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INFORMAL EXPERT WORKING GROUP ON JOINT INVESTIGATIONS: CONCLUSIONS AND RECOMMENDATIONS

2 to 4 September 2008, Vienna

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Background to Joint Investigations

The value of international co-operation between State Parties to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (1988 Drug trafficking Convention) the UN Transnational Organised Crime Convention 2003 (UNTOC) and the UN Convention Against Corruption 2005 (UNCAC) in combating criminal activity such as drug trafficking, transnational organised crime and corruption is self evident. All three conventions contain provisions on various forms of co-operation including co-operation at the level of law enforcement, judicial co-operation through mutual legal assistance, co-operation in restraint and confiscation of drugs and crime proceeds, in the provision of spontaneous information and also by establishing joint investigations.

In accordance with Article 9 of the 1988 Drug Trafficking Convention, State Parties are required to consider establishing joint teams where appropriate and in accordance with domestic law, taking into account the security of persons and operations. Officials taking part in such teams are required to act as authorised by the appropriate authorities of the Party hosting the operation and to respect the sovereignty of that Party.

Article 19, UNTOC and Article 49, UNCAC encourage, but do not require States, to establish agreements or arrangements to establish joint investigative bodies in relation to matters which are the subject of investigations, prosecutions, proceedings in more than one State, and in addition in the absence of such agreements, seek to establish a legal basis between States for case by case co-operation, subject to the sovereignty of the State Party hosting the joint investigation.

The UNODC legislative guides and commentaries to the drugs and crime conventions acknowledge that the domestic laws of many countries permit and have permitted collaborative and co-operative approaches and joint investigative practices for some time, however experience suggests that legal and other difficulties remain in establishing effective joint investigations. Although previous working groups on mutual legal assistance (MLA) and special investigative techniques have stressed the importance of maximising direct personal contacts with a view to developing trust and building relationships with authorities in other States, and have encouraged the use of joint investigations, no detailed consideration of this issue was undertaken and it was therefore decided to hold an Informal Expert Working Group (EWG) to examine the subject of joint investigations in more detail. A clear understanding of the issues surrounding joint investigations will improve the ability of UNODC to develop the capacity of criminal justice systems in dealing with serious and organised crime and provide effective training on the effective implementation of the UN drugs and crime conventions particularly in relation to international co-operation.

An overview of the issues considered by the EWG follows in the executive summary below, summaries and background discussions are set out in part 2 of this report.

Executive Summary

The EWG on Joint Investigations examined a broad range of collaborative and co-operative approaches and joint investigative practices in use throughout the world today with a view to raising awareness of the provisions on joint investigations, identifying models for joint investigations, determining the existence of legal obstacles or impediments and other practical issues inhibiting the establishment of joint investigations as provided for in the UN drugs and crime conventions. The issues identified by the Group are listed in Part 2 of this report with summaries of discussions. Recommendations and suggestions in relation to the initiation and management of joint investigations are set out in part 2 of this report.

The overall aim of the group was to examine existing practices and any new approaches, identifying lessons learned which could assist in the practical implementation of the joint investigation provisions in the drugs and crime conventions

The Group worked on the understanding that the concept of a joint investigation was broad, interchangeable and includes the range of collaborative and co-operative approaches referred to above and applies to the criminality covered by the UN drugs and crime conventions. During the course of the discussion, the Group briefly considered the difficulties presented by establishing joint investigations in specific crime areas such as drug trafficking and trafficking in human beings however, these issues were not discussed in detail due to the limited time available to the EWG and also because some of the same ground had been covered in an earlier EWG on the use of special investigative techniques.

The Group identified two models for joint investigations, the first model consists of parallel and co-ordinated investigations, non co-located but where the parties have established a common goal and are assisted by law enforcement co-operation as well as the formal MLA process. The second model is the integrated model which can be further characterised as either passive or active depending on the extent of law enforcement powers available to participating officers. A full discussion of the two models follows at point 2(a) of this report.

The Group agreed to examine the new integrated approach and resulting experiences arising from recent pilot projects in Canada/USA and from Joint Investigations Teams (JITS) in use within the European Union (EU) with a view to discussing the impact, any advantages of this specific approach, to share any good or promising practices and to consider the broad legislative changes necessary to implement the integrated model. The discussions enabled experts with experience of this model to pinpoint particular advantages and to make recommendations.

Finally, the Group briefly considered the agreements necessary to give effect to integrated teams. The international instruments and documents considered by the Group are at *Annex 1*.

The report contains the findings, considerations and recommendations discussed by the experts during the meeting printed in bold letters, numbered for easier reference and accompanied by a brief summary of discussions.

Part 1

Introduction The Expert Working Group (EWG)

1(a) Organisation and participation

The Organised Crime & Criminal Justice Section (OCS) within the Treaty & Legal Assistance Branch (TLAB) in the Division of Treaty Affairs within the United Nations Office of Drugs and Crime (UNODC) organised an informal EWG on joint investigations. The EWG met in the UNODC Headquarters in Vienna, between 2 – 4 September 2008.

Nineteen international experts participated with UNODC OCS legal advisors in exchanging views and information based on their wide range of personal experiences in the use of a variety of co-operative and collaborative approaches and joint investigative practices summarised at 2(a). The EWG covered most geographical regions of the world and brought together law enforcement and prosecutorial expertise from both civil law and common law legal systems as well as regional organisations and government ministries. The expertise available covered the field of international co-operation and the broad range of crime areas covered by the UN drugs and crime conventions. All experts were invited to participate based on their expertise and in their own personal capacity. The full list of participating experts can be found at *Annex 3*.

1(b) Task and working method

The EWG's task was to:

- Consider the range of collaborative/co-operative approaches and joint investigative practices in use today,
- Identify models for joint investigations,
- Reach a common understanding on the concept of a joint investigation pursuant to the UN drug and crime conventions
- Determine the existence of legal and practical obstacles to the establishment of joint investigations including problems in establishing joint investigations in particular crime areas,
- Give general recommendations in relation to the initiation, authorisation and management of joint investigations,
- Examine issues to be taken into account in particular lessons learned and good practices emerging from the use of an integrated model for joint investigations,
- Consider the legal framework necessary to give effect to integrated joint investigations and give broad recommendations on the areas to be covered by national legislation and issues to be covered in joint investigation agreements.

The EWG first discussed the range of collaborative and co-operatives approaches and joint investigative practices in use and identified two models for joint investigation as well as the existence of legal and practical considerations relating to the establishment of joint investigations, and continued by making recommendations in relation to initiation, authorisation and management of joint investigations. For this purpose experts had been strongly encouraged to come prepared to share case examples in order to demonstrate a particular legal or practical problem arising in the context of establishing a joint investigation in a specific case or type of case.

Based on the discussion of the new integrated model for joint investigations in use in the European Union and recently piloted in Canada and USA and drawing on the experience of relevant experts, the advantages of an integrated approach were identified. There was also consideration of joint investigation agreements and the legal framework necessary to give effect to the integrated model. All relevant discussions are set out in part 3 of this report.

1(c) Overview - joint investigations at a glance - concepts and models for joint investigations

Joint investigation – what is it?

The Group worked on the understanding that the concept of a joint investigation was a broad and interchangeable concept describing the range of collaborative and co-operative approaches and joint investigative practices, discussed during the meeting (summarised at 2(a)) and applicable to the criminality covered by the UN drug and crime conventions. The Group decided that there was no merit in distinguishing between “joint teams” Article 9 1 (c) Drug Trafficking Convention 1988 and “joint investigations” pursuant to Article 19 UNTOC and Article 49 UNCAC and that these phrases should be understood according to their ordinary meaning within the context of the conventions.

Joint investigative body – what is it?

The expertise within the Group considered that a “joint investigative body” pursuant to Articles 19 UNTOC and Article 49 UNCAC was distinct from both a “joint team” and “joint investigation” in that this was intended to be a more permanent structure formed on the basis of a bilateral agreement, this is briefly discussed at 2 (a).

Is there a recommended model for joint investigations?

As a result of the discussions within the Group, two joint investigation models emerged, the first model consists of parallel, co-ordinated investigations with a common goal whilst the second consists of integrated joint investigation teams with officers from at least two jurisdictions. The integrated teams can be further divided and characterised either as passive or active. Either model can be used as a basis for implementation of the joint investigation provisions of the UN drugs and crime conventions and it is for countries to decide which model is most appropriate. The two models are discussed in detail at 2 (a).

What is the legal basis for Joint Investigations?

The legal basis for establishing joint investigations depends on the domestic context in each State in particular the nature of the legal system. Thus the basis can range from mutual legal assistance legislation, legislation on international co-operation including cross border use of specialist investigative techniques (surveillance and undercover work), the code of criminal procedure, specific legislation on joint investigations (EU only) administrative guidance, standard operating procedures and long standing co-operative practices. The extent of legislation required depends on the joint investigation model used.

1(d) Legal obstacles in joint investigations

The EWG identified the following issues:

- Lack of clear legal frameworks,
- Gaps in legislation for those countries wishing to take the option of implementing the joint investigation provisions by establishing integrated teams (see 1(f) below).

1(e) Practical obstacles and considerations arising in the context of joint investigations

The EWG identified the following issues:

- Particular problems relating to the establishment of joint investigations in specific areas of criminal activity (trafficking in persons, drug trafficking),
- The lack of contact points for joint investigations,
- Lack of clarity as to the officials competent to authorize joint investigations,
- The necessity for trust, commitment and to develop common goals,
- The need to consider availability of resources and the requirement for operational planning including management structures,
- Ensuring the security of operational information,
- The need for appropriate training of criminal justice officials.

1(f) Legal considerations arising in the integrated model

The EWG identified the necessity for legislation in the following areas:

- Equivalence of powers (foreign officers in the host state),
- Operational control of the joint investigation,
- Evidence gathering by foreign law enforcement officers in host state,
- The ability to carry out investigative measures in the absence of MLA requests in the home state(EU only),
- Civil and criminal liability of foreign law enforcement officers,
- Direct sharing of information (subject to the issues discussed at 3(f)).

1(g) Advantages of the integrated model

The EWG identified the following advantages:

- The building of trust and relationships,
- Strengthening law enforcement capacity by consolidation of resources including linguistic abilities,
- Strategic benefits to countries involved,
- Direct sharing of information (subject to the issues discussed at 3(f)) and the ability to act on it immediately,
- Greater efficiency and effectiveness as a result of the ability to carry out investigative measures and to gather evidence in the absence of MLA requests (EU only).

The content of joint investigation agreements and recommendations arising out of the limited use of integrated teams are listed at 3 (d) (g) and (h).

Part 2

Findings, considerations and recommendations relating to Joint investigations in practice

2(a) Summary of co-operative/collaborative approaches and joint investigative practices – identification of two models for joint investigations.

As a result of this part of the discussion two joint investigation models emerged, the first model consists of parallel, co-ordinated investigations with a common goal whilst the second consists of integrated joint investigation teams with officers from at least two jurisdictions. The integrated teams can be further divided and characterised either as passive or active. The models are discussed in detail below and it should be emphasised that either model can be used as a basis for implementation of the joint investigation provisions of the UN drugs and crime conventions however, it is for countries to decide which model is most appropriate

For the purposes of obtaining the widest possible overview of the collaborative and co-operatives approaches and joint investigative practices in use throughout the world, sixteen international experts gave an account of collaborative and co-operative approaches and joint investigation practices from the point of view of their jurisdiction, perspective, knowledge of a particular crime area and experience in law enforcement, prosecution or the wider criminal justice area. The accounts given by the experts were illustrated by case examples from particular areas of practice which included drug trafficking, trafficking in persons, corruption, transnational organised crime, international judicial co-operation and mutual legal assistance including an assessment of the particular approach in their jurisdiction and identification of any obstacles and inhibiting factors.

The basis for these collaborative and co-operative approaches and joint investigative practices vary depending on the legal system in question and included (a) joint investigations established on the basis of existing mutual legal assistance (MLA) legislation and agency to agency memoranda of understanding (MOUs) (b) flexible co-operation based on long standing co-operative practices assisted by a liaison officer network and/or existing MLA legislation (c) integrated teams, both passive and active, consisting of officers from at least two jurisdictions, all these are described in further detail below.

As a result of the above exercise and reflecting the variety of experience around the table, two joint investigation models emerged, the first model identified consists of parallel, co-ordinated investigations with a common goal assisted by a liaison officer network or through personal contacts and supplemented by formal MLA requests in order to obtain evidence. The officials involved are non co-located and are able to work jointly on the basis of long standing co-operative practices and/or existing MLA legislation depending on the nature of the legal system(s) involved.

The second model consists of integrated joint investigation teams with officers from at least two jurisdictions. These teams can be further divided and characterised either as passive or active. An example of an integrated/passive team could include the situation where a foreign law

enforcement officer is integrated with officers from the host state in an advisory or consultancy role or, in a supportive role based on the provision of technical assistance to the host state. An integrated/active team would include officers from at least two jurisdictions with the ability to exercise (equivalent or at least some) operational powers under host state control in the territory or jurisdiction where the team is operating.

Integrated teams are usually co-located, in the case of the integrated/passive team; this is on the basis of either national legislation enabling a foreign officer to be appointed/designated or a technical assistance agreement. In the case of the integrated/active team, foreign officers may also be designated based on existing national legislation providing it is adequate. Relevant legislation in EU Member States is based on the concept of a seconded – foreign – officer with the ability, subject to statutory discretion, to exercise powers under control of a team leader of the host state where the operational activity is taking place. The integrated/active model was described by one expert as a specially created infrastructure enabling officials from at least two countries to work in one jurisdiction with at least some equivalent operational powers. The officials allowed to participate in such a team will depend on the system in question, for instance teams formed from officials of inquisitorial civil law systems will normally include a judge or prosecutor as well as law enforcement officers.

The purpose of this exercise was to identify the models in use but it is important to state that either model could be used in order to implement the joint investigation provisions of the UN drugs and crime conventions. The decision as to which model is more appropriate is for countries to decide taking into consideration the inevitable sovereignty issues that arise out of the participation of foreign law enforcement officers integrated/active teams.

Much of the collaborative and co-operative work described by the experts during this part of the discussion took place amongst neighbouring countries on a bi-lateral basis. All integrated/active models described were formed within the same region with neighbouring countries as partners whilst the integrated/passive models and parallel co-ordinated co-operation took place between countries from different geographical regions. There were a variety of triggers for the work including operational needs, the existence of transnational criminal activity, border security and technical assistance in specific crime areas e.g. drug trafficking. The scope of the co-operation included not only procedural actions aimed at obtaining evidence but also investigative measures (including special investigative techniques – see also 2 (f) below).

2 (b) Legal obstacles in joint investigations

In respect of both joint investigation models the lack of a legal framework was identified as a significant obstacle.

The general discussion showed that the main legal impediments relating to the establishment of joint investigations generally were considered to be:

- The lack of a clear legal framework or specific (enabling) legislation dealing with the establishment of joint investigations,
- Lack of clarity regarding operational control e.g. in relation to undercover officers,
- Liability for costs of the joint investigation.

It was also clear from the discussion that the new legislation would be required for establishment of the integrated/active model in order to deal with the attendant sovereignty issues arising out of

the operational deployment of officers from foreign jurisdictions. For the purposes of the integrated/active model the following issues were identified as requiring legislation:

- The equivalence of powers for foreign law enforcement officers,
- Operational control and where this should lie,
- Evidence gathering by foreign law enforcement officers (especially with the use of coercive means) and thereafter its admissibility in any proceedings,
- The possibility for a team member to gather evidence in their home jurisdiction without the necessity for a formal MLA request,
- The civil and criminal liabilities of foreign law enforcement officers,
- The Exchange of operational information and control over such information once exchanged.

The Group heard that most EU Member States have enacted legislation in all these areas based on Article 13 of the EU Convention on Mutual Assistance in Criminal Matters of 2000 which provides a comprehensive framework for the establishment of Joint Investigation Teams (JITs).

In establishing joint investigations therefore, countries should consider the ability of their legislative frameworks to support whichever model of joint investigation is to be established and, if countries wished to pursue the integrated/active model, legislation at least in the areas discussed above should be considered in order to help ensure the success of prosecutions arising out joint investigations. (Legislation in relation to the integrated model is further discussed at 3 (c).

As a caveat to the general feeling that lack of a clear legal framework was an obstacle, it must be said that some experts felt that they were not hampered by the lack of a clear legal framework and one participant in particular was concerned that the introduction of such legislation would result in loss of flexibility. It must be noted however that these experts were talking generally about their legal systems and practice in their home jurisdictions rather than specifically about the integrated/active model.

2(c) Practical considerations and recommendations

In addition to the legal issues discussed above and in respect of both models for joint investigations, a number of practical considerations relevant to the establishment of joint investigations were also identified by the Group including the following:

- Parties need to be able act quickly, bearing in mind that operational information upon which a joint investigation can be based may, in most cases, be of value for a limited period of time,
- There is a need for identifiable contacts for the purposes of initiating discussions and authorising the establishment of joint investigations. One participant spoke of an instance where investigations were found to be linked to other countries but no action could be taken to develop co-operation due to lack of infrastructure and identifiable contacts within the other country.
- There must be trust between parties preferably before the start of the joint investigation,
- Parties must establish common goals for the joint investigation at the outset,

- There must be sufficient commitment to ensure that assistance will continue to be available when the investigation develops into a prosecution,
- Parties must consider availability and sharing of resources at the outset as these issues can determine the extent of the co-operation possible,
- In an integrated/active model, a decision should be made on the working language for the joint investigation,
- In an integrated/active model, training must be provided at the outset to ensure adequacy of knowledge of law enforcement powers in the host state.

Some of the above issues gave rise to further discussions in the Group under the headings of initiation and management at 2(c) (iv) and 2(c) (v) below. Issues identified above relating to the integrated model are discussed further in part 3 of this report.

2(c) (i) Common understanding

On the basis of the above discussions the Group agreed that the concept of a joint investigation should be understood as a broad, flexible and interchangeable concept applicable to the range of collaborative and co-operative approaches discussed in 2(a) above, and to the wide range of criminality covered by the UN drug and crime conventions.

Experts with relevant experience considered that a “joint investigative body” pursuant to Articles 19 UNTOC and Article 49 UNCAC could be distinguished from both a “joint team” and “joint investigation” in the sense that a more permanent structure, based on bilateral agreements, was intended. Although there was limited experience within the group of such bodies inspiration for the structure of such a body could be drawn from existing long terms multi agency task forces established in the domestic context to deal with a particular threats or area of criminal activity and in the international context from the pilot projects conducted by Canada and USA to explore a long term cross-border law enforcement programme, the programme being based on a bi-lateral agreement between Canada and USA and operational agreements between the agencies involved (incorporating law enforcement, customs, coast guard and immigration) on both sides.

2 (c) (ii) Criteria for establishment

The Group agreed that joint investigations should be considered on a flexible case by case basis in response to specific operational needs and based on operational priorities.

The Group also considered whether there would be merit in recommending the establishment of joint investigations in particularly complex cases and which needed a joint effort beyond an MLA request, experts from EU countries also pointed out that Article 13 of the EU Convention on Mutual Assistance in Criminal Matters of 2000 envisages joint investigation teams being set up in the context of difficult and demanding cases, although there was some support for this the Group felt above all that joint investigations should be considered on a flexible case by case basis in response to specific operational needs based on operational priorities.

2 (c) (iii) Considerations arising in relation to particular criminal activities

Particular problems arising in specific types of criminal activity such as drug trafficking and trafficking in persons were identified in the initial discussion and are summarised below. These issues should be considered in the establishment of joint investigations relating to these criminal activities.

Discussions revealed that joint investigations had been established in relation to a number of criminal activity types, these included corruption, terrorism, drug trafficking, trafficking in persons and various forms of transnational organised crime. These activities and their nature were not discussed in depth but during the course of discussions individual experts working in the fields of trafficking in persons and drug trafficking expressed the opinion that aspects of these cases could present specific problems in the establishment of joint investigations. These observations are included as examples of issues that can arise in these areas.

As far as **trafficking in persons** is concerned, one expert working in this field emphasised the importance of victim testimony considered essential in most prosecutions for human trafficking. Victims of trafficking are often traumatised and can be fearful that relatives left behind in their country of origin will be threatened by the trafficker if they co-operate with a prosecution in the destination country. In addition victims are often mistrustful of the authorities in their home countries so although it is necessary for destination and origin countries to co-operate in order to ensure successful prosecutions of traffickers in both origin and destination states, careful consideration needs to be given to

the extent to which the origin country can be engaged by the destination country, particularly if judicial and law enforcement integrity is an issue in the country in question.

Another potential issue arises from the involvement of non governmental organisations (NGOs) in human trafficking cases and the extent to which it is possible to involve such an organisation within a joint investigation. Again this is an issue which needs to be considered when a joint investigation in human trafficking is being established and could be regulated either by guidance or legislation dealing with prosecutor/law enforcement and NGO co-operation.

Although **drug trafficking cases** lend themselves to joint investigations, an expert experienced in this field pointed out that problems arise where the joint investigation involves a chain of countries and incorporates cross border use of special investigative techniques such as surveillance and controlled deliveries. These issues arise if the countries concerned regulate these techniques differently and have different regimes in relation to the deployment and use of undercover officers on a cross border basis, use of civilians in undercover operations, protection of informants/under cover officers or telephone interception.

It should be noted that many of these issues were discussed in detail by an earlier EWG on special investigative techniques which made a number of recommendations including the need for flexible legislation/guidelines compatible with effective international co-operation and also that requirements for authorisation of such operations should not be so onerous as to affect the timely and effective operational use of the particular measure in question and that the widest protection of undercover officers should be guaranteed pre/during and post trial. A further EWG has been established to consider the gathering of evidence by electronic means including telephone interception, the conclusions and recommendations of this group are pending.

2(c) (iv) Initiation

Countries should consider appointing a contact point for initial enquiries relating to joint investigations. The location of the contact point should be for countries to determine and it is recommended that initiation and authorisation procedures should be as uncomplicated as possible.

Although there is no formal requirement for the nomination of a contact point for joint investigations, the need for such contact points was identified in the general discussion and the Group felt that this would be useful because officials with the ability to make necessary decisions were sometimes difficult to trace. The appointment of such a contact point would have the added benefit of avoiding duplication arising when a number of channels are used or authorities contacted. The Group agreed that countries should consider appointing an authority or official position within an authority to act as an initial conduit for enquiries relating to joint investigations. The location of the contact point should be for countries to determine but if an MLA request is required to initiate a joint investigation or, if the joint investigation has an evidence gathering element then the

central authority for mutual legal assistance may be an appropriate contact point or could at least act as a central repository of information concerning joint investigations.

The question of disseminating details of contact points was discussed as was the possibility of such information being held at UNODC. Experts were reminded of the existence of the UNODC online directory of central authorities, established in accordance with the 1988 Drug Trafficking Convention, containing details of central authorities notified to the UN pursuant to the requirements of (inter alia) Article 7 of the 1988 Drug Trafficking Convention, decision 3/2 of the UNTOC Conference of the Parties, Article 18 UNTOC and Protocol Against Smuggling of Migrants.

The Group also felt that the initiation and authorisation procedure for joint investigations should be kept as simple as possible and that the need for any specific authorisation procedures should be explained at the outset (e.g. necessity for Ministry of Justice authorisation or the fact that authorisation is strictly subject to resources).

2 (c) (v) Management issues

Experts agreed on the necessity for a discussion between potential partners at the outset at which the feasibility of a joint plan of action should be discussed and clear, common goals defined. Costs and any financial issues having implications for the investigation should be discussed openly and frankly at this stage. Consideration also

needs to be given to the overall management of the joint investigation and security of operational information.

If agreed, then any joint action and common goals should be reflected in an operational plan for the investigation. A comprehensive plan may be difficult to draw up at the beginning of an investigation but ideally key phases of the operation should be identified, detailing any decision making processes required, necessary tasks, specific activities in

order to carry out the tasks and individual responsibilities related to those tasks. Allocation of resources and budget would also form part of the plan. The plan would be applicable for a defined period and start, review and end dates should be clearly set out.

As far as the overall management structure of the joint investigation itself is concerned, there were a number of differences between the practices of experts; in some cases the operational plan would be underpinned by a general MOU agreement broadly allowing co-operation between the countries and/or the agencies involved in the investigation. In the EU a specific joint investigation agreement between the relevant authorities of the countries involved in the investigation is required procedure whilst in other cases there was a necessity for a bi-lateral agreement between the countries involved and an operational agreement with annexed operational plan of the type discussed above. Some experts however, indicated that their practice did not include the negotiation of a separate joint investigation agreement. Such issues are for countries to decide in accordance with their practice and procedural requirements. Agreements and their content are discussed further in Part 3 of this Report and examples of agreements are included at Annex 2.

In addition, individual experts felt that consideration should be given to the levels of management necessary to oversee the investigation at administrative, executive as well as operational levels including the necessity for a steering group.

Once the operation was ongoing, the management and security of operational information is a major factor and for this purpose use of secure communication channels (via liaison officer, Europol or Interpol) are recommended. One expert described a recent operation where in the context of a joint investigation an officer was embedded in a foreign law enforcement authority for a limited period without the existence of a joint investigation agreement in order to secure the exchange of information. It was explained how this experience not only ensured that information could be transferred then exchanged securely and that evidence could be gathered in the correct format but also served to foster trust and commitment demonstrated by the deferment of operational action until both parties were ready.

2 (c) (vi) Training

Provision of appropriate training to criminal justice officials in the use and application of UN and other international instruments particularly their international co-operation aspects.

All experts agreed that there is a need for all relevant authorities within the criminal justice system to be familiar with the use and application of UN and other international instruments particularly their international co-operation aspects. If this could be achieved it would contribute to the development of an “international culture” and facilitate the co-

operative and collaborative working described in this document. To this end appropriate training should be provided to criminal justice officials in the use, application and advantages of the international co-operation practices in general and including those described in this report.

Part 3

Joint investigations, integrated/active models promising practices and lessons learned

3 (a) Background

Approximately one third of the experts within the EWG had experience of integrated/active joint investigations and offered to share their practical experiences with the rest of the Group. This was discussed and was of interest to the remaining experts due to the possibilities offered by the integrated/active model including enhanced strategic relationships, direct information sharing and others. Although it was acknowledged that the experience was limited, relatively new (based on integrated law enforcement projects piloted by Canada and the United States and on recent EU experiences) and would require additional legislation, it was agreed that there would be merit in discussing these experiences as this information could be beneficial to the experts themselves and State Parties wishing to consider this model in the establishment of joint investigations pursuant to the UN drug and crime conventions.

The Canada/USA integrated law enforcement pilot projects and related initiatives developed from the Integrated Border Enforcement Teams first formed in 2001 which, whilst promoting co-operation/collaboration at the border and co-locating intelligence, were based on the premise that the respective law enforcement agencies were responsible for law enforcement operations in their own jurisdictions. The integrated law enforcement pilot projects were a response to the evolving nature and methods of transnational crime groups and were set up to explore new cross border law enforcement models where officers would be authorised to enforce the law on both sides of the border subject to host state control.

Pilot projects were held in 2005 and 2007 and a related operation was held in 2006. The lessons learned from these pilots remain under consideration and were used to help assess whether a longer term programme should be employed for specific events or on a more permanent basis.

Joint investigation teams (JITs) in the EU are based on Articles 13, 15 and 16 of the EU Convention on Mutual Assistance in Criminal Matters of 2000 (the 2000 Convention). Articles 13, 15 and 16 were then incorporated into a separate EU Council Framework Decision on Joint Investigations agreed in 2002. The framework decision was required to be transposed into the legislation of the EU Member States and was supplemented by an EU Council Recommendation on a model agreement in 2003. The framework decision ceased to apply when the 2000 Convention came into force in 2005 and most EU JITs have been formed on the basis of the 2000 Convention and relevant enabling legislation.

The EU JIT introduced three new concepts including the concept of the seconded officer (from a foreign jurisdiction) with the ability to exercise operational powers in the host state subject to the discretion of the host state team leader, the direct exchange of information between team

members in accordance with national law and, the exercise of investigative measures, for the purposes of the JIT, by team members within their own jurisdiction without the necessity for a formal request for mutual legal assistance.

The common ground between the Canada/USA and EU experiences was that the integrated/active model is established on the basis of project management principles with a start date, end date and revisions as necessary.

3 (b) Facilitation of joint investigations by networks and regional organisations

Two EU regional organisations, Eurojust and Europol, were represented in the EWG and explained how their organisations could facilitate, support and contribute to the establishment of joint investigation teams. It should be noted that these participants spoke exclusively in relation to the establishment of Joint Investigation Teams pursuant to Article 13, Convention on Mutual Assistance in Criminal Matters of 2000. Both organisations were included in the EWG in order to provide an account of their experiences and to stimulate discussions (It should be noted that Interpol had also been invited to the EWG but unfortunately was unable to participate).

Eurojust is an EU inter-governmental organisation established by EU Council Decision dated 28th February 2002 in which all EU Member States are represented by national representatives who are prosecutors, judges or police officers of equivalent competence. The basic objective of Eurojust is to stimulate and improve co-operation and co-ordination in relation to serious crime in the EU particularly when the criminality is organised.

Due to its nature and objectives Eurojust has an overview of joint investigations in the EU as well as the necessary joint investigation (operational) agreements. In addition Eurojust as an organisation or through its national members is able, to request EU Member States to establish a joint investigation team and/or to participate in a joint investigation team. Eurojust is able to identify potential cases suitable for joint investigation teams, is able to facilitate contacts between EU Member States, it can organise co-ordination meetings to discuss the formation of joint investigation teams, it can overcome the language barrier by providing simultaneous translation and can co-operate with various non EU countries through contact points and agreements. In a joint project between Eurojust and Europol a manual on joint investigation teams is being compiled comprising an overview of the legislation of the EU Member States in relation to joint investigations and guidance. A copy of the guidance and manual can be obtained from Eurojust by e mail request to info@eurojust.europa.eu

Europol (on the basis of the EU Council Act of 28th November 2002) can also play a supportive role in the establishment of joint investigation teams in the EU in order to ensure a secure exchange of information between EU Member States and analysis of the information exchanged including checks against Europol databases. This support can be provided both in advance of a decision to set up a joint investigation team and during the operation of the team. Once the team is established information may be exchanged directly between team members but nevertheless the team may wish to benefit from ongoing analytical support. One issue subject to ongoing discussions is the location, retention and storage of information jointly gathered once the JIT is no longer operational.

In addition to the facilitation and support offered by the above organisations the Group was informed of a the EU Network of joint investigation team contact points (JITS network) established as a result of an EU Council agreement. Meetings of the contact points are held on a regular basis where experiences and agreements are exchanged and problems discussed. The Group was informed by EU experts that the establishment of the JITS network as well as the work done on the manual and guidance had had significant impact on the ability of EU Member States to form joint investigation teams within the EU.

An appropriate legislative framework, the content of joint investigation agreements, the advantages of the integrated/active model, the recommendations and other issues listed below were distilled from the EWG discussion on integrated/active teams, based on experiences and contributions from the Canadian, United Kingdom, French, Finnish, Europol and Eurojust experts.

3 (c) Legislation

As discussed in Part 2 of this report, countries wishing to consider the establishment of integrated/active teams should consider additional legislation to cover the following issues:

- The equivalence of powers (in the host state) for foreign law enforcement officers,
- Operational control over the joint investigation and where this should lie,
- Evidence gathering by foreign law enforcement officers (especially with the use of coercive means) to facilitate admissibility in any subsequent proceedings,
- Evidence gathering by a team member in their home jurisdiction without the necessity for a formal MLA request,
- The civil and criminal liabilities of foreign law enforcement officers,
- Exchange of operational information and control over such information once exchanged.

Existing examples of national legislation can be found in the EU and Council of Europe (CoE) Member States which have ratified the EU 2000 Convention and/or 2nd Protocol to CoE Convention. The ratification of international instruments varies in some cases consisting of direct application of the convention provisions. In other cases, it consists of either new legislation specifically on joint investigations, or amendments to existing legislation on mutual legal assistance, penal codes or codes of criminal procedure, and the extent of such legislation varies from system to system.

As far as the EU is concerned there are examples of fairly detailed legislation (from both common law and civil law systems) which cover the conditions for setting up a JIT and other issues including the ability of seconded officers to exercise investigative powers in the Member State hosting the JIT. The EU experience suggests that clear legislation should be introduced to cover new concepts and that it should be sufficiently flexible to allow for JITs on a case by case basis. Some of these provisions could serve as useful precedents and will be available in the manual on EU JITs under preparation by Eurojust and Europol available from Eurojust on request (see 3(b)).

The issue of equivalence of powers for law enforcement officers and the way that this could be regulated generated the most discussion. The experience within the EWG showed that foreign officers designated in countries under existing statutory powers (although this is generally not

sufficient for the purposes of an integrated/active team) and on the basis of EU legislation as seconded officers, exercised powers under host state control. Within the EU, the issue of whether a seconded (foreign) officer could participate in investigative actions, be present when investigative actions were being carried out, or be excluded from such actions, was a matter of statutory discretion in most cases left to the day to day team leader of the joint investigation and there were no specific examples of officers using hard coercive powers.

Other examples provided by experts from EU Member States showed that seconded officers were not able to exceed the extent of their domestic powers, in other words they could not be granted more powers in the host state than they were entitled to exercise in their home jurisdiction and that in those EU Member States represented in the EWG, there were no specific legislative provisions dealing with the carrying of weapons and that this would be covered in the operational agreement on the basis of applicable national legislation.

3 (d) Agreements

In the EU, the model agreement developed by the EU Council Recommendation of 8th May 2003, and based on the provisions of the EU 2000 Convention, is used as a starting point for negotiations between the relevant national authorities in Member States. The model agreement distinguishes between general and special conditions, general conditions include the following:

- The parties to the joint investigation (law enforcement agencies, prosecuting authorities),
- The purpose of the joint investigation,
- The time period (and any review dates),
- Identification of the host state(s),
- The state(s) of operation

Any additional special conditions are negotiated between the parties and reflected in the agreements, special conditions include the following

- Limitations on the transfer of information or specific information (e.g. informants or other sensitive information).
- The ability of seconded (foreign) law enforcement officers to participate in operational activities (investigative measures) in the host state,
- The ability of seconded (foreign) law enforcement officers to carry firearms.

Examples of agreements used in the EU based on the model are attached at Annex 3. Some EU Member States have gone further and developed their own model protocols or agreements with neighbouring states to facilitate negotiations, for example France has developed seven such model protocols to date.

Outside the EU the experience of negotiating agreements for the purpose of establishing an integrated/active team was limited to the Canada/USA pilot programme, the operational agreements were based on a state to state bi-lateral agreement

All in all there was insufficient experience available to the group to devise a model agreement for the purposes establishing joint investigations pursuant to the UN Conventions but it is hoped

that this guidance and the examples attached in the annexes will provide a starting point for UN State Parties in the consideration of this developing area.

Further discussions enabled the following advantages to be identified and the following recommendations made.

3 (e) Overall Advantages

- The direct day to day contact required within the integrated team helps build trust, relationships and commitment between the countries involved in the joint investigation.
- The national law enforcement capacities of each of the countries are strengthened and enhanced by the sharing of strategy, resources as well as information within **one** integrated team.
- The countries involved benefit strategically from consolidating resources from both countries within one operational team.

3 (f) Operational Advantages

- The direct sharing of national information between team members within one team is seen as a benefit in the sense that information can be made available quickly and can be acted upon immediately. However, and as a caveat to the above, the security of operational information and sensitive information (e.g. relating to informants) in an ongoing investigation is crucial, therefore careful consideration is required before departing from usual transmission channels. By way of example the Europol expert emphasised the advantages of using of Europol channels in EU JITs for secure transmission of information and explained the handling codes and tables of equivalence which regulate further dissemination of the information transmitted. In addition, thought needs to be given to data analysis and again the Europol expert explained the support that Europol can offer in terms of providing a JIT with initial operational analysis and ongoing analytical support. Countries should therefore consider which existing international and regional structures can be used to secure transmission of operational information and to perform data analysis.
- The exercise of investigative measures and gathering of evidence in the absence of formal MLA requests as well as the ability within one team to jointly plan the case and discuss in advance any admissibility requirements for evidence. (This is limited to EU JITs).

Although it is recognised that language barriers can constitute a barrier to the establishment of integrated/active joint investigations and might mean that this model is particularly suitable to regions where the same or similar language is spoken, experience also shows that where a team is composed of authorities from countries with different languages, the consolidation of linguistic ability within one team can assist with operational activities. Such activities can include the ability to act immediately upon information arising from audio surveillance and/or interception in a language other than

the language of the host state or, taking witness statements in the language of the witness if not the language of the host state.

3 (g) General Recommendations

- Training of prosecutors, judges and law enforcement on international co-operation issues is essential. (see also (2 (i))),
- Promote integrated/active joint investigations at national, operational level through existing (law enforcement or prosecutorial groups) associations, groups and committees,
- Promote integrated/active joint investigations regionally through existing regional organisations/networks and/or the development of a network of national contact points for joint investigations,
- Develop model agreements (bi-lateral and operational) and make available or disseminate to prosecutors and law enforcement,
- Promote the necessity for education of the public as to the reasons for integrated/active joint investigations and ensure visibility by co-marking (uniforms, vehicles) where appropriate,

3 (h) Operational Recommendations

- Integrated/active joint investigations should be established in relation to ongoing criminal activity identified at an early stage where joint operations or joint information sharing would add value to the investigation,
- All parties (including police, prosecutors and others) within the national jurisdiction with a law enforcement/prosecutorial interest in the criminal activity should be brought together at the stage when a joint investigation is being considered so as to ensure an informed and co-ordinated approach to the investigation at national level,
- An initial meeting with partners from the other country should be organised in order to identify and define common goals, this is accepted practice in the EU for the establishment of case by case JITs,
- An integrated/active joint investigation team should be composed of law enforcement officers/prosecutors necessary to take forward the required operational objectives and bureaucracy should be kept to a minimum. (EU experience suggests that extensive governance may inhibit the formation of an effective joint investigation team),
- The training of officers on laws, practices, culture of the other country and any specific techniques required, is an issue of major importance and this was confirmed by all experts contributing to this part of the discussion. Therefore a comprehensive assessment of training needs should take place at the outset and tailored training devised before commencement of operational activity,
- Equivalence of powers for law enforcement officers subject to statutory discretion or agreement (based on practical experience in the EU),
- Equality in contribution of resources by the parties should be ensured as far as possible in order to ensure equality in decision making. (Experience suggests that inequality in contribution impacts on equality of decision making),
- An evaluation should be conducted at the close of the operation for future training and development purposes. This should include a specific audit of the training provided at the beginning of the operation and its sufficiency having regard to the nature of the operation,
- Parties should consider inclusion of a dispute resolution mechanism within the overall arrangements,

Annex 1

International provisions and other documents considered by the EWG

- UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 - Article 9,
- UN Convention Against Transnational Organised Crime, 2003 - Article 19,
- UN Convention Against Corruption, 2005 - Article 49,
- 2nd Protocol of 2001 to the 1959 European Convention on Mutual Assistance in Criminal Matters - Article 20,
- EU Convention on Mutual Assistance in Criminal Matters between the Member States, 2000 - Article 13,
- EU Council Recommendation of 8th May 2003 on a model agreement for setting up a joint investigation team,
- Kishniev Convention of 2002 on Mutual Legal Assistance and Legal Relationships in Civil, Family and criminal Matters – Article 63,
- Agreement on Extradition and Mutual Legal Assistance between the EU and the USA, Article 5,
- EU Council Decision of 28th February 2002 on the setting up of Eurojust,
- EU Council Document dated 8th July 2005 on the proposal for designation of national experts in relation to joint investigation teams.

Annex 2
Examples of JIT Agreements

Model agreement prepared to the UNODC's Informal Expert Working Group on Joint Investigations Vienna, 2- 4September 2008.

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AGREEMENT ON SETTING UP A JOINT INVESTIGATION TEAM (JIT)

In accordance with Article AA of the Convention on Mutual Assistance in Criminal Matters between the XX and YY (hereinafter referred to as "the Convention") and as transposed into the national legislation of the Parties to the Agreement:

1. Parties to the Agreement

The following Parties have concluded an Agreement on the setting up of a joint investigation team (hereinafter referred to as "JIT"):

1. National Bureau of Investigation, XX
2. Supreme Prosecution Service of the Republic of AA,
3. Criminal Police Directorate, AA
4. Police Directorate Metropolitan City, AA

The Parties to the Agreement may decide by common agreement to invite competent authorities in the other States parties of the Convention or in third States to become Parties to this Agreement.

Parties other than the above mentioned States may also join the Agreement to support the investigation, but they shall not be entitled to be actively involved in the investigations¹.

2. Purpose of the JIT

The Agreement shall cover the setting up of a JIT for the following purpose:

The criminal investigation concerned is being conducted into suspected criminal activities mainly in relation to drug trafficking whereas criminal investigation concerned is being conducted into the activities of an organised crime group/groups led from the region YA in AA produce and distribute heroin through its established network and logistic into the territory of XX. The investigation will also be conducted into with other accessorially criminal activity related to these above described criminal activities.

The purpose of the JIT is to create the best possible conditions and possibilities for the competent AA and XX authorities to carry out jointly an effective pre-trial investigation conduct the necessary hearings, implementing the necessary coercive means and other required investigations actions. The final purpose of the joint investigation is to impose criminal liability on the suspects.

The JIT shall draw up an operational action plan as a part of this agreement, which shall define the means of achieving the purposes laid down in this agreement.

The list of the names of the members of the JIT is attached to this agreement. The JIT leader shall be informed of any change in the composition of the team immediately by letter.

3. JIT leader(s) and competence of the members

The leader of the JIT shall be a representative of the competent authority in the Member State where the team operates. The JIT leader shall ensure compliance with the laws and regulations of the State in the territory of which the team operates.

The leader of the JIT in AA is Prosecutor CC and in XX Detective Chief Superintendent DD. In case the leader of the JIT is changed the party will inform the other party of this agreement by letter.

The Parties shall agree that officials of foreign States may, on the order and under the leadership and supervision of the investigator in charge in the Member State where the team operates, carry out interviews and other investigative measures to achieve the purposes for which the team was set up, to the extent that the laws of the country concerned permit.

As regards the provision of information, the legislation and other relevant rules and regulations of the country where the information is provided apply. The Parties and their

¹ This refers namely to any intergovernmental organisation that might support the investigation without having been mandate with any operational power in the investigation.

representatives in the JIT shall agree, as far as possible, on the provision of information in advance to ensure that they follow the same principles when providing information, taking account of all interests relevant to the investigation.

4. Confidentiality

The information obtained during the operation of the JIT may not be used for purposes other than those for which this team was set up without the consent of the Parties. However, the information may be used for preventing an immediate and serious danger to life or health.

In addition to what is stated above, the provisions of the agreements in force in the Member States concerned or the conditions concerning restrictions to the use of information laid down separately by the Parties shall be complied with.

5. Organisational arrangements

The parties to the Agreement shall bear the costs of the JIT during its operation. Personnel costs shall be borne by the competent authorities that the officials represent. Other operating costs shall be borne by the State in the territory of which the team operates.

The language to be used for communications shall be ZZ, unless otherwise agreed.

6. Period covered by the Agreement

This Agreement shall come into force when all the Parties have signed the Agreement.

This Agreement shall expire when the criminal investigation for the purpose of which this JIT was set up has been concluded in the Member States concerned but no later than on 31 December 200.

The expiry date stated in this Agreement may be extended by mutual consent of the Parties.

7. Evaluation of the operation of the JIT

After the operation of the JIT ends, the Parties shall arrange a meeting to evaluate the performance and further development of the operation. The JIT shall draw up a report on the operation, which shall show how the action plans was implemented and which results were achieved.

Done at place and date

National Bureau of Investigation

Person

Supreme Prosecution Service of the Republic AA

Person

Criminal Police Directorate within General Police Directorate, AA

Person

Police Directorate Metropolitan City, AA

Person

**MODELE D'ACCORD POUR LA
CREATION D'UNE EQUIPE COMMUNE D'ENQUETE
FRANCO-BELGE**

Conformément à l'article 13 de la Convention du 29 mai 2000 relative à l'entraide judiciaire en matière pénale entre les Etats membres de l'Union européenne, à la décision-cadre du Conseil du 13 juin 2002 sur les équipes communes d'enquête et à la recommandation du Conseil du 8 mai 2003 relative à un modèle d'accord pour la création d'une équipe commune d'enquête.

1. PARTIES A L'ACCORD

Les parties ci-après ont conclu un accord pour la création d'une équipe commune d'enquête :

Nom de l'autorité judiciaire française partie à l'accord :

et

Nom de l'autorité judiciaire belge partie à l'accord :

2. OBJET ET MISSIONS DE L'EQUIPE COMMUNE D'ENQUÊTE

L'accord porte sur la création d'une équipe commune d'enquête chargée de la mission suivante :

2.1. Les faits dont sont saisies les autorités judiciaires des Etats concernés :

- *Indication des enquêtes pénales ouvertes dans les deux Etats :*

2.2. Objet et missions de l'équipe commune d'enquête :

- *Description de la mission spécifique de l'équipe commune d'enquête et des actes d'enquête susceptibles d'être effectués à cette fin :*

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Les autorités mentionnées plus haut considèrent que la finalité de cette équipe commune d'enquête présente un intérêt pénal pour les deux Etats et nécessite une implication conjointe des autorités chargées des investigations dans la conduite des opérations à effectuer dans les deux Etats.

Au besoin, l'objet et la mission de l'équipe commune d'enquête pourront être modifiés par avenant entre les parties.

3. DUREE DE L'ACCORD

En ce qui concerne le présent accord, cette équipe commune d'enquête pourra fonctionner durant la période suivante, du :

<i>Insérer la date de début</i>

au :

<i>Insérer la date de fin</i>

La date d'expiration du présent accord pourra être anticipée ou repoussée avec l'accord conjoint des parties. Dans le cas où elle serait repoussée, l'accord devra être actualisé.

4. ETATS DANS LESQUELS L'EQUIPE COMMUNE D'ENQUETE VA OPERER

L'équipe commune d'enquête opérera en

<i>Indiquer l'Etat ou les Etats dans lesquels l'équipe commune d'enquête doit opérer</i>
--

L'équipe mènera ses opérations conformément au droit de l'Etat sur le territoire duquel elle intervient.

Lorsque l'équipe intervient sur le territoire français, tous ses membres agissent conformément au droit français et sous la direction de l'autorité judiciaire française visée au point 1 du présent accord.

Lorsque l'équipe intervient sur le territoire belge, tous ses membres agissent conformément au droit belge et l'autorité judiciaire belge visée au point 1 du présent accord.

En Belgique, la législation applicable pour le fonctionnement d'une équipe commune d'enquête est la loi du 9 décembre 2004 sur l'entraide judiciaire internationale en matière pénale et modifiant l'article 90 ter du Code d'instruction criminelle, plus particulièrement les articles 8 à 12 de cette loi ainsi que le Code d'instruction criminelle et la loi sur la fonction de la police du 5 août 1982.

En France, la législation applicable pour le fonctionnement de l'équipe commune d'enquête est le Code de procédure pénale, notamment les articles 695-2 et 695-3.

5. RESPONSABLES DE L'EQUIPE COMMUNE D'ENQUETE

Les membres de l'équipe commune d'enquête agissent sous la direction de l'autorité judiciaire, conformément au droit de l'Etat où l'équipe intervient.

Les autorités judiciaires visées au point 1 du présent accord désignent, pour ce qui les concerne, la personne dont le nom figure ci-après et qui représentent les autorités en charge de l'enquête compétentes des Etats dans lesquels l'équipe intervient comme responsables de l'équipe commune d'enquête, sous la direction duquel, dans son pays, les membres de l'équipe effectueront leur mission :

	Nom	Grade	Détaché par
En France			
En Belgique			

En cas d'indisponibilité de l'une des personnes mentionnées ci-dessus, son supérieur notifiera son remplacement à l'autre partie.

6. MEMBRES DE L'EQUIPE COMMUNE D'ENQUETE

Les personnes dont les noms figurent ci-après seront membres de l'équipe commune d'enquête :

Pour la France :

Nom	Grade	Fonction	Détaché par :

Pour la Belgique :

Nom	Grade	Fonction	Détaché par :

En cas d'indisponibilité de l'une des personnes mentionnées ci-dessus, son supérieur notifiera son remplacement à l'autre partie.

7. CONDITIONS SPECIFIQUES DE L'ACCORD

Les dispositions spéciales suivantes s'appliqueront dans le cadre du présent accord :

7.1 Conditions d'intervention des enquêteurs:

Les membres de l'équipe commune d'enquête pourront accomplir des actes qui relèvent de la police judiciaire sur le territoire de l'autre Etat conformément au droit de cet Etat.

En Belgique, la législation applicable pour le fonctionnement d'une équipe commune d'enquête est la loi du 9 décembre 2004 sur l'entraide judiciaire internationale en matière pénale et modifiant l'article 90 ter du Code d'instruction criminelle, plus particulièrement les articles 8 à 12 de cette loi ainsi que le Code d'instruction criminelle.

En France, la législation applicable pour le fonctionnement de l'équipe commune d'enquête est le Code de procédure pénale, notamment les articles 695-2 et 695-3.

Ces dispositions légales spécifiques relatives aux équipes communes d'enquête sont jointes en annexe.

7.2 - Conditions dans lesquelles les membres détachés pourront porter et utiliser leurs armes

Les modalités de port et d'utilisation des armes de service par les agents d'un Etat sur le territoire de l'autre Etat pour les besoins de leur activité dans le cadre de l'équipe commune d'enquête seront fixées conformément aux règles en vigueur dans l'Etat sur le territoire duquel s'exerce la mission.

7.3 – Conditions dans lesquelles les membres détachés pourront échanger des informations émanant des autorités qui les ont détachés :

La confidentialité de l'information recueillie est essentielle pour l'efficacité de l'équipe commune d'enquête, pour la confiance entre les autorités qui y participent et juridiquement exigée par le secret de la procédure.

Les autorités judiciaires parties à l'accord, les chefs de l'équipe commune d'enquête ainsi que les membres de l'équipe commune d'enquête visés au point 6, ont accès à l'ensemble des

renseignements et des éléments de preuve recueillis au cours de l'enquête auxquels ils participent. Ils peuvent exploiter ces renseignements et ces preuves dans le cadre juridique prévu pour les équipes communes d'enquête.

7.4 – Relations avec Eurojust et Europol :

Sans préjudice de leurs missions propres, il est convenu qu'Eurojust, Europol et l'OLAF pourront, si la nécessité s'en fait sentir et à la demande conjointe des autorités judiciaires visées au point 1 du présent accord, participer à l'équipe commune d'enquête à titre d'experts.

Eurojust et Europol ne peuvent accomplir eux-mêmes aucun acte d'information ou d'instruction, mais pourront, moyennant l'accord ou la demande conjointe des autorités judiciaires visées au point 1 du présent accord, donner un appui à l'équipe commune d'enquête.

7.5 – Concertation quant à l'exercice des poursuites :

Les autorités judiciaires visées au point 1 du présent accord veilleront à se concerter, en accord avec les autorités compétentes de leur Etat, sur le moment et les modalités de l'intervention des enquêteurs et sur la meilleure manière d'exercer les éventuelles poursuites.

8. DISPOSITIONS RELATIVES A L'ORGANISATION

L'Etat dans lequel se dérouleront les actes d'enquête fournira les moyens techniques nécessaires à l'accomplissement des missions (bureaux, appareils de télécommunications, matériel spécialisé, etc...).

8.1 Frais relatifs au fonctionnement des équipes communes d'enquête

Les frais nécessaires aux actes d'instruction ou d'enquête seront supportés par les autorités de l'Etat dans lequel l'acte est accompli.

Les frais relatifs au séjour, à l'hébergement et au transport des agents participant à une équipe commune d'enquête seront supportés par leur Etat d'origine.

8.2 Utilisation des véhicules

Les membres de l'équipe commune d'un Etat pourront utiliser leurs véhicules administratifs sur le territoire de l'autre Etat.

8.3 Responsabilité

La responsabilité civile et pénale des agents détachés est soumise au régime prévu aux articles 15 et 16 de la Convention du 29 mai 2000 relative à l'entraide judiciaire en matière pénale entre les Etats membres de l'Union européenne.

8.4 Relations avec la presse :

Le secret de la procédure doit être respecté. Cependant, si un contact avec la presse doit avoir lieu, seuls les magistrats chargés habituellement des relations avec la presse dans chacun des Etats seront habilités à communiquer. Le contenu des communiqués de presse fera l'objet d'un accord préalable des autorités judiciaires compétentes des Etats concernés.

Fait à (*lieu*), le (*date*)

Signature de toutes les parties

