



# Strategic meeting on drug trafficking

*The Hague, 29-30 September 2014*

OUTCOME REPORT





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## OUTCOME REPORT

Eurojust

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## 1. Introduction

The strategic meeting on drug trafficking, organised by Eurojust, was held in The Hague on 29 and 30 September 2014. In total, 80 prosecutors, law enforcement authorities and experts in the drug trafficking field from across the Member States of the European Union met at Eurojust's premises for two days of intensive workshops and discussions. Contributions were also received from representatives of Brazil, the USA and Norway, as well as EU bodies and international organisations, including Europol, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the Council of Europe (Pompidou Group) and the United Nations Office on Drugs and Crime (UNODC).

With a focus on increasing the effectiveness of international judicial cooperation in drug trafficking cases, this strategic meeting followed Eurojust's strategic seminar on drug trafficking held in Krakow in October 2011, together with the Polish Presidency of the EU. The Krakow seminar called for a multi-disciplinary and coordinated response at international level against organised criminal groups (OCGs) involved in the trafficking of drugs.

Progress with respect to the drug trafficking action plan for Eurojust was presented, together with areas in which further work is required: **controlled deliveries, (pre)precursors and new psychoactive substances (NPS), and cooperation with third States**. The three workshops addressed these areas and gave participants the opportunity to discuss, with reference to case scenarios, pressing issues face-to-face and in-depth.

Prior to the strategic meeting, Eurojust circulated two questionnaires to the Member States: one on controlled deliveries and one on judicial perspectives on NPS and pre-precursors. Based on the replies to the questionnaires, in-depth analysis was carried out. The results of the analysis served as a starting point for discussions.

## 2. Opening session

*Klaus Rackwitz, Administrative Director of Eurojust*, welcomed the participants and briefly presented the efforts of Eurojust in enacting its Action Plan against drug trafficking, in which almost all objectives were achieved. Drug trafficking remains one of the EU crime priorities, as demonstrated by the large number of drug trafficking cases referred to Eurojust and the large number of coordination meetings organised by Eurojust to solve judicial cooperation and coordination issues in drug trafficking cases. In 2013 alone, 239 cases were opened, 56 coordination meetings held and 26 joint investigation teams (JITs) formed.

*Francisco Jiménez-Villarejo, Vice-President of Eurojust and National Member for Spain*, highlighted that drug trafficking is a serious crime that continues to be a major concern and a threat to the safety and well-being of EU citizens, and therefore is an EU and Eurojust priority. He indicated that the focus of the strategic meeting was to identify ways to increase the effectiveness of international judicial cooperation in drug trafficking cases with support from Eurojust and other EU agencies. Eurojust has been actively involved in identifying practical and legal obstacles in judicial cooperation in drug trafficking cases, and has provided possible solutions to address them within the framework of the Eurojust 2012 strategic project, *Enhancing the work of Eurojust in Drug Trafficking Cases* (the 'strategic project'). Mr Jiménez-Villarejo introduced the agenda of the strategic meeting, highlighting the three areas of judicial cooperation identified by the strategic project as presenting challenges and requiring further insight.



*Axel Voss, Member of the European Parliament and Rapporteur for the Eurojust Regulation, expressed strong concern about the increased threat posed by serious crime, including drug trafficking, trafficking in human beings and illicit trafficking of firearms. These crime types are highly profitable activities that present many challenges in investigation and prosecution. In the area of drug trafficking in particular, significant challenges are encountered due to the cross-border aspect of the crimes and the rate at which the synthetic drugs market, and especially the new psychoactive substances market, evolves. Mr Voss stressed that drugs are dangerous and their consumption poses public health challenges. Therefore, the fight against drug trafficking should be high on the EU agenda. OCGs have increased their activities. Drug trafficking crimes are committed by mobile OCGs that are active in more than one country. One Member State acting alone cannot easily detect and combat drug trafficking. Mr Voss called for a coordinated response and highlighted the essential role played by Eurojust in improving coordination of investigations and prosecutions and in assisting judicial authorities in dealing with cases involving third States. As Rapporteur for the Eurojust Regulation, Mr Voss concluded his presentation by stressing the importance of reforming Eurojust in light of the provisions of Articles 85 and 86 of the Lisbon Treaty.*

*Paola Tardioli-Schiavo, Deputy Head of the Anti-Drugs Policy Unit in the European Commission, DG Justice, agreed that Member States, EU and international organisations need to stay firmly committed and strengthen action against the main challenges brought about by drug trafficking. She highlighted that the level of use of traditional drugs in most countries is stable or declining, but the emergence of NPS puts increasing pressure on Europe's drug control models. Ms Tardioli-Schiavo explained how the European Commission has taken firm action to protect young people from the dangers of 'legal highs' through an innovative legislative proposal. She also mentioned other challenges (e.g. more sophisticated concealment methods, drug traffickers adapting quickly to changes in demand or supply, the need to use alternative trafficking routes, trafficking groups diversifying their business and criminal groups become increasingly interconnected) and how the Commission has responded to these challenges. The Commission has two main objectives when responding to the challenges: to disrupt trafficking flows and prevent drugs from reaching the European Union, and to address the harmful consequences of trafficking. The Commission presented two legislative proposals in September 2013 to strengthen the EU's ability to respond to the challenges posed by the NPS: a proposal for a Regulation to replace Council Decision 2005/387/JHA and a proposal for a Directive that amends the 2004 Framework Decision on drug trafficking. The Commission has also developed new legislation to clamp down on the trafficking in drug precursors. In September 2013, new legislation was adopted to strengthen EU rules on the control of production and trade in drug precursors. Ms Tardioli-Schiavo reminded the participants that the Commission also enhances international cooperation via bilateral agreements against the diversion of drug precursors. An agreement with Russia on precursors was ratified in 2013, although its implementation is now delayed due to the present political situation. Similar agreements with Turkey, Mexico, Chile, the USA, China and the countries of the Andean region are proceeding. Ms Tardioli-Schiavo also mentioned that the European Union has adopted five legislative instruments to deprive traffickers of their gains. The newest instrument is a directive on confiscation and asset recovery, adopted by the European Union in April 2014. Ms Tardioli-Schiavo encouraged the enhancement of operational and international cooperation and the development of supply reduction indicators. Uncoordinated national action may force traffickers to move drug production sites to neighbouring countries or to shift trafficking routes, but will not ultimately disrupt trafficking.*

*Benedikt Welfens, Chair of the Trafficking and Related Crimes Team at Eurojust*, presented Eurojust's *action plan on drug trafficking* and the results of implementation of the action plan. As background, he explained that the action plan was agreed in 2012 as a result of the strategic project. The action plan highlights eight areas for improving cooperation: coordination meetings, secure channels, Europol and third States, JITs and other coordination tools, conflicts of jurisdiction, cross-border asset recovery, controlled deliveries and number of coordination cases. Thirteen Key Performance Indicators (KPI) measure enhanced cooperation in these areas. Mr Welfens introduced the draft implementation report, which shows that 11 of the 13 objectives have been fully achieved or are in progress. Confidentiality and disclosure guidelines were approved in 2014, together with other guidance on coordination meetings, to be included in the Eurojust Operational Manual. Ten secure connections were established with Member States. Eurojust was also linked to the Europol Secure Information Exchange Network Application (SIENA), which fostered increased exchange of information between the two organisations and increased the level of Europol's attendance at coordination meetings. JITs were used in 30 per cent of cases (compared to 4 per cent during the previous analysis period), showing a greater awareness of the potential usefulness of this tool in drug trafficking cases. Guidelines on Article 7.2 of the Eurojust Decision were adopted in July 2012. These guidelines establish an internal procedure for the opinion of Eurojust regarding conflicts of jurisdiction and recurring refusals or difficulties concerning the execution of requests for judicial cooperation. Preliminary analysis was provided by Eurojust's Case Analysis Unit in 27 per cent of cases to prepare and facilitate discussions during coordination meetings. In conclusion, Mr Welfens mentioned three areas that required further work by Eurojust in 2014: cross-border controlled deliveries from a judicial perspective, judicial cooperation with third States and judicial cooperation in cases involving NPS, which had emerged from recent casework analysis. The in-depth analysis of the three areas have been added to the implementation report as *Issues in focus*.

### 3. Plenary session

#### *3.1. Results of the Eurojust questionnaire on controlled deliveries*

*Ioana van Nieuwkerk, Legal Officer at Eurojust*, presented the analysis of Member States' responses (26 in total) to a Eurojust questionnaire on judicial aspects of controlled deliveries. The analysis revealed a large number of obstacles encountered in judicial cooperation in this area, mainly due to persistent and significant differences between the legal systems of the Member States as regards the authorisation and execution of these special investigative techniques. The main reported obstacles were encountered due to uncertainties in the route/timing of the drug consignment (reported by 11 Member States) and due to difficulties in obtaining permission for placing GPS devices in vehicles suspected of transporting drugs (reported by 10 Member States). Moreover, the analysis showed that in a large number of Member States, a judicial authorisation based on an MLA request is needed for executing controlled deliveries, while in a few others, the police are responsible for granting such authorisation. The analysis also showed that 13 Member States have a central contact point for authorisation of controlled deliveries, while 13 Member States have not established one. These differences have created difficulties (in nine Member States) in the identification of competent authorities in other Member States or in obtaining their authorisation. Other major obstacles reported by the national authorities were related to insufficient resources or to differences between the legal requirements of the Member States with regard to: (i) substitution of unlawful drugs; (ii)

postponement of drug seizures; (iii) cross-border deployment of undercover officers; (iv) admissibility of evidence gathered in the context of controlled deliveries; (v) involvement of participating informants; (vi) deployment of armed police officers in other Member States; (vii) sharing of declassified information gathered in the context of controlled deliveries; etc. Problems in cooperation with third States in controlled deliveries have also been reported, as well as their limited experience in the use of controlled deliveries within JITs. Solutions were proposed by a number of Member States, including the harmonisation of legislation, the availability of updated information on the competent authorities and legal requirements of controlled deliveries in all Member States, as well as the involvement of Eurojust and Europol in such cross-border operations. The detailed findings of the questionnaire on controlled deliveries are reported in *Issue in Focus Number 1*, attached to the draft implementation report distributed to the participants.

### ***3.2. Case study on cooperation with third States***

*Ingrid Maschl-Clausen, National Member for Austria*, explained the background and challenges posed by the so-called 'JIT Vineyard', involving the investigating and prosecuting authorities from Austria, Germany, the Netherlands and the former Yugoslav Republic of Macedonia. The case focused on heroin trafficking rings. The drug was stored in the Netherlands, transported in small quantities to Austria and Germany, and sold there by an OCG whose heads were nationals of the former Yugoslav Republic of Macedonia. The arrest of low-level members of this OCG in Austria and Germany did not seem to have an adverse effect on their activities. The OCG leaders could not be extradited from their country. Eurojust's coordination meetings facilitated the opening of a parallel investigation in the former Yugoslav Republic of Macedonia and cooperation among all countries involved, which led to the execution of simultaneous actions and arrests. In view of the quantity of information to be exchanged among these countries as well as activities of restructured groups, a JIT was formed, allowing for measures, particularly telephone interceptions, to be carried out without the need for an MLA request for each action. Eurojust assisted in finding the legal basis for the JIT agreement (more than one legal arrangement applicable among the members) and with drafting and translating the JIT agreement into Macedonian. The JIT was active for one year with the involvement of four countries plus Eurojust and Europol. Prolongation for an additional year (until September 2014) took place between only two of the involved countries. In total, Eurojust held eight coordination meetings to facilitate the work of the JIT. The operation resulted in 360 convictions and the confiscation of approximately 91 kg of heroin.

### ***3.3. Judicial perspectives on NPS and (pre)precursors***

*Federica Curtol, Senior Analyst at Eurojust*, presented the methodology and main results of a survey among prosecutors in the matter of (pre)precursors and NPS. The relevance of the topic emerged from Eurojust's casework itself. An increasing number of cases were referred to Eurojust due to the difficulties posed by different legal frameworks operating in the Member States. Member States follow different approaches to the prosecution of non-regulated (pre)precursors (e.g. APAAN). Prosecution is not possible in almost half of the countries considered. In some Member States, the production of these substances is considered as a 'preparatory act' to the commission of drug production offences. In other Member States, an 'analogy or generic approach' is enforced to equate non-regulated (pre)precursors to chemically or functionally equivalent substances. An analogy approach is also in

place in some Member States to target NPS belonging to families of substances with similar chemical composition (i.e. synthetic cannabinoids or synthetic cathinones, such as mephedrone). Several Member States reported using legislation on or administrative regulation of medical products to address the problem of NPS and expressed some concerns about a possible legal gap caused by the European Court of Justice decision of 10 July 2014, in which the term ‘medical product’ is not considered to cover substances such as synthetic cannabinoids, which ‘are consumed solely to induce a state of intoxication and are, as such, harmful to human health’<sup>1</sup>. Other judicial cooperation challenges were mentioned, including the length of procedures required to regulate this innovative drug market and the difficulties in identifying new substances due to the lack of capacity and technical methods. The detailed findings of the survey conducted by Eurojust are reported in *Issue in Focus Number 2*, attached to the draft implementation report distributed to the participants.

### ***3.4. Global trends in drug trafficking routes and NPS***

*Karen Kramer, Senior Expert, Organized Crime Branch UNODC*, presented global trends in drug trafficking. She outlined that in her presentation, as sources of information, she had used an annual report questionnaire (ARQ), crop surveys, country reports on regional Heads of National Drug Law Enforcement Agencies (HONLEA) meetings and the World Drug Report. She highlighted recent trends in the production and trafficking of the principal illicit drugs, specifically opiates, cocaine, amphetamine-type stimulants and cannabis and provided information on NPS and NPS trafficking. Afghanistan and Myanmar continue to account for the majority of illicit opium poppy cultivation worldwide. The majority of global opium seizures continues to be made by the Islamic Republic of Iran. Compared to opium and illicit morphine, heroin seizures cover a wider range of countries. Global seizures of heroin increased gradually over the period 2006-2011, peaking at 81 tons. Since 2010, heroin seizures in Africa, particularly East Africa, have increased. This shift in seizure trends potentially indicates that traffickers are increasing using the so called ‘southern route’ to traffic heroin from Afghanistan to consumer markets. Coca bush cultivation remains concentrated in Colombia, Peru and Bolivia. Ms Kramer explained the declines and increases in cocaine seizures per continent. Cocaine seizures in Europe remained stable. A secondary route for cocaine involves the use of countries in Africa, notably West Africa, as transit countries. Limited data from African countries means that establishing trends is difficult. However, significant seizures also continue to be made in West Africa. Cocaine seizures have increased in both Asia and Oceania in recent years. This change indicates that traffickers are using new routes and looking to establish new markets. Cannabis continues to be the most widely cultivated, produced, trafficked and consumed illicit drug worldwide. The most prominent countries in the production of cannabis resin are Afghanistan and Morocco. The global supply of amphetamine-type stimulants continued to evolve in terms of the extent of manufacture, patterns in trafficking routes and nature of substances involved. In general, NPS is an umbrella term for unregulated (new) psychoactive substances or products intended to mimic the effects of controlled drugs. Of 103 countries for which information on NPS was available as of December 2013, 94 countries reported the emergence of such substances on their markets. The number of NPS on the global market more than doubled over the period 2009-2013. By December 2013, the number of such substances reported to UNODC reached 348, up from 251 such substances

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<sup>1</sup> European Court of Justice (Fourth Chamber), 10 July 2014, preliminary ruling under Article 267 TFEU in joined Cases C 358/13 and C 181/14. Available at: <http://curia.europa.eu/juris/celex.jsf?celex=62013CJ0358&lang1=en&type=TEXT&ancre>.

as of July 2012, and 166 substances in 2009. UNODC recently launched an early warning advisory on NPS, which will serve as a global monitoring system for NPS.

### ***3.5. EMPACT - A multi-disciplinary fight against drug trafficking (focus on priority synthetic drugs)***

*Laimonas Vasilauskas, Drugs Coordinator at Operations Department of Europol*, presented the EU priorities in the fight against organised crime and the European Multidisciplinary Platform Against Criminal Threats (EMPACT). He emphasized that an integrated approach via the EU policy cycle and EMPACT is a business model to tackle the threat of organised crime at EU level. The model is needed for several reasons: organised crime networks operate in multiple crime areas, diversifying their routes and *modus operandi*; the market for illicit drugs remains the most dynamic of all criminal markets; horizontal cooperation needs further development and alignment; and law enforcement needs support and engagement at political level. Mr Vasilauskas explained that the EU policy cycle starts with the EU Serious Organised Crime Threat Assessment (SOCTA), highlighting current and new threats. The SOCTA is used for defining the EU crime priorities. The EU policy cycle continues with Multi-Annual Strategic Planning, which leads to EMPACT Operational Action Plans for each crime priority. In the end, the activities and situation are reviewed and assessed. EMPACT has two crime priorities focused directly on drugs: 1) synthetic drugs and 2) cocaine and heroin. Mr Vasilauskas introduced the strategic goals and actions for both priorities, showing that the goals of EMPACT regarding synthetic drugs are to reduce the trafficking of pre-precursors and other chemicals and to improve knowledge about NPS. Other goals of EMPACT regarding synthetic drugs are improving judicial cooperation among the Member States, third States and the private sector by conducting joint and parallel investigations and prosecutions; focusing on asset recovery and money laundering activities; improving the strategic and operational picture of synthetic drugs; developing intelligence and gathering information; and developing multi-disciplinary training and awareness. Mr Vasilauskas concluded by explaining the operational and strategic support Europol provides in the fight against drug trafficking.

### ***3.6. The EU drug situation: drug penalties and indicators***

*Brendan Hughes, Senior Scientific Analyst, European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)*, gave an overview of the EU drug situation, drug penalties and indicators. He explained the Drugs Action Plan 2009-2012, which provided the framework to develop key indicators for the collection of policy-relevant data on drug-related crime, illegal cultivation, drug markets and supply reduction interventions, and to develop a strategy to collect these indicators. EMCDDA has collected data on drug law offences, seizures, prices, composition of tablets, potency, purity, plantations, trafficking routes, *modus operandi* and production facilities. The first European conference on drug supply indicators was held in 2010 and brought together forensic scientists, law enforcement authorities, criminologists, data analysts, monitoring professionals and other professionals dealing with the subject. Three main areas emerged: drug markets, drug-related crime and drug supply reduction. In 2013, Council Conclusions on improving the monitoring of the drug supply in the European Union were given. A strategic analysis was conducted jointly by EMCDDA and Europol, resulting in an evidence-based, coherent overview of the dynamic drug markets in Europe and contributing factors. In the EU drug markets report, synergies between EMCDDA's scientific approach

and structured data sets and Europol's operational information on latest trends and intelligence on organised crime were combined. Mr Hughes illustrated findings of the EU Drug Markets Report 2013 by explaining the prescribed penalty ranges for supplying heroin in some Member States, types of sentences for supply offences and estimated trafficking penalties expected by practitioners in 2014. For 1 kg of heroin, 1 kg of cannabis and 10 kg of cannabis, the estimated penalties vary considerably depending on the Member State and the person replying.

### ***3.7. Website/online course for magistrates on precursors***

*Tony Verachtert, Chief Commissioner, Belgian Federal Judicial Police, Representative of the POMPIDOU Group*, presented the state of play of a project to develop a website and a long-distance training course for prosecutors in the field of chemical precursors for the production of drugs/NPS. This project, carried out by the Council of Europe's Human Rights Education for Legal Professionals (HELP) Programme, together with the Pompidou Group, capitalises on the initiative and benefits from cooperation between the European Network of Prosecutors in Synthetic Drugs and Precursors (ENPSDP) and Eurojust. Mr Verachtert explained that, at the moment, access to the website is restricted to the pilot group members, but the promoters of this project intend to extend access to other prosecutors and experts from police, customs and tax authorities. The website currently includes legal materials (legislation and case law) and chat facilities to allow the exchange of relevant information among specialised prosecutors in the field of precursors. The development of the website and the distance learning course are related. All relevant information available on the website might be used as background and training materials for the course. Some experts are currently developing a full-fledged curriculum for the course. When all the background materials are uploaded and the content is drafted, an interactive product will be built by the HELP Secretariat and the course will be launched in some pilot countries for a selected group of prosecutors.

### ***3.8. Study on judicial cooperation, mutual legal assistance and extradition of drug traffickers and other drug-related crime offenders***

*Mr Javier L. Parra Garcia, Government Secretary & EJN Contact Point, Tribunal Superior de Justicia Región de Murcia (Spain)*, presented the study on judicial cooperation, mutual legal assistance and extradition of drug traffickers and other drug-related crime offenders between the European Union and its Member States and Latin American and Caribbean (LAC) countries. The objectives of the study are to provide facts and figures as well as detailed analysis on the functioning, utilisation and obstacles to the implementation of and potential gaps in existing mutual legal assistance (MLA) and extradition agreements. The study also seeks to provide the Commission with the relevant elements to enable an in-depth evaluation of the need and potential added value of entering into EU-level MLA and extradition agreements, notably with those LAC countries recognised as leading suppliers of cocaine and those that serve as a gateway for smuggling cocaine into Europe. Mr Parra Garcia introduced the principal findings of the study, and also relevant problems and other considerations that have arisen from the research. In particular, he highlighted the role to be played by Eurojust in the following areas: speeding up MLA assistance; use of legal contact point networks active across the continents; confiscation and asset recovery in drug trafficking cases; and solutions to problems in multi-jurisdictional cases. Mr Parra Garcia concluded by presenting 13 key conclusions of the study. One is the creation of the 'EU Liaison Magistrate' to be posted in competent authorities in selected LAC

countries located along significant drug trafficking routes. Some other key conclusions particularly relevant for Eurojust are to strengthen and extend existing Memoranda of Understanding (MoUs) (IberRed-Eurojust and Iber-Red – EJN) and to study the possibilities of contact with REMJA (Meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas).

## 4. Outcome of workshops

All workshops were based on a common methodology, which consisted of a drug trafficking case to be discussed among prosecutors and experts on the basis of their own legal systems and prosecution practices. The conclusions of the three workshops, addressing the case scenario from three different perspectives, were reported to the Plenary by the Chairs and Co-Chairs. During the final session, the participants were given the possibility to comment and provide feedback.

### 4.1. Workshop 1: Judicial aspects of controlled deliveries and the role of Eurojust and Europol

*Chair: Mr Ladislav Hamran, National Member for Slovakia at Eurojust and Vice-President*

*Co-Chair: Mr Laimonas Vasiliauskas, Drugs Coordinator at Operations Department of Europol*

The goal of the workshop was to address challenges encountered by national authorities in the authorisation and execution of controlled deliveries of drugs, particularly (pre)precursors and NPS. The participants were invited to discuss whether a cross-border controlled delivery can be organised in the context of the given case scenario and the pre-conditions for executing this special investigative technique. Furthermore, participants were invited to explore whether obstacles in judicial cooperation and solutions thereto could be foreseen in the controlled delivery in the given case.

The discussions revealed that the organisation of a controlled delivery is practically impossible in a number of Member States that do not include the specific (pre)precursors and NPS in the lists of controlled substances and therefore cannot criminalise their trafficking. Other Member States would be able to organise the controlled delivery, even if the (pre)precursors and NPS are not regulated, by relying on other offences, such as customs fraud, participation in a criminal organisation or preparatory acts to commit a drug offence.

Regarding the preconditions for a controlled delivery, the discussions showed that most of the Member States would require an MLA request (which could, in some Member States, in urgent situations, be submitted even after the operation takes place), while others would be content with a request on a police-to-police basis. If an MLA request is required, the request should be addressed in most Member States to the local prosecution office in which the drug consignment crosses the border. However, if the route of the consignment is unknown, problems may arise in identifying the competent authorities. Some Member States have overcome this problem by providing a subsidiary competence of the central prosecution office if the route is unknown or changes unexpectedly. Other preconditions for the execution of the controlled delivery include the constant monitoring of the drug consignment and the seizure of drugs if a potential risk arises that they may disappear and subsequently enter the market.

Among the obstacles foreseen in the execution of the cross-border operation, the participants also mentioned: (i) the complexity of the case, involving many jurisdictions; (ii) reluctance to execute requests for placing a vehicle tracking device and, in some Member States, even the absence of

legislation for using such devices in controlled deliveries; (iii) difficulties related to the deployment of undercover officers, including the need, in some Member States, for their testimony in court and the differences among the Member States with regard to their status; and (iv) cooperation with third States could be problematic.

Several solutions to address practical and legal obstacles in controlled deliveries were proposed, including:

- Proper communication between the competent authorities in the Member States
- For long-term investigations, the use of JITs to facilitate faster exchange of information and more effective communication
- Harmonisation of legislation on controlled deliveries
- Some Member States proposed the consideration of a unified set of requirements for controlled deliveries and, in this respect, the adoption of a form similar to the EAW form, to minimise the risk of receiving requests for additional information
- Assistance from Eurojust and Europol in organising operational meetings and coordination meetings, clarification of legal requirements in the Member States, identification of contact points for controlled deliveries in the Member States, analysis of information, tactical and technical support, etc.

#### *4.2. Workshop 2: Judicial cooperation in cases involving (pre)precursors and NPS*

*Chair:* Mr Lambert Schmidt, Principal Administrator, Anti-Drugs Policy Unit – DG JUSTICE, European Commission

*Co-Chair:* Ms Cornelia Geldermans, National Public Prosecutor Synthetic Drugs and Precursors and Teammanager, National Public Prosecutor's Office, Netherlands

The goal of the workshop was to discuss how prosecutors would address a cross-border case involving (pre)precursors and NPS. Several participants underlined that the possibility to open an investigation of trafficking in (pre)precursors is linked to the presence of these substances in European regulation or national lists of proscribed drugs. Failing this requisite, prosecution is still possible in some countries if the production of these substances can be considered as a 'preparatory act' to the commission of drug offences.

As to NPS, in some Member States, prosecution is based on medical laws. A legal gap may exist as a consequence of the European Court of Justice decision of 10 July 2014. Further possibilities for prosecution were explored, including participation in an OCG (possible only if other offences are committed), consumer legislation (for products) and some best practice, such as including NPS in a temporary list for a month and then, after this test period, officially listing it.

The role of Eurojust was mentioned, particularly with regard to advice in the setting up of JITs or parallel investigations, organising coordination meetings and helping with the difficulties posed by differences in legislation. Coordination meetings at Eurojust were deemed a good platform to discuss issues related to the leadership in a cross-border case involving (pre)precursors and NPS in which several possible factors apply (e.g. criminal offences, severity of sanctions, interest of the country, advancement of the investigation, capacity and expertise).

Even in the absence of a JIT (due to the fact that not all countries might be able to open an investigation on NPS), several cooperation possibilities were still open, including spontaneous

exchange of information, execution of MLA requests (though particular attention should be paid to the issue of double criminality in the event of requests dealing with intrusive actions).

Finally, some recommendations were formulated:

- To explore 'creative' solutions to address the problems related to the prosecution of 'legal' NPS/pre-precursors. For example, consider the use of administrative laws (e.g. withdrawing permits for shops), consumer legislation, and food safety legislation.
- To consider using special investigative techniques adopted for OCGs to investigate and prosecute NPS cases.
- To exchange expertise across countries (e.g. forensic reports, judgements, etc). See, e.g., the website launched by a joint initiative among ENPSDP/Pompidou Group/Eurojust.
- To provide an overview of the legal situation/innovative approaches to combating NPS/pre-precursors. For instance, both EMCCDA and Eurojust have collected relevant materials that could be further developed.

#### *4.3. Workshop 3: Judicial cooperation with third States*

*Chair: Ms Malči Gabrijelčič, National Member for Slovenia at Eurojust and Chair of the External Relations Team*

*Co-Chair: Ms Lidia Paloma-Montaño, Magistrate, Consejo General del Poder Judicial*

The goal of the workshop was to discuss how prosecutors, given a case scenario presenting some legal challenges, could cooperate with third States in the best possible way. Reference to Brasil, Norway and the USA was often made, due to the fact that representatives from those third States participated in this workshop. The participants strove to find best practice and define the legal basis for information exchange with the three third States. They also strove to find best practice in cooperation with and without a JIT agreement and expressed their expectations regarding how Eurojust could best support them.

Exchange of information with third States could become an obstacle to judicial cooperation, especially when exchanging personal data. The participants could solve the potential obstacle by using Eurojust's coordination meetings as a tool for the safe exchange of information and by reaching a common agreement on disclosure matters at the beginning of the coordination meeting. The culture of establishing direct contacts with judicial authorities in Europe has not yet fully developed in some countries, e.g. in Brazil. Participants suggested that promoting spontaneous exchange of information would contribute positively. The participants listed several legal instruments for exchanging information with third States, e.g. Memorandum of Understanding with Iber-Red, Palermo Convention Art. 18, EU-US MLA Agreement, Member States – US agreements and EU 2000 Convention.

A JIT agreement with a third State would be possible under the Palermo Convention, EU 2000 Convention, the EU-US MLA Agreement, and 26 MS - US agreements, bilateral agreements, the 2<sup>nd</sup> Additional Protocol to the CoE convention on criminal matters, the UN Convention against illicit trafficking in narcotic drugs and psychotropic substances and national legislation in third States. Participants concluded that a JIT may be a useful tool, but neither always necessary nor the best tool for cooperation in a complex case. In practice, reflecting the facts given in the fictional case scenario: (1) the USA would be reluctant to join a JIT because of a disclosure issue; (2) Italy, as a leader of the investigation, could not participate in a JIT because it has not ratified the EU 2000 Convention ; and

(3), in the end, the JIT might not be efficient, since more than 10 Member States would be involved. In such cases, the participants would prefer cooperation without a JIT agreement, using MLA requests for investigative measures. Eurojust's judicial assistance via coordination meetings and Europol's analytical support were mentioned as essential tools for cooperation. Other useful avenues of cooperation were via Iber-Red, Ameripol and other networks.

The participants listed the following expectations from Eurojust in relation to third States:

- To identify the competent authorities, names and contact details for police and prosecutors;
- To facilitate information exchange on judicial level;
- To involve Europol for cross-checking data;
- To provide advice to build a common legal framework for cooperation;
- To organise coordination meetings timely and proactively;
- To use contact points in the third States;
- To support the spontaneous and open exchange of information;
- To facilitate MLA requests; and
- To provide feedback and updates on the state of play of parallel investigations and proceedings (information in accordance to Article 13).

Finally, the participants supported the idea of establishing 'Eurojust liaison magistrates' who would be located in third States. From the participants' point of view, such postings would improve cooperation, and their role could be vital for three reasons: (1) Eurojust liaison magistrates would serve all Member States; (2) they would provide in-house expertise by virtue of their familiarity with the laws and practice of the host countries; and (3) they would give visibility to Eurojust and enhance cooperation.

## 5. Closing remarks

*Ladislav Hamran, Vice-President of Eurojust and National Member for the Slovak Republic*, thanked the participants for sharing their experience in fighting drug trafficking and their feedback on Eurojust's support in this area. He summarised the main ideas that arose as a result of the strategic meeting and ensured participants that Eurojust is committed to following up on the conclusions of the workshops. In addition to distributing the outcome report of this strategic meeting by the end of 2014, Eurojust is committed to finalise the three *Issues in Focus*, based on the results of the discussions and further feedback from the participants to be received by mid-November. Once finalised, these documents will be distributed to the participants and to other practitioners in the Member States to assist, for example, in locating the authorities competent to authorise a controlled delivery in another Member State, or identifying the legal provisions of a Member State on drug precursors and (pre)precursors. Eurojust will regularly update this information. Another step that Eurojust is planning in the near future is a joint Eurojust-EMCDDA publication in the area of drug trafficking. An MoU on cooperation with EMCDDA was recently concluded and the organisations will soon initiate discussions on the subject of this publication.

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