Conference of the Parties to the United Nations Convention against Transnational Organized Crime
Working Group on International Organized Crime
Vienna – 7 to 8 July 2020

The use and role of joint investigative bodies in combating transnational organized crime
The traditional mechanism of the international LoR

The traditional mechanism of the international LoR is no longer adequate to ensure an efficient and real time judicial cooperation among the competent authorities concerned.

Joint investigation bodies/teams → a cultural leap in quality in the field of judicial cooperation
Sharing/joining not requesting
The added value

1) **Exchange of information** - JITs simplify, facilitate and speed up the exchange of information between the members from both countries, including for purposes of gathering of sources of evidence;

2) **Speedy approach** aimed at coordinating the investigative measures and efficient collaboration between the competent authorities;

3) **Ability to request investigative measures between team members directly**, dispensing with the need for a request of MLA;

4) **Presence of its members at house searches, hearings, etc. in all jurisdictions covered**;

5) **Possibility to develop and enhance mutual trust** between judicial and police authorities of different jurisdictions, share best practices and working experience, especially in complex investigations;

6) **Avoiding possible breach of the principle of ne bis in idem**;

7) **Possibility for Eurojust and Europol to participate** with their direct assistance and support;

8) **Possibility to request the EU, Eurojust and Europol funding available**.
Legal bases

At international level

- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988 (art. 9)
- UN Convention against transnational organised crime, adopted in Palermo on 12-16 December 2000 (Art. 19)
- UN Convention against Corruption adopted by the General Assembly of the United Nations on 31 October 2003 (art. 49)

- Agreement on mutual legal assistance between the European Union and the United States of America signed in Washington on 25 June 2003 (art. 5)

The JIT provisions contained in the UN instruments are generally considered as “enabling clauses”

At regional level

EU Convention on Mutual Assistance in Criminal Matters, adopted on 29 May 2000 (art. 13)

Second Additional Protocol to the European Convention on Legal Assistance of 1959, signed in Strasbourg in 2001

Framework Decision on Joint Investigation Teams (2002/465/JHA)

Bilateral agreements (e.g. Italy/Switzerland; Italy/Albania)
When setting up a JIT

- **major cross-border investigations** ➔ proceedings on serious offences having transnational nature and not confined within the domestic sphere require difficult and demanding investigations having links with other States

- **connected investigations that require coordination** ➔ when the circumstances of the case necessitate coordinated, concerted action in the States involved

In most of the cases where a JIT is set up, there are parallel investigations ongoing in the States concerned.

If investigations are already ongoing, the stage of domestic investigations may be significant.
Model for setting up a joint investigation team. The agreement

a) The composition (Parties to the Agreement)
   - “Members”
   - “Seconded members”
   - Other participants
   - The leader of the team

b) The object and purpose of the investigation
   - Description of the fact
   - The aims of the teams and investigations
   - The activities that can be carried out

c) The applicable law

d) The period covered by the agreement

e) Miscellaneous provisions (use of arms, costs, language of communication, media)
The admissibility of the evidence collected

In accordance with art. 20, paragraph 10 of the EU Convention on Mutual Assistance in Criminal Matters, adopted on 29 May 2000, and with art. 1 of the Framework Decision on Joint Investigation Teams (2002/465/JHA), information lawfully obtained by a JIT may be used for:

- The purposes for which the JIT was set up;
- Investigating other offences, subject to the prior consent of the jurisdiction concerned;
- Preventing an immediate and serious threat to public security, if subsequently a criminal investigation is opened;
- Other purposes if agreed by the Parties setting up the JIT.

Important to establish, in the so-called “operational plan”, shared modalities to take evidence.

The flexibility offered by the JIT allows since at the stage of collection of evidence to anticipate any question of admissibility and to find appropriate solutions.

The role of the leader includes providing guidance to members of the JIT on aspects and procedures to be taken into account in the taking of evidence.
“nowadays circulation of persons and goods is quite easy: but if there are no borders for robbers, the same should also be true for cops, otherwise there is no game”