


Debate Topics :

Romania 2 vs. France 2

Team France 2

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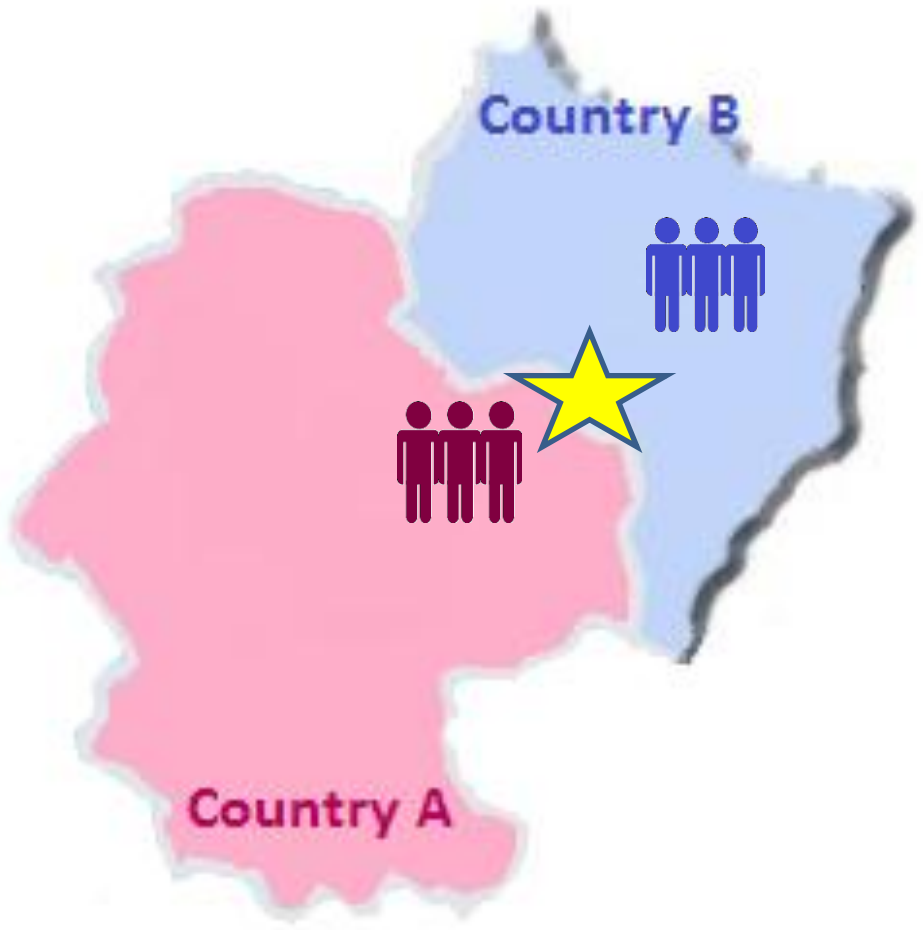




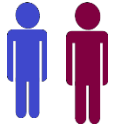
 = Criminal activities

 = National policemen and investigators

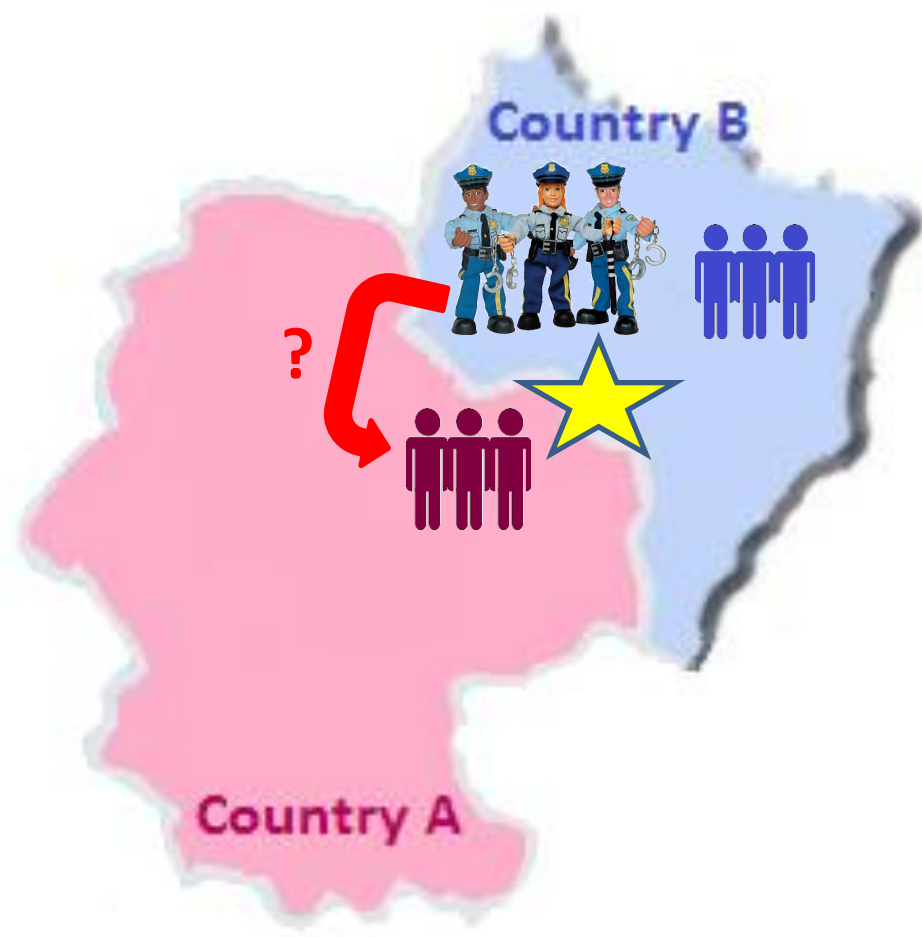
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Joint Investigation Team (JIT)



-  = Transmission of evidence
-  = Criminal activities
-  = National policemen and investigators

 +  = 



Joint Investigation Team (JIT)

How should evidence gathered by the JIT acting in and on the territory of EU Country B be transmitted to EU Country A if it is considered also relevant to Country A's investigations ?



France 2 shall sustain that the issuing of a common Letter Rogatory to that effect is unnecessary.

Agenda



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Introduction

- I. The futility of a Letter Rogatory : better alternatives for transmission of evidence
 - A. Transmitting evidence through the JIT itself
 - B. Transmitting evidence thanks to other tools of cooperation

- II. The irrelevance of a Letter Rogatory : the shortcomings of a counterproductive instrument
 - A. Drawbacks in form
 - B. Drawbacks in content

Conclusion

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Letters Rogatory

Traditional instruments of cooperation :

- European Convention 20th April 1959

Aim at **promoting** cooperation in criminal matters



Joint Investigation Teams

Recently created :

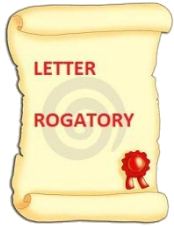
- MLA Convention 29th May 2000
- Framework Decision 13th June 2002

Aim at making cooperation **more efficient**

DO THEY NEED a
LETTER ROGATORY ?



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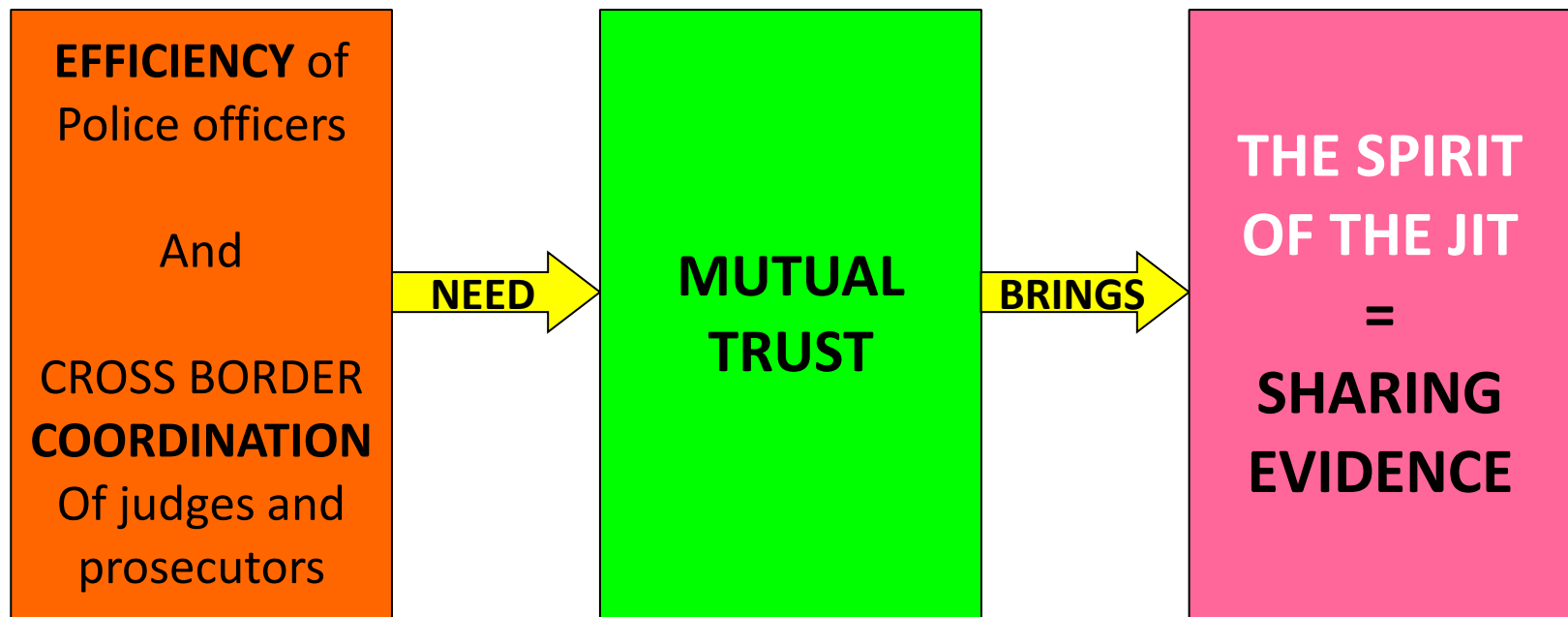


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I. The futility of a Letter Rogatory

A) Transmitting evidence through the JIT itself

Reason n°1 : A JIT is a convenient framework for sharing evidence



I. The futility of a Letter Rogatory

A) Transmitting evidence through the JIT itself

Reason n°1 : A JIT is a convenient framework for sharing evidence.

First implication : **SIMPLIFICATION OF THE INVESTIGATIVE PROCESS**

Fading borders : the JIT acts as if it were investigating in only one State .

→ A **specific procedure** to transfer evidence shouldn't be necessary.

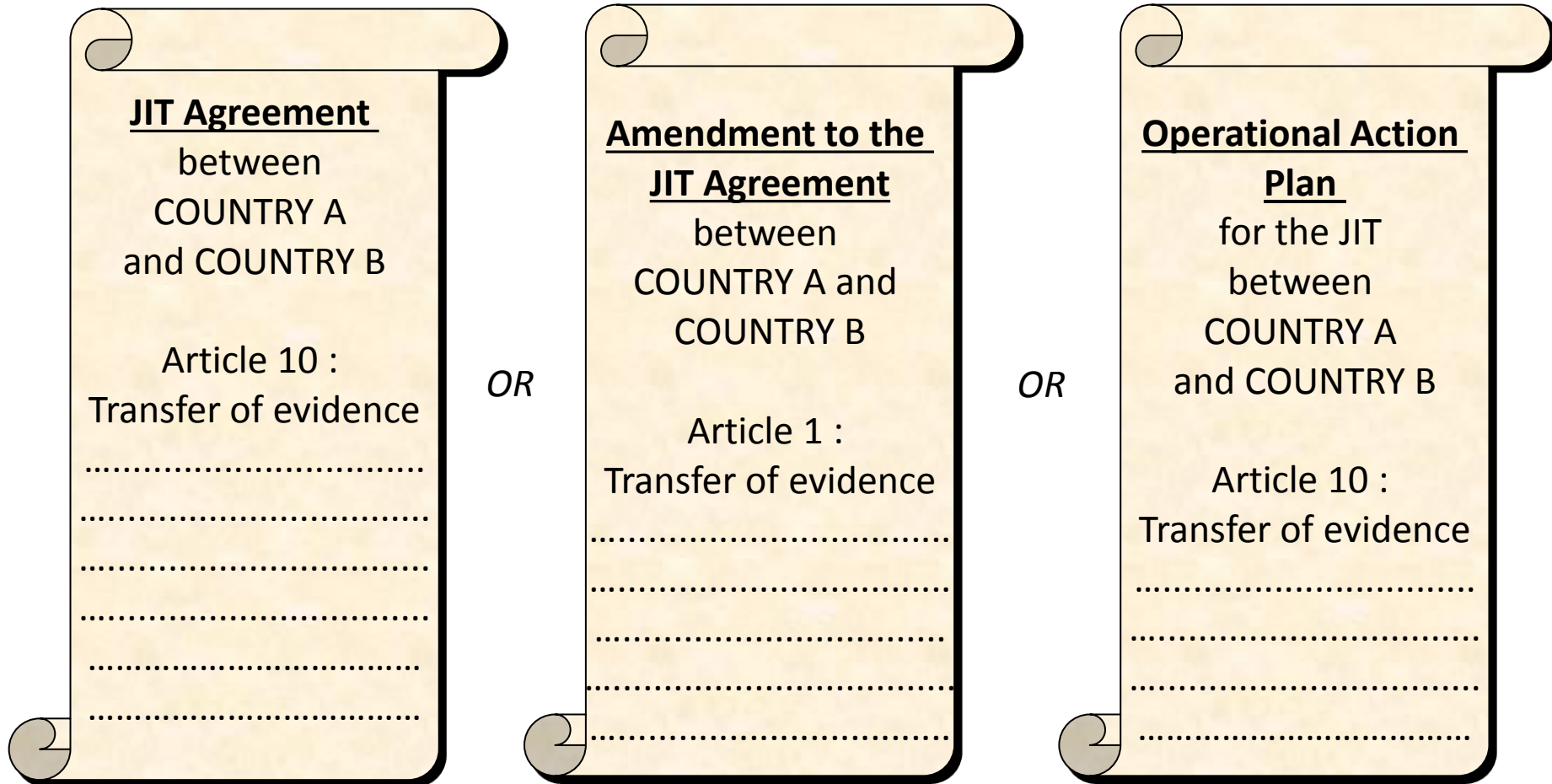
Second implication : **FLEXIBILITY OF THE INVESTIGATIVE PROCESS**

- ❑ Joint Investigation Team Manual : « *JITs are designed as a **flexible tool for supporting investigations** involving cross border crime and building mutual trust* ».
- ❑ A JIT relies on a **written agreement** that can be **amended at any time**.
- ❑ The **Operational Action Plan** containing a paragraph on evidence gathering and « translation » of evidence.

I. The futility of a Letter Rogatory

A) Transmitting evidence through the JIT itself

Reason n°1 : A JIT is a convenient framework for sharing evidence
= JIT's legal supports are sufficient on their own



I. The futility of a Letter Rogatory

A) Transmitting evidence through the JIT itself

Reason n°2 : Provisions on transmission of information could be used to transmit evidence.

<u>Legal basis</u>	<u>Provisions</u>
2000 MLA CONVENTION	<p>Art. 7 : <u>spontaneous exchange of information</u> : « ...may exchange information <u>without a request to that effect</u>, relating to criminal offences... »</p> <p>Art. 13§10 : <u>use of information lawfully obtained</u> by a member or seconded member while part of a JIT which is not otherwise available to the competent authorities of the Member States concerned, for the following purposes.</p>

I. The futility of a Letter Rogatory

A) Transmitting evidence through the JIT itself

Reason n°2 : Provisions on transmission of information could be used to transmit evidence.

Article 13§10 :

« *Information lawfully obtained (...) may be used for the following purposes :*

a) for the purposes for which the team has been set up ;

b) subject to prior consent of the Member States where the information became available, for detecting, investigating and prosecuting other criminal offences (...);

c) for preventing an immediate and serious threat to public security ;

d) for other purposes to the extent that this is agreed between Member States setting up the team »

I. The futility of a Letter Rogatory

A) Transmitting evidence through the JIT itself

Reason n°2 : Provisions on transmission of information could be used to transmit evidence.

<u>Legal basis</u>	<u>Provisions</u>
2000 MLA CONVENTION	Art. 7 : <u>spontaneous exchange of information</u> : « ... <i>may exchange information without a request to that effect, relating to criminal offences...</i> » Art. 13§10 : <i>use of information lawfully obtained by a member of a JIT for purposes a), b), c) and d).</i>
Model agreement on the establishment of a JIT (26 february 2010)	13.4 : Conditions under which seconded members may share information derived from seconding authorities. 13.10bis : Confidentiality and use of information already existing and/or obtained during the operation of the JIT.
Check list for the Operational Action plan	Information exchange and communication – describe how information will be exchanged.

→ **Wide scope of transmission of information...AND EVIDENCE !**

I. The futility of a Letter Rogatory

A) Transmitting evidence through the JIT itself

Evidence (Oxford dictionary) : *information drawn from personal testimony, a document, or a material object, used to establish facts in a legal investigation*



Difference between evidence and information is thin

Example : A JIT between the United Kingdom and France

Interception of telecommunications carried out in the UK by the JIT
A French magistrate asks for transmission of the interception

→ **Information in one country, evidence in the other**



Fingerprint discovered in France

French policemen ask for transmission of the UK's fingerprints database

→ **Information when isolated, evidence taken together**



I. The futility of a Letter Rogatory

B) Transmitting evidence thanks to other tools of cooperation

Possibilities to share evidence apart from the JIT itself :

➡ By transferring evidence under the provisions of **article 39 of the Schengen Agreement** of 1985

« 2. *Written information (...) may not be used (...) as evidence of the offence charged other than with the consent of the [Member State where the information was collected] »*

→ No use of Letter Rogatory , but restriction to countries members of the Agreement.

➡ By using new instruments of cooperation based on mutual recognition : **Freezing Order** and **European Evidence Warrant**

→ Provisional seizure of evidence accompanied by a procedure aiming at collecting and transferring evidence.

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II. The irrelevance of a Letter Rogatory :

A) Drawbacks in form

Numerous drawbacks in form which concern the **writing, translation and transmission of a Letter Rogatory**

- ❑ No standardized document

→ ***Time lost to understand the Letter Rogatory...
(origin, content, ways of execution)***



- ❑ Difficulty of translation

→ ***Cordoba does not accept Letters transmitted in English***

I Want YOU



To Speak English

- ❑ Complex identification of the foreign authority

→ ***In Spain, each city has its own investigating judge***



- ❑ No binding deadlines

→ ***Not sure to receive an answer before the ending of the JIT***



II. The irrelevance of a Letter Rogatory :

B) Drawbacks in content

GROUNDS FOR REFUSAL: LEGAL BASIS

1959 Convention on mutual assistance in criminal matters (article 2) :

« Assistance *may be refused*:

a. if the request concerns an offence which the requested Party considers a *political offence [...] or a fiscal offence*;

b. if (...) that execution is likely to prejudice the *sovereignty, security, ordre public or other essential interests of its country*. »

GROUNDS FOR REFUSAL: THE MAIN FLAWS

TOO BROAD and NOT PRECISE ENOUGH

Grounds for refusal are so **numerous and broad** that a Letter Rogatory can be refused almost every time

Our case : Might involve a serious offence, such as **terrorism** (ETA,...)

→ Risk of refusal because of **prejudice to public order**



II. The irrelevance of a Letter Rogatory

The use of a Letter Rogatory in our case would be both:

- Rather impractical (Drawbacks in form)
- Unpredictable (Drawbacks in content)

S. Mogini: « *a letter rogatory is like a castaway's message in a bottle which he or she hopes will reach its destination* »

A Letter Rogatory



The magistrate



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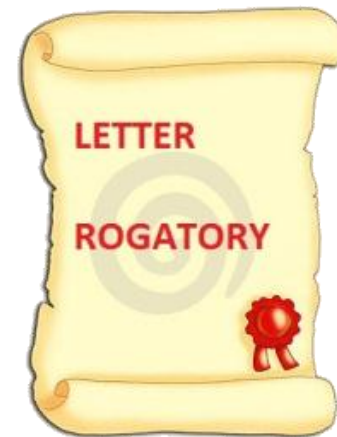


Conclusion : answer to the debate

QUESTION : How should evidence gathered by the JIT acting in and on the territory of EU Country B be transmitted to EU Country A if it is considered also relevant to Country A's investigations ?

ANSWER : The issuing of a Letter Rogatory to transmit evidence when a JIT is created is :

- 1) **Unnecessary** because better solutions exist.
- 2) **Irrelevant** because of its numerous weaknesses.



Conclusion : proposals



How could we make this answer more obvious and avoid such a questioning in the future ?

Three proposals :



- ❑ **To promote other tools** specially designed to transmit evidence
 ➡ ***to make the most of freezing orders and EEW***

- ❑ **To clarify the status of evidence in the legal basis of the JITs**
 ➡ ***by rewriting the MLA Convention to assimilate evidence and information***

- ❑ **To provide Member States with an example of agreement**
 ➡ ***by modifying the Model Agreement on the Establishment of a JIT***

Conclusion

Final Step :

To Harmonize the national rules regarding the admissibility of evidence

- ❑ As proposed by the EU Commission in its 2010 Action plan implementing the Stockholm programme...
- ❑ But nothing has been launched yet...

THANK YOU FOR YOUR ATTENTION !

