



FIGHT AGAINST ORGANISED CRIME AND CORRUPTION,
STRENGTHENING THE PROSECUTORS' NETWORK

HANDBOOK ON

JOINT INVESTIGATION TEAMS

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Definition of the EU

“The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms.

The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders”.

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* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence. This footnote applies whenever Kosovo is mentioned in this handbook.

Foreword

by Alenka SAGMEISTER RANZINGER

I first heard about joint investigation teams some seven years ago. Then being a district state prosecutor in the Group of the State Prosecutors for Prosecution of Organized Crime within the Supreme State Prosecution Office of the Republic of Slovenia, I was requested to attend a meeting with foreign police officers. In the invitation there was a short draft of the suspected factual situation of the criminal offence in question, and an initial suggestion to consider the possibility of signing an agreement for a joint investigation team (JIT).

At that time I, and likely many other prosecutors, did not have an understanding of the purpose, procedures or even possibility of establishing a JIT. While this lack of awareness is quickly diminishing across the region, this Handbook seeks to act as a resource to address existing knowledge gaps and promote the effective use of JITs.

The development of this Handbook takes its origins from the project '*Fight against organized crime and corruption: Strengthening the Prosecutors' Network*', which is being lead by a consortium consisting of the *Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH* (lead partner; www.giz.de), and the *Dutch Center for International Legal Cooperation* (www.cilc.nl). The two consortium partners closely cooperate with the *Dutch, German and Slovenian Prosecution Service*, the *International Association of Prosecutors (IAP)*, as well as *EUROJUST*, the *European Judicial Network in Criminal Matters* (both based in The Hague, the Netherlands) and the *Southeast European Prosecutors Advisory Group (SEEPAG)* based in Bucharest, Romania.

This regional project covers the Western Balkans (Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Serbia as well as Kosovo*) and has a duration of 29,5 months. The

* This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence. This footnote applies whenever Kosovo is mentioned in this handbook.

overall objective of the project seeks to improve and promote cross-border and international judicial cooperation in the beneficiaries to investigate and prosecute cross border crime, in particular organised crime and corruption. This Handbook supports that objective by strengthening regional understanding of JITs and acting as a practical guide for their implementation to fight cross-border crime.

With the support of the consortium partners and broader prosecutorial network, this Handbook was written by an expert, who had approached its creation with enthusiasm and fresh energy. Jošt JESENICNIK has produced a valuable text, concise enough to keep the reader's attention, but still comprising all information a prosecutor should have when starting activities related to setting up a JIT. No doubt this Handbook will be a useful tool not only for the prosecutors who don't have previous knowledge on the topic, but also for those who want to refresh their knowledge.

At the same time, the Handbook is a valuable guide through the legislation of the states of the Western Balkans, relevant for establishing a JIT, as applicable in December 2013. The laws will be amended by the legislators over time for sure, but the tabulation of the relevant laws as presented in this Handbook will in future still assist and direct the reader in finding the relevant provisions applicable in the given (future) time and place.

I believe this Handbook can successfully solve many initial misunderstandings and delays in cross border cooperation in criminal cases.

Therefore, I'm especially honoured to contribute this foreword to it. With great pleasure I'm handing it over to you now, to read it and hopefully make it a part of many successful criminal investigations.

I. Background

With the modern ways of communication and the fast possibilities of travelling the whole world is becoming a global village. The majority of borders in the world have already fallen, therefore people and goods move from one country to another without significant problems. Though this is a civilization breakthrough, this process has a flaw which cannot be easily avoided. Allowing people to move from one country to another freely includes necessarily the possibility that criminal offenders may also use this freedom to commit criminal offences in multiple countries or try to avoid criminal prosecution by fleeing across borders.

Although the barriers on borders have been lifted for people and goods, they still very much exist for state jurisdiction and criminal procedure. To fight the new “international” perpetrators and criminal groups, the countries had to adjust their criminal procedure and accept the need for stronger international cooperation.

In the urge to strengthen international cooperation in criminal matters, a new tool was introduced – Joint Investigation Team (JIT). A Joint Investigation Team is a tool for assisting and facilitating a specific investigation involving cross-border crime, and also for building mutual trust. Countries that have participated in a JIT have frequently demonstrated a marked increase in willingness to use JITs and other forms of cross-border cooperation.

The use of JITs as a tool of international cooperation in criminal matters became an option for the Beneficiaries through signing and ratifying The Second Additional Protocol to The European Convention on Mutual Legal Assistance. After the provisions of the Second Protocol entered into force in the Beneficiaries, some of them (Bosnia and Herzegovina, Montenegro, Kosovo, the former Yugoslav Republic of Macedonia and Serbia) have also adopted this institute in their national legislation.

The Handbook on Joint Investigation Teams for the Beneficiaries is meant to be a tool for the prosecutors from Albania, Bosnia and Herzegovina,

Croatia, the former Yugoslav Republic of Macedonia, Montenegro, Serbia as well as Kosovo* that will guide them from the decision on creating a JIT through the whole process needed to create a JIT. Joint Investigation Teams are not the only or always appropriate tool in cross-border investigation. Prosecutors from the Beneficiaries should be aware of their considerable benefits and be in a position to make informed decisions about their use. The main goal of this Handbook is to inform practitioners for the Beneficiaries about the legal basis and requirements for setting up a JIT and to provide advice on when and how a JIT can be usefully employed. At the same time the Handbook is meant to be a guide to avoid misunderstandings about Joint Investigation Teams, to encourage practitioners to make use of this new tool with the purpose of adding value to their investigations, and help develop international cooperation in criminal matters in general.

II. Joint Investigation Team (JIT)

A Joint Investigation Team (JIT) is an investigation team set up for a fixed period, based on an agreement between two or more countries or other competent authorities, for the investigation of a specific criminal offence. (*Modified Europol's definition of a JIT*)

From the JIT definition five basic components can be deduced:

- international component,
- formal agreement,
- joint investigation,
- time component, and
- specific criminal offence.

International component

The essence of Joint Investigation Teams is a need for an international investigation on a trans-boarder criminal activity. Joint Investigation Teams are not so much set up depending on the seriousness of a crime, but rather due to the crime's international and cross-border dimension.

With regard to this fact Joint Investigation Teams should be set up when the investigation into criminal offences requires difficult and demanding investigations having links with authorities from different countries, and when authorities from different countries conduct investigations into criminal offence(s) in which the nature of the case necessitates coordinated and concerted actions in different countries.

Joint investigation

Existing methods of investigation were deemed in some cases insufficient to effectively combat serious cross-border crime. In order to investigate and prosecute the modern forms of international criminal offences it is necessary to establish fast and efficient cooperation between the competent authorities of different countries.

It was felt that a team of investigators and judicial authorities from two or more states, working together with clear legal authority and certainty about the rights, duties and obligations of the participants, would improve the fight against cross border organised crime. Such cooperation could lead to coordinated investigations carried out in different countries, which would be to the benefit of all participating countries.

In addition, the prosecutors will receive the information gathered in other countries directly and will be able to submit requests to the domestic courts as an expert on domestic law, thus avoiding mistakes or insufficiencies in the request.

The advantages of using a JIT are especially:

- the ability and competence to share information directly between JIT members without the need for formal requests,
- the competence to request investigative measures between team members directly, dispensing with the need for Letters Rogatory (this applies also to requests for coercive measures),
- the possibility for JIT members to be present at house searches, interviews, etc. in all jurisdictions covered, helping to overcome language barriers in interviews, etc.,
- the opportunity to co-ordinate efforts on the spot, and for informal exchange of specialized knowledge, and
- the opportunity to determine the optimal investigation and prosecution strategies.

One of the key advantages of investigation by JIT is also the possibility to ask on the spot the foreign authority to take into consideration the legal requirements in the process of gathering evidence or even the possibility that investigators from a foreign country can be present at an investigative measure being undertaken. This way the JIT members can also make sure that all the requirements of their domestic criminal procedure are met and the later exclusion of evidences is avoided.

The Team

The Team is set up in the country in which investigation is expected to be predominantly carried out. At the same time, at the early stage of drafting the agreement, the geographic basis for the investigation must be consid-

ered; if the investigation reveals a different area of operations, flexibility should be allowed and even predicted.

A group of investigators and other personnel, from two or more countries, should be assembled together in close proximity to the investigation. This implies a number of people temporarily working outside of their own country as it might, in many cases, be an ideal arrangement, especially where there is no language barrier, which applies for the majority of the Beneficiaries. However, there is no requirement or obligation that members of the JIT have to work outside of their home country, even if the JIT is permanently based in another country. Indeed, a JIT can quite properly be formed with members from two or more countries when nobody works outside their own country - what is a usual praxis in JITs between the EU Member States.

When assembling the Team special consideration should be given to linguistic abilities of Team members to enable and encourage communication between them and to avoid unnecessary translation-related difficulties and complications.

The JIT leader

Clear leadership structure is essential for good teamwork. Therefore, every JIT needs to have a Team leader (or more leaders, if necessary). The JIT leader has to have leadership skills and has to have the capabilities for good communication with JIT members. The international legal framework usually does not specify who has to be the Team leader, but experience has proved it is very useful that the JIT leader be a public prosecutor, due to the fact that the whole investigation should be conducted with the vision of a later criminal procedure. Some national legislations have adopted this idea.¹

It is possible to have more than one leader. Perhaps the countries participating in a JIT would prefer to have a leader from each participating country. This way each respective JIT leader can supervise the execution of investigative measures in his country as a national expert. Such leadership is called a “flowing” leadership structure, dependent on the geographic sphere of operations. Such leadership demands constant communication

¹ For instance Art 24, Para 6 of the Law on Mutual Legal Assistance in Criminal matters of Bosnia nad Herzegovina

between Team leaders in order to avoid situations in which different or even contradictory instructions by different Team leaders would be given to JIT members.

The decision on the JIT leader is left open for the countries to decide upon on the basis of case-by-case particularities. Some countries may not have national provisions on JIT leaders, but it is possible that some other countries that participate in a JIT have national provisions that have to be followed.

The question of JIT leader or more leaders should be resolved and agreed upon at the meeting/communication before defining the JIT agreement.

Formal agreement²

A JIT agreement is a formal agreement between two or more countries or other competent authorities, which has to be prepared and signed by competent authorities. The agreement is formalized and has to have all the necessary elements in order to avoid later disagreements or misunderstandings.

A formal agreement should always include:

- A) Firstly, as an international agreement between sovereign countries, it has to have all the elements of an international agreement determined:
- legal basis for the JIT agreement,
 - parties to the Agreement (countries and competent authorities),
 - participants to the Agreement (international bodies),
 - purpose of the JIT (criminal offence information),
 - period covered by the agreement,
 - location in which the JIT will operate.
- B) Secondly, on the basis of good practices, provisions of some countries³ and EUROJUST's recommendations to EU Member States, the agreement should also include:

² A model JIT agreement can be found in Appendix 3

³ Bosnia and Herzegovina (team members, JIT leaders, purpose/action plan, competences, period/ timeframe, special conditions of the investigative measures conducted in BiH, implication of third countries, Information and evidence exchange and application rules), Croatia (provisions of the MLA for EU countries), Montenegro (criminal offence defini-

- Operational Action Plan,
- method of communication within the team (language, interpreters, etc.),
- JIT leader or leaders,
- JIT members and their roles and competencies,
- provisions on seconded members,
- evidence acquiring methods,
- information and evidence exchange and application rules,
- method of using and disposing of the collected information and evidence,
- conflict resolution,
- special conditions of the agreement, and
- provisions on the internal evaluation.

The formal agreement is always a result of a request for setting up a JIT and of the negotiations that follow this request. In some Beneficiaries (Albania, Kosovo, Montenegro) this initial request must be in the form of a Letter Rogatory, in some Beneficiaries it has to be sent through the Ministry (Bosnia and Herzegovina, Serbia) and in some Beneficiaries it can be sent directly to the competent authority (the former Yugoslav Republic of Macedonia, Croatia).

It is advised that enough time should be spent on drafting the agreement and that all possible issues are taken into consideration at this preliminary stage. All predictable obstacles and challenges should be defined as well as the possible ways of solving them in order to avoid time consuming debates and arguments later on during the investigation.

Time component

The aim of a JIT per definition is to set up the investigation team for a fixed period of time. It is not possible to set up a JIT as a permanent operational team.

tion, presence of foreign official persons when the investigation is conducted in Montenegro, evidence application rules), the former Yugoslav Republic of Macedonia (criminal offence definition, criminal liability of the seconded JIT members, evidence exchange and application rules)

The time component is crucial for the participating countries to be able to allocate their resources to the cause of investigating and prosecuting the specific cross-border criminal offence. In addition, in all Beneficiaries covert measures are time limited and for different time periods. These limitations must be reflected in the JIT agreement, and the operational plan must be in accordance with them. Yet bearing this in mind, JIT members will be able to make a realistic time plan for the investigation, and create an action plan that will envision the time needed for a certain investigative measure to be carried out.

Specific criminal offence

The aim of a Joint Investigation Team is to investigate a given criminal case. According to applicable international legislation and the legislations of the Beneficiaries, it is not possible to establish a JIT as a generically competent task force for a certain type of crime.

The participating countries and JIT members must have the same and clear idea of what the aim of their co-operation is. Therefore, the criminal offence that is to be investigated must be well defined in its legal definition and in the suspected factual situation. The suspects must be identifiable and their role in the criminal offence determinable.

Such specification will enable each potentially participating country to inquire on the suspects and/or on the criminal offence before communicating with authorities from other countries potentially participating in the JIT. In addition, collecting and sharing information before starting the JIT helps the members to see the wider picture of the criminal offence at this early stage, and consequently to be able to start taking relevant actions right away.

Having a well-specified criminal offence that is to be investigated, the participating countries will be able to choose the most qualified prosecutor(s) and investigators to be members of the JIT.

III. STEP BY STEP APPROACH

For setting up a Joint Investigation Team it is best to follow the simple steps listed below. These steps will guide you through the process and help you remember to take into consideration all relevant aspects of a JIT. This way you may successfully avoid future disagreements or misunderstandings regarding conduct of the investigation.

7 STEPS TO SETTING UP A JIT

- 1) defining the criminal offence (elements for JIT – international component),
- 2) overview of legal framework (international, domestic, foreign),
- 3) contacting the foreign authorities (meeting) – agreeing on the key elements (case, time, method of cooperation, JIT parties, funding),
- 4) request for setting up a JIT,
- 5) drafting the formal agreement,
- 6) signing the agreement,
- 7) carrying out the agreement – Operational Action Plan.

(1) Defining criminal offence

The first step in the process of setting up a JIT is to thoroughly study the already acquired information on the cross-border criminal offence and the suspects, with the aim to identify the need and the benefits of creating a JIT.

The prosecutor has to be especially vigilant on the international elements of the criminal offence to justify the use of this type of international cooperation.

It is useful to informally contact the prosecutor or other competent authority, from other countries that would be involved, for information they have on the case. Informal contacts can be established through the professional acquaintance the prosecutor may already have in the foreign country. If this is not the case, communication can be established with assistance of police.

The prosecutor has to weigh on one hand the benefits the JIT will bring and on the other hand the administrative consequences the JIT will have, and the costs it will cause. Only with such information is it possible to make an informed decision about setting up a JIT. However, in the end it always comes to a case-by-case decision.

(2) Legal framework (domestic, foreign)

Once established that the investigation of a criminal offence should be conducted by a JIT, it is necessary to determine the legal basis on which the JIT agreement will be based, and upon which the JIT will operate. A properly determined legal base is crucial. This determines the fate of the JIT agreement and consequently the admissibility of the evidence gained through such investigation.

To determine the legal basis for a JIT, the prosecutor has to take into account both domestic and foreign legislation and the international legal documents that bind the countries potentially participating in the JIT.

As it is pointless to review all possible combinations of countries, the national legislative framework will be presented for each Beneficiary separately, after the presentation of the international legislative framework applicable for the majority of the Beneficiaries.

A - INTERNATIONAL LEGAL FRAMEWORK

According to international law, all adopted international treaties have supremacy over national legislation and are on the same level as national constitutions. Therefore, the provisions of the international conventions, treaties and agreements both multilateral and bilateral have supremacy over national law.

1) SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS – Articles 20, 21, 22 – Joint investigation teams⁴

State	Signature	Ratification	Entry into force
Albania	13/11/2001	20/6/2002	1/2/2004
Bosnia and Herzegovina	17/5/2006	7/11/2007	1/3/2008
Croatia	9/6/2004	28/3/2007	1/7/2007
Montenegro	7/4/2005	20/10/2008	1/2/2009
Serbia	7/4/2005	26/4/2007	1/8/2007
the former Yugoslav Republic of Macedonia	8/11/2001	16/12/2008	1/4/2009

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=182&CM=7&DF=&CL=ENG>

This Protocol provides the legal basis for establishment of a Joint Investigation Team in cases where criminal offences involve difficult and demanding investigations having links with other countries, or where more countries are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the countries involved. The initial request should contain a proposal for the composition of the Team. The Protocol also dictates that the leader of the JIT shall be a representative of the competent authority of the country in which the JIT will operate. Operations of the JIT have to be in compliance with the national laws of the country in which it operates. The Protocol also contains provisions on seconded JIT members, execution of certain investigative measures, requests to third-party countries (non-JIT members), information exchange rules, information application rules, participation of third parties in the investigative measures of the JIT, and criminal and civil liability of the officials participating in the investigative measures of the JIT in another country.

Note that Austria, Germany, Italy, Cyprus, Turkey and some other states in Europe have not adopted the Second Protocol, while the Non-European states of Chile and Israel have.

⁴Detailed provisions of the international legal framework can be found in Appendix 2

**2) POLICE COOPERATION CONVENTION FOR SOUTHEAST EUROPE
– Article 27 – Joint Investigation Teams⁵**

The Beneficiaries adopted this Convention as follows:

State	Ratification date	Date of deposition of ratification (expected)	Entry into force of Convention (expected)
Albania	September 11, 2006	May 31, 2007	October 10, 2007
Bosnia and Herzegovina	April 11, 2007	July 17, 2007	October 15, 2007
Montenegro	December 26, 2007	January 28, 2008	May 1, 2008
Serbia	July 23, 2007	September 10, 2007	December 11, 2007
the former Yugoslav Republic of Macedonia	June 1, 2007	July 12, 2007	October 10, 2007

<http://www.pccseesecretariat.si/index.php?page=documentspcc&item=35>

This Convention provides the legal basis for the establishment of a Joint Investigation Team in cases where criminal offences involve difficult and demanding investigations having links with other countries, or where more countries are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the countries involved. A request for a JIT can be made by any country involved. The Team shall be set up in one of the countries in which the investigation is expected to be carried out. The request for the establishment of a Joint Investigation Team shall include the title of the authority making the request, the purpose of the Joint Investigation Team, the country in which the Joint Investigation Team will operate and proposals for the composition of the Joint Investigation Team. The Convention also dictates that the leader of the JIT shall be a representative of the competent authority of the country in which the JIT will operate. Operations of the JIT have to be in compliance with the national laws of the country in which it operates. The Convention contains provisions on seconded JIT members, execution of certain investigative measures, requests to third-party countries, infor-

⁵Detailed provisions of the international legal framework can be found in Appendix 2

mation exchange rules, information application rules and participation of third parties in the investigative measures of the JIT.

The other members to this Convention are: Austria, Bulgaria, Hungary, Moldova, Romania, and Slovenia.

Additional international legal basis, which could also be used, with a wider legal interpretation (mutual assistance to the widest extent possible):

3) UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME – Article 19 – Joint Investigation Teams⁶

The Beneficiaries adopted this Convention as follows:

State	Signature	Ratification, Acceptance(A), Approval(AA), Accession(a), Succession(d)
Albania	12 Dec 2000	21 Aug 2002
Bosnia and Herzegovina	12 Dec 2000	24 Apr 2002
Croatia	12 Dec 2000	24 Jan 2003
Montenegro		23 Oct 2006 d
Serbia	12 Dec 2000	6 Sep 2001
the former Yugoslav Republic of Macedonia	12 Dec 2000	12 Jan 2005

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en

The Convention applies to the prevention, investigation and prosecution of:

- laundering of proceeds of crime,
- corruption,
- obstruction of justice,
- serious crime - meaning an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty

where the offence is transnational in nature and involves an organized criminal group.

⁶Detailed provisions of the international legal framework can be found in Appendix 2

This Convention envisions that countries will conclude bilateral or multi-lateral agreements for setting up Joint Investigation Teams for the investigation of transnational crimes dealt with in this Convention. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. At the same time the Convention prescribes the obligation to ensure the sovereignty of the countries participating in the JIT.

This Convention does not provide for any particularity regarding establishment of a JIT, such as for instance composition of a JIT agreement, criminal and civil liability of JIT members, etc.

In total 179 countries are parties to this Convention, among them Austria, Cyprus, Germany, Finland and Italy.

4) UNITED NATIONS CONVENTION AGAINST CORRUPTION – Article 49 – Joint Investigations⁷

The Beneficiaries adopted this Convention as follows:

State	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)
Albania	18 Dec 2003	25 May 2006
Bosnia and Herzegovina	16 Sep 2005	26 Oct 2006
Croatia	10 Dec 2003	24 Apr 2005
Montenegro		23 Oct 2006 d
Serbia	11 Dec 2003	20 Dec 2005
the former Yugoslav Republic of Macedonia	18 Aug 2005	13 Apr 2007

<http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

This Convention envisions that countries will conclude bilateral or multi-lateral agreements for setting up Joint Investigation Teams for the investigation of transnational crimes dealt with in this Convention. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. At the same time the Conven-

⁷Detailed provisions of the international legal framework can be found in Appendix 2

tion prescribes the obligation to ensure the sovereignty of the countries participating in the JIT.

This Convention neither provides any provisions on the procedure for establishment of a JIT, nor on the operational matters of a JIT.

In total 168 states are parties to this Convention, among them Austria and Cyprus, but not Germany or the Czech Republic, for instance.

5) CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME AND ON THE FINANCING OF TERRORISM – Chapter IV, Section 2 – Investigative assistance – Article 16 – Obligation to assist⁸

This Convention was adopted by the Beneficiaries as follows:

State	Signature	Ratification	Entry into force
Albania	22/12/2005	6/2/2007	1/5/2008
Bosnia and Herzegovina	19/1/2006	11/1/2008	1/5/2005
Croatia	29/4/2008	10/10/2008	1/2/2009
Montenegro	16/5/2005	20/10/2008	1/2/2009
Serbia	16/5/2005	14/4/2009	1/8/2009
the former Yugoslav Republic of Macedonia	17/11/2005	27/5/2009	1/9/2009

<http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=198&CM=0&CL=ENG>

This Convention provides the legal basis for the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such a broad spectrum of assistance also includes the establishment of a Joint Investigation Team.

⁸Detailed provisions of the international legal framework can be found in Appendix 2

6) CONVENTION ON CYBERCRIME – Title 3 – General principles relating to mutual assistance – Article 25 – General principles relating to mutual assistance⁹

This Convention and its Explanatory Report were adopted by the Committee of Ministers of the Council of Europe at its 109th Session (8 November 2001) and the Convention was opened for signature in Budapest, on 23 November 2001, on the issue of the International Conference on Cyber-crime. The Beneficiaries adopted this Convention as follows:

States	Signature	Ratification	Entry into force
Albania	23/11/2001	20/6/2002	1/7/2004
Bosnia and Herzegovina	9/2/2005	19/5/2006	1/9/2006
Croatia	23/11/2001	17/10/2002	1/7/2004
Montenegro	7/4/2005	3/3/2010	1/7/2010
Serbia	7/4/2005	14/4/2009	1/8/2009
the former Yugoslav Republic of Macedonia	23/11/2001	15/9/2004	1/1/2005

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG>

This Convention provides the widest possible extent of assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. The Convention also prescribes direct communication in urgent cases, narrows the grounds for refusal and widens the field of fulfillment of dual criminality.

The Convention has been ratified by the majority of the member states of the Council of Europe except, for instance, Greece, Liechtenstein, Sweden, and Turkey. In addition, Australia, Japan, and USA are parties to this Convention.

Whenever any of the enumerated international Conventions are used as a common legal base for a concrete JIT, for the matters not regulated by the respective Convention, the countries involved must consider their

⁹Detailed provisions of the international legal framework can be found in Appendix 2

national legislations and establish a JIT that would be constituted and would operate in accordance with all national legislations concerned.

B - NATIONAL LEGAL FRAMEWORK

In this chapter the national legal framework of the Beneficiaries is tabulated, along with the Bilateral Agreements. Please note that the Bilateral Agreements and Treaties do not necessarily regulate Joint Investigation Teams as such and in particular, but can be considered generally in setting up JITs.

ALBANIA¹⁰

1) The Criminal Procedure Code – Articles 10 and 505

2) The Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters – Article 13

3) the Bilateral agreements:

- The Agreement between Albania and the former Yugoslav Republic of Macedonia on mutual legal assistance on criminal and civil law, and
- The Agreement between the Council of Ministers of the Republic of Albania and the Government of the Republic of Kosovo on mutual legal assistance in criminal matters

BOSNIA AND HERZEGOVINA¹¹

1) The Law on Mutual Legal Assistance in Criminal Matters – Articles 1, 3, 24 and 94,

2) the Bilateral agreements:

- The Agreement between Bosnia and Herzegovina and the Republic of Croatia on legal assistance in civil and criminal matters,
- The Agreement between Bosnia and Herzegovina and the Republic of Macedonia on legal assistance in civil and criminal matters, and

¹⁰Detailed provisions of the Albanian national legal framework can be found in Appendix 1

¹¹Detailed provisions of the Albanian national legal framework can be found in Appendix 1

- The Agreement between Bosnia and Herzegovina and Serbia and Montenegro on Legal Aid in Civil and Criminal Matters and The Agreement on Amendments to The Agreement – Articles 1 and 36a

CROATIA¹²

- 1) The State Attorney`s Office Act – Articles 71.a to 71.i,**
- 2) The Criminal Procedure Code – Articles 201 and 202,**
- 3) The Croatian Constitution – Article 141,**
- 4) The International Legal assistance in Criminal Matters Act – Article 6,**
- 5) The USKOK Law – Article 17,**
- 6) the Bilateral agreements:**
 - The Agreement between Bosnia and Herzegovina and the Republic of Croatia on legal assistance in civil and criminal matters,
 - The Agreement between the Republic of Croatia and the Republic of Kosovo on mutual legal assistance in criminal matters,
 - The Treaty between the Republic of Croatia and the Republic of Macedonia on the Legal Assistance Concerning Civil and Criminal Matters, and
 - The Treaty between the Republic of Croatia and the former Republic of Yugoslavia on the Legal Assistance Concerning Civil and Criminal Matters

KOSOVO¹³

- 1) The Law on International Legal Cooperation in Criminal Matters – Articles 1, 2, 97 and 98,**
- 2) The Criminal Procedure Code – Article 219,**
- 3) the Bilateral agreements:**

¹²Detailed provisions of the Bosnian and Herzegovinian national legal framework can be found in Appendix 1

¹³Detailed provisions of the Croatian national legal framework can be found in Appendix 1

- The Agreement between the Republic of Croatia and the Republic of Kosovo on mutual legal assistance in criminal matters,
- The Agreement on Mutual Legal Assistance with the former Yugoslav Republic of Macedonia, and
- The Agreement between the Council of Ministers of the Republic of Albania and the Government of the Republic of Kosovo on mutual legal assistance in criminal matters

MONTENEGRO¹⁴

1) The Constitution of Montenegro – Article 9,

2) The Law on Mutual Legal Assistance in Criminal Matters – Articles 2 and 42, and

3) the Bilateral agreements:

- The Treaty between Yugoslavia and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters,
- The Treaty between Serbia and Montenegro and the Republic of Macedonia on Legal Assistance in Civil and Criminal Matters, and
- The Agreement between Serbia and Montenegro and Bosnia and Herzegovina on Mutual Legal Assistance in Civil and Criminal Matters

SERBIA¹⁵

1) The Law on Mutual Assistance in Criminal Matters – Articles 1, 4, 83, 84 and 96,

2) The Constitution of the Republic of Serbia – Articles 16 and 194,

3) the Bilateral agreements:

- The Agreement between Serbia and Montenegro and Bosnia and Herzegovina on Mutual Legal Assistance in Civil and Criminal Matters – Articles 33 and 36a,

¹⁴Detailed provisions of the Kosovo national legal framework can be found in Appendix 1

¹⁵Detailed provisions of the Montenegrin national legal framework can be found in Appendix 1

- The Agreement between Serbia and Montenegro, and the Republic of Macedonia on Legal Aid in Civil and Criminal Matters – Articles 25 and 30, and
- The Agreement between the Republic of Serbia and Montenegro on Legal Assistance in Civil and Criminal Matters – Articles 33 and 38

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA¹⁶

1) The Law on International Cooperation in Criminal Matters – Articles 15, 38, and 39,

2) The Criminal Procedure Code – Articles 39 and 40,

3) The Law on Public Prosecution – Article 36, and

4) the Bilateral agreements:

- The Agreement on Mutual Legal Assistance with Serbia and Montenegro,
- The Agreement on Mutual Legal Assistance with Serbia,
- The Agreement on Mutual Legal Assistance with Montenegro,
- The Agreement on Mutual Legal Assistance with Kosovo,
- The Agreement on Mutual Legal Assistance with Croatia,
- The Agreement on Mutual Legal Assistance with Bosnia and Herzegovina, and
- The Agreement on Mutual Legal Assistance with Albania.

C - SUMMARY OF THE JIT LEGAL BASES

ALBANIA

In Albania there is no direct legal basis in the national legislation for establishing a JIT. Nevertheless, the legal basis can be derived from Article 13 of the Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters, under which international cooperation is possible to the extent of other investigative actions that are not prohibited by law.

Article 10 of the Criminal Procedure Code, which stipulates that relations with foreign authorities in criminal matters shall be governed by interna-

¹⁶Detailed provisions of the Serbian national legal framework can be found in Appendix 1

tional agreements, ratified by Albania, gives the legal basis for the direct use of provisions on Joint Investigation Teams in the conventions ratified by the Republic of Albania.

Therefore, it is possible to use as the legal basis the provisions of:

- Article 20 of The Second Additional Protocol to The European Convention on Mutual Assistance in Criminal Matters, and
- Article 27 of The Police Cooperation Convention for South-east Europe (PCC SEE).

Additionally the use of the following provisions as a legal basis is possible:

- Article 19 of The United Nations Convention against Transnational Organized Crime,
- Article 49 of The United Nations Convention against Corruption,
- Article 16 of The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and
- Article 25 of The Convention on Cybercrime.

However, we must bear in mind that all instruments for international co-operation under these last four conventions are limited to the specific criminal offences covered by these conventions, while the use of all international conventions is limited to cooperation with the states that have ratified the respective convention.

In conclusion, in Albania the legal basis for a JIT agreement can be drawn from the extensive interpretation of the international legal assistance of the Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters, and from the international conventions.

Due to the fact that JITs are not yet regulated on the national level and the conventions do not include provisions on the authority competent related to JITs, this should be interpreted in accordance with Article 505 of the Albanian Criminal Procedure Code and Article 6 of The Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters. Through such interpretation the Ministry of Justice is competent for deciding on participating in a JIT and on signing the JIT agreement.

It is recommended that the Republic of Albania regulates the use of JITs also on the national level. At present, there are some aspects of such cooperation that remain unclear. For instance, it is not clear who is the competent authority for receiving requests and for establishing JITs; there is no definition of criminal offences for which a JIT can be established; there are no provisions on the composition of the Team (members and leaders), on the elements which have to be included in a JIT agreement, on special conditions of the investigative measures conducted in the country, on information and evidence exchange rules, etc. This way it will facilitate the establishment of a JIT with the states that have not adopted any of the above enumerated international Conventions.

BOSNIA AND HERZEGOVINA

According to The Law on International Legal Aid in Criminal Matters itself, the provisions of The Criminal Procedure Codes of the Entities (the Federation of Bosnia and Herzegovina and the Republic of Srpska) and of the Brčko District of Bosnia and Herzegovina pertaining to the international legal assistance procedure shall be harmonized with the provisions of The Law on International Legal Aid in Criminal Matters. This means that the content of the provisions on Joint Investigation Teams in the Entities (the Federation of Bosnia and Herzegovina and the Republic of Srpska) and the Brčko District have to be in substance the same as the provisions of The Law on International Legal Aid in Criminal Matters.

For the criminal matters that fall under competency of the Court of Bosnia and Herzegovina (Article 7 of The Law on the Court of BiH) the legal basis for setting up a JIT is Article 24 of The Law on International Legal Aid in Criminal Matters. Pursuant to the said article as read with The Law on the Prosecution Office of BiH, the competent national authority that can authorize or request the establishment of a JIT is the Prosecutor's Office of BiH.

In cases that fall under the competency of the prosecution offices of both Entities and the Brčko District of Bosnia and Herzegovina, the legal basis for a JIT are provisions of their Criminal Procedure Codes that have to be, if/when adopted, substantially the same as laid down in Article 24 of The Law on International Legal Aid in Criminal Matters. As long as the Criminal Procedure Codes of both Entities and the Brčko District do not

contain such provisions – and currently indeed they do not - The Law on International Legal Aid in Criminal Matters directly applies also in both Entities and in the Brčko District. The competent national authority that can authorize or request the establishment of a JIT in this case would be the competent Prosecution Office of the Federation of BiH (a concrete Cantonal Prosecution Office), and of the Republic of Srpska (a concrete District Prosecution Office). The competent national authority that can authorize or request the establishment of a JIT in the Brčko District is the Prosecution Office of the Brčko District.

Under Article 24 of The Law on International Legal Aid in Criminal Matters (and the relevant provisions of the Criminal Procedure Codes of both Entities and the Brčko District) a Joint Investigation Team can be set up if the circumstances of the certain case justify it. The Joint Investigation Team is established with an agreement of the competent prosecutor's office and the competent judicial authority of the foreign country. The purpose of the JIT is to conduct an investigation of the specific case in the territory of one or more parties to the agreement. The agreement that establishes a Joint Investigation Team is time limited.

A JIT agreement has to have the following elements:

- composition of the Team (members and leaders),
- the task of the Team,
- authorities/competences of the Team, and
- period/ timeframe.

The request to establish a Joint Investigation Team has to be sent in the form of a Letter Rogatory¹⁷ through the Ministry of Justice of BiH to the

¹⁷ The Letter Rogatory has to have all the element of the Letter Rogatory prescribed by Article 3, Paragraph 4 of The Law on International Legal Aid in Criminal Matters:

- 4) Unless otherwise stipulated in an international treaty or this Law, the Letter Rogatory must contain the following:
 - a) name of the authority making the request, case reference number, exact name of the requested State, and, if possible, name of the requested authority;
 - b) legal grounds to afford mutual legal assistance;
 - c) specific description of an act of mutual legal assistance sought and the reason for the request;
 - d) legal definition of the criminal offense and a short summary of the facts;
 - e) exact personal details and nationality of the person concerned and his status in the proceedings;

competent prosecutor's office in BiH. The request has to include a suggestion of the composition of the Team. Such rules apply for both foreign and domestic authorities, when sending a request to establish a JIT.

The location of the Team should be in the jurisdiction of one of the contracting parties, where it is expected that the investigation is going to take place.

A Joint Investigation Team in Bosnia and Herzegovina can be formed:

- if the investigation of criminal offence(s) in one country requires a harmonious and extensive investigation linked to another country;
- if several authorities conduct an investigation of a criminal offence(s) which by its nature demands a coordinated approach in all relevant countries;
- if investigative measures need to be conducted alternately in Bosnia and Herzegovina and in a foreign country or more countries.

A Joint Investigation Team can operate in the territory of BiH with the following requirements:

- the Team leader is a competent prosecutor in BiH;
- the Team is to conduct the investigation in accordance with the criminal legislation of BiH;
- the Team members are to work under the supervision of the Team leader;
- the competent prosecutor's office is to undertake all the necessary organizational measures to fulfill the needs of the Team.

The foreign members of a JIT have the right to be present when the investigative measures are carried out, but the BiH Team leader can decide otherwise, if there are reasonable grounds in accordance with the legislation of BiH.

The BiH Team leader can give the foreign team members the authority to conduct the entrusted investigative measures in accordance with the legislation of BiH, under condition that the competent foreign judicial authorities of the state that has seconded its member give an approval for it.

-
- f) the title of the documents and the name and the address of the recipient, if the Letter Rogatory refers to the service of court writs and other documents, and
 - g) other information that may be of significance in order to proceed upon request.

If there is a need for investigative measures to be carried out in the territory of Bosnia and Herzegovina, then the BiH members of the JIT can request the competent BiH national authority to carry out the investigative measure. The investigative measures shall be then carried out in accordance with the legislation of BiH.

If during the JIT investigation in the territory of BiH international legal assistance from a third country (non-JIT member) is needed, the competent judicial authority of BiH will request such international legal assistance.

The information gathered from the BiH national and foreign member of the JIT during the investigation, when this information is not accessible in another way, can be used by the BiH competent authorities for the following purposes and under strict conditions:

- for detection, investigation, and prosecution of the criminal offences for which the JIT was set up;
- for detection, investigation or prosecution of other criminal offences, under the condition that the country in the territory of which the information was obtained by the JIT members gives its consent;
- in order to prevent imminent and serious aggravation of public safety, without prejudice to the provision stated above, in case that later on there is a criminal investigation;
- for other purposes if so agreed between the parties to the JIT agreement.

Pursuant to Article 94 of The Law on International Legal Aid in Criminal Matters, the Minister of Justice of Bosnia and Herzegovina may give additional instructions for forming Joint Investigation Teams. However, thus far no official explanatory notes, ministerial decisions or administrative circulars relevant to JITs have been issued.

As already presented in the chapter on International Legal Framework, in Bosnia and Herzegovina the following international legal bases for establishing a JIT can be used and will have supremacy over national Laws for the issues they regulate:

- Article 20 of The Second Additional Protocol to The European Convention on Mutual Assistance in Criminal Matters, and

- Article 27 of The Police Cooperation Convention for South-east Europe (PCC SEE).

Additionally the use of the following provisions as an international legal basis is possible:

- Article 19 of The United Nations Convention against Transnational Organized Crime,
- Article 49 of The United Nations Convention against Corruption,
- Article 16 of The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and
- Article 25 of The Convention on Cybercrime.

Again, we must bear in mind that all instruments for international co-operation under these last four conventions are limited to the specific criminal offences covered by these conventions, while the use of all international conventions is limited to cooperation with the states that have adopted a respective convention.

CROATIA

In Croatia the legal basis for a JIT with EU Member States are Articles 71.a to 71.i of The State Attorney`s Office Act. For a JIT with non EU Member States, the legal basis are Articles 201 and 202 of the Criminal Procedure Code, Article 141 of the Croatian Constitution and the analogical use of Articles 71.a to 71.i of The State Attorney`s Office Act.

Croatia became an EU Member state on 1 July 2013, thus it accepted the whole “Acquis Communautaire”. However, Croatia has not yet ratified the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union – 2000 and the Council Framework Decision of 13 June 2002 on Joint Investigation Teams. However again, the relevant provisions of the said Convention and the said Framework Decision have been transposed into national legislation with the amendments to The State Attorney`s Office Act.

Article 71.a of The State Attorney`s Office Act prescribes that on the basis of a written agreement with the competent authorities of a foreign countries, a Joint Investigation Team can be set up for the purpose of conduct-

ing a coordinated joint investigation of a serious criminal offence, especially criminal offences regarding narcotics, human trafficking and terrorism, committed in Croatia and in a foreign country.

Article 71.b of The State Attorney's Office Act prescribes that the request to establish a Joint Investigation Team has to contain all the information of a Letter Rogatory in accordance with The Act on International Legal Assistance¹⁸ and a suggestion on the composition of the Joint Investigation Team. The request for the JIT can be sent directly to the authority that should participate in the JIT or to the Ministry of Justice. In accordance with The USKOK Law, the USKOK department for international cooperation and joint investigations is competent to appoint members of the USKOK to the joint investigations based on international agreements.

Article 71.c of The State Attorney's Office Act prescribes that the JIT operates in the territory of Croatia or in a foreign country such that when working in Croatia the JIT leader is a representative of the competent prosecutor's office or the Office for Fighting Corruption and Organized Crime (USKOK), the leader has to work in accordance with the Croatian legislation, while JIT members perform their duties in accordance with the guidance of the JIT leader and their competences. The Republic of Croatia provides all the necessary help for the work of a JIT in the territory of Croatia.

Article 71.d of The State Attorney's Office Act prescribes that seconded JIT members have the right to be present when investigative measures are carried out, but the Team leader can decide otherwise. Seconded JIT members can also carry out some investigative actions if the competent Croatian authority entrusts them with that capacity. Croatian JIT members

¹⁸ Act on international legal assistance - Article 8:

- 3) Unless an international treaty or this Act provide otherwise, the request for international assistance has to include:
1. The place of issuance and the name of the competent foreign authority sending the request.
 2. The legal basis for providing international legal assistance.
 3. The exact description of the requested international legal assistance and the reason for the request for international legal assistance.
 4. The legal name, a short factual and legal description of the criminal offence (unless the request relates to the service of court decisions, submissions, documents, etc.).
 5. Accurate data about and citizenship of the person in relation to whom international legal assistance is sought and his position in the procedure.
 6. In the case of service of court deeds, the type of deed being forwarded.

can ask Croatian authorities to carry out investigative measures and the investigative measures shall be then carried out in accordance with Croatian legislation.

Article 71.e of The State Attorney's Office Act prescribes that foreign JIT members can acquire from Croatian JIT members information regarding the designated investigation.

The Croatian prosecutors can use the information acquired through the JIT for the following purposes and under strict conditions:

- for detection, investigation, and prosecution of the criminal offences for which the JIT was established;
- for detection, investigation or prosecution of other criminal offences, under the condition that the country from which the information was obtained by the JIT members gives its consent;
- in order to prevent imminent and serious aggravation of public safety, without prejudice to the provision stated above, in case that later on there is a criminal investigation;
- for other purposes if so agreed between the parties of the JIT agreement.

Article 71.f of The State Attorney's Office Act prescribes that EU institutions can also participate in a JIT and the same rules apply for these members as for other JIT members, if not agreed otherwise.

Article 71.g of The State Attorney's Office Act prescribes that if during the investigation of a JIT in the territory of Croatia there is a need for international legal assistance from a third-party country, the competent judicial authority of Croatia will request such international legal assistance.

Article 71.h of The State Attorney's Office Act prescribes that evidence acquired in a foreign country within the framework of a JIT is lawful under the rule of reciprocity, unless the evidence is contrary to the principles of the domestic legal order.

Article 71.i of The State Attorney's Office Act prescribes that the Republic of Croatia bears the civil responsibility for damages inflicted by Croatian JIT members during JIT operations.

As already presented in the chapter on International Legal Framework, in Croatia the following international legal basis for setting up a JIT can be used and will have supremacy over national Laws for the issues they regulate:

- Article 20 of The Second Additional Protocol to The European Convention on Mutual Assistance in Criminal Matters.

Additionally, the use of the following provisions as an international legal basis is possible:

- Article 19 of the United Nations Convention against Transnational Organized Crime,
- Article 49 of the United Nations Convention against Corruption,
- Article 16 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and
- Article 25 of the Convention on Cybercrime.

Again, we must bear in mind that all instruments for international co-operation under these last four conventions are limited to the specific criminal offences covered by these conventions, while the use of all international conventions is limited to cooperation with the states that have adopted the respective convention.

KOSOVO

In Kosovo the legal basis for a JIT are Articles 98 and 97 of the Law on International Legal Cooperation in Criminal Matters (LILCCM) with additional regard to Articles 1 and 2 of the same Law.

Articles 1 and 2 of the Law on International Legal Cooperation in Criminal Matters define international legal assistance in criminal matters as every kind of assistance requested by foreign countries or by Kosovo with the intention to support investigative and judicial procedures in criminal cases. At the same time it gives ground for international legal assistance in the absence of an international agreement between Kosovo and a foreign country by the use of the principles of reciprocity.

In accordance with Article 97 of the LILCCM Joint Investigation Teams are to be in accordance with The Second Additional Protocol of The European Convention on Mutual Assistance in Criminal Matters of 1959.

The Chief State Prosecutor's Office is competent to decide on requests for setting up a Joint Investigation Team. In accordance with Article 219 of The Criminal Procedure Code the Minister of Justice shall have final approval of all international requests made to foreign governments.

Article 98 of the LILCCM provides that the competent authorities of Kosovo, by mutual agreement with one or more countries, may form a Joint Investigation Team for a specific purpose (difficult and demanding investigations which are related to other states, several states are conducting investigations into criminal offences and the circumstances require coordinated and joint action among the states involved) and for a limited period of time for the purpose of carrying out criminal investigations in one or more of the states forming the team. The period may be extended by agreement between the parties.

Joint Investigation Teams may be formed at the request of any of the states involved.

Members of a Joint Investigation Team, which have been seconded to the Team by their states, may be authorized to conduct investigations in the territory of Kosovo, under the leadership of the Kosovo Team member, in accordance with the agreement between Kosovo and the seconding state(s).

Members of a Joint Investigation Team shall be entitled to be present at any investigative measure taken in Kosovo. However the leader of a Team may, for particular reasons in accordance with national law, decide otherwise.

National members of a Joint Investigation Team may, in accordance with national law and within the limits of their competence, provide the Team with information available in Kosovo for the purpose of the criminal investigations conducted by the Team.

When within the JIT's investigation investigative measures are to be taken in Kosovo, national JIT members may request the competent national authority to execute these measures. In Kosovo, these measures shall be considered under the conditions which would apply if they were requested within national investigations.

When the information has been lawfully obtained by a national member of a Joint Investigation Team, and this information is otherwise not available

to national authorities, it may still be used for the following purposes and under strict conditions:

- for detection, investigation, and prosecution of the criminal offences for which the JIT was established;
- for detection, investigation or prosecution of other criminal offences, under the condition that the country from which the information was obtained by the JIT members gives its consent;
- in order to prevent an immediate and serious threat to public security;
- for other purposes if so agreed between the parties of the JIT agreement.

Persons other than representatives of the competent authorities of the JIT member countries may be allowed to take part in the activities of the Team. These JIT participants do not have the same rights as JIT members, unless it has been expressly agreed otherwise.

In accordance with Article 102 of the Law on International Legal Cooperation in Criminal Matters, expenses incurred during the provision of international legal cooperation within the territory of Kosovo shall be supported from the budget of Kosovo.

There is no official international legal base for setting up a JIT with Kosovo.

MONTENEGRO

In Montenegro the legal basis for a JIT is Article 42 of the Law on Mutual Legal Assistance in Criminal Matters (LMLACM). Pursuant to Article 43 of this Law, the Ministry responsible for the judiciary shall deliver and receive Letters Rogatory requesting establishment of a JIT.

Exceptionally, in cases when provided for under an international agreement or where there is reciprocity, Paragraph 3 of Article 4 of the LMLACM allows the national judicial authority to directly or indirectly deliver and receive Letters Rogatory to and from the competent foreign judicial authority. In such cases, a copy of the Letter Rogatory must be given to the Ministry responsible for the judiciary.

Article 2 of the LMLACM stipulates that international legal assistance shall be provided in accordance with an international agreement or on the basis of reciprocity.

Paragraph 2 of Article 43 of the said Law stipulates that the permissibility and the method of enforcement of the action requested by a Letter Rogatory (not explicitly excluding establishment of a JIT) shall be decided by the court in accordance with domestic law and international agreement. This provision suggests that the decision whether and how to establish a JIT in a concrete case should be taken by the court. Such procedure is in contradiction with prosecutor's authority to decide (also) on (the modality of) the investigation he/she will conduct.

According to the additional explanation of the Ministry of Justice of the Republic of Montenegro, given for the purpose of this Handbook, in practice the competent national authority that authorizes or requests the establishment of a JIT is the competent state prosecutor's office. However, the Law reads as presented in the previous paragraph.

Article 44 of the LMLACM provides for the possibility that the domestic judicial authority may approve the presence of a foreign official person who has legal interest in the enforcement of the action requested. The foreign authority shall be informed of the place and the time of the enforcement of the action requested.

Article 45 of the LMLACM prescribes that the evidence gathered in a foreign country is admissible before Montenegrin courts under condition that it has not been acquired with actions that violate the principles of the domestic (Montenegrin) judicial system and the generally accepted principles of the international law.

Article 46 of the LMLACM excludes mutual legal assistance in cases of military criminal offences.

Article 47 of the LMLACM gives ground for refusal of mutual legal assistance (and also Joint Investigation Teams) for political criminal offences and if the execution of the Letter Rogatory of the requesting state is likely to prejudice the sovereignty, constitutional order, security or other essential interests of Montenegro.

Above all, the legal basis for Joint Investigation Teams derives from Article 9 of the Constitution of Montenegro. The said article states that the ratified and published international agreements and generally accepted rules of international law shall form an integral part of the internal legal order, shall

have supremacy over the national legislation and shall be directly applicable when they regulate relations differently from the internal legislation. This presents the legal basis for the direct use of provisions on Joint Investigation Teams in the conventions ratified by the Republic of Montenegro.

Consequently and as already presented in the chapter on International Legal Framework, in Montenegro the following international legal basis for setting up a JIT can be used and will have supremacy over national Laws for the issues they regulate:

- Article 20 of The Second Additional Protocol to The European Convention on Mutual Assistance in Criminal Matters, and
- Article 27 of the Police Cooperation Convention for South-east Europe (PCC SEE).

Additionally the use of the following provisions as an international legal basis is possible:

- Article 19 of the United Nations Convention against Transnational Organized Crime,
- Article 49 of the United Nations Convention against Corruption,
- Article 16 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and
- Article 25 of the Convention on Cybercrime.

Again, we must bear in mind that all instruments for international co-operation under these last four conventions are limited to the specific criminal offences covered by these conventions, while the use of all international conventions is limited to cooperation with the states that have adopted the respective convention.

It is recommended that the Republic of Montenegro further regulates the use of JITs also at the national level as there are aspects of such cooperation that at the present time remain unclear, such as the competent authority for establishing a JIT, definition of criminal offences for which a JIT can be set up, the composition of the team (members and leaders), the elements which have to be included in a JIT agreement, special conditions of the investigative measures conducted in the country, information and evidence exchange rules, etc. This way it will facilitate the establishment of a JIT with

the states that have not adopted any of the above mentioned international Conventions.

SERBIA

In Serbia, in cases where no ratified international treaty exists or certain matters are not regulated by it¹⁹, the legal basis for a JIT is Article 96 as read with Article 83 of the Law on Mutual Assistance in Criminal Matters.

No official explanatory notes, ministerial decisions or administrative circulars relevant to JITs were available to us for the purposes of this Handbook.

The Law on Mutual Assistance in Criminal Matters does not provide for specific formal requirements for establishing a JIT, but existence of a general justification deriving from the circumstances of the specific case. There are no specific formal requirements referring to the agreement and/or request to establish a JIT. It is only required that the competent authority of the Republic of Serbia, which is the Minister of Justice and Public Administration, forms an agreement with the competent authority of a foreign country²⁰.

Under the provisions of Articles 16 and 194 of the Constitution of the Republic of Serbia and Article 1 of the Law on Mutual Assistance in Criminal Matters, the following provisions of the international conventions can be used as a legal ground for establishing a JIT, and will have supremacy over national Law on Mutual Assistance in Criminal Matters for the issues they regulate:

- Article 20 of The Second Additional Protocol to The European Convention on Mutual Assistance in Criminal Matters, and
- Article 27 of the Police Cooperation Convention for South-east Europe (PCC SEE).

In addition, the following provisions can be considered as a possible legal ground to establish a JIT:

- Article 19 of The United Nations Convention against Transnational Organized Crime,

¹⁹ Article 1 of the Law on Mutual Assistance in Criminal Matters

²⁰ Joint investigative teams, Article 96 of the Law on Mutual Assistance in Criminal Matters

- Article 49 of The United Nations Convention against Corruption,
- Article 16 of The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and
- Article 25 of The Convention on Cybercrime.

Again, we must bear in mind that all instruments for international co-operation under these last four conventions are limited to the specific criminal offences covered by these conventions, while the use of all international conventions is limited to cooperation with the states that have adopted the respective convention.

It is recommended that the Republic of Serbia further regulates the use of JITs also at the national level as there are some aspects of such cooperation that currently remain undefined, for instance the composition of the Team (members and leaders), the elements which have to be included in a JIT agreement, special conditions of the investigative measures conducted in the country, information and evidence exchange rules, etc. In addition, this way establishment of a JIT with the states that have not adopted any of the enumerated international conventions will be facilitated.

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

In the FYR Macedonia the legal basis for a JIT is Article 38 as read with Article 15 of the Law on International Cooperation in Criminal Matters. Article 15, Paragraph 8 in Chapter II of this Law regulates the term international legal assistance that, among other things, scopes establishing joint investigation teams. According to Article 38 of the said Law, the national bodies competent for detection and prosecution of corruption and organized crime, together with foreign competent bodies, may be a part of a joint investigation team. A JIT must be established for a particular purpose and for a determined time period; with consent of the JIT member states it is possible to extend the initial time frame of a JIT.

The Ministry of Internal Affairs of the Republic of Macedonia has issued a Guideline for Criminal Investigations²¹. In this guideline there is a spe-

²¹ Information acquired from a questionnaire on JIT in the framework of the JIT THB project.

cial section titled “International joint crime investigations”, which contains provisions on the procedure of this type of investigations.

Pursuant to Articles 39 and 40 of the Criminal Procedure Code and to Article 36 of the applicable Law on Public Prosecution, the competent national authority that can authorize or request the establishment of a JIT is the Public Prosecutor²². Article 36 regulates that the Public Prosecutor of the Republic of Macedonia within the international agreements realizes direct cooperation with public prosecutors from other countries especially in the field of preventing and prosecuting organized crime and other difficult forms of crimes through direct exchange of data, direct cooperation, education, specialization of staff and other methods of cooperation.

Criminal liability of JIT members seconded to the FYR Macedonia is provided by Article 39 of the Law on International Cooperation in Criminal Matters, and it is the same as criminal liability of national members of a JIT, either for offences committed against or by members.

As already presented in the chapter on International Legal Framework, in the former Yugoslav Republic of Macedonia the following provisions of the international conventions can be used as a legal ground for establishing a JIT and will have supremacy over national Laws for the issues they regulate:

- Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, and
- Article 27 of the Police Cooperation Convention for South-east Europe (PCC SEE).

Additionally, the use of the following conventions as an international legal basis is possible:

- Article 19 of the United Nations Convention against Transnational Organized Crime,
- Article 49 of the United Nations Convention against Corruption,
- Article 16 of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, and
- Article 25 of the Convention on Cybercrime.

²²Based on Article 36 of the Act on Public Prosecution

The applicability of the last four conventions is limited to strictly determined criminal offences covered by these conventions, while the applicability of all international convention is being limited to the states that have adopted the respective convention.

The former Yugoslav Republic of Macedonia has experience with working in a JIT with EU Member States.

It is recommended that the FYR Macedonia further regulates the use of JITs also at the national level as there are some aspects of such cooperation that at the present time remain unclear, for instance the composition of the Team (members and leaders), the elements which have to be included in a JIT agreement, information and evidence exchange rules, etc. This way establishment of a JIT with the states that have not adopted any of the enumerated international conventions will be facilitated. In this respect the existing experience with a JIT should be a valuable advantage.

COOPERATION WITH EUROJUST²³

In accordance with Article 1(12) of the European Union Framework Decision on JITs, as well as the corresponding provisions of the 2000 European Union Mutual Legal Assistance Convention, EUROJUST and EUROPOL can participate in JITs, separately as well as jointly. Furthermore, Article 6 of the Cooperation Agreement between EUROPOL and EUROJUST enables both parties together, at the request of one or more EU Member States, to participate in the establishment of a JIT, and support national judicial and law enforcement authorities in the preliminary discussions concerning the establishment of JITs.

To this effect, EUROPOL supports the discussion between EU Member States and Third States (non-EU members) by organizing and funding, upon a justified request, the mission of experts to these operational meetings.

According to the EUROJUST Decision, National Members to EUROJUST shall be entitled to participate in JITs concerning their own states. However, an EU Member State may make the participation of its National Member subject to the agreement of the competent national authority. National Members, their deputies or their assistants shall be invited to participate in

²³Detailed provisions of the EUROJUST legal framework can be found in Appendix 1

any JIT involving their state and for which Community funding is provided under the applicable financial instruments. Each EU Member State shall define whether the National Member participates in the JIT as a national competent authority or on behalf of EUROJUST.

EUROJUST also has the capacity to ask the competent authorities in EU Member States to establish a JIT. It can be done either through the National Member of the concerned EU Member State according to Article 6 of the EUROJUST Decision, or by the College of EUROJUST according to Article 7 of the EUROJUST Decision.

Regarding the involvement of Third States, EUROJUST can cooperate with them and support them on the basis of the *ad hoc* agreement between EUROJUST and the Third State involved according to the EUROJUST Council Decision²⁴. Under such agreement EUROJUST can exchange data, provide assistance, post liaison magistrates and coordinate the execution of requests for judicial cooperation, meaning also the establishment of a Joint Investigation Team.

Some of the Beneficiaries have already entered into a special agreement with EUROJUST under which both sides committed to an even stronger cooperation in the field of combating serious transnational crime. With such an agreement the Beneficiaries received the knowledge, experiences and support from EUROJUST. Thus far such an agreement has been concluded with Croatia²⁵ and the former Yugoslav Republic of Macedonia²⁶.

EUROPOL's support to JITs is provided for by Articles 5 and 6 of the Council Decision on EUROPOL. Given that EUROPOL is a law enforcement organization, the focus is naturally more on police-type support, such as:

- providing an international picture, linking related cases and investigations,
- identifying appropriate support, be it analytical, on the spot with technical and forensic expertise, or logistics, via the operational centre for the JIT,

²⁴ Articles 26a, 27, 27a and 27b of the Eurojust Council Decision (2009)

²⁵ Now already an EU Member State so this agreement (Agreement between Eurojust and the Republic of Croatia (2007)) is no longer relevant.

²⁶ Agreement on cooperation between Eurojust and the former Yugoslav Republic of Macedonia (2008)

- helping with the exchange of information via secure channels of communication established with Member States and all operational cooperation partners, and
- contributing to the drafting of the JIT agreement, arrangements and help with the evaluation and lessons learnt after a JIT has been closed.

(1) Contacting the foreign authorities

After finishing the first two steps and after deciding to move forward in the process of establishing a Joint Investigation Team, it is best (if possible) to informally contact the authorities from the other potential JIT member countries. For this purpose the contacts established during previous cooperation or in different international, regional and bilateral or multilateral seminars can be used. The contacts of the relevant authorities of the EU Member States and of some Third-Party States (non-EU Member States) can be acquired through EUROJUST and EUROPOL. In this first contact it is necessary to explain the so far discovered facts and the reasons for international cooperation. **Foreign prosecutors must always be addressed with a clear purpose and well-articulated questions!** Our reasons for contacting a foreign prosecutor must be made concrete and practical. Usually one of the first questions for the foreign authority would be whether there is an already ongoing criminal investigation in the foreign country and, if so, who is in charge of it.

The contacted authority should provide feedback with information and explain the possibilities of a JIT in their country.

Early communication will enable the prosecutor to make a decision to either start the process of establishing a JIT and sending the request for setting up a JIT, or not.

Mutual trust is the best and only proper basis for good international cooperation!

(2) Request for establishing a JIT

Upon receiving the informal confirmation that the other country(s) is (are) interested in establishing a JIT, the prosecutor has to address the foreign authorities more formally with the request to establish a JIT. The request

must include all relevant information already given informally and the motion to formally begin the process of establishing the JIT.

After the request for establishing the JIT is considered by all relevant authorities in all countries involved, it is recommended that investigators, prosecutors and/or judges from the potential JIT member countries meet and discuss the matter at the earliest opportunity before a formal proposal and agreement are drafted. As some countries have implemented domestic administrative rules which, for example, stipulate notification of the competent ministries in the preparatory stage, the early involvement of all competent persons is of the utmost importance so as not to jeopardize or delay the whole process. In such a meeting especially the key elements have to be agreed upon, such as: definition of the case, definition of the time frame, the methods of cooperation, JIT parties, funding, and all other components described in the JIT formal agreement section (of which, for instance, the issue of translation has proven to be possibly a very serious challenge).

While negotiating the agreement, the core objective of the JIT should be borne in mind, along with differences in legal procedures, rules of evidence and the authority competent for ordering certain coercive measures.

(3) Drafting the formal agreement²⁷

In the meeting described above the participants should also decide on the authority or country that will prepare the draft JIT agreement. The draft version of the JIT agreement should be grounded on the information exchanged and it should take into consideration all given national legislations.

A JIT agreement cannot override domestic law and obligations.

The draft agreement should have all the necessary components listed in the Formal Agreement section of this Handbook.

The draft should then be disseminated among the potential JIT member countries and authorities, which should give their final comments and suggestions. The authority that prepared the draft should collect the suggestions and amend the draft version until all parties are satisfied with the text.

²⁷ An Example JIT agreement and a Model JIT agreement can be found in Appendix 3

However, everybody involved should strive for the text of the agreement to present the best balance between precision and efficiency. Lengthy discussions about every detail can hardly result in a fruitful joint criminal investigation.

(4) Signing the agreement

When all JIT parties are satisfied with the text of the JIT agreement the formal procedure of establishing a JIT can be carried out.

The JIT agreement is an international contract and has to be considered as such. Therefore, this phase should strictly follow formal rules, especially the rules on the competent authority for signing the agreement.²⁸

The formal signing of the JIT agreement can be done in three different ways:

- The JIT agreement is first signed by one country and then sent to another country that will participate in the JIT. The receiving country will sign the agreement and send it to the next participating country. This process continues until all the participating countries have signed the agreement.
- Or: the representatives of all competent authorities from all the participating countries gather in a formal meeting and sign the agreement at the same time.
- Or: a mixture of both ways described above.

The decision on the modality of the signing depends on the will of the participating countries, but in any case the participating parties have to make sure that the process of signing the JIT agreement does not take too long.

Another (additional) country can also join the JIT agreement after the JIT was already set up. Upon the consent of all JIT members the newly participating country signs the JIT agreement or an annex to the JIT agreement. The procedure and form is decided by the countries already participating in the JIT.

²⁸ Meaning: Albania (Ministry of Justice), Bosnia and Herzegovina (the competent prosecutor office), Croatia (the competent prosecutor office), Kosovo (Ministry of Justice), Montenegro (the competent prosecutor office), Serbia (the Public prosecutor's office), Macedonia (Public prosecutor)

(5) Carrying out the agreement – Operational Action Plan

When the formal JIT agreement is signed by all the participating countries the JIT can start with its work.

One of the first priorities should be an initial meeting of all the JIT members and other participants. It is highly recommended that in this meeting an action plan be adopted.

– Operational Action Plan

An Operational Action Plan is a document in which it is foreseen how the work in a JIT will be carried out, a timeframe of every individual action, and which JIT member shall conduct which action. Such an Operational Plan will benefit the Joint Investigation Team greatly as all of its members will know when, where and which investigative measures will take place. Therefore, the members of the JIT can adjust their work and plans, and be prepared for the upcoming events. With the operational plan the work of the JIT is clearly divided and the JIT members know exactly who is responsible for which part of the joint investigation.

The process of drafting the Operational Plan helps the Joint Investigation Team to adequately foresee the time needed for the investigation. Consequently, this enables the Team to stay inside the prescribed timeframe in the course of the investigation, and contributes to the timeliness of the specific actions and work of individual JIT members and the Team as a whole.

In addition, by following the Operational Plan JIT members will more easily keep their focus on the final goal and thus avoid wasting their time on matters of secondary importance. The Operational Plan deals with a broad spectrum of important operational topics and further defines the aspects of the JIT, which ultimately contributes to a well organized and clearly defined cooperation where all its members know what to expect from each other.

Although a written Operational Action Plan is not necessary²⁹ for the work of a JIT, it is highly recommended for the reasons outlined in the text above. In addition, all JIT members having the same document with the

²⁹ The only thus far existing Macedonian JIT did not have a written Operational Action Plan.

same information leads to less misinterpretations or forgetfulness of the operational decisions already agreed upon.

The absence of a written Operational Action Plan does not mean that a JIT will (or could) operate without a form of operational plan. Every team, wanting to conduct teamwork towards a successful result, needs to agree on a kind of plan and on a timeframe of specific actions that will be undertaken by the group as a whole and/or by certain individual members. A Joint Investigation Team is no exception. Therefore, the following suggestions can be used as a reminder for a formal or an informal Operational Plan made by Joint Investigation Teams.

An Operational Action plan should include:

- description of the purpose of the JIT;
- identification of the location(s) where the JIT is likely to operate, description on how the JIT will be managed and the investigation conducted, taking note of national legislation, guidelines and procedure;
- description of the role of members and/or participants of the JIT, identifying and describing the different operational roles and tasks of each member and/or participant in the JIT;
- list of special or specific measures that are to be implemented, identifying and describing investigative activity that requires special measures or procedure e.g. child suspects, victims, dangerous/hostile working environment, etc.;
- specification of operational and investigative powers, identifying and describing special operations/investigative techniques that will be employed during the investigation i.e. intrusive surveillance, informants, undercover officers, communication intercepts etc., and related legislation/procedure;
- description of the way of communication and information exchange, determining how information will be exchanged, what will be the procedures for communication, the language of communication, means for a secure exchange of information and storage of sensitive information;
- decision on intelligence collection, assessment and tasking;
- decision on how/if any financial investigation will be carried out (following the proceeds from crime);

- specification of the evidence gathering (identifying the legislation, guidelines, procedure etc. which must be taken into account including the responsible agency/individual, requirement to translate evidence);
- specification of what has been agreed upon for prosecution (who will prosecute whom, what and when);
- comments about possible testimony of JIT members before courts (identifying the likelihood of a JIT member to be summoned to the Court, and the respective national procedures that would apply in such cases);
- the ways and circumstances of disclosure of information about the investigation, identifying the rules and procedures for all jurisdictions where the JIT is likely to operate;
- a frame of operational and strategic meetings (identifying and describing the meetings that will take place, their frequency and participants) and
- provisions on administration and logistics (issues concerning administration, translations, equipment such as office accommodation, vehicles, IT equipment or any other technical equipment, resources, personnel, media, confidentiality issues, etc.).

On the basis of such an Action Plan the investigative work can finally start and actions can be carried out. The JIT leader or leaders must supervise the work and make sure that the Action Plan and work take account of any relevant change of facts.

In addition, the JIT leader or leaders must make regular and constant internal evaluations.

Activities of the JIT must be planned and executed as swiftly as possible and appropriate in every concrete case.

IV. CONCLUSION

A Joint Investigation Team is a rather new tool for international cooperation in investigating cross-border crimes. The main advantages of investigations carried out in a JIT are:

1. synchronized direction in the territories of all JIT Member Countries, which results in the best possible timing, manner and sequence of the investigative actions carried out;
2. the actual power (be it formal or not) of all JIT members to be directly or indirectly involved in investigative actions in another JIT Member Country; this results firstly in increased personal engagement of every JIT member and consequently in his/her personal sense of accountability for the final success of the investigation, and secondly it enables fast or even on-the-spot exchange of relevant information, which again leads to better synchronization of actions carried out;
3. working in a team stimulates team spirit among JIT members; it forces them to rely on one another and, therefore, to be more open and sincere in their intents; mutual trust is then an inevitable consequence.

Finally, all above listed advantages lead to an optimal outcome of the concrete criminal investigation. This is at the same time the main goal and the main advantage of every JIT.

A successful fight against cross-border organized crime must be an irrevocable commitment of each state governed by the rule of law. A Joint Investigation Team is a modern tool for international cooperation in criminal matters that has many times proven to be efficient. Let's use it!

APPENDIX 1

NATIONAL LEGAL FRAMEWORK

ALBANIA

Criminal procedure code (Consolidated version as of October 2010)

Article 10

Application of international agreements

1. Relations with foreign authorities in criminal matters shall be governed by international agreements, ratified by Albania, generally recognized principles and norms, and also provisions of this Code.

TITLE X

JURISDICTIONAL RELATIONS WITH FOREIGN AUTHORITIES

CHAPTER II

INTERNATIONAL ROGATORY LETTERS

SECTION I

ROGATORY LETTERS FROM ABROAD

Article 505

Ministry of Justice Powers

1. The Minister of Justice decides to grant support to a letter of application of a foreign authority regarding communications, notifications and the taking of proofs, except when he evaluates that the requested actions impair the sovereignty, the security and important interests of the state.
2. The Minister does not grant support to the letter of application when it is certain that the requested actions are prohibited expressly by law or contradict the fundamental principles of the Albanian rule of law. The Minister does not grant support to the letter of application when there are motivated reasons to think that

the considerations regarding race, religion, sex, nationality, language, political beliefs or the social state may cause a negative influence to the performance of the process, and when it is certain that the defendant has expressed freely his consent for the letter of application.

3. In cases the letter of application has as subject the summons of the witness, expert or a defendant before a foreign judicial authority, the Minister of Justice does not grant support to the letter of application when the requesting state does not give sufficient guarantee for the un-encroachment of the cited person.

4. The Minister has the right to not grant support to the letter of application in case the requesting state does not give the necessary guarantee of reciprocity.

**Law on jurisdictional relations with foreign authorities in criminal matters
(Official Gazette No. 181/2009)**

LETTERS ROGATORY

Article 13

Types of letters rogatory and field of application

1. The types of letters rogatory are:

- a) a notification of the act of summons to a person under investigation, defendant, witness, expert, sentenced person or other parties in the criminal proceeding;
- b) a notification of the orders, decisions of judicial authorities and of other necessary documents related to the criminal proceeding in the requesting state;
- c) measures of property security for purposes of a criminal proceeding;
- ç) the questioning of a person under investigation, defendant, sentenced person, witness and expert, even through holding a hearing session by means of telephonic and audio-visual connections;
- d) the temporary transferring of detained persons for the purpose of questioning them;
- dh) other investigative actions that are not prohibited by law.

BOSNIA AND HERZEGOVINA**Law on Mutual Legal Assistance in Criminal Matters
(Official Gazette No. 53/09,58/2013)
(Federation of Bosnia and Herzegovina)****GENERAL PROVISIONS****Article 1
(Scope)**

- (1) This Law shall govern the manner and procedure of mutual legal assistance in criminal matters (hereinafter: mutual legal assistance), unless otherwise provided by an international treaty or if no international treaty exists.
- (2) Mutual legal assistance, for the purpose of this Law, shall be provided in all procedures with respect to criminal acts the criminal prosecution of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting State.
- (3) Mutual legal assistance, in accordance with this Law, may also be afforded in misdemeanor proceedings brought by the courts or administrative authorities, in respect of acts which are punishable under the Bosnia and Herzegovina law by imprisonment or fine, and where in such proceedings the decision of the administrative authority may give rise to proceedings before a court having subject matter jurisdiction in criminal matters.
- (4) Mutual legal assistance is also afforded in respect of the international courts and other international organizations whose member Bosnia and Herzegovina is, if so stipulated in an international treaty.

**Article 24³⁰
(Joint Investigation Teams)**

- (1) If the circumstances of the specific case so justify, joint investigation teams may be formed by an agreement between the relevant Prosecutor's Office in Bosnia and Herzegovina and the relevant authorities of a foreign State for the purpose of conducting the investigation in the territory of one or more contracting states which have formed the joint team for a limited time.

³⁰ Unofficial translation into English

(2) The agreement shall specify: team composition, tasks, authorities, and time period for which the team has been formed. Upon the approval of the signatories of the agreement, the team may continue with its work even after the deadline specified in the agreement expired.

(3) The request for the formation of a joint investigative team has to contain data referred to in Article 3 of this Law, and any interested party may file it. The request shall be filed with the competent prosecutor's office in Bosnia and Herzegovina through the Bosnia and Herzegovina Ministry of Justice, including the proposed team composition. In the same way, the prosecutor of the competent prosecutor's office in Bosnia and Herzegovina files such a request, in case of a need, with the competent foreign judicial authority.

(4) The team shall be formed in the territory of one of the signatories of the agreement, in whose territory the execution of investigative measures is expected. The request shall include the proposal of the team composition.

(5) A Joint investigative team may be established when:

- a) Investigation of the criminal offenses, conducted in one of the States, requires a complex and comprehensive investigation, related to the other States;
- b) Several parties conduct investigation of the criminal offenses, whose nature requires coordinated and harmonized actions by the States involved;
- c) Investigative actions have to be carried out in Bosnia and Herzegovina and another state(s) simultaneously;

(6) The joint investigative team will act in the territory of Bosnia and Herzegovina under the following general terms:

- a) The team leader shall be the prosecutor of the competent prosecutor's office in Bosnia and Herzegovina;
- b) The team shall carry out investigative actions in lien with the criminal legislation in Bosnia and Herzegovina, while national and foreign team members of the joint investigative team will execute their tasks under the leadership of the team leader;
- c) The competent prosecutor's office in Bosnia and Herzegovina shall undertake all necessary organizational measures required for the operation of the team.

(7) Foreign team members of the joint investigative team shall be entitled to witness the execution of the investigation in the territory of Bosnia and Herzegovina.

The team leader may decide otherwise under specific conditions and in line with the legislation in Bosnia and Herzegovina.

(8) The team leader may entrust the foreign members of the joint investigative team with powers to take certain investigative measures, in line with the legislation in Bosnia and Herzegovina and with permission of the competent foreign judicial authorities of the State that dispatched its members.

(9) If the joint investigative team has to carry out investigative actions in the territory of Bosnia and Herzegovina, national team members may ask the competent authorities in Bosnia and Herzegovina that they take over these actions. Such actions will be carried out in line with the laws in Bosnia and Herzegovina.

(10) If the joint investigative team needs legal assistance from a third State during the investigation carried out in the territory of Bosnia and Herzegovina, a competent judicial authority will submit a Letter Rogatory.

(11) Information obtained by national or foreign team members during the work in the joint investigative team may be used by competent national judicial authorities, unavailable to them otherwise, for the following purposes:

- a) the purpose for which the team was formed;
- b) to detect, investigate or prosecute other criminal offenses, upon approval of the State whose foreign members had access to such information;
- c) to prevent direct or serious endangerment of public safety, and without prejudice to subparagraph b) if the criminal investigation is instigated at a later time;
- d) for other purposes if so agreed by the parties that formed the team.

FINAL PROVISIONS

Article 93

(Cessation of validity of the provisions of the Criminal Procedure Code of Bosnia and Herzegovina)

(1) By this Law's coming into effect, the provisions under Chapter XXX and Chapter XXXI of the Criminal Procedure Code of Bosnia and Herzegovina shall become ineffective.

(2) The provisions of the Criminal Procedure Code of the Entities and the Brčko District of Bosnia and Herzegovina pertaining to the international legal assistance

procedure shall be harmonised with the provisions of this Law within six months as of the date of coming into force of this Law.

Article 94³¹

(Instructions issued by the Bosnia and Herzegovina Minister of Justice)

The Bosnia and Herzegovina Minister of Justice shall issue instructions, which regulate the procedures of the competent authorities of Bosnia and Herzegovina in contact with Eurojust, in terms of Article 3 of this Law.

The Bosnia and Herzegovina Minister of Justice may issue, in accordance with Article 10 of this Law, the Instructions for establishment of joint investigative teams.

**Law on the Court of BiH
(Official Gazette No. 49/09, 74/09, 97/09)**

Article 7

Criminal Jurisdiction

(1) The Court has jurisdiction over criminal offences defined in the Criminal Code of Bosnia and Herzegovina and other laws of Bosnia and Herzegovina.

(2) The Court has further jurisdiction over criminal offences prescribed in the Laws of the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko District of Bosnia and Herzegovina when such criminal offences:

a) endanger the sovereignty, territorial integrity, political independence, national security or international personality of Bosnia and Herzegovina;

b) may have serious repercussions or detrimental consequences to the economy of Bosnia and Herzegovina or may have other detrimental consequences to Bosnia and Herzegovina or may cause serious economic damage or other detrimental consequences beyond the territory of an Entity or the Brčko District of Bosnia and Herzegovina.

(3) The Court shall have further jurisdiction as follows:

a) to take a final and legally binding position on the implementation of Laws of Bosnia and Herzegovina and international treaties on request by any court of the Entities or any court of the Brčko District of Bosnia and Herzegovina entrusted to implement the Law of Bosnia and Herzegovina;

³¹ Unofficial translation into English

- b) to issue practice directions on the application of the substantive criminal law of Bosnia and Herzegovina falling within the competence of the Court on genocide, crimes against humanity, war crimes and violations of the laws and practices of warfare and individual criminal responsibility related to those crimes, ex officio or at the request by any court of the Entities or of the Brčko District of Bosnia and Herzegovina.
- c) decide any issue relating to International and inter-Entity criminal law enforcement, including relations with Interpol and other international police institutions, such as decisions on the transfer of convicted persons, and on the extradition and surrender of persons, requested from any authority in the territory of Bosnia and Herzegovina, by foreign States or International Courts or Tribunals;
- d) decide any conflict of jurisdiction between the courts of the Entities, between the Courts of the Entities and the Courts of the Brčko District of Bosnia and Herzegovina and between the Court of BiH and any other Court;
- e) decide on the reopening of criminal proceedings for criminal offences prescribed in the Laws of Bosnia and Herzegovina.

**Law on the Prosecutors Office of BiH
(Official Gazette No. 49/09, 97/09)**

**Article 12
Criminal Jurisdiction**

- 1.) The Prosecutor's Office shall be the authority competent to investigate the offences for which the Court of Bosnia and Herzegovina is competent, and to prosecute offenders before the Court of Bosnia and Herzegovina, in accordance with the Criminal Procedure Code of Bosnia and Herzegovina and other applicable laws.
- 2.) The Prosecutor's Office shall be the authority competent to receive requests for international legal assistance in criminal matters as stipulated by law, multilateral and bilateral treaties and conventions, including requests for extradition or surrender of persons sought, from Courts or authorities within the territory of Bosnia and Herzegovina and from other States or International Courts or Tribunals. Where a court decision is necessary to carry out the request, the Prosecutor's Office shall be competent to make application for such decision.
- 3.) The Special Departments shall inter alia undertake measures defined by law with a view to investigating and prosecuting the perpetrators of War Crimes, Or-

ganized Crime, Economic Crime and Corruption offences as provided by Law, when provision is made in the said laws that the Court of Bosnia and Herzegovina has such jurisdiction;

CROATIA

Criminal procedure code

(Official Gazette No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13)

Article 201

Under the conditions provided for in the international agreement and a special law, the joint investigation may be undertaken for criminal offences provided for by this agreement and a special law.

Article 202

(35) Joint investigation is meant as course of action of the police, state prosecutor and the court in accordance with international law

Croatian Constitution

(Official Gazette No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10)

Article 134

International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.

Law on State Attorney's Office³²
(Official Gazette No. 76/09, 153/09, 116/10, 145/10, 57/11, 130/11,
72/13)
(State Attorney's Office Act)

e. Joint investigations
Article 71.a

(1) The Republic of Croatia State Attorney's Office may, based on the agreement with competent authorities of one or more Member States, form a joint investigation team for the purpose of conducting joint investigation of the criminal offenses committed in the territory of Republic of Croatia and one or more Member States. Joint investigation team compositions shall be defined in the agreement.

(2) A Joint investigation team may be formed:

1. For serious and complex investigations of criminal offenses committed in the territory of the Republic of Croatia, involving perpetrators related to individuals from other Member States;

2. When the competent state attorney's office in the Republic of Croatia and competent authorities of one or more Member States conduct investigation of criminal offenses for which circumstances require harmonized and coordinated joint engagement of competent authorities of the States involved.

(3) If requirements referred to in paragraph 2 of this Article have been met, so that they constitute grounds for filing request with another State to form a joint investigation team, particularly in cases of trafficking in narcotics and people, and the acts of terrorism.

Article 71.b

A request to form a joint investigation team, delivered to the Member State or Member States, in addition to the data referred to in Article 8(3) of the Law on Mutual Assistance in Criminal Matters, has to contain the proposal of the joint investigation team composition.

Article 71.c

The joint investigation team shall operate in the Republic of Croatia, that is, in the territory of Member States, whose members form part of that investigative body, in accordance with the following general requirements:

1. If the joint investigation is conducted in the Republic of Croatia, the leader of the joint investigation team shall be a representative of the competent district state

³² Unofficial translation into English

attorney's office or Bureau for suppression of corruption and organized crime (hereinafter Bureau),

2. The State attorney or Bureau director, that is the deputy of the Bureau director or district state attorney, being the leader of the joint investigation team, shall act in accordance with the valid laws of the Republic of Croatia,

3. Joint investigation team members shall execute their tasks based on instructions of the leader referred to in paragraph 2 of this Article, within the powers defined by their authorities in the agreement on establishment,

4. The Republic of Croatia shall ensure necessary conditions for the work of the joint investigation team in its territory.

Article 71.d

(1) Members of the joint investigation team from other states in which the joint investigation is carried out ("secondary members") shall be entitled to participate in individual actions within the joint investigation carried out in the Republic of Croatia. The joint investigation team leader may, in accordance with the valid laws of the Republic of Croatia, deprive them of their participation; however he or she is bound to inform them of the reasons.

(2) The team leader may, in accordance with the valid laws of the Republic of Croatia, entrust the secondary members of the joint investigation team with the execution of individual actions, upon prior approval by the competent authorities of the Republic of Croatia and the Member State, from which the secondary member comes.

(3) When a joint investigation team determines that a certain action should be executed in the Republic of Croatia, members from the Republic of Croatia shall ask the competent authorities to undertake those actions. The competent authority shall execute requested actions in accordance with the valid laws of the Republic of Croatia.

Article 71.e

(1) A member of the joint investigation team from the Republic of Croatia may, for the needs of joint investigation, in accordance with the valid laws of the Republic of Croatia and within its competencies, make the data, known to him or her, available to other members of the joint investigation team.

(2) A member of the joint investigation team may use the data, obtained during the participation in the joint investigation in the territory of another State, otherwise un-

available to the competent authorities of his or her State, for the following purposes:

1. For the purpose for which the joint investigation team was formed,
2. With the prior consent of a Member State in which the data was found, it may be used to detect, investigate and prosecute other criminal offenses. A Member State may withhold such consent only in cases when the usage of the data could endanger the criminal investigation in that Member State or if that Member State could withhold the assistance,
3. To prevent immediate and serious threat to public safety, in which case the data referred may not be used, beyond the requirements referred to in paragraph 2, to subsequently initiate criminal investigation,
4. For other purposes, if so agreed between Member States which form the joint investigation team.

Article 71.f

(1) With the prior consent of members of the joint investigation team from other Member States, and if the laws of those countries allow, other individuals such as officers of the bodies established in accordance with the Treaty on European Union, may participate in the work of the joint investigation team in the territory of the Republic of Croatia.

(2) Rights enjoyed by members or secondary members do not apply to those individuals, unless specifically provided otherwise by the agreement.

Article 71.g

If the joint investigation team needs legal assistance from a State, which did not participate in the establishment of the joint investigation team, competent authorities referred to in Article 71.c of this Law may ask for international legal assistance from the competent authorities of that State, in accordance with the applicable international treaties.

Article 71.h

Evidence obtained by a foreign judicial authority within the joint investigation team shall be considered legitimate under the condition of reciprocity, if it is not in contravention of the principles of national legal order.

Article 71.i

The Republic of Croatia shall be liable for the harm to an individual, made by the state attorney and deputy state attorney in the course of execution of duties during their operations, being members of the joint investigation team.

USKOK Law³³
(Official Gazette No. 76/09, 116/10, 145/10, 57/11, 136/12)
(Law on the Bureau for Suppression of Corruption and Organized Crime)

Article 17

(1) The Department for international cooperation and joint investigation:

1. shall, in accordance with the international treaties, cooperate with the competent authorities of other States and international organizations,
2. appoints the members to joint investigative bodies established, based on international treaties or provisions applicable to individual cases, for the purpose of investigation, criminal prosecution or legal representation of the charges before criminal courts referred to in Article 21 of this Law, in the Republic of Croatia or one or more Member States.

(2) In the joint investigations conducted in the Republic of Croatia, the Department for international cooperation and joint investigation supervises the application of national legislation and the respect of sovereignty of the Republic of Croatia. It shall inform without any delay the Director about all observed deficiencies or disputes that may not be resolved by counseling with the competent authority of another State or its representatives and, where necessary, the Director will ask for the opinion of the ministry responsible for the matters of judiciary and the ministry responsible for international relations.

(3) For the needs of joint investigations, the Department for international cooperation and joint investigation shall:

1. receive requests from other States prior to undertaking special evidentiary actions relative to criminal offenses in accordance with Article 332 of the Criminal Procedure Code and take steps before competent courts,
2. supervise, in case of particularly urgent actions, which the competent authorities of other States, in accordance with the special agreement, are authorized to independently undertake in the territory of the Republic of Croatia, the Department, maintaining that the competent authority of that State does not breach the domicile of the right to personal freedom and dignity of individual. Following the taking of these actions, it shall submit a final report to the Director, who may require the authorized officials of the authorized party to be present when the report is submitted,

³³ Unofficial translation into English

3. receive the requests from the competent authorities of the other State for legal assistance in case of criminal proceedings referred to in Article 21 of this Law. The Department shall inform the Republic of Croatia State Attorney's Office about all requests received and actions undertaken.

International Legal assistance in Criminal Matters Act (Official Gazette No. 178/04)

INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL PROCEDURES PENDING IN THE REPUBLIC OF CROATIA OR IN A FOREIGN STATE

Authorities competent to provide international legal assistance and communication channels

Article 6

(1) Domestic judicial authorities forward requests for international legal assistance and the information from Article 18, paragraph 1 of this Act to competent foreign authorities through the Ministry of Justice.

(2) The Ministry of Justice is competent to receive requests for international legal assistance from competent foreign authorities, which it then forwards to domestic judicial authorities, unless it is evident that the request should be rejected.

(3) The Ministry of Justice may return the request to the competent foreign authority to be corrected or supplemented, and set a reasonable term for the delivery of the corrected or supplemented request. Following the expiration of the term, the request is executed according to the state of the file.

(4) By way of derogation from paragraph 1 of this Article, domestic judicial authorities may forward the request for international legal assistance directly to the foreign judicial authority, where this is expressly provided in this Act, and under the condition of reciprocity, or where such a channel is provided in an international treaty (direct communication).

(5) In the cases of direct communication from paragraph 4 and paragraph 7 of this Article, the domestic judicial authority delivers a copy of the request for international legal assistance to the Ministry of Justice.

(6) In urgent cases and if there is reciprocity, the Ministry of Justice may forward and receive requests for international legal assistance through Interpol.

(7) In the cases of direct communication from paragraph 4 of this Article, domestic judicial authorities may forward and receive requests for international legal assistance through Interpol, under the obligation from paragraph 5 of this Article.

(8) The Ministry of Justice forwards and receives requests for international legal assistance from and to a foreign state with which the Republic of Croatia has not concluded an international treaty, and in cases where an international treaty expressly provides diplomatic service channels, through the Ministry of Foreign Affairs.

KOSOVO

Law on International Legal Cooperation in Criminal Matters (Official Gazette No. 33/2013)

GENERAL PROVISIONS

Article 1 Purpose

1. This law establishes conditions and procedures pertaining to the provision of international legal assistance in criminal matters, unless otherwise provided for by international agreements or in the absence of an international agreement.
2. In absence of an international agreement between Kosovo and a foreign country international legal assistance is to be administered on the basis of the principles of reciprocity.
3. International legal assistance procedures are provided for with provisions of Criminal Procedure Code, unless otherwise provided for by this Law.

Article 2 Definitions

1. Terms used in this law shall have the following meanings:
 - 1.1. International Legal Assistance in Criminal Matters- every kind of assistance requested by foreign countries or by Kosovo with the intention to support investigative and judicial procedures;

**SUB-CHAPTER IV
OTHER FORMS OF COOPERATION**

**Article 97
General provisions**

1. Assistance under this Chapter shall be provided in accordance with the Second Additional Protocol of the European Convention on Mutual Assistance in Criminal Matters of 1959, unless otherwise provided by national law.
2. The Chief State Prosecutor's Office is competent to decide on requests under this Chapter.

**Article 98
Joint investigation teams**

1. The competent authorities of the Republic of Kosovo, by mutual agreement with one or more states, may form joint investigation teams for a specific purpose and for a limited period of time, for the purpose of carrying out criminal investigations in one or more of the states forming the team. The period may be extended by agreement between the parties.
2. Joint investigation teams may in particular be formed where:
 - 2.1. the investigation of a criminal offence in a state involves difficult and demanding investigations which are related to other states;
 - 2.2. several states are conducting investigations into criminal offences and the circumstances require coordinated and joint action among the states involved.
3. Joint investigation teams may be formed at the request of any of the states involved.
4. Members of the joint investigation team, which have been seconded to the team by their states, may be allowed to conduct investigations in the territory of the Republic of Kosovo, under the leadership of the Kosovo team member, in accordance with the agreement between the Republic of Kosovo and seconding states.
5. Members of the joint investigation team shall be entitled to be present at any investigative measure taken in the Republic of Kosovo. However the leader of the team may, for particular reasons, in accordance with national law, decide otherwise.
6. National members of a joint investigation team may, in accordance with national law and within the limits of their competence, provide the team with in-

formation available in the Republic of Kosovo for the purpose of the criminal investigations conducted by the team.

7. Where a joint investigation team needs investigative measures to be taken in the Republic of Kosovo, national members seconded to the team may request the national competent authorities to take those measures. Those measures shall be considered in the Republic of Kosovo under the conditions which would apply if they were requested in national investigations.

8. Information lawfully obtained by a national member of a joint investigation team, which is not otherwise available to national authorities, may be used for the following purposes:

8.1. for the purposes for which the team has been formed;

8.2. subject to the prior consent of the state where the information became available, for detecting, investigation and prosecuting other criminal offences;

8.3. for preventing an immediate and serious threat to public security;

8.4. for other purposes to the extent that this is agreed between the states forming the team.

9. Persons other than representatives of the competent authorities of the states forming the joint investigation team may be allowed to take part in the activities of the team. The rights conferred to the members of the team by virtue of this Article shall not apply to these persons unless it has been expressly agreed otherwise.

Article 102 **Expenses**

1. Expenses pertaining to extraditions from the Republic of Kosovo to foreign states incurred outside the territory of the Republic of Kosovo shall be borne by the requesting states.

2. Expenditures pertaining to extraditions from other states to the Republic of Kosovo shall be provided for by the budget of the Republic of Kosovo.

3. Pursuant to this Law, other expenses incurred during the provision of international legal cooperation incurred within the territory of the Republic of Kosovo shall be supported from the budget of the Republic of Kosovo.

**Criminal procedure code
(Official Gazette No. 37/12)**

**Article 219
International Requests**

1. The state prosecutor or competent judge shall, at the earliest possible time, initiate international legal requests, requests for extraditions, requests for prisoner transfers or requests for executions of judgments.
2. All international requests shall be made in compliance with the Law on International Legal Cooperation in Criminal Matters, Nr. 04/L-31, or successor law.
3. The state prosecutor or competent judge shall make all international requests in consultation and compliance with the Office of International Legal Cooperation in the Ministry of Justice, or successor agency.
4. The Minister of Justice shall have final approval of all international requests made to foreign governments.
5. The state prosecutor or competent judge shall not speak to media about pending or intended international requests but shall refer the media to the Ministry of Justice.
6. Evidence obtained informally from foreign governments, law enforcement agencies, prosecutors or courts shall be admissible if accompanied by a statement from that foreign government, law enforcement agency, prosecutor or court which demonstrates that the evidence is reliable and was obtained in accordance with the law of that foreign state. Such evidence may not form the sole or decisive basis for a finding of guilt. Such information shall be accompanied at the main trial by a notice of corroboration under Article 263 of this Code.
7. If the Office of International Legal Cooperation receives and approves a request for assistance from a foreign government, the Office of International Legal Cooperation shall assign the request to the appropriate state prosecutor, who shall initiate a criminal proceeding with the limited purpose of obtaining the requested information or performing the requested action. If the requested information or action is not permitted by the law or is not possible to obtain or perform, the state prosecutor shall inform the Office of International Cooperation and shall terminate the criminal proceeding.

MONTENEGRO

Constitution of Montenegro (Official Gazette No. 1/07, 38/13)

Legal order Article 9

The ratified and published international agreements and generally accepted rules of international law shall make an integral part of the internal legal order, shall have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation.

The Law on Mutual Legal Assistance in Criminal Matters (Official Gazette No. 4/08)

Article 2

- (1) International legal assistance shall be provided in accordance with an international agreement.
- (2) If there is no international agreement or if certain issues are not regulated under an international agreement, international legal assistance shall be provided in accordance with this Law, provided that there is reciprocity or that it can be expected that the foreign state would execute the letter rogatory for international legal assistance of the domestic judicial authority.

Article 4

- (1) Domestic judicial authority shall forward letters rogatory for mutual legal assistance to foreign judicial authorities and receive the letters rogatory for mutual legal assistance of the foreign judicial authorities through the ministry responsible for the judiciary (hereinafter referred to as the “Ministry”).
- (2) In cases where there is no international agreement or reciprocity, the Ministry shall deliver and receive letters rogatory for mutual legal assistance through diplomatic channels.
- (3) In cases when this has been provided for under an international agreement or where there is reciprocity, the Ministry shall deliver and receive Letters Rogatory for international legal assistance through the competent authority of the foreign state as a central communication authority.
- (4) Exceptionally, in cases when provided for under an international agreement or where there is reciprocity, the national judicial authority may deliver directly or indirectly to the competent foreign judicial authority and receive letters rogatory

for mutual legal assistance of the foreign state, with the obligation to deliver copy of letter rogatory to the Ministry.

(5) In urgent cases, provided that there is reciprocity, letter rogatory for mutual legal assistance may be delivered and received through the National Central Bureau of the Interpol.

(6) The courts and the state prosecutors' offices shall be responsible for provision of mutual legal assistance in accordance with the law.

V. OTHER FORMS OF INTERNATIONAL LEGAL ASSISTANCE

Article 42

Other forms of mutual legal assistance shall be: submitting documents, written materials and other cases related to the criminal proceedings in the requesting country; mutual exchange of information, as well as undertaking of individual procedural actions; hearing the accused, witness and expert, including hearing through video and telephone conference, crime scene investigation, search of premises and persons, temporary seizure of items, secret surveillance measures, joint investigation teams, submitting bank transaction information, DNA analysis, temporary surrender of a person deprived of liberty in order to give testimony, delivering information from penal records, information on the judgement and other procedural actions.

Article 43

(1) The Ministry shall deliver and receive letters rogatory for the forms of mutual legal assistance referred to in Article 42 of this Law in accordance with Article 4 of this Law.

(2) The permissibility and the method of enforcement of the action which is the subject matter of the letter rogatory of the foreign judicial authority shall be decided by the court in accordance with domestic law and international agreement.

Article 44

(1) At the letter of request of the foreign judicial authority, domestic judicial authority may approve the presence of a foreign official person and person having legal interest in the enforcement of the action requested by the letter rogatory.

(2) In case the presence at the letter of request referred to in paragraph 1 above is approved, domestic judicial authority shall send notice to the foreign judicial

authority of the place and time of enforcement of the action requested by the letter rogatory.

Article 45

Procedural action undertaken by the foreign judicial authority in accordance with its law shall be deemed equal to the relevant procedural action undertaken by a domestic judicial authority within the criminal proceedings, unless this is contrary to the principles of the domestic judicial system and generally accepted principles of the international law.

Article 46

Mutual legal assistance shall not be provided if the letter rogatory concerns military criminal offence.

Article 47

Mutual legal assistance referred to in Article 42 of this Law may be refused:

- (1) if the letter rogatory of the requesting state concerns political criminal offences;
- (2) if the execution of the letter rogatory of the requesting state is likely to prejudice the sovereignty, constitutional order, security or other essential interests of Montenegro.

SERBIA

**Law on Mutual Assistance in Criminal Matters
(Official Gazette No. 20/09)**

Competent authorities

Article 4

The authorities competent to exercise mutual assistance shall include national courts and public prosecutor's offices (hereinafter: judicial authorities) specified by law.

Certain actions in the mutual assistance proceedings shall be performed by the Ministry of Justice, the Ministry of Foreign Affairs and the Ministry of Internal Affairs.

Requests for mutual assistance delivered to an incompetent authority shall be transmitted without delay to the authority competent to proceed, and the authority that has submitted the request shall be notified.

Subject of other forms of mutual assistance
Article 83

Other forms of mutual assistance include:

- 1) conduct of procedural activities such as issuance of summonses and delivery of writs, interrogation of the accused, examination of witnesses and experts, crime scene investigation, search of premises and persons, temporary seizure of objects;
- 2) implementation of measures such as surveillance and tapping of telephone and other conversations or communication as well as photographing or videotaping of persons, controlled delivery, provision of simulated business services, conclusion of simulated legal business, engagement of under-cover investigators, automatic data processing;
- 3) exchange of information and delivery of writs and cases related to criminal proceeding pending at the requesting party, delivery of data without the letter rogatory, use of audio and video-conference calls, forming of joint investigative teams;
- 4) temporary surrender of a person in custody for the purpose of examination by the requesting party's competent body.

Joint investigative teams
Article 96

If the circumstances of the case justify it, joint investigative teams may be formed by an agreement between the Minister responsible for judiciary and a foreign country.

Constitution of the Republic of Serbia
(Official Gazette No. 98/06)

International relations
Article 16

The foreign policy of the Republic of Serbia shall be based on generally accepted principles and rules of international law.

Generally accepted rules of international law and ratified international treaties shall be an integral part of the legal system in the Republic of Serbia and applied directly.

Ratified international treaties must be in accordance with the Constitution.

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Criminal Procedure Code (Official Gazette No. 150/10)

PUBLIC PROSECUTOR AND JUDICIAL POLICE

1. Public prosecutor

Article 39

Rights and obligations of the public prosecutor

(1) The public prosecutor's general right and duty shall be to prosecute perpetrators of criminal offenses, which are to be prosecuted ex-officio.

(2) In cases of crimes which are prosecuted ex-officio, the public prosecutor shall have the following rights and duties:

- to direct the actions of the entities that are competent for detection and reporting of crimes and their perpetrators;
- to propose or issue orders for the application of special investigation measures, under conditions and in a manner as determined in this Law;
- to enact decisions and to conduct investigation procedure;
- to locate, propose and secure evidence, under conditions and in a manner as determined in this Law;
- to propose temporary measures for safeguarding property or objects that are crime proceeds or due to the execution of the confiscation measure;
- to decide on postponement of criminal prosecution under the conditions and in a manner as determined in this Law;
- to propose the issuance of a penal warrant under the conditions as determined in this Law;
- to negotiate and come to an agreement with the defendant on a guilty plea, under the conditions and in a manner as determined in this Law;
- to file and represent indictments before the competent court;
- to appeal against judicial decisions that are not valid and final and apply extraordinary legal remedies against valid and final decisions;

- to rule upon appeals by injured parties in circumstances as provided for in this Law; and
 - to undertake other activities provided by the law.
- (3) The public prosecutor shall initiate special procedures and shall participate in them when that is prescribed with a separate law.

Article 40
Competency of the public prosecutor

- (1) The subject-matter jurisdiction of the public prosecutor is determined by the provisions that are valid for the court jurisdiction for the region to which the prosecutor has been appointed and by the Law on the Public Prosecution Office.
- (2) The inherent jurisdiction of the public prosecutor is determined by the provisions that are valid for the court jurisdiction for the region to which the prosecutor has been appointed.
- (3) Any clashes of jurisdiction amongst public prosecutors shall be decided by their immediate higher public prosecutor.
- (4) When there is a danger of procrastination, any required actions may be taken over by an unauthorized public prosecutor, but he or she must immediately inform the competent public prosecutor thereof.

Law on International Cooperation in Criminal Matters
(Official Gazette No. 124/10)

CHAPTER II
INTERNATIONAL LEGAL ASSISTANCE

Concept
Article 15

The international legal assistance shall include:

- enforcement of procedural actions such as delivery of documents, written evidence and acts related to the criminal proceedings in the sending state;
- delivery of spontaneous information;
- exchange of certain information and notifications;
- temporary transfer of persons deprived of freedom;

- cross-border observation;
- controlled delivery;
- using persons with hidden identity;
- joint investigation teams;
- monitoring communications;
- interrogation through video conference;
- interrogation through telephone conference;
- searching of premises and persons;
- temporary security of items, property or means related to the criminal offence;
- temporary freezing, confiscation and retention of assets, bank accounts and financial transactions or incomes from a criminal offence;
- confiscation of property and property benefits;
- deprivation of items;
- protection of personal data;
- criminal and civil liability of officials, and
- delivery of extracts from criminal records.

Joint investigation teams

Article 38

(1) The domestic competent authorities for detection and prosecution of organised crime and corruption can be part of the joint investigation teams with the foreign competent authorities, formed for a particular purpose and with limited duration and possibility for its extension if both states that formed the team agree to the extension.

(2) The states that formed the team from paragraph (1) of this article shall determine the composition of the team by mutual consent and the team shall be formed in the territory of one of the states.

(3) The joint investigation team may be formed when within the investigative procedure complex investigative actions for mobilisation of significant resources

have to be implemented, as well as when a coordinated action of the interested parties is necessary because of the complexity of the case.

(4) The joint investigation team shall implement its operations in accordance with the legislation of the state in whose territory the operations are implemented. The responsible person of the team shall be the representative of a competent authority which participates in the criminal investigation of the state in whose territory the team implements its operations.

The required organisational conditions for the implementation of the operations of the team shall be provided by the state in whose territory the team implements its operations.

(5) If the joint investigation team needs assistance from a state which didn't participate in the forming of the team, the request for legal assistance may be sent to that state.

Criminal liability of authorised persons **Article 39**

During the implementation of the activities specified in articles 35, 36, 37 and 38 from this law, the authorised officials from the foreign state in whose territory no actions have been implemented shall be equal to the authorised officials in the Republic of Macedonia where the actions were implemented in respect of the offences where they are victims or the offences they committed, unless otherwise agreed by the Republic of Macedonia and the foreign state.

LAW ON PUBLIC PROSECUTION **(Official Gazette No. 150/07)**

Article 36

The Public Prosecutor's Office of the Republic of Macedonia shall, within the framework of the international agreements, cooperate directly with the public prosecutor's offices of other states, especially in the field of prevention and criminal prosecution of organized crime and other serious criminal offenses through exchange of information, direct cooperation, education, specialized training of staff, and other forms of cooperation.

COOPERATION WITH EUROJUST

Eurojust Council Decision (2009)

Article 26a

Relations with third States and organisations

1. In so far as is required for the performance of its tasks, Eurojust may establish and maintain cooperative relations with the following entities:

(a) third States;

(b) organisations such as:

(i) international organisations and their subordinate bodies governed by public law;

(ii) other bodies governed by public law which are based on an agreement between two or more States; and

(iii) the International Criminal Police Organisation (Interpol).

2. Eurojust may conclude agreements with the entities referred to in paragraph 1. Such agreements may, in particular, concern the exchange of information, including personal data, and the secondment of liaison officers or liaison magistrates to Eurojust. Such agreements may only be concluded after consultation by Eurojust with the Joint Supervisory Body concerning the provisions on data protection and after the approval by the Council, acting by qualified majority. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it deems appropriate.

3. Agreements referred to in paragraph 2 containing provisions on the exchange of personal data may only be concluded if the entity concerned is subject to the Council of Europe Convention of 28 January 1981 or after an assessment confirming the existence of an adequate level of data protection ensured by that entity.

4. Agreements referred to in paragraph 2 shall include provisions on the monitoring of their implementation, including implementation of the rules on data protection.

5. Prior to the entry into force of the agreements referred to in paragraph 2, Eurojust may directly receive information, including personal data in so far as this is necessary for the legitimate performance of its tasks.

6. Prior to the entry into force of the agreements referred to in paragraph 2, Eurojust may under the conditions laid down in Article 27(1), directly transmit infor-

mation, except for personal data, to these entities, in so far as this is necessary for the legitimate performance of the recipient's tasks.

7. Eurojust may, under the conditions laid down in Article 27(1), transmit personal data to the entities referred to in paragraph 1, where:

(a) this is necessary in individual cases for the purposes of preventing or combating criminal offences for which Eurojust is competent, and

(b) Eurojust has concluded an agreement as referred to in paragraph 2 with the entity concerned which has entered into force and which permits the transmission of such data.

8. Any subsequent failure, or substantial likelihood of failure, on the part of the entities referred to in paragraph 1 to meet the conditions referred to in paragraph 3, shall immediately be communicated by Eurojust to the Joint Supervisory Body and the Member States concerned. The Joint Supervisory Body may prevent the further exchange of personal data with the relevant entities until it is satisfied that adequate remedies have been provided.

9. However, even if the conditions referred to in paragraph 7 are not fulfilled, a national member may, acting in his capacity as a competent national authority and in conformity with the provisions of his own national law, by way of exception and with the sole aim of taking urgent measures to counter imminent serious danger threatening a person or public security, carry out an exchange of information involving personal data. The national member shall be responsible for the legality of authorising the communication. The national member shall keep a record of communications of data and of the grounds for such communications. The communication of data shall be authorised only if the recipient gives an undertaking that the data will be used only for the purpose for which they were communicated.

Article 27 **Transmission of data**

1. Before Eurojust exchanges any information with the entities referred to in Article 26a, the national member of the Member State which submitted the information shall give his consent to the transfer of that information. In appropriate cases the national member shall consult the competent authorities of the Member States.

2. Eurojust shall be responsible for the legality of the transmission of data. Eurojust shall keep a record of all transmissions of data under Articles 26 and 26a and of the grounds for such transmissions. Data shall only be transmitted if the recipi-

ent gives an undertaking that the data will be used only for the purpose for which they were transmitted.

Article 27a

Liaison magistrates posted to third States

1. For the purpose of facilitating judicial cooperation with third States in cases in which Eurojust is providing assistance in accordance with this Decision, the College may post liaison magistrates to a third State, subject to an agreement as referred to in Article 26a with that third State. Before negotiations are entered into with a third State, the Council, acting by qualified majority, shall give its approval. Eurojust shall inform the Council of any plans it has for entering into any such negotiations and the Council may draw any conclusions it deems appropriate.

2. The liaison magistrate referred to in paragraph 1 is required to have experience of working with Eurojust and adequate knowledge of judicial cooperation and how Eurojust operates. The posting of a liaison magistrate on behalf of Eurojust shall be subject to the prior consent of the magistrate and of his Member State.

3. Where the liaison magistrate posted by Eurojust is selected among national members, deputies or assistants:

(i) he shall be replaced in his function as a national member, deputy or assistant, by the Member State;

(ii) he ceases to be entitled to exercise the powers granted to him in accordance with Articles 9a to 9e.

4. Without prejudice to Article 110 of the Staff Regulations of Officials of the European Communities laid down by Regulation (EEC, Euratom, ECSC) No 259/681, the College shall draw up rules on the posting of liaison magistrates and adopt the necessary implementing arrangements in this respect in consultation with the Commission.

5. The activities of liaison magistrates posted by Eurojust shall be the subject of supervision by the Joint Supervisory Body. The liaison magistrates shall report to the College, which shall inform the European Parliament and the Council in the annual report and in an appropriate manner of their activities. The liaison magistrates shall inform national members and national competent authorities of all cases concerning their Member State.

6. Competent authorities of the Member States and liaison magistrates referred to in paragraph 1 may contact each other directly. In such cases, the liaison magistrate shall inform the national member concerned of such contacts.

7. The liaison magistrates referred to in paragraph 1 shall be connected to the Case Management System.

Article 27b

Requests for judicial cooperation to and from third States

1. Eurojust may, with the agreement of the Member States concerned, coordinate the execution of requests for judicial cooperation issued by a third State where these requests are part of the same investigation and require execution in at least two Member States. Requests referred to in this paragraph may also be transmitted to Eurojust by a competent national authority.
2. In case of urgency and in accordance with Article 5a, the OCC may receive and process requests referred to in paragraph 1 of this Article and issued by a third State which has concluded a cooperation agreement with Eurojust.
3. Without prejudice to Article 3(2), where requests for judicial cooperation, which relate to the same investigation and require execution in a third State, are made, Eurojust may also, with the agreement of the Member States concerned, facilitate judicial cooperation with that third State.
4. Requests referred to in paragraphs 1, 2 and 3 may be transmitted through Eurojust if it is in conformity with the instruments applicable to the relationship between that third State and the European Union or the Member States concerned.

APPENDIX 2

INTERNATIONAL LEGAL FRAMEWORK

SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Article 20 – Joint investigation teams

1) By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

A joint investigation team may, in particular, be set up where:

- a. a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- b. a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

2) In addition to the information referred to in the relevant provisions of Article 14³⁴ of the Convention, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.

3) A joint investigation team shall operate in the territory of the Parties setting up the team under the following general conditions:

- a. the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team

³⁴European Convention on Mutual Assistance in Criminal Matters (1959) - Article 14

1. Requests for mutual assistance shall indicate as follows:

- a. the authority making the request,
- b. the object of and the reason for the request,
- c. where possible, the identity and the nationality of the person concerned, and
- d. where necessary, the name and address of the person to be served.

2. Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

operates. The leader of the team shall act within the limits of his or her competence under national law;

- b. the team shall carry out its operations in accordance with the law of the Party in which it operates. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in sub-paragraph a, taking into account the conditions set by their own authorities in the agreement on setting up the team;
- c. the Party in which the team operates shall make the necessary organisational arrangements for it to do so.

4) In this article, members of the joint investigation team from the Party in which the team operates are referred to as “members”, while members from Parties other than the Party in which the team operates are referred to as “seconded members”.

5) Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.

6) Seconded members of the joint investigation team may, in accordance with the law of the Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Party of operation and the seconding Party.

7) Where the joint investigation team needs investigative measures to be taken in one of the Parties setting up the team, members seconded to the team by that Party may request their own competent authorities to take those measures. Those measures shall be considered in that Party under the conditions which would apply if they were requested in a national investigation.

8) Where the joint investigation team needs assistance from a Party other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operation to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.

9) A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

10) Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:

- a. for the purposes for which the team has been set up;
- b. subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Party concerned or in respect of which that Party could refuse mutual assistance;
- c. for preventing an immediate and serious threat to public security, and without prejudice to sub-paragraph b. if subsequently a criminal investigation is opened;
- d. for other purposes to the extent that this is agreed between Parties setting up the team.

11) This article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

12) To the extent that the laws of the Parties concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Parties setting up the joint investigation team to take part in the activities of the team. The rights conferred upon the members or seconded members of the team by virtue of this article shall not apply to these persons unless the agreement expressly states otherwise.

Article 21 – Criminal liability regarding officials

During the operations referred to in Articles 17, 18, 19 or 20, unless otherwise agreed upon by the Parties concerned, officials from a Party other than the Party of operation shall be regarded as officials of the Party of operation with respect to offences committed against them or by them.

Article 22 – Civil liability regarding officials

1) Where, in accordance with Articles 17, 18, 19 or 20, officials of a Party are operating in another Party, the first Party shall be liable for any damage caused by them during their operations, in accordance with the law of the Party in whose territory they are operating.

- 2) The Party in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.
- 3) The Party whose officials have caused damage to any person in the territory of another Party shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
- 4) Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Party shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Party.
- 5) The provisions of this article shall apply subject to the proviso that the Parties did not agree otherwise.

State	Signature	Ratification	Entry into force
Albania	13/11/2001	20/6/2002	1/2/2004
Bosnia and Herzegovina	17/5/2006	7/11/2007	1/3/2008
Croatia	9/6/2004	28/3/2007	1/7/2007
Montenegro	7/4/2005	20/10/2008	1/2/2009
Serbia	7/4/2005	26/4/2007	1/8/2007
the former Yugoslav Republic of Macedonia	8/11/2001	16/12/2008	1/4/2009

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=182&CM=7&DF=&CL=ENG>

POLICE COOPERATION CONVENTION FOR SOUTHEAST EUROPE

Article 27

Joint Investigation Teams

- (1) By mutual agreement, the law enforcement authorities of two or more Contracting Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Contracting Parties setting up the team. The composition of the team shall be set out in the agreement setting up the team.
- (2) A joint investigation team may, in particular, be set up where:

- a) a Contracting Party 's investigations into criminal offences require difficult and demanding investigations having links with other Contracting Parties;
 - b) a number of Contracting Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Contracting Parties involved.
- (3) A request for the setting up of a joint investigation team may be made by any of the Contracting Party concerned. The team shall be set up in one of the Contracting Parties in which the investigations are expected to be carried out.
- (4) Requests for the setting up of a joint investigation team shall include the authority making the request, the purpose of the joint investigation team, the Contracting Parties in which the joint investigation team will operate and proposals for the composition of the joint investigation team.
- (5) A joint investigation team shall operate in the territory of the Contracting Parties setting up the team under the following general conditions:
- a) the leader of the team shall be a representative of the law enforcement authority participating in criminal investigations from the Contracting Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
 - b) the team shall carry out its operations in accordance with the law of the Contracting Party in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team.
- (6) In this Article, members of the joint investigation team from Contracting Parties other than the Contracting Party in which the team operates are referred to as being "seconded" to the team.
- (7) Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Contracting Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Contracting Party where the team operates, decide otherwise.
- (8) Seconded members of the joint investigation team may, in accordance with the law of the Contracting Party where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the law enforcement authorities of the Contracting Party of operation and the seconding Contracting Party.

(9) Where the joint investigation team needs investigative measures to be taken in one of the Contracting Parties setting up the team, members seconded to the team by that Contracting Party may request their own law enforcement authorities to take those measures. Those measures shall be considered in that Contracting Party under the conditions which would apply if they were requested in a national investigation.

(10) Where the joint investigation team needs assistance from a Contracting Party other than those which have set up the team, or from a third State, the request for assistance may be made by the law enforcement authorities of the Contracting Party of operations to the law enforcement authorities of the other Contracting Party concerned in accordance with the relevant instruments or arrangements.

(11) A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Contracting Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

(12) Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the law enforcement authorities of the Contracting Parties concerned may be used for the following purposes:

- a) for the purposes for which the team has been set up;
- b) subject to the prior consent of the Contracting Party where the information became available, for detecting, investigation and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Contracting Party concerned or in respect of which that Contracting Party could refuse mutual assistance;
- c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;
- d) for other purposes to the extent that this is agreed between Contracting Parties setting up the team.

(13) This Article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.

(14) To the extent that the laws of the Contracting Party concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the law enforcement authori-

ties of the Contracting Parties setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of international organisations recognized by Contracting Parties. The rights conferred upon the members or seconded members of the team by virtue of this Article shall not apply to these persons unless the agreement expressly states otherwise.

State	Ratification date	Date of deposition of ratification (expected)	Entry into force of Convention (expected)
Albania	September 11, 2006	May 31, 2007	October 10, 2007
Bosnia and Herzegovina	April 11, 2007	July 17, 2007	October 15, 2007
Montenegro	December 26, 2007	January 28, 2008	May 1, 2008
Serbia	July 23, 2007	September 10, 2007	December 11, 2007
the former Yugoslav Republic of Macedonia	June 1, 2007	July 12, 2007	October 10, 2007

<http://www.pccseesecretariat.si/index.php?page=documentspcc&item=35>

Additional international legal basis, which could also be used, with a wider legal interpretation (mutual assistance to the widest extent possible):

UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Article 19. Joint investigations

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.

State	Signature	Ratification, Acceptance(A), Approval(AA), Accession(a), Succession(d)
Albania	12 Dec 2000	21 Aug 2002
Bosnia and Herzegovina	12 Dec 2000	24 Apr 2002
Croatia	12 Dec 2000	24 Jan 2003
Montenegro		23 Oct 2006 d
Serbia	12 Dec 2000	6 Sep 2001
the former Yugoslav Republic of Macedonia	12 Dec 2000	12 Jan 2005

http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en

The convention applies for to the prevention, investigation and prosecution of:

- participation in an organized criminal group
- the laundering of proceeds of crime
- corruption
- obstruction of justice

- serious crime - meaning an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty

where the offence is transnational in nature and involves an organized criminal group.

UNITED NATIONS CONVENTION AGAINST CORRUPTION

Article 49. Joint investigations

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.

State	Signature	Ratification, Acceptance (A), Approval (AA), Accession (a), Succession (d)
Albania	18 Dec 2003	25 May 2006
Bosnia and Herzegovina	16 Sep 2005	26 Oct 2006
Croatia	10 Dec 2003	24 Apr 2005
Montenegro		23 Oct 2006 d
Serbia	11 Dec 2003	20 Dec 2005
the former Yugoslav Republic of Macedonia	18 Aug 2005	13 Apr 2007

<http://www.unodc.org/unodc/en/treaties/CAC/signatories.html>

CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME

Chapter IV

Section 2 – Investigative assistance

Article 16 – Obligation to assist

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and oth-

er property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property.

State	Signature	Ratification	Entry into force
Albania	22/12/2005	6/2/2007	1/5/2008
Bosnia and Herzegovina	19/1/2006	11/1/2008	1/5/2005
Croatia	29/4/2008	10/10/2008	1/2/2009
Montenegro	16/5/2005	20/10/2008	1/2/2009
Serbia	16/5/2005	14/4/2009	1/8/2009
the former Yugoslav Republic of Macedonia	17/11/2005	27/5/2009	1/9/2009

<http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=198&CM=0&CL=ENG>

CONVENTION ON CYBERCRIME

Title 3 – General principles relating to mutual assistance

Article 25 – General principles relating to mutual assistance

1. The Parties shall afford one another mutual assistance to the widest extent possible for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.
2. Each Party shall also adopt such legislative and other measures as may be necessary to carry out the obligations set forth in Articles 27 through 35.
3. Each Party may, in urgent circumstances, make requests for mutual assistance or communications related thereto by expedited means of communication, including fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), with formal confirmation to follow, where required by the requested Party. The requested Party shall accept and respond to the request by any such expedited means of communication.
4. Except as otherwise specifically provided in articles in this chapter, mutual assistance shall be subject to the conditions provided for by the law of the requested Party or by applicable mutual assistance treaties, including the grounds on which the requested Party may refuse co-operation. The requested Party shall not exer-

cise the right to refuse mutual assistance in relation to the offences referred to in Articles 2 through 11 solely on the ground that the request concerns an offence which it considers a fiscal offence.

5. Where, in accordance with the provisions of this chapter, the requested Party is permitted to make mutual assistance conditional upon the existence of dual criminality, that condition shall be deemed fulfilled, irrespective of whether its laws place the offence within the same category of offence or denominate the offence by the same terminology as the requesting Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under its laws.

States	Signature	Ratification	Entry into force
Albania	23/11/2001	20/6/2002	1/7/2004
Bosnia and Herzegovina	9/2/2005	19/5/2006	1/9/2006
Croatia	23/11/2001	17/10/2002	1/7/2004
Montenegro	7/4/2005	3/3/2010	1/7/2010
Serbia	7/4/2005	14/4/2009	1/8/2009
the former Yugoslav Republic of Macedonia	23/11/2001	15/9/2004	1/1/2005

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=185&CM=&DF=&CL=ENG>

APPENDIX 3

INTRODUCTION

In regard to the problems and potential anxiety which may arise when confronted with the fact that a formal international agreement will have to be prepared, agreed upon and signed, in the scope of this Handbook a practical support was prepared on two levels.

The first level aims to be as practical and as concrete as it can be, trying to give a glimpse at an imaginary example of an agreement on the establishment of a Joint Investigation Team that was prepared to present a possible real-life situation with a minimalistic approach for setting up a Joint Investigation Team in a cross-border criminal investigation.

The second level approaches the formal agreement from a theoretical point of view, without any case data. The model of an agreement on the establishment of a Joint Investigation Team is a proposal of how the agreement should look and what topics should be agreed upon. As it is up to the contracting parties what will be in the agreement, the model is to be used as a base for discussion and negotiations or as a reminder of what can be included in the agreement. The model also includes some possibilities and suggestions that can be in the agreement at the discretion of the contracting parties.

The JIT agreement should always be prepared with respect to the explanations given in the substantive part of this Handbook.

EXAMPLE OF AN AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

In accordance with:

Article 20 of the Second additional protocol to the European convention on mutual assistance in criminal matters, Article 27 of the Police Cooperation Convention for South-east Europe (PCC SEE) and Article 19 of the United Nations Convention against Transnational Organized Crime,

and

for Bosnia and Herzegovina in accordance with Article 24 of the Law on International Legal Aid in Criminal Matters of Bosnia and Herzegovina,

for Montenegro in accordance with Article 42 of the Law on mutual legal assistance in criminal matters of the Republic of Montenegro and

for Serbia in accordance with Article 96 in connection with Article 83 of the Law on Mutual Assistance in Criminal Matters of the Republic of Serbia.

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) Tužilaštvo Bosne i Hercegovine (Prosecutors office of BiH), Kraljice Jelene 88, Sarajevo, Bosnia and Herzegovina,

and

2) Vrhovno Državno Tužilaštvo Crne Gore (Supreme State Prosecution of Montenegro), Ul.Slobode br.20, Podgorica, Montenegro

and

3) Okružno javno tužilaštvo Beograd (District Public Prosecutor's Office of Beograd), Savska 17/A, Beograd Serbia

The parties to this agreement may decide by common agreement to invite other countries, agencies and administrations to become parties to this agreement.

2. Purpose, Scope and Missions of the Joint Investigation Team:

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

For the investigation of trans-border criminal activity of a criminal group lead by A.B., a Serbian citizen, who together with C.D. and E.F., citizens of Montenegro, and G.H., I.J., K.L., M.N., O.P. and R.S., citizens of Bosnia and Herzegovina, is committing criminal offences of unlawful production and distribution of narcotics (Heroin) in a well organized criminal group and in large quantities.

The criminal offences commenced in May 2013 and are still ongoing.

The criminal group has a clear hierarchy where A.B. makes all the key decisions and is leading the whole operation from Beograd (Serbia), G.H. and I.J. are responsible for the production of the narcotics near Sarajevo (Bosnia and Herzegovina), K.L., M.N., O.P. and R.S. are responsible for the transport of the narcotics from Bosnia and Herzegovina to Serbia and Montenegro, C.D. and E.F. are responsible for the distribution of the narcotics near Podgorica (Montenegro) and for shipment of the narcotics via boat to the European Union countries.

There is still a large number of members of the criminal group and their cooperatives that are not known at the moment, but play an important role in the production and distribution of the narcotics.

The described criminal activity is a serious criminal offence in all participating countries. The prescribed penalties in all participated countries are higher than five years.

The joint investigation team will jointly investigate the criminal offences of the criminal group where:

In Serbia the District Public Prosecutor's Office of Beograd, Prosecutor's Office for Organized Crime, is leading the investigation under No. 123/2013. Thus far the Serbian authorities have been able to identify the criminal group leader, his whereabouts and the telephone number he is using. The Serbian JIT members will:

- gather further information on the criminal activities of the criminal group leader,
- acquire a court order for wiretapping of the criminal group leader,
- share the acquired information in real time with other JIT members,
- conduct further investigation of the so far unknown persons from Serbia, that are participating or supporting the criminal group,
- seize illegal narcotics and confiscate the illegally acquired assets, and
- conduct all other necessary investigative measures agreed in the JIT.

In Bosnia and Herzegovina the Prosecutors office of BiH is leading the investigation under No. K-557/2013. Thus far the BiH authorities have been able to

identify some of the members of the criminal group (G.H. and I.J.) responsible for the production of the narcotics and identify three possible locations where the narcotics are being produced. The information on the locations has not yet been confirmed. The BiH authorities will:

- gather information on the criminal activities of the criminal group members from its country,
- gather information on the locations where the narcotics are being produced,
- acquire a court order for the house search of the premises where the narcotics are being produced,
- identify the routes for transporting the illegal narcotics,
- share the acquired information in real time with other JIT members,
- conduct further investigation of the so far unknown persons from BiH, that are participating or supporting the criminal group,
- seize illegal narcotics and confiscate the illegally acquired assets and
- conduct all other necessary investigative measures agreed in the JIT.

In Montenegro the Supreme State Prosecution of Montenegro, Posebni odjel za organizirani kriminal, is leading the investigation under No. Kt-63/2013. Thus far the Montenegrin authorities have detected several shipments of Heroin from the shipyard in Bar, Montenegro. The gathered information has shown that the illegal narcotics were stored near Podgorica and came from Bosnia and Herzegovina. The Montenegrin authorities identified C.D. and E.F. as the persons responsible for the attempts to ship the illegal narcotics via ship to the European Union. The authorities also identified K.L., M.N., O.P. and R.S. as the persons responsible for the transport of the illegal narcotics to Podgorica. Thus far conducted investigations indicate that at least ten more members are involved in the criminal group.

The Montenegrin authorities will:

- gather information on the criminal activities of the criminal group members from its country,
- confirm the information on the location where the narcotics are being stored,
- acquire a court order for the house search of the premises where the narcotics are being stored for shipment,
- share the acquired information in real time with other JIT members,
- conduct further investigation of the so far unknown persons from Montenegro, that are participating or supporting the criminal group,
- seize illegal narcotics and confiscate the illegally acquired assets and
- conduct all other necessary investigative measures agreed in the JIT.

The exchange of findings obtained within the scope of the investigations and the arrangement of the aforementioned coercive measures will occur within the JIT without submission of a formal request for mutual legal assistance.

All documents are exchanged directly between the members of the JIT, and assistance can be obtained from the local police liaison officers responsible for the area concerned.

The parties may, if necessary, redefine the purpose, scope and mission of the JIT by unanimous common agreement in the form of an additional agreement between the parties in the JIT, who are represented by their respective leaders.

3. Period covered by the agreement

With respect to this agreement, this JIT may operate for a period of twelve months from the date of the signature of this agreement, meaning from 2 December 2013 to 2 December 2014.

The JIT's period of operation may be extended by a set period, whereby the extension and termination of the length of the period must be unanimously agreed. In this case, a supplemental agreement must be drawn up.

The JIT may be disbanded prematurely either unanimously or by simple majority. Should the JIT be terminated by simple majority, the JIT partners will have to reach an agreement beforehand as to the date when the secured evidence will be handed over. In case of premature termination of the JIT, no new investigative measures on the basis of the JIT shall be carried out.

4. Country or countries in which the JIT will operate

The JIT will operate in Bosnia and Herzegovina, Montenegro and Serbia.

The Joint investigation team shall carry out its operations in accordance with the law of the country in which it operates at any particular time. Should the JIT move its operational base to another country, the law of this country shall then apply. In case investigations in a third country become necessary, the participating countries will seek agreement on the procedure.

5. Places where the JIT is based:

The JIT is based in the following cities:

- Sarajevo, Bosnia and Herzegovina
- Podgorica, Montenegro
- Beograd, Serbia

6. Contract Language and Working Language:

The participating countries decide that the contract language (amendments and additions to this contract and the underlying negotiations) is English.

The working languages set down for the co-ordination and implementation of the joint investigation measures (operational activities) are Bosnian, Serbian, Montenegrin and English.

Documents will be exchanged between the parties in the original language.

7. JIT Leader or Leaders

The parties have designated the following person, who shall be a representative of the competent authorities in the country or countries where the team is operating, as the leader of the JIT and under whose leadership the members of the JIT must carry out their tasks in the country to which he belongs:

Country	On secondment from (name of body)	Name	Rank and affiliation (judicial, Police or other competent authority)
Bosnia and Herzegovina	Prosecutors office of BiH	X.X.	Prosecutor
Montenegro	Supreme State Prosecution of Montenegro	Y.Y.	Higher State Prosecutor
Serbia	District Public Prosecutor`s Office of Beograd	Z.Z.	District Public Prosecutor

Should any of the abovementioned persons be prevented from carrying out their duties, a replacement will be designated without delay by mutual consent of the parties in an appendix to the agreement. In urgent cases, it will be sufficient for the parties to the JIT to give notification of the replacement by letter. Such notification shall subsequently be confirmed in an appendix to the agreement.

8. Members of the JIT

In addition to the persons referred to in the article on JIT Leader or Leaders, the following persons shall be members of the JIT:

<i>Country</i>	<i>On secondment from (name of body)</i>	<i>Name or identification number</i>	<i>Rank and affiliation (judicial, Police or other competent authority)</i>	<i>Role</i>
Bosnia and Herzegovina	Prosecutors office of BiH	A.X.	Prosecutor	JIT member
Bosnia and Herzegovina	Police	B.X.	Higher Police inspector	JIT member
Bosnia and Herzegovina	Police	C.X.	Police officer	JIT member
Montenegro	Supreme State Prosecution of Montenegro	A.Y.	State Prosecutor	JIT member
Montenegro	Police	B.Y.	Police officer	JIT member
Serbia	Police	A.Z.	Police senior inspector	JIT member
Serbia	Police	B.Z.	Senior Police officer	JIT member
Serbia	Police	C.Z.	Police officer	JIT member

Should any of the above-mentioned persons be prevented from carrying out their duties, a replacement will be designated without delay in an appendix to this agreement or by a written notification sent by the competent leader of the JIT.

The parties ensure that a sufficient number of members in their country speak the English language to enable efficient communication between the members.

The members of the JIT are criminally and civilly liable for their actions in accordance with the law of the country in whose territory they are operating.

9. General Conditions of the Agreement

The JIT members will cooperate and coordinate their investigations concerning the criminal offences committed by the described international criminal group. The JIT members will share the gathered information and evidences in real time, without delay. The communication between JIT members will be direct and without unnecessary formalities.

The JIT members will decide on a timeframe for investigative measures and will respect the deadlines.

The participating countries will respect the investigations in other countries participating in the JIT and will plan their investigation and the execution of their

investigative measures with other countries participating in the JIT, through the JIT members.

Countries participating in the JIT will resolve any unforeseen difficulties regarding the work of the joint investigation team or the investigation of the criminal offences, which fall within the scope of the JIT, through dialog with other countries participating in the JIT. The participating countries will firstly try to resolve the problems with communication between the JIT leaders. In case such communication will not resolve in a solution, the countries participating in the JIT will immediately organize a meeting between the competent authorities of the countries participating in the JIT and find a solution in the form of an amendment to this agreement.

10. Specific Conditions of the Agreement

The judicial authorities, as parties to the agreement, the leaders as well as all members of the JIT have access to all information and evidence gathered in the course of the JIT`s investigations and obtained in the investigations carried out to date by the authorities of the countries participating in the JIT.

A member seconded within the scope of the JIT can, under the leadership and presence of the competent officer authorized to carry out investigative measures in the host country, be permitted to take part in investigative measures within the scope of the host country`s applicable law, provided this has been approved by the seconding country. Therefore, foreign officers do not have any powers to give instructions and it must be ensured that a competent officer from the host country shall be able to take action in individual measures at any time.

All information and evidence obtained for or by the JIT shall form part of the relevant case files, as far as required by national law, and provided this does not contravene the law applicable in the country concerned, it is not classified as confidential and is not covered by any other declaration to prevent this. Only declassified information and evidence shall be submitted to the JIT partners.

If it proves necessary for one of the parties to the agreement to send a letter of request for mutual assistance to a third country, then generally this party shall ask the third country for permission to share all findings and evidence obtained in response to the request with the other parties to the agreement.

Members of the JIT may be requested to make witness statements for use in any of the legal systems of the parties. It is understood that the Members of the JIT may be called to give evidence in the other`s jurisdiction. The national laws governing professional secrecy of the public officials remain applicable.

11. Organizational Measures

The parties to this agreement take the necessary organizational measures to enable the JIT to carry out its work. The cost incurred by investigative measures shall be paid by the authorities in the country where the investigative measure is carried out. The costs of interpreters are paid by the country which requests the interpreter, irrespective of where the interpreter carries out the interpreting work. Cost for travel and accommodation of the officers participating in the JIT are paid by the seconding country. There is no separate remuneration.

The officials from a country participating in the JIT are not allowed to carry their service weapons on the territory of the other country participating in the JIT.

No Press releases are allowed before all of the countries in the JIT have concluded their investigation and the JIT purpose is fulfilled.

12. Use of Information and Evidence obtained on the basis of the JIT:

Information and evidence lawfully obtained within the scope of the JIT may be used for the following purposes:

- for the purposes for which the JIT was established,
- to expose, investigate and prosecute other crimes, subject to obtaining prior approval from the participating country in which the information was obtained. This approval can only be refused in cases where the use of this information would adversely affect the criminal investigations in the participating country concerned or in cases where this country could refuse to provide assistance,
- to avert an imminent and serious risk to public safety and notwithstanding the prior point, if a criminal investigation will then be initiated;
- for other purposes, provided this has been agreed by the countries which have established the JIT;
- this Agreement does not derogate existing obligations in national law for the parties to take measures (seizure, controlled delivery) upon detailed information received by that party on the whereabouts of illegal substances.

The parties entrust the leader or a member of the JIT with the task of giving advice on the obtaining of evidence. His or her role includes providing guidance to members of the JIT on aspects and procedures to be taken into account in the taking of evidence. The person(s) who carry out this function should be indicated here. The parties may inform each other about giving testimony by members of the JIT.

13. Amendments to the agreement

Amendments to this agreement shall be signed by the parties and shall be attached to the original version of this agreement.

14. Internal evaluation

Every three months at least, the JIT leaders shall evaluate the progress achieved as regards the general purpose of the JIT, while determining and addressing any problems thus identified.

After the operation of the JIT ends, the parties may, where appropriate, arrange a meeting to evaluate the performance of the JIT.

The JIT may draw up a report on the operation, which may show how the Operational Action Plan was implemented and which results were achieved.

This agreement is signed in 6 copies.

Sarajevo, Bosnia and Herzegovina, 2 December 2013

(Signatures of all parties)

MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM³⁵

In accordance with:

(enter national and international legal basis)

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):

4) (Name of the first competent agency/administration of a country as a party to the agreement)

and

5) (Name of the second competent agency/administration of a country as a party to the agreement)

and

6) (Name of the last competent agency/administration of a country party as a party to the agreement)

The parties to this agreement may decide by common agreement to invite other countries, agencies and administrations to become parties to this agreement.

2. Purpose, Scope and Missions of the Joint Investigation Team:

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

a) General provisions:

(Description of the specific purpose of the JIT. This should include the circumstances of the crime(s) being investigated (date, place and nature))

³⁵ Prepared on the basis of an existing JIT agreement from the former Yugoslav Republic of Macedonia with other countries and with consideration of the EUROJUST guidelines for JIT agreements

“SUGGESTIONS:”

“The exchange of findings obtained within the scope of the investigations and the arrangement of the aforementioned coercive measures will occur within the JIT without submission of a formal request for mutual legal assistance.”

“All documents are exchanged directly between the members of the JIT, and assistance can be obtained from the local police liaison officers responsible for the area concerned.

The parties may, if necessary, redefine the purpose, scope and mission of the JIT by unanimous common agreement in the form of an additional agreement between the parties in the JIT, who are represented by their respective leaders.

b) Specific provisions:

(Description of the case in all JIT member countries and the specifics of the investigations in a certain country)

(1) Investigations in Country A

(which authority is investigating the case, case number, which authorities are cooperating and which will be participating in the JIT, the so far gathered general information in the case concerning the specific country (places, scope, etc), purpose and scope of the investigation in a certain country,...)

(2) Investigations in Country B

(3) Investigations in Country C

3. Period covered by the agreement

With respect to this agreement, this JIT may operate during the following period:

from

[insert date]

to

[insert date]

The JIT’s period of operation may be extended by a set period, whereby the extension and termination of the length of the period must be unanimously agreed. In this case, a supplemental agreement must be drawn up.

The JIT may be disbanded prematurely either unanimously or by simple majority. Should the JIT be terminated by simple majority, the JIT partners will have to reach an agreement beforehand as to the date when the secured evidence will be handed over. In case of premature termination of the JIT, no new investigative measures on the basis of the JIT shall be carried out.

4. Country or countries in which the JIT will operate

The JIT will operate in the country or countries designated hereafter:
[Designate country or countries in which the JIT is intended to operate]

The Joint investigation team shall carry out its operations in accordance with the law of the country in which it operates at any particular time. Should the JIT move its operational base to another country, the law of this country shall then apply. In case investigations in a third country become necessary, the participating countries will seek agreement on the procedure.

5. Places where the JIT is based:

The JIT is based in the following cities:

- “name of the city”, “country”
- “name of the city”, “country”
- “name of the city”, “country”

6. Contract Language and Working Language:

The participating countries decide that the contract language (amendments and additions to this contract and the underlying negotiations) is/are _____.

The working language set down for the co-ordination and implementation of the joint investigation measures (operational activities) is/are _____, _____ and _____.

Interpreters will be used at the relevant office of the JIT in _____, the judicial authorities will also have the opportunity to use interpreters from the police authorities.

Documents will be exchanged between the parties in the original language.

7. JIT Leader or Leaders

The parties have designated the following person, who shall be a representative of the competent authorities in the country or countries where the team is operating, as the leader of the JIT and under whose leadership the members of the JIT must carry out their tasks in the country to which he belongs:

Country	On secondment from (name of body)	Name	Rank and affiliation (judicial, Police or other competent authority)

Should any of the abovementioned persons be prevented from carrying out their duties, a replacement will be designated without delay by mutual consent of the parties in an appendix to the agreement. In urgent cases, it will be sufficient for the parties to the JIT to give notification of the replacement by letter. Such notification shall subsequently be confirmed in an appendix to the agreement.

8. Members of the JIT

In addition to the persons referred to in the article on JIT Leader or Leaders, the following persons shall be members of the JIT:

Country	On secondment from (name of body)	Name or identification number	Rank and affiliation (judicial, Police or other competent authority)	Role

Should any of the above-mentioned persons be prevented from carrying out their duties, a replacement will be designated without delay in an appendix to this agreement or by a written notification sent by the competent leader of the JIT.

“POSSIBILITY:”

The JIT partner shall be notified in writing of any change to the members of the JIT. Any such notification shall be considered and agreed Annex to this Agreement, if no objections are made by other JIT partners.

The parties ensure that sufficient number of members in their country speak the _____ language to enable efficient communication between the members.

“POSSIBILITY:”

“The members of the JIT are criminally and civilly liable for their actions in accordance with the law of the country in whose territory they are operating.”

9. General Conditions of the Agreement

(Provisions on the key elements of the Joint Investigation Team and conditions in which the JIT shall operate)

10. Specific Conditions of the Agreement

(Provisions on specific elements of the Joint Investigation Team and conditions in between two specific countries or all countries participating in the JIT- like provisions about the execution of special investigative measures and the exchange and handling of in this way collected information, access to information, classified information handling, provisions on cooperation with third countries,...)

“POSSIBILITY:”

“The judicial authorities, as parties to the agreement, the leaders as well as all members of the JIT have access to all information and evidence gathered in the course of the JIT’s investigations and obtained in the investigations carried out to date by the authorities of the countries participating in the JIT.”

“A member seconded within the scope of the JIT can, under the leadership and presence of the competent officer authorized to carry out investigative measures in the host country, be permitted to take part in investigative measures within the scope of the host country’s applicable law, provided this has been approved by the seconding country. Therefore, foreign officers do not have any powers to give instructions and it must be ensured that a competent officer from the host country shall be able to take action in individual measures at any time.”

“All information and evidence obtained for or by the JIT shall form part of the relevant case files, as far as required by national law, and provided this does not contravene the law applicable in the country concerned, it is not classified as confidential and is not covered by any other declaration to prevent this. Only declassified information and evidence shall be submitted to the JIT partners.”

“If it proves necessary for one of the parties to the agreement to send a letter of request for mutual assistance to a third country, then generally this party shall ask the third country for permission to share all findings and evidence obtained in response to the request with the other parties to the agreement.”

“Members of the JIT may be requested to make witness statements for use in any of the legal systems of the parties. It is understood that the Members of the JIT may be called to give evidence in the other’s jurisdiction. The national laws governing professional secrecy of the public officials remain applicable.”

“SUGGESTIONS:”

(In order to avoid making the agreement too cumbersome some or all following points may be located in the Operational Action Plan)

The following special arrangements may apply to this agreement:

(To be inserted, if applicable. The following sub-chapters are intended to highlight possible areas that need to be specifically described)

10.1. Terms under which seconded members of the JIT may be excluded when investigative measures are taken.

10.2. Specific conditions under which a seconded member of a JIT may request his/her own national authorities to take measures which are requested by the team without submitting a letter of request.

10.3. Conditions under which seconded members may share information derived from seconding authorities.

10.4. Provisions concerning the confidentiality of this agreement.

10.5. Conditions under which assistance sought under the Convention and other arrangements may be given.

11. Organizational Measures

9. 10. 11. 11.1. Costs incurred by the JIT

“SUGGESTIONS:”

“The parties to this agreement take the necessary organizational measures to enable the JIT to carry out its work. The cost incurred by investigative measures shall be paid by the authorities in the country where the investigative measure is carried out. The costs of interpreters are paid by the country which requests the interpreter, irrespective of where the interpreter carries out the interpreting work. Cost for travel and accommodation of the officers participating in the JIT are paid by the seconding country. There is no separate remuneration.”

“POSSIBILITY:”

- Provisions on insurance for seconded members of the JIT;
- Provisions on the translation of, for example, the documents obtained into the language of other members of the JIT, as well as into the official language of communication (if different), since this can entail considerable (unnecessary) expenditure;
- Provisions concerning expenses or income arising from seized assets.

11.2. Office rooms (if shared office rooms will be used)

11.3. Vehicles (if shared vehicles will be used)

11.4. Service weapons

“SUGGESTIONS:”

“The officials from a country participating in the JIT are not allowed to carry their service weapons on the territory of the other country participating in the JIT.

11.5. Press (provisions concerning the media, in particular the need for consultation prior to the presentation of press releases and official information briefings).

11.6. Specific data protection rules

12. Participants in the JIT

The provisions on participants in the JIT are dealt with in the relevant appendix to this agreement.

(Participation of organizations like EUROJUST, EUROPOL, EULEX, etc.)

13. Use of Information and Evidence obtained on the basis of the JIT:

Information and evidence lawfully obtained within the scope of the JIT may be used for the following purposes:

(list of the proceedings and purposes for which the information obtained through JIT can be used)

“SUGGESTIONS:”

- for the purposes for which the JIT was established,
- to expose, investigate and prosecute other crimes, subject to obtaining prior approval from the participating country in which the information was obtained. This approval can only be refused in cases where the use of this information would adversely affect the criminal investigations in the participating country concerned or in cases where this country could refuse to provide assistance,
- to avert an imminent and serious risk to public safety and notwithstanding the prior point, if a criminal investigation will then be initiated;
- for other purposes, provided this has been agreed by the countries which have established the JIT;
- this Agreement does not derogate existing obligations in national law for the parties to take measures (seizure, controlled delivery) upon detailed information received by that party on the whereabouts of illegal substances.

“POSSIBILITY:”

(The parties entrust the leader or a member of the JIT with the task of giving advice on the obtaining of evidence. His or her role includes providing guidance to members of the JIT on aspects and procedures to be taken into account in the

taking of evidence. The person(s) who carry out this function should be indicated here. The parties may inform each other about giving testimony by members of the JIT.)

14. Amendments to the agreement

Amendments to this agreement, including but not limited to the following:

- (a) the incorporation of new members of the JIT;
- (b) changes to the purpose provided for in Article 2 of this agreement;
- (c) additions or changes to the current articles,

shall take the form provided by this model agreement, shall be signed by the parties and shall be attached to the original version.

15. Internal evaluation

Every six months at least, the JIT leaders shall evaluate the progress achieved as regards the general purpose of the JIT, while determining and addressing any problems thus identified.

After the operation of the JIT ends, the parties may, where appropriate, arrange a meeting to evaluate the performance of the JIT.

The JIT may draw up a report on the operation, which may show how the Operational Action Plan was implemented and which results were achieved.

This agreement is signed in ____ copies.

Place of signature, date

Signatures of all parties

