

Conny Rijken & Gert Vermeulen

**JOINT
INVESTIGATION
TEAMS
IN THE
EUROPEAN UNION**

From Theory to Practice

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IN THE EUROPEAN UNION:
FROM THEORY TO PRACTICE

Edited by

Conny RIJKEN

and

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JOINT INVESTIGATION TEAMS
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INTRODUCTION

Law enforcement authorities have long been convinced that they are not able to fight cross-border crime solely on the national level. In more recent times and actually since the early 1990s, the political level has become aware of this as well. This resulted in the adoption of a vast number of documents within the EU with the aim of facilitating cross-border activities to fight cross-border crime. One of the relevant instruments produced within the EU is that of the Joint Investigation Team (JIT). A JIT is considered a possible instrument to facilitate judicial cooperation within the European Union (EU). Until recently, the instrument of a JIT has not been used in practice although it was believed that there were a large number of cases in which the instrument could be applied. During the Dutch EU presidency (the second half of 2004), the establishment of an operational JIT was adopted as one of its goals in the field of police affairs. This JIT project was initiated with the aim being to use the instrument of a JIT as a possibility for a more intensive and efficient cooperation in the fight against Trafficking in Human Beings (THB) from and through Bulgaria (further on referred to as the THB-JIT project). As THB from and through Bulgaria was felt to be a common problem by most countries involved in this project (Belgium, Bulgaria, Germany, the Netherlands, and the United Kingdom), this crime was chosen as the subject for this project. Another aim of the project was to gain an insight into the way a JIT could function and the obstacles and conditions to be met for a JIT to be effective. To identify these obstacles and conditions and to make the information gathered available to future JITs, scientific research was conducted by an international and interdisciplinary research group, being given the possibility to monitor and analyse the whole project.¹ For various reasons, an operational JIT could not be established within the THB-JIT project. However, meanwhile an operational JIT was initiated between the Netherlands and the United Kingdom in a drugs case (referred to as the Drugs JIT). The research group was invited to monitor and analyse this process as well.

¹ This research was conducted with the financial support of the Dutch Ministry of Internal Affairs, the Dutch Ministry of Justice, the National Crime Squad in the United Kingdom, the *Bundeskriminalamt* in Germany, the Dutch Police and Science Programme, the Research and Documentation Centre of the Dutch Ministry of Justice, and the Netherlands Police EU Presidency 2004.

² These written sources consist of: a. relevant literature, b. legal documents such as relevant EU documents and instruments such as treaties, recommendations, Framework Decisions etc., c.

The three main sources for the gathering of the necessary information on both JIT projects were: written sources,² interviews (both live and telephone interviews) and questionnaires, and monitoring and observation of the meetings of the Steering Group, the so-called Joint Intelligence Group (JIG), the JIT and other meetings that were held in the context of both JIT projects.³ The research was assigned to Tilburg University by the international steering group.⁴ The international steering group consisted of representatives from all five countries involved in the THB-JIT project, and was managed by a project board from the Netherlands Police EU Presidency 2004.⁵ The research group consisted of academic researchers from three of the different states involved in the THB-JIT project, namely, Belgium, Germany, and the Netherlands.⁶ Consultations with a researcher from the United Kingdom took place on an *ad hoc* basis. Different professional backgrounds (legal, criminological, and sociological) were represented in the research group. It was counselled by a Scientific Advisory Board (SAB),⁷ with academics from universities and academic institutions in different countries. All the researchers have adapted the result of their part of the research to contribute to this book.

This book provides a more analytical approach to the projects subject to the scientific research mentioned above. It is exceptional that academics are given the opportunity to be so closely involved in the operational field at such an early stage of testing and using new methods to fight cross-border crimes. Consequently, this book provides an insight into the obstacles met and remedies adopted when resorting to a JIT. It shows the complexity of factors that influence criminal cooperation and that have to be in place when this form of cooperation is initiated. Players in the field are not always aware of (the lack of) these factors.

policy documents of the countries involved in the JIT for the understanding of how things work out in practice in these countries, and d. reports of meetings from the Joint Intelligence Group, Analysis Group, JIT, Steering Group and other bodies, Europol documents, Eurojust documents, etc.

³ The information that was gathered during these meetings concerned, for instance, the way in which the participants cooperated, how the interests in participating played a role in the cooperation, etc.

⁴ See Chapter I.

⁵ The members of the project board were Bas Barendregt, Timo Kansil, Jaco Vos and Jan Wiarda.

⁶ Ghent University (Institute for International Research on Criminal Policy), Max Planck Institute, and Tilburg University respectively.

⁷ The Scientific Advisory Board was chaired by Prof. Dr. Ernst Hirsch Ballin (Tilburg University). The other members of the SAB were Prof. Dr. Gert Vermeulen (Ghent University, Belgium), Prof. Dr. Hans Jörg Albrecht (Max Planck Institute), Prof. Dr. Monica den Boer (Free University Amsterdam), Prof. Dr. Willy Bruggeman (Benelux University Eindhoven Centre), Prof. Dr. Lazar Gruev (Sofia University and a member of the Constitutional Court of Bulgaria), Prof. Dr. Frans Leeuw and Roelof Jan Bokhorst, LL.M (Scientific Research and Documentation Centre, Dutch Ministry of Justice), Prof. Dr. Gert Vermeulen (Ghent University) and Frits Vlek, LL.M (Dutch Police and Science Program).

This book helps to identify these factors and does not leave the practitioners empty-handed. Conditions are formulated that have to be met before more intensified cooperation following the JIT concept can be successful. Furthermore, recommendations are made throughout the book and in the concluding chapter in particular for the application of these conditions.

The legal framework to start a JIT is a first prerequisite for the establishment of a JIT. Without such a framework, a JIT can never achieve its full potential. This legal framework within the EU was provided for in the first place by Article 13 of the EU Convention on Mutual Assistance and in the second place by the Council Framework Decision on JITs, which is an exact copy of Article 13. The way in which the different Member States involved in the THB-JIT project, have dealt with the obligation to implement the Framework Decision and Article 13 EU Convention on Mutual Assistance, if bound by it, is analysed in depth in Chapter I. However, it is thought that, especially on the operational level, with persons who must be considered able and qualified to make decisions to set up a JIT, there is a particular need for awareness as regards the practical consequences of the establishment of a JIT. This book attempts to meet this need.

The process of the establishment and the functioning of a JIT can be divided into three steps, corresponding with the different stages of an ordinary investigation, namely, the pre-operational phase, the operational phase, and the judicial phase. The possibilities and limitations concerning the exchange of law enforcement information within these phases is therefore elaborated upon in Chapters II, III and IV. Since they are two important bodies on the European level in facilitating police and judicial cooperation, Europol and Eurojust can be involved in JITs in several ways. The implications of their involvement on the practical as well as the juridical level are dealt with in Chapter V. The more practical aspects as well as the requirements for effective cooperation within a JIT form valuable information for practitioners who have to deal with JITs in the future. An insight is given into the way the two initiatives (the THB-JIT project and the operational Drugs JIT) were organised, who participated, and how relations developed (Chapter VI).

The analysis of the theoretical background of the instrument of a JIT, the efforts to establish a JIT within the THB-JIT project, and the establishment of the first operational JIT form the basis for the formulation of conditions and recommendations for the use of the instrument of a JIT and for the establishment of future JITs. Therefore, we believe that this book will be valuable to all those involved in criminal cooperation as well as to the national legislator, as it will show the importance of a clear and effective implementation of legislation.

The central question throughout the various stages of cooperation in criminal matters discussed in the book is what added value a JIT can bring. The results of the scientific research are used as illustrative material and operational input for a more theoretical reflection on the various aspects of a JIT. The book is composed in such a way that the chapters can be read separately, thus allowing the reader to focus on parts corresponding to his or her particular interest.

March 2006

Conny RIJKEN
Gert VERMEULEN

LIST OF ABBREVIATIONS

ACPO	Association of Chief Police Officers
APB	Action Plan Bulgaria
APBWG	Action Plan Bulgaria Working Group
AWF	Analysis Work File
BDSG	Bundesdatenschutzgesetzes
BGBI	Bundesgesetzblatt
BA	Bundeskriminalamt
BKAG	Bundeskriminalamtgesetz
CBP	College bescherming persoonsgegevens
CCP	Code of Criminal Procedure
CJA	Criminal Justice Act
CoE	Council of Europe
CPIA	Criminal Procedure and Investigations Act
CPS	Crown Prosecution Service
DIN	International Network Service (Dienst Internationale Netwerken)
DNRI	National Criminal Intelligence Service (Dienst Nationale Recherche Informatie)
ECJ	European Court of Justice
EDU	European Drugs Unit
EEC	European Economic Community
EJN	European Judicial Network
ELO	Europol Liaison Officers
ENU	Europol National Unit
EPCTF	European Police Chiefs Task Force
EU	European Union
Eurojust	European Judicial Cooperation Unit
EUROPOL	European Police Office
IGO	Intergovernmental organisation

JIG	Joint Intelligence Group
JIT	Joint Investigation Team
KLPD	Korps Landelijke Politiediensten
LKA	Länder Kriminal Amter
LRT	Landelijk Recherche Team
MoU	Memorandum of Understanding
MRO	Meldingen Recherche Onderzoeken
NCIS	National Crime Intelligence Service
NCS	National Crime Squad
NCSEW	National Crime Squad of England and Wales
NGO	Non-Governmental Organisation
NSPIS	National Strategy for Police Information Systems
PII	Public interest immunity
PV	Proces-verbaal
RIPA	Regulation of Investigatory Powers Act
SAB	Scientific Advisory Board
SIC	Schengen Implementation Convention
SIRENE	Supplementary information request at the national entry
SIS	Schengen Information System
SOCA	Serious Organised Crime Agency
TEU	Treaty on European Union
THB	Trafficking in Human Beings
TOC	Transnational Organised Crime
TREVI	Terrorism, Radicalism, Extremism, Violence International

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