

Issue in focus number 3

“Cooperation with third States”

1. Introduction

This Issue in focus provided brief background information for the discussions during Workshop No. 3 “*Judicial cooperation with third States*” in the context of the strategic meeting on drug trafficking held by Eurojust on 29 and 30 September 2014.

Following a short explanation of the reasons for the selection of this topic and the methods followed to prepare the background information (Section 2), this paper is structured into three main sections focusing on:

- **Section 3** - Analysis of Eurojust’s casework (quantitative and qualitative)
- **Section 4** - Mapping of Eurojust’s contact points vs. key drug trafficking areas as identified in Europol’s *Serious Organised Crime Threat Assessment* (SOCTA).
- **Section 5** – Selected recommendations from a recent study sponsored by the European Commission on judicial cooperation, mutual legal assistance and extradition of drug traffickers and other drug-related crime offenders, among the Member States of the European Union and Latin American and Caribbean (LAC) countries (hereinafter the “European commission study”)¹

2. Background, scope and methods

The in-depth analysis of Eurojust’s casework conducted in the context of the strategic project *Enhancing the work of Eurojust in drug trafficking cases* (hereinafter the “Strategic Project”, which covered the period 1 September 2008 to 31 August 2010 and is later referred to herein as the “Compared Period”)² led to several conclusions related to cooperation with third States, among which the need to ensure a more frequent and harmonised approach to their participation in Eurojust’s coordination meetings.

The Action Plan on Drug Trafficking included several recommendations to address the above from Eurojust’s side. However, the Implementation Report of the Action Plan revealed that the number of coordination meetings attended by third States actually decreased during the period 1 September 2010 to 31 August 2012, which is later referred to herein as the “Reporting Period”, compared to the previous analysis conducted in the context of the strategic project.

Accordingly, the DT Project Team complemented the quantitative analysis of Eurojust’s casework with qualitative research to explore the reasons for inviting third States to coordination meetings on drug trafficking cases and identify possible obstacles to their participation.

¹ Parra, Arnaiz, Bodoque and Robinson (2013), *Study on judicial cooperation, mutual legal assistance and extradition of drug traffickers and other drug-related crime offenders, between the EU and its Member States and Latin American and Caribbean (LAC) countries*, European commission, Luxembourg, available online at:

http://ec.europa.eu/justice/anti-drugs/files/study-lac-judicial-coop_en.pdf

² Eurojust (2012) *Strategic Project on enhancing the work of Eurojust in Drug Trafficking cases: final results*, Eurojust, The Hague, available online at:

[http://www.eurojust.europa.eu/doclibrary/corporate/Casework%20publications/Enhancing%20the%20work%20of%20Eurojust%20in%20drug%20trafficking%20cases%20\(Jan%202012\)/drug-trafficking-report-2012-02-13-EN.pdf](http://www.eurojust.europa.eu/doclibrary/corporate/Casework%20publications/Enhancing%20the%20work%20of%20Eurojust%20in%20drug%20trafficking%20cases%20(Jan%202012)/drug-trafficking-report-2012-02-13-EN.pdf)

Access to case files and/or interviews with National Desks as owner of the cases was necessary to carry out the above analysis. As to the scope of the qualitative analysis, this refers to 2013, as several case files from previous years had been destroyed, thus preventing in-depth analysis. The results of this analysis are reported in Section 3 of this paper.

Furthermore, the DT Project Team compared the findings of Europol's SOCTA report (identifying key areas for drug trafficking) with the current availability of Eurojust contact points. The results of this mapping exercise are reported in Section 4 by type of trafficked substance (synthetic drugs, heroin and cocaine).

Finally, the DT Project Team considered the recommendations of the European Commission study and extracted those related to the possible role to be played by Eurojust in judicial cooperation with third States (see Section 5).

3. Analysis of Eurojust's casework

3.1. The decreased attendance of third States

Third States attended drug trafficking coordination meetings in 13 of the 70 cases (19%). During the Compared Period, third States attended 26% of drug trafficking coordination meetings. Therefore, the goal of Eurojust to increase the level of attendance by 10% was not achieved.

Albania and Switzerland each participated in two drug trafficking coordination meetings during the Reporting Period; Colombia, the former Yugoslav Republic of Macedonia, Croatia, Norway and Turkey each participated in one. Previously, during the Compared Period, the following third States attended drug trafficking coordination meetings: Norway (six), Turkey (three), Switzerland (two), and the former Yugoslav Republic of Macedonia, Iceland, Serbia, Colombia and the USA (one each).

Liaison Prosecutors from Croatia, Norway and the USA were seconded to Eurojust throughout the entire Reporting Period. A cooperation agreement with Switzerland entered into force on 22 July 2011.

Over the entire Reporting Period the most frequent requests to Eurojust in terms of cooperation with third States were the speeding up and facilitating of mutual legal assistance, while delays in the execution of Letters of Request was identified as the most common obstacle. As the need and feasibility of involving third States in Eurojust coordination meetings should be identified on a case-by-case basis, it could not be determined with certainty whether there was no urgent need for the participation of third States during the Reporting Period or whether other factors, such as a lack of cooperation agreements or trust, led to this development. For this reason, further research into the underlying reasons was carried out on the grounds of a declining trend in the participation of third States in coordination meetings related to drug trafficking casework.

3.2. Questions from the College on third States

The College requested the TRCT Project Team to give special attention to the following questions when analysing cooperation with third States:

- Why was a third State invited to a coordination meeting and which contribution and added value their attendance provided?
- If a third State was not invited to or did not attend a coordination meeting, what were the reasons for their non-participation?

3.3. Replies and results of the analysis

There were 14 cases in which at least one third State was registered as requesting country in drug trafficking cases registered in 2013 or participated in a coordination meeting on a drug trafficking case that was held in 2013. Four cases involved Albania, Croatia (two), Switzerland (two), Venezuela (two), and one with each of the following: Colombia, FYROM, Morocco, Russian Federation, Serbia and USA.

There are many reasons for inviting a third State to a coordination meeting. Often, a criminal network operates from a third State, the delegations need to clarify questions on legal assistance matters or extradition requests or a Member State wishes a third State to initiate an investigation and discuss linked cases. In many of the analysed cases, at least one suspect is living in a third State or has assets in the territory of a third State.

In many cases, a coordination meeting with a third State resolved and clarified problems or potential problems with mutual legal assistance requests and facilitated the smooth exchange of information. In a few cases, the coordination meeting was held bilaterally, and therefore the participation of the third State was essential. The participation of third States was also mentioned as assisting in establishing direct contacts and, at best, led to a successful joint operation with a third State.

In four of the 14 cases there was no information available. All four are cases in which a third State was a Requested State according to the CMS but did not attend a coordination meeting. Only in two cases, was information available on the reasons as to why a third State did not attend a coordination meeting. In both cases, no mutual legal assistance request was pending towards the third State at the time of the coordination meeting. As a matter of fact, in one case the case was opened towards the third State only after the coordination meeting.

3.4. A case illustration

Reported in Eurojust News, issue No. 9, June 2013.

“Several drug trafficking distribution networks in Austria, Germany, Belgium and the Netherlands had been set up by an OCG from the former Yugoslav Republic of Macedonia to transport heroin from the former Yugoslav Republic of Macedonia to Belgium and the Netherlands. On reaching Western Europe, the heroin was distributed to Frankfurt and Vienna. Possible links appeared to exist with the UK, Sweden, Denmark, France and Switzerland. Thanks to police cooperation between Austria and Germany and intensive investigations, large quantities of heroin were seized in both countries. The parties agreed that Eurojust should coordinate the investigations in the Member States and promote the initiation of investigations and prosecutions in the former Yugoslav Republic of Macedonia.

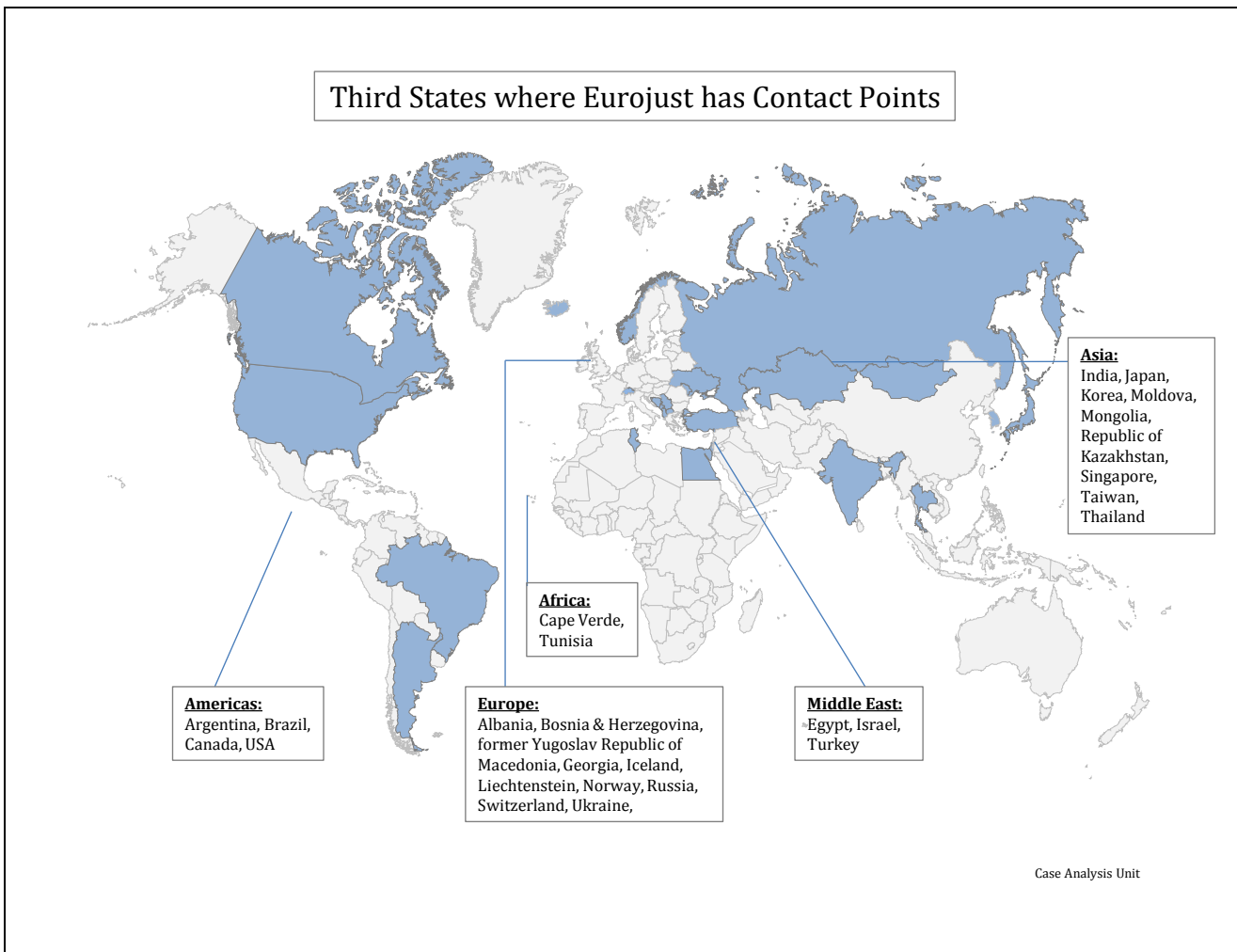
As the former Yugoslav Republic of Macedonia does not allow extradition of its own nationals, and since most of the suspects were residing there, Eurojust held two coordination meetings to speed up the investigations. As a result of the first coordination meeting, the former Yugoslav Republic of Macedonia initiated criminal proceedings. Coordinated investigations resulted in the arrest and conviction of the main suspects and several other perpetrators.

The OCG subsequently rebuilt its network and a third coordination meeting was held at Eurojust to discuss how to foster cooperation. This third coordination meeting provided a forum for an in-depth debate on how to overcome any legal issues and to identify potential solutions combining the use of several judicial instruments. After consultation and agreement at national level on the proposed measures to be adopted, a fourth coordination meeting at Eurojust resulted in the setting up of a JIT between Austria, Germany, the Netherlands and the former Yugoslav Republic of Macedonia that is currently active. The JIT received financial support through Eurojust’s JIT Funding Project.”

4. Cooperation with third States via the Eurojust Contact Points

Eurojust has established cooperation with Contact Points in 30 countries: Albania, Argentina, Bosnia and Herzegovina, Brazil, Cape Verde, Canada, Egypt, former Yugoslav Republic of Macedonia, Georgia, Iceland, India, Israel, Japan, Republic of Kazakhstan, Korea, Liechtenstein, Moldova, Mongolia, Montenegro, Norway, Russian Federation, Serbia, Singapore, Switzerland, Taiwan (Republic of China), Thailand, Tunisia, Turkey, Ukraine and USA (see Chart 1).

Chart 1. Third States where Eurojust has contact points for judicial cooperation

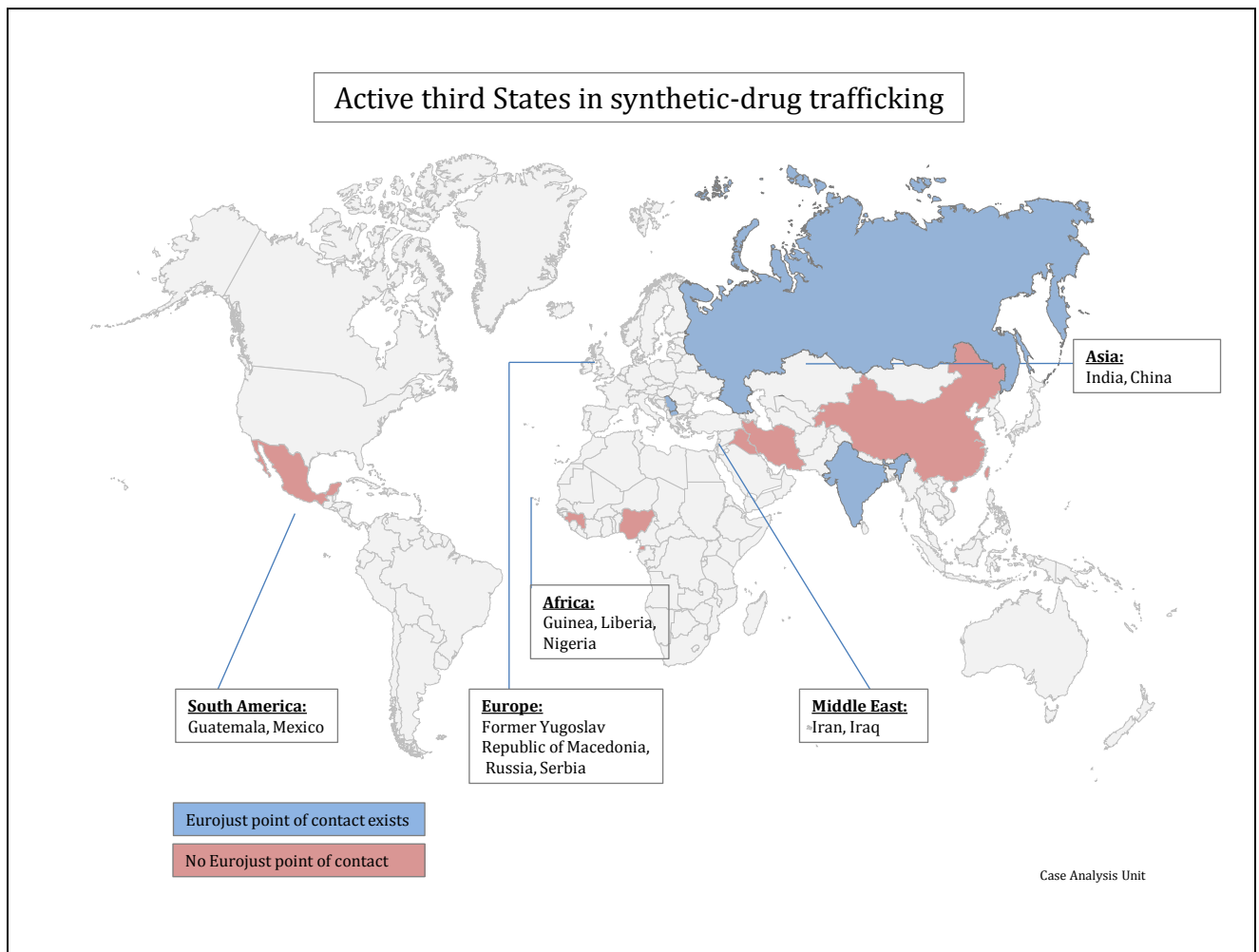


4.1. Synthetic drugs and third States

The *Threat Assessment 2013 on Synthetic Drugs* (Europol, 2013) indicates that China, India and Russia are important third States for importing chemicals used as precursors and (pre)precursors for synthetic drug production in the EU. The Threat Assessment also points out that the involvement of third States in the production of synthetic drugs is estimated to increase in the future. There are indications that Guinea, Liberia and Nigeria in Africa, Mexico and Guatemala in South America, Iran and Iraq in the Middle East, and the former Yugoslav Republic of Macedonia and Serbia in Europe, are already actively producing synthetic drugs.

Eurojust has a Contact Point in the three European third States, but none in any non-European State indicated as crucial to the synthetic drug situation in the EU. Chart 2 illustrates the geographical locations and highlights in red those third States where there is currently no Eurojust Contact Point.

Chart 2. Eurojust Contact Points in relation to those third States that are active in synthetic-drug trafficking



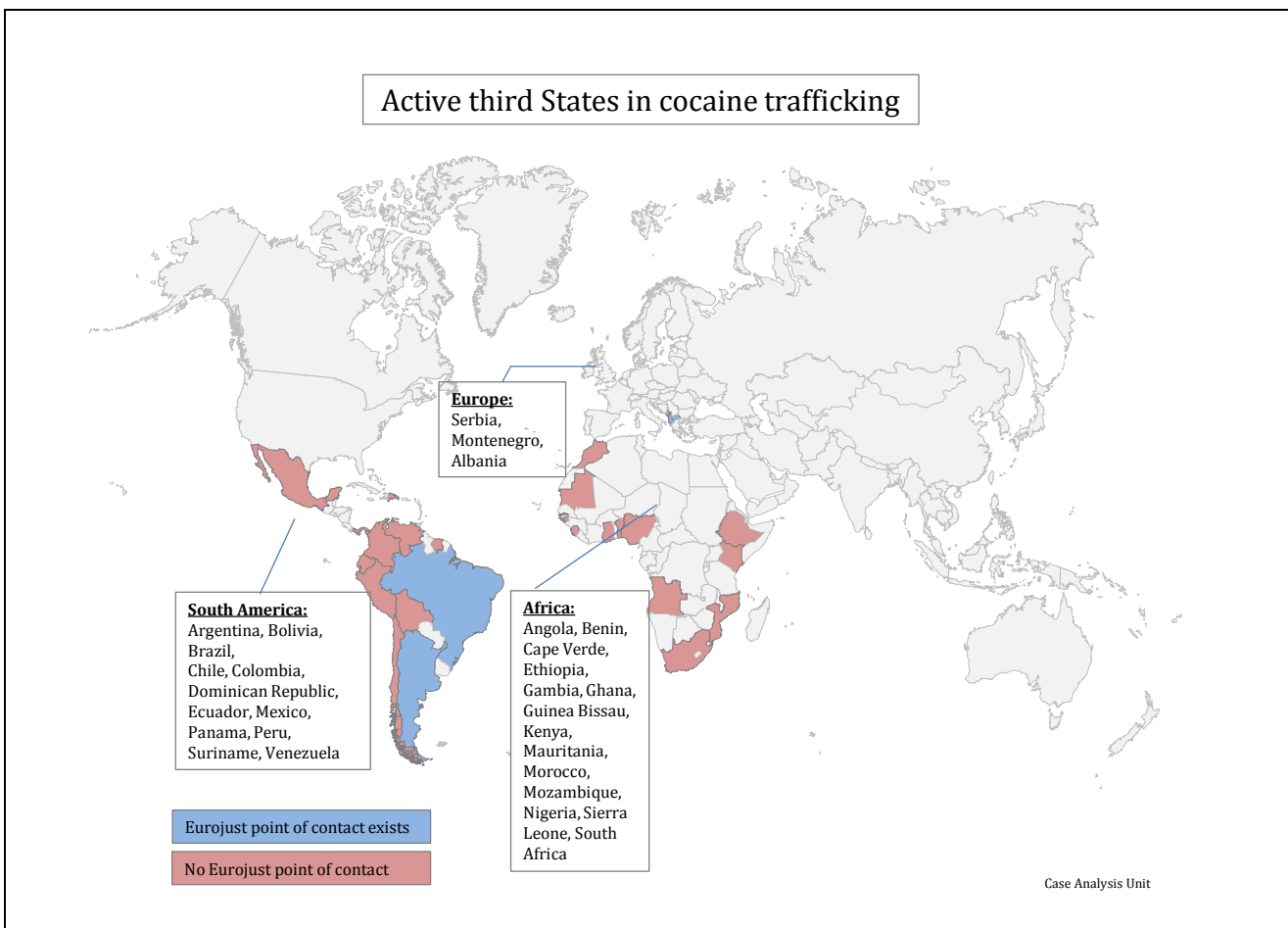
4.2. Cocaine and third States

Several third States in many continents play a crucial role in facilitating cocaine production, transportation, storing, marketing and importing to the EU. Historically, South America has played a big role in cocaine markets. Colombia, with whom Eurojust does not have an established Contact Point, has been the leading producer of cocaine (Europol, 2013). Mexico, Peru, Bolivia and Venezuela also have important and increasing roles as producer or transit countries. Eurojust does not have a Contact Point in any of these countries. Argentina, Brazil, Chile, Peru, Suriname, Ecuador, Panama and, particularly, the Dominican Republic, are widely used as transit points for cocaine. Eurojust has a Contact Point established with two of these countries: Argentina and Brazil.

In West Africa, there are many key transit points for cocaine transportation: Benin, Cape Verde, Gambia, Ghana, Guinea Bissau, Mauritania, Nigeria and Sierra Leone. In Southern and Eastern Africa, Kenya, Mozambique, Angola, Ethiopia and South Africa are also used as transit countries. Morocco in the north of Africa is the main continental port to import cocaine to the EU. Eurojust has a Contact Point in one of these crucial African countries: Cape Verde.

In Europe, Serbian, Montenegrin and Albanian organised crime groups are active in the cocaine market. Eurojust has an established Contact Point in all of these countries. Chart 3 illustrates the geographical positions of the crucial third States for cocaine situation in the EU and highlights in red those that have no Eurojust Contact Point at the moment.

Chart 3. Eurojust Contact Points in relation to those third States that are active in cocaine trafficking

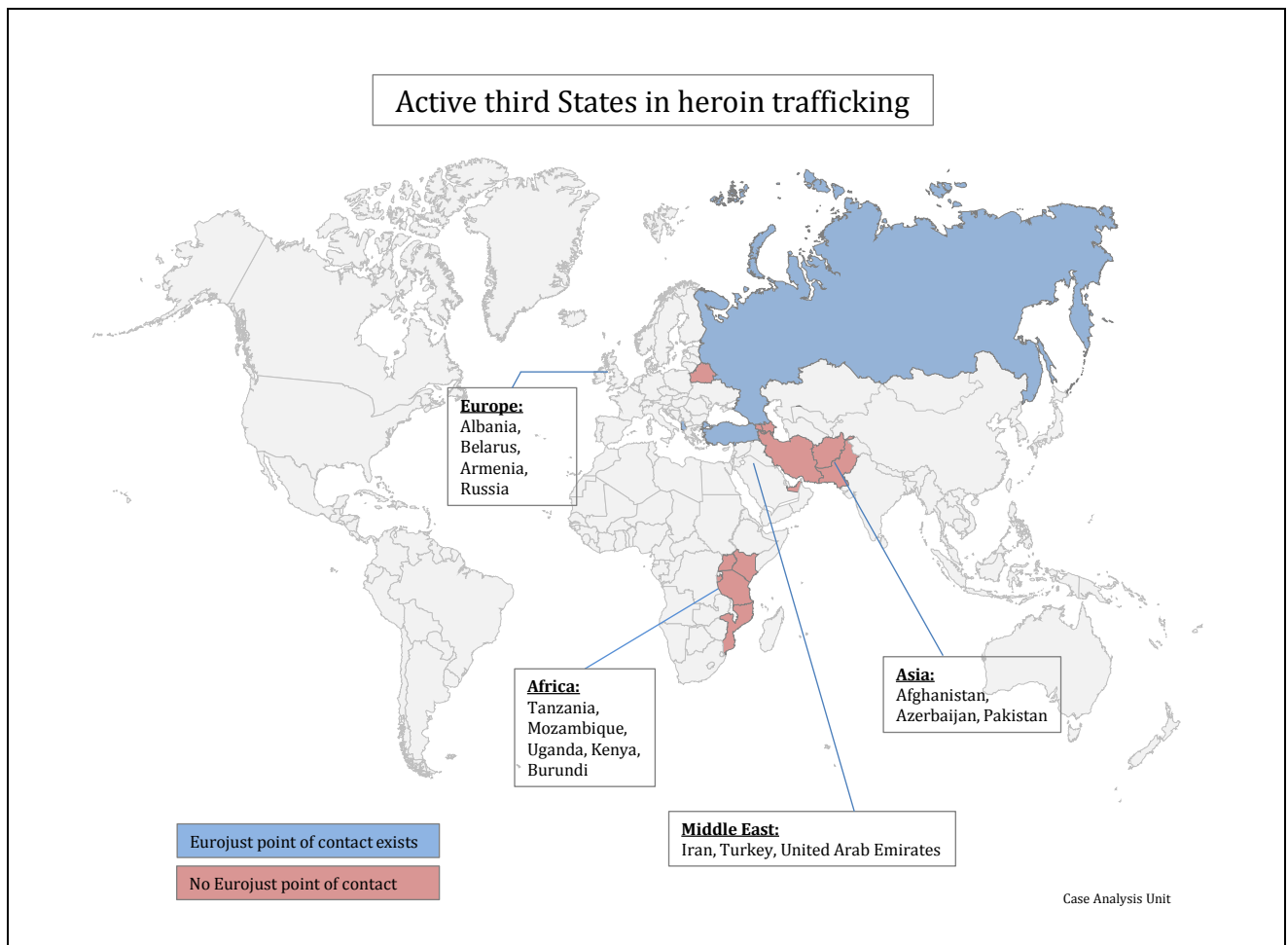


4.3. Heroin and third States

Regarding the supply and transportation of heroin, Afghanistan, Iran and Pakistan play an important role in the EU heroin market. Turkey is widely used as a transit country for heroin from Asia to Europe. The United Arab Emirates in the Middle East and Tanzania, Mozambique, Uganda, Kenya and Burundi in East Africa play an important role, either as transit countries or the origin of the traffickers. In Europe and Asia, Azerbaijan, Albania, Belarus, Armenia and Russia are important for heroin trafficking. (Europol, 2013)

Eurojust has no Contact Points established with non-European third States involved actively in heroin supply, production, transportation or marketing. Chart 4 shows the geographical locations of the important third States for the heroin situation in the EU and highlights in red those that currently have no Eurojust Contact Point.

Chart 4. Eurojust Contact Points in relation to those third States that are active in heroin trafficking

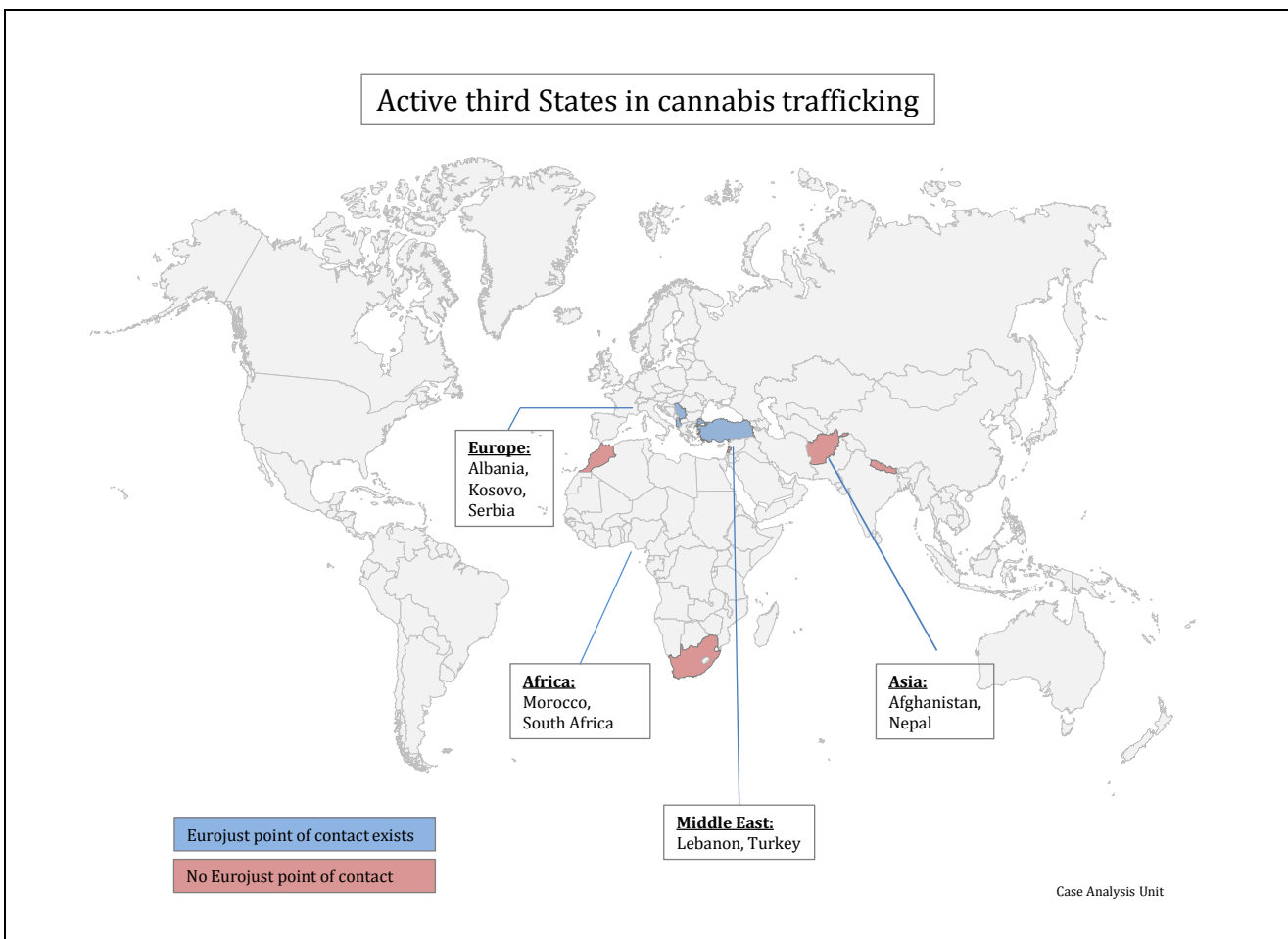


4.4. Cannabis and third States

According to the EMCDDA-Europol report on EU Drug Markets (EMCCDA-Europol, 2013),³ the majority of cannabis resin destined for the European market is sourced from Morocco and typically smuggled through the Iberian peninsula. Afghanistan has also emerged as a main producer of cannabis resin, together with Lebanon, Nepal and India, while Albania (and, to a lesser extent, other countries in the Balkan region, including Kosovo and Serbia) and South Africa primarily supply herbal cannabis to the European market. At the same time, Vietnamese OCGs have become prominent in the indoor cultivation of cannabis in many EU countries. European domestic production of herbal cannabis has thus led to a decline in seizures in recent years. Nevertheless, Turkey continues to play a role as a major transit country via Greece.

Eurojust has three Contact Points established with non-European third States actively involved in cannabis supply, production, transportation or marketing. Chart 5 shows the geographical locations of important third States regarding the cannabis situation in the European Union and highlights in red those that currently have no Eurojust Contact Point.

Chart 5. Eurojust Contact Points in relation to those third States that are active in cannabis trafficking



³ EMCDDA-Europol (2013), *EU Drug market Report. A Strategic Analysis*, available at <http://www.emcdda.europa.eu/publications/joint-publications/drug-markets>

5. Recommendations from the European Commission's study

The European Commission's study provides a comprehensive analysis of the existing cooperation between Member States of the EU and LAC countries in the field of judicial cooperation in Latin America. In the final section of the report, several "operational conclusions" are identified. Two of these conclusions refer directly to Eurojust and are reported below with their background for the reader's convenience and possible discussion during the dedicated workshop at Eurojust's strategic meeting on drug trafficking on 29 and 30 September 2014.

KEY CONCLUSION C

"Creation of the figure of the 'Eurojust Liaison Magistrate' to be posted in competent authorities of selected LAC countries along significant drug trafficking routes."

The background for this operational conclusion is provided in the European commission's study as it follows (quote from pages 299-300):

"The benefits of liaison magistrates, prosecutors and police officers are proven. Experience shows that these on-site agents promote faster and more useful MLA than is usually possible using traditional at-distance dealings. Additionally they play an important role in overcoming interlegal systems' obstacles (substantive, procedural or attitudinal).

There is a legal basis for this action since the Eurojust Decision allows the possibility of posting liaison magistrates for the purpose of facilitating judicial cooperation with third countries from 2009 onwards. The Eurojust Decision limits the possibility of posting Eurojust liaison magistrates to third States with which Eurojust has concluded a cooperation agreement.

In the near future, Eurojust could establish contacts aimed at exploring the possibility for future cooperation agreements with Latin American countries, in particular Brazil, Colombia and Mexico. These countries should be regarded as outstanding drug trafficking hubs, although the number of Eurojust cases involving them is very low (almost inexistent in the case of Mexico), a circumstance in need of consideration; awareness should be raised towards the fact that Mexico is one of the most important drug trafficking highways worldwide. Eurojust priorities as regards third States for 2013 include establishing contacts aimed at exploring possibilities on future cooperation agreements with Latin American countries, in particular with Mexico and Brazil. The findings of this study could provide Eurojust with new data in order for Eurojust to consider the inclusion of other countries in the list of priorities: as could be the case of Colombia, Peru or Surinam.

Eurojust has designated contact points in 29 different third States, but only two LAC countries belong to this list: Argentina and Brazil. Eurojust should take proactive action towards the designation of contact points in other relevant countries in this region, taking into account that it has opened many more cases relating to some of these countries than to a number of the third States included in the current list."

KEY CONCLUSION E

"To strengthen and extending existing MoUs (IberRed - Eurojust and IberRed - EJN) and to study the possibilities to contact with REMJA for further exploring areas of common interest and future cooperation."

The background for this operational conclusion is provided in the European commission's study as it follows (quote from pages 296-298):

“As noted, there are two regional cooperation networks located on both sides of the Atlantic dealing with legal cooperation in criminal matters: REMJA (Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas) and EJN. There is also another comprehensive intercontinental network: Ibero- American Network of International Legal Cooperation, (Red Iberoamericana de Cooperación Jurídica Internacional – IberRed).

The use of memoranda of understanding between different networks and organisations can be very efficient if it is later properly implemented. In this respect it is worth mentioning the potential of the MoU signed between IberRED and EJM or IberRed and Eurojust and lately IberRed and the General Secretariat of INTERPOL. Therefore these memoranda should be reinforced in different directions; as regards the Eurojust-IberRed MoU, already in force since May 2009:

- A thorough assessment is needed from both sides as regards the effectiveness of the MoU in relation to the purpose established in art. 2.1 (reinforcing the fight against serious forms of transnational crime); this assessment involves a serious quantitative and qualitative analysis of the activities conducted within the frame of the MoU and their ability to fulfil the abovementioned purpose, i.e. do these activities lead to the identification of the main obstacles, difficulties and causes of refusal in the bi-regional mutual legal cooperation? and are Eurojust and IberRed’s role in the solution of those problems clearly defined?, or is the framework provided by the MoU sufficient or adequate to reach that role?; this analysis could eventually lead to the conclusion that such an instrument should be amended for the improvement of its efficiency.
- More concrete action should be taken as regards the commitments and conclusions reached by Eurojust and IberRed in the bilateral meeting that took place in Madrid on 9 July 2012, in particular in two fields:
 - o possible actions to be carried out together in the fight against organised crime,
 - o facilitating the roles of Eurojust and IberRed to foster the participation of LAC countries’ judicial authorities in coordination meetings.
- As regards the latter conclusion, it should be highlighted that the number of Eurojust cases involving third countries in the LAC region is extremely low and the participation of LAC countries in Eurojust coordination meetings has been practically inexistent over the years. This circumstance needs to be properly addressed particularly taking into account that drug trafficking is by nature a transnational activity and that the LAC countries are one of the main cultivation, production and transport routes (this situation is extremely relevant as regards to cocaine, only produced in the LAC region). This involvement of LAC countries in Eurojust casework should go beyond the use of the MoU since no personal data can be exchanged via the MoU, which could be used as a tool to boost closer cooperation by requesting the opening of a Eurojust case under arts. 3.2 and 26a of the Eurojust Decision.
- Fostering the use of the MoU among the National Members of Eurojust by directly liaising with IberRed contact points. Avoiding channelling all requests via the central contact point should be fostered without prejudice to the facilitating role of the latter as foreseen in art. 2,e of the MoU, by providing them all with access to Iber@ secure communications network.
- Knowledge and understanding of the MoU should be promoted among the IberRed contact points, particularly taking into account that the vast majority of requests channelled via the MoU have been received from National Members and just a very few from IberRed contact points.
- Detailed information should be provided with regard to the competences and tasks of the different IberRed contact points taking into account that those contact points belong to different Institutions (Prosecution Service, Judiciary, Ministries of Justice, Central Authorities)

in order to assist National Members to identify the relevant competent contact point to be addressed.

[...]

In addition to the remarks to improve the efficiency of the MoU between Eurojust and IberRed, an open discussion should be launched as regards the need to amend the MoU to allow the exchange of operational information not involving personal data. Pursuant to art. 7.2 of the MoU the exchange of information will not include the transmission of operational information, including data relating to an identified or identifiable natural person. If Eurojust and IberRed are to cooperate and work together in the fields of their shared competences in international judicial cooperation in criminal matters as set forth in art. 3.1 of the MoU, the exclusion of the possibility of exchanging operational information is clearly hampering that purpose, since most of the requests received from both sides (National Members and IberRed contact points) entail in a way or another practical operational information related to concrete mutual legal assistance or extradition requests.

IberRed is a judicial cooperation network with a broad scope of competences due to the fact that it includes both civil and criminal matters and involves all the actors engaged in judicial cooperation: Prosecution Services, Judiciary, Ministries of Justice and central authorities (the latter could be entrusted to any of those three institutions). In addition, any other judicial or administrative authority deemed to have competences in the field of judicial cooperation can also be part of IberRed. Prosecution Services, Judiciary and Ministries of Justices of each country should designate at least three contact points. IberRed operates in two different divisions, one in charge of civil matters and the other one in charge of criminal matters.

On the other hand, REMJA represents a networking platform which includes just central authorities (except Cuba) and to establish some contact with this network will also be an interesting way to improve mutual confidence.

[...]"