gathering of evidence by JIT members must fully comply with the relevant legal requirements. Evidence collected unlawfully must not be used in judicial proceedings.⁴² The admissibility of evidence in court is a matter regulated by domestic law. As a general rule, *lex loci* applies, meaning the relevant domestic laws of the place where the investigation, prosecution, or criminal trial takes place must be applied.⁴³

20. If a JIT requires information or other assistance from a State that is not participating in the team, the general laws and procedures relating to mutual legal assistance must be followed. It should be disclosed to the requested State that any information or cooperation provided will be shared with the other JIT partners.⁴⁴ When information obtained by the JIT from a third State is shared within and beyond

³⁷ Council of Europe, *Explanatory Report to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters* (8 November 2001) p. 16; B de Buck, 'Join Investigation Teams: The participation of Europol officials' (2007), volume 8 *ERA Forum*, p. 253, 256.

³⁸ B Nagy, 'About joint investigation teams in a nutshell' (2009), p. 4 *Current Issues of Business and Law*, p. 141, 152.

³⁹ Eurojust JITs Network, *Fourth JITs Evaluation Report* (2023), p. 30.

⁴⁰ N Zurkinder, *Joint Investigation Teams: Chancen und Grenzen von gemeinsamen Ermittlungsgruppen in der Schweiz, Europa und den USA* (2013), p. 180–181.

⁴¹ R Zaharieva, 'The European Investigation Order and the Joint Investigation Team—which road to take' (2017), volume 18 *ERA Forum*, p. 397, 401–402; [CTOC/COP/WG.4/2020/3](#), p. 10.

⁴² N Zurkinder, *Joint Investigation Teams: Chancen und Grenzen von gemeinsamen Ermittlungsgruppen in der Schweiz, Europa und den USA* (2013) 255; R Riegel, 'Gemeinsame Ermittlungsgruppen' [2009], issue 3 *eu crim*, p. 99, 105.

⁴³ N Long, *Implementation of the European Arrest Warrant and Joint Investigation Teams at EU and National Level*, Study (2009) p. 35; Eurojust JITs Network, *Guidelines on Joint Investigation Teams Involving Third Countries* (2022), p. 12.

⁴⁴ N Zurkinder, *Joint Investigation Teams: Chancen und Grenzen von gemeinsamen Ermittlungsgruppen in der Schweiz, Europa und den USA* (2013), p. 180.

the team, the conditions relating to information sharing and evidence must be observed.⁴⁵ If the JIT partners change after the request is made (for example, another State joins the JIT), further approval to share the information needs to be sought from the requested State.

D. Closing and evaluation

21. A JIT is usually closed when either the joint investigation has been completed or the period for which the JIT has been set up has lapsed. If further joint investigations are necessary beyond the original expiry date, the JIT partners need to agree on an extension of the JIT agreement, preferably before that agreement lapses.⁴⁶

22. Situations where one JIT partner unilaterally leaves an ongoing JIT should be avoided, not least because this can jeopardize ongoing investigations. If due to different timeframes or deadlines, changed circumstances, or other external factors one JIT partner needs to conclude the investigation and exit the JIT, preliminary and transitional arrangements should be made to prevent an abrupt termination of the JIT, especially if the remaining partner(s) still require cooperation.⁴⁷

23. When the JIT agreement is about to expire, it is advisable to jointly carry out an evaluation of the outcomes and achievements.⁴⁸ Furthermore, it is useful to review the use of operational powers, including coercive measures, the procedural rules that had to be followed, and how information was shared with and within the JIT and was later used as evidence in judicial proceedings.⁴⁹

II. Practical obstacles pertaining to and benefits of the use of joint investigative teams

A. Obstacles pertaining to the use of joint investigative teams

24. Research shows that presently JITs are widely used in Europe and Latin America but elsewhere practice suggests that States are unwilling or unable to set up and engage in this type of international cooperation. This is because the laws of some States do not permit the secondment of foreign law enforcement or other justice officials to their territory. Furthermore, some States view joint investigations as an intrusive cooperation tool and instead employ more limited mechanisms.⁵⁰

25. The planning, setting up, and operation of JITs are complex and costly undertakings. Bureaucratic and legal barriers can slow down the creation of a JIT, making other international cooperation tools potentially more efficient and less expensive. For this reason, JITs are often only taken into consideration if other methods of mutual assistance cannot achieve the same objective.⁵¹

⁴⁵ A Balcaen, 'Law enforcement information exchange in the operational phase of a JIT' in C Rijken and G Vermeulen (eds), *Joint Investigation Teams in the European Union* (2006), p. 85, 110.

⁴⁶ Eurojust JITs Network, *Guidelines on Joint Investigation Teams Involving Third Countries* (2022), p. 11.

⁴⁷ V Terziev, M Petkov and D Krastev, 'Concept of Joint Investigation Teams' (2021) VII, Issue 19; *IJASOS – International E-Journal of Advances in Social Sciences*, p. 324, 328.

⁴⁸ [CTOC/COP.WG.3/2020/2](#), p. 14; Eurojust JITs Network, *Guidelines on Joint Investigation Teams Involving Third Countries* (2022), p. 11.

⁴⁹ A Weyembergh, I Armada, and C Briere, 'The Cooperation Between Police and Justice at the EU Level: The Representative Example of Joint Investigation Team' in C Briere and A Weyembergh (eds), *The Needed Balances in EU Criminal Law* (2018), p. 355, 380.

⁵⁰ Eurojust JITs Network, 'Conclusions of the Tenth Annual Meeting of National Experts on Joint Investigation Teams (JITs), 24 and 26 June 2014', Council of the European Union Doc 17115/14 (19 December 2014), p. 4.

⁵¹ S Vuelta Simon, 'Dernières Nouvelles des équipes communes d'enquête: entre partage et souveraineté...' (2007) *Avr/Jun Revue de science criminelle et de droit pénale compare*, p. 267,

26. Additional hurdles may arise if a JIT seeks to employ special investigative techniques, i.e. techniques for gathering information in such a way as to not alert the target persons.⁵² Such techniques, which include controlled delivery, electronic and other forms of surveillance, wiretapping of communications, and undercover operations, can be particularly useful for the investigation of corruption, which is expressly recognized by article 50 of the United Nations Convention against Corruption. The use of special investigative techniques can have significant human rights implications and international human rights law, institutions, and jurisprudence articulate several parameters concerning their use.⁵³ For evidence obtained through special investigative techniques to be admissible in judicial proceedings, most jurisdictions require strict adherence to several safeguards. These commonly involve judicial or independent oversight of the use of those techniques as well as adherence to the principles of legality, subsidiarity, and proportionality,⁵⁴ in accordance with the trial State's domestic law and sometimes in that of other States participating in the investigation. To ensure the admissibility of evidence obtained through special investigative techniques in the context of JITs, it is thus necessary that all participating States have mechanisms for supervisory control of such techniques.

27. Problems can arise if the laws of the host State for gathering evidence differ from the domestic laws of the State in which the case is presented to the court. One way to avoid these problems is to concentrate the investigation and other criminal proceedings in one State and determine the jurisdiction when the JIT agreement is set up.⁵⁵ Another way would be to transfer the proceedings to the jurisdiction where the investigation was carried out.⁵⁶

28. A further issue arising in the context of the sharing of evidence obtained by JITs is the extent to which the evidence may or must be disclosed to other parties and the stage of the proceedings where such disclosure is to take place. Domestic laws vary significantly on this point.⁵⁷ In some jurisdictions, the prosecution must disclose the evidence at its disposal to the defence. Similarly, the defence may have to disclose certain information relevant to the case to the prosecution before trial.⁵⁸ Some domestic laws authorize the prosecution to exclude certain information from disclosure (for example, sensitive information relating to national security) while elsewhere domestic laws require full disclosure in court of all information.⁵⁹

29. A common point of concern is the point on the penalties and punishment provided for serious crimes under domestic law, chiefly offences that attract the death penalty under the laws of one of the States considered for or involved in a JIT. The

269.

⁵² UNODC, *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime* (2nd ed 2017) para. 443.

⁵³ UN Human Rights Committee, *General Comment No. 16 (Right to Privacy)*, UN Doc HRI/GEN/1/Rev.1 (1988) para. 8; UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of the United States of America*, CCPR/C/USA/CO/4 (23 April 2014), para. 22.

⁵⁴ D Chrysikos, 'Article 50: Special Investigative Techniques' in C Rose, M Kubiciel, and O Landwehr (eds), *The United Nations Convention Against Corruption* (2019), p. 502, 507.

⁵⁵ CTOC/COP.WG.3/2020/2, p. 13; J Nagy, 'About joint investigation teams in a nutshell' (2009), p. 4, *Current Issues of Business and Law*, p. 141, 155–156; N Long, *Implementation of the European Arrest Warrant and Joint Investigation Teams at EU and National Level*, Study (2009), p. 35.

⁵⁶ V Terziev, M Petkov, and D Krastev, 'Concept of Joint Investigation Teams' (2021) VII; issue 19; *IJASOS – International E-Journal of Advances in Social Sciences*, p. 324–325.

⁵⁷ CTOC/COP.WG.3/2020/2, p. 13; L Block, 'EU joint investigation teams' in S Hufnagel, S Bronitt, and C Harfield (eds), *Cross-border Law Enforcement Regional Law Enforcement Cooperation* (2011), p. 87, 94.

⁵⁸ A Balcaen, 'Law enforcement information exchange in the operational phase of a JIT' in C Rijken and G Vermeulen (eds), *Joint Investigation Teams in the European Union* (2006), p. 85, 96–97.

⁵⁹ T Spapens, 'Joint Investigation Teams in the European Union: Article 13 JITS and the Alternatives' (2011), p. 19 *European Journal of Crime, Criminal Law and Criminal Justice*, p. 239, 252.

death penalty is denounced in international law and the United Nations Human Rights Committee stresses that all parties to the International Covenant for Civil and Political Rights (ICCPR), which enshrines the right to life in article 6, must take appropriate measures to protect individuals against the deprivation of life by other States operating inside their territory or in other areas subject to their jurisdiction. States must also ensure that all activities occurring wholly or partly inside their territory, as well as in other places subject to their jurisdiction, and which have a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, are consistent with article 6 of the ICCPR.⁶⁰ In relation to the creation and operation of JITs, States will need to consider carefully, and from the outset, whether the joint investigation may involve offences attracting the death penalty in any of the participating States and the implication this may have on the ability to cooperate and exchange information and evidence.

30. In addition to these legal considerations, there are several practical aspects that need to be considered prior to the creation of a JIT. These relate, inter alia, to the parties in the joint investigation (the States, agencies, and their personnel). From the outset it is also necessary to reflect on the powers available to JIT members seconded to another jurisdiction and the supervision of the investigation and the investigators. Another important point to consider are the costs associated with joint investigations. To function properly, JITs require adequate human and financial resources, along with technical equipment, and so on. States need to be mindful that joint investigations are more resource-intensive and more expensive than common national investigations.

B. Benefits of joint investigative teams

31. Research shows that JITs can overcome many of the limitations of traditional forms of cooperation by enabling criminal justice officials to work across borders. In cases where law enforcement officials or prosecutors from different jurisdictions need to exchange information or cooperate in an investigation, the establishment of a JIT is a valuable tool to enhance communication, coordination, and collaboration; to build trust between different States, their agencies and officials; and to integrate officials from the participating agencies into the national system.⁶¹

32. JITs are particularly helpful when criminal investigations in one State require difficult and demanding investigations in another, or when several States are conducting investigations where a concerted, coordinated approach would be necessary.⁶² JITs enable seconded members of the team to take part in investigative measures conducted outside their State of origin (within the limits foreseen by national legislation and/or specified by the JIT leader).⁶³

33. JITs reduce the bureaucracy commonly associated with mutual legal assistance and other forms of international cooperation in criminal matters. They have ‘the potential to significantly facilitate investigations and the exchange of information by eliminating the need to transmit individual requests for mutual legal assistance between team members.’⁶⁴ Formal channels of mutual legal assistance can be slow

⁶⁰ UN Human Rights Committee, *General Comment No 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life*, CCPR/C/GC/36, para. 22.

⁶¹ Argentina, Dirección General de Cooperación Regional e Internacional, *Equipos Conjuntos de Investigación, Estrategias de trabajo articulado para investigar y perseguir al crimen organizado* (2017), p. 9; R Riegel, ‘Gemeinsame Ermittlungsgruppen’ [2009], issue 3 *eu crim*, p. 99, 100.

⁶² T Spapens, ‘Joint Investigation Teams in the European Union: Article 13 JITS and the Alternatives’ (2011) 19 *European Journal of Crime, Criminal Law and Criminal Justice*, p. 239, 249.

⁶³ V Terziev, M Petkov, and D Krastev, ‘Concept of Joint Investigation Teams’ (2021) VII, issue 19 *IJASOS – International E-Journal of Advances in Social Sciences*, p. 324, 324; J Nagy, ‘About joint investigation teams in a nutshell’ (2009)p. 4; *Current Issues of Business and Law*, p. 141, 149.

⁶⁴ UNODC, *State of Implementation of the United Nations Convention against Corruption*:

and inflexible and may thus fall short ‘in complex cases where information stemming from different sources needs to be exchanged quickly or concerted investigative action needs to take place in two or more countries.’⁶⁵ Instead of multiple requests for assistance, JIT agreements create a common space which reduces the administrative burden and increases the speed of information-sharing.

34. In sum, as noted by Eurojust “JITs offer national authorities in different States a flexible framework that is relatively quick and easy to establish and enables the respective authorities to participate in the investigation in a mutually beneficial way. Once a JIT has been set up, the partners can directly exchange information and evidence, cooperate in real time and jointly carry out operations. Further, JITs allow for practitioners to be present during investigative measures on each other’s territories, and to therefore share their technical expertise and human resources more efficiently. Direct contacts and communication enable the JIT members to build personal relations and trust, leading to faster and more efficient cooperation.”⁶⁶

II. Conclusion

35. Based on research conducted by the GlobE Network in this annex, it canvassed some of the legal and practical issues that need to be considered when planning, establishing, and operating JITs and has highlighted many of the benefits and concerns involved. States need to be mindful of important points that must be considered to ensure that joint investigations function fairly and efficiently. These issues include, inter alia, the need for a proper legal basis and clear articulations of the powers available to seconded JIT members. Legal jurisdictional barriers can be obstacles to the use of joint investigations, especially if they are overly restrictive and do not account for the practicality of joint operational activities.

Criminalization, Law Enforcement and International Cooperation, 2nd ed. (Vienna, 2017), p. 254.

⁶⁵ T Spapens, ‘Joint Investigation Teams in the European Union: Article 13 JITS and the Alternatives’ (2011), p. 19 *European Journal of Crime, Criminal Law and Criminal Justice*, p. 239, 247.

⁶⁶ Eurojust, ‘Supporting judicial authorities in the use of joint investigation teams’, Factsheet (2020), p. 2.