

In their presentation Romania focussed on the point that a Letter Rogatory is necessary for information that has been found outside the boundaries of the JIT agreement. For example because the information was obtained before or after the time span the JIT agreement covers, or because of the speciality principle. France pointed out in this regard that a JIT agreement can be amended. Both teams agreed that the information obtained within the scope of the JIT could be transferred and used as evidence through the JIT.

The questions of the jury made clear that there is some debate on that last point of view. This debate stems mainly from the fact that there is no clear definition of evidence. The

Convention of Mutual Legal Assistance 2000, article 13 paragraph 10 states:

“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 Member States 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 Member State 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 Member State concerned or in respect of which that Member State 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 Member States setting up the team.”

Both teams stated that in the practice of the JIT there is no distinction made between information and evidence and thus evidence is transferred through the JIT. We are not familiar with cases in which this practice caused problems. However we recommend to prevent problems in the future in capital cases that a clear definition of both information and evidence shall be made.