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NOTE

From:	EUROJUST
To:	Delegations
Subject:	EUROJUST Issue in focus number 1 - Cross-border controlled deliveries from a judicial perspective

Delegations will find attached the EUROJUST first addendum to the Implementation report - Issue in focus number 1 "Cross-border controlled deliveries from a judicial perspective".

Issue in focus number 1 "Cross-border controlled deliveries from a judicial perspective"

1. Introduction

This Issue in focus provided brief background information for the discussions during Workshop No. 1 "*Cross-border controlled deliveries from a judicial perspective*" 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 two main sections focusing on:

- **Section 3** - Analysis of the replies to the **questionnaire on controlled deliveries to all Member States** and Norway to identify main issues encountered in judicial cooperation in this field and to gather the views of the national authorities on the role played by Eurojust and Europol in controlled deliveries
- **Section 4** – Analysis of the replies to a **question asked of all Eurojust National Members** to establish whether they have exercised their powers to authorise and coordinate controlled deliveries in accordance with Articles 9c(1)(d) and 9d(a) of the Eurojust Decision.

Additionally, the **Annex** to this Issue in focus includes a table that was drafted by collating selected information from the replies to the questionnaires and by information available from other sources (Europol, the EMCDDA and the EJN). This compendium covers two main areas:

- Whether a Mutual Legal Assistance (MLA) request is required (before or after the controlled delivery);
- Which authority should be contacted (central or not).

The potential usefulness of this work wasdiscussed by the practitioners participating in the strategic meeting and further validated after the strategic meeting in view of its distribution among interested practitioners.

2. Background, scope and methods

The Implementation Report concluded that Eurojust has limited experience as regards the involvement of its National Members in authorising and coordinating controlled deliveries. On 28 January 2014, the College of Eurojust considered the findings of the Implementation Report and decided that Eurojust should identify methods of increasing assistance to Member States in the area of controlled deliveries, in particular by gathering and disseminating best practice and obstacles in judicial cooperation in this area. As a consequence, on 18 March 2014, Eurojust circulated the two questionnaires mentioned above, the replies of which are analysed in the following two sections.

Further efforts were made to elaborate a practical compendium from the replies to the questionnaires and the available sources (see Annex) that could be used by prosecutors to facilitate cases of cross-border controlled deliveries.

3. The questionnaire on controlled deliveries

The questionnaire consisted of four main sections and four questions, namely:

Section 1 - Cooperation between Member States in international controlled deliveries, with a view to:

- Establishing whether an MLA request is a pre-condition for controlled deliveries according to the legal frameworks of the Member States *(Question 1(a));*
- Identifying the main practical and legal obstacles in judicial cooperation in controlled deliveries *(Question 1(b);*
- Establishing whether a central contact point for the authorisation of controlled deliveries is or could be beneficial to the national authorities *(Question 1(c));* and
- Establishing whether controlled deliveries have been executed within the framework of JITs and whether the JIT brought added value to the execution of the delivery *(Question 1(d)).*

Section 2 - Cooperation with third States in international controlled deliveries, with a view to:

- Identifying whether third States have been involved in controlled deliveries and to gather issues identified in cooperation with third States in this area *(Question 2)*.

Section 3 - The role of Eurojust and Europol in controlled deliveries, with a view to:

- Gathering the views of the national authorities on the role played by Eurojust and Europol in controlled deliveries *(Question 3)*.

Section 4 - Comments and recommendations, with a view to:

- Gathering further suggestions from the national authorities on the topic of the questionnaire *(Question 4)*.

Eurojust received 28 responses to the questionnaire from competent authorities in: BE, BG, CZ, DE, EE, IE, EL, ES, FR, HR, IT, CY, LV, LT, LU, HU, MT, NL, AT, PL, PT, RO, SK, FI, SE, SI, UK and NO. The main findings of the analysis of the responses are reported below.

3.1. The need for an MLA request

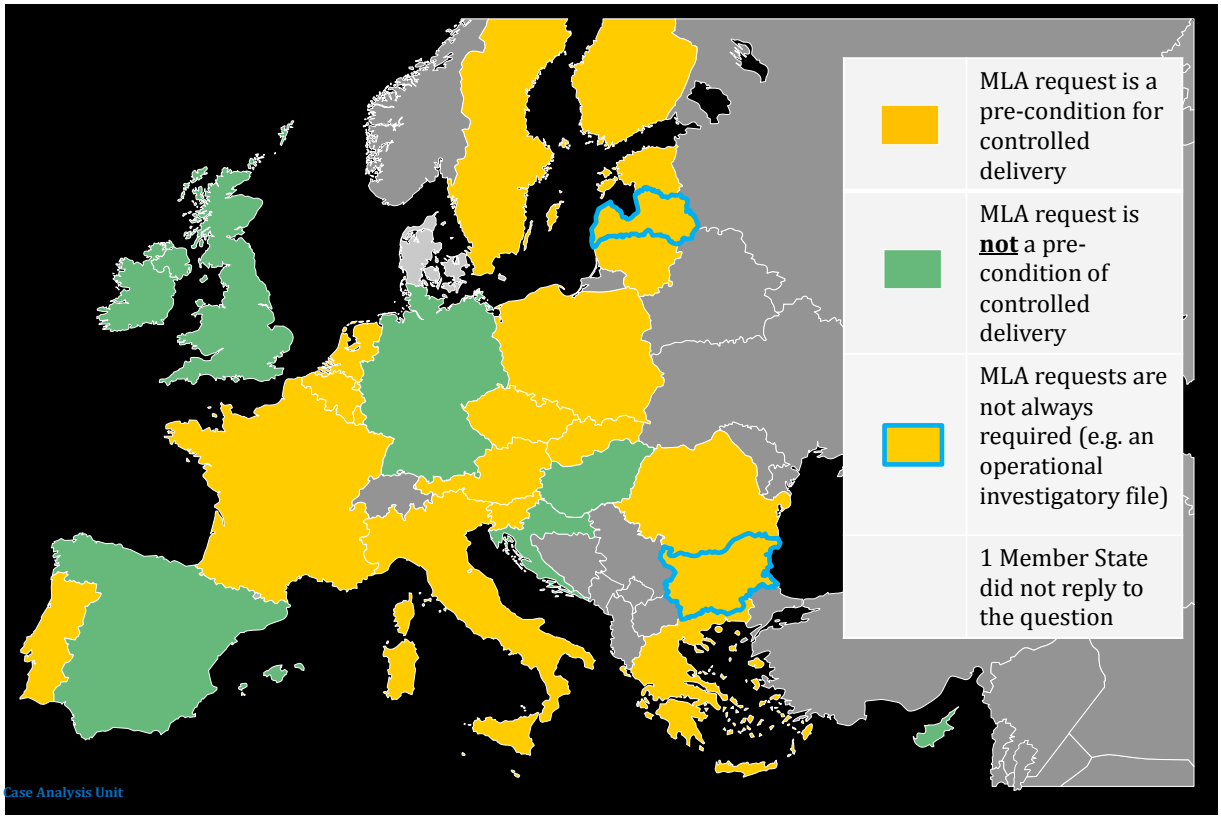
The questionnaire *(Question 1(a))* asked the national authorities to indicate whether an MLA request is a pre-condition for authorising a controlled delivery in their Member State. The responses show that:

- **An MLA request is required** for the authorisation of a controlled delivery in 20 Member States (BE, BG, CZ, EE, EL, FR, IT, LV, LT, LU, MT, NL, AT, PL, PT, RO, SI, SK, FI and SE) and in Norway. Nevertheless,
  - BG and LV indicated that an MLA request is obligatory only in cases where the controlled delivery is requested within the framework of an ongoing criminal investigation or criminal case. MLA requests are not needed when the controlled delivery is requested in the context of an operational investigatory file.
  - BE and PL indicated that a verbal agreement may be reached in urgent cases followed by an MLA request after the execution of the controlled delivery.
  - EL indicated that the Central Anti-Drug Coordination Unit – National Intelligence Unit (SODN-EMP) receives all requests for controlled deliveries and sends them for approval to the prosecutor from the Athens Court of Appeal.

- **An MLA request is NOT a pre-condition** for authorising a controlled delivery in seven Member States: DE, IE, ES, HR, CY, HU and the UK. The authorities of these Member States will be content with requests on a police to police basis. At the same time:
  - DE mentioned that an informal written request sent by fax or email is sufficient.
  - HU indicated that an authorisation by a prosecutor would nevertheless be required if undercover agents are involved in the controlled delivery.
  - CY mentioned that mutual agreements and arrangements with other countries are used as a basis for executing controlled deliveries.

- HR indicated that it has not accepted the application of Article 18 of the Second Additional Protocol to the 1959 MLA Convention which regulates controlled deliveries. Furthermore, the 2000 MLA Convention and its additional Protocol signed in 2001 have not yet entered into force for HR.

Chart 1. Need for MLA request to authorise a controlled delivery



3.2. Practical and legal obstacles

The questionnaire *(Question 1(b))* contained a list of eight relevant obstacles in judicial cooperation in controlled deliveries. These obstacles have been identified in Eurojust's casework and/or as a result of Eurojust's strategic meetings. The national authorities were asked to specify and describe whether one or more of the listed obstacles has been encountered in their daily work. At the same time, the national authorities were invited to add and describe, according to their experience, any other practical or legal obstacle that was not included among those listed.

The main findings resulting from the analysis of responses to this question are presented below:

3.2.1. The scale of the problem in the Member States

- All respondents, except EL and LU, have encountered difficulties in controlled deliveries.
- Five responses (LV, AT, SI, SK and FI) highlighted only one legal or practical obstacle encountered in the execution of controlled deliveries.
- The remaining responses indicated several obstacles (for example, FR reported seven obstacles; LT, HU and PT reported six obstacles each; IE reported five obstacles).

3.2.2. Main obstacles in controlled deliveries reported by the national authorities

- 11 Member States have been confronted with ***difficulties in carrying out controlled deliveries because the exact route and/or timing of a drug consignment was not known in advance*** (or the route or timing changed unexpectedly):
    - FR mentioned that the uncertainty of the route creates problems in identifying the French local competent judicial authority to authorise the delivery, since there is no single judicial authority in FR with nationwide jurisdiction in this area. AT has also pointed out the issue of "domestic" conflicts of competence that appear in practice. In these cases, AT relies on its legal provisions that foresee a subsidiary nationwide competence of the Vienna Prosecution Service.
    - UK indicated that changes in the route present challenges but this does not make working impossible. "Control" and evidential integrity of the consignment are issues that have affected the UK in the past and may influence its operational response.
    - IE and LT indicated that, in more than one case, the operation could not be executed because foreign authorities refused to provide assistance due to the unknown route/final destination of the drugs. SE indicated that it responded negatively to foreign requests for authorisation of controlled deliveries because of not receiving concrete details regarding the route, vehicle, drugs and people involved.

- HU mentioned that, typically, the exact route and timing are not known in advance, particularly at the time of drafting the MLA request. The practice of HU is to inform the requested State that such details are not communicated in the MLA request, but only later through police channels. This practice, however, has not been accepted by a number of Member States.

- IE suggested a solution to address this issue; if the route is unknown, it may mean that the drugs should then be seized rather than lost.

o 10 Member States have been confronted with ***difficulties or delays in obtaining permission from other Member States for placing GPS/surveillance devices in vehicles suspected of transporting drugs:***

- BG highlighted that some countries do not formulate their requests properly and in accordance with relevant international conventions. This has led to several supplementary MLA requests that had to be dealt with urgently.

- FR mentioned that some countries systematically request authorisation to use real-time location technology on the territory of FR. On the other hand, these countries have difficulty executing FR requests to place surveillance equipment on vehicles.

- CY indicated that the possibility of placing GPS/surveillance devices on vehicles suspected of transporting drugs is not provided for in their national legislation.

- LT indicated that some Member States stipulate requirements that are redundant and encumber the operation. Regardless of the possibility to receive real-time GPS information from the initiator of the delivery, these Member States request direct control of the GPS devices installed by the authorities of another Member State.

- The UK mentioned that this has not posed difficulties recently.

o Nine Member States have encountered ***difficulties or delays in identifying the competent authorities in another Member State or in obtaining their authorisation for controlled deliveries***:

- CZ indicated that some Member States have entrusted the police with the authorisation of controlled deliveries and this may lead to delays in identifying the competent authorities in these Member States.

- EE, IE and LT referred only to delays in obtaining authorisation.

- FR indicated that difficulties have been encountered only at the Interregional Court in Marseille, while the judicial authorities in Paris and Lille have not experienced such problems.

- HU highlighted the lack of proper and updated information on the competent authorities and on the legal requirements for controlled deliveries in other Member States. It is essential to have access to accurate information on the competence rules in all Member States (whether the competence for authorisation lies with the police or the judiciary) and to know whether a letter rogatory is a requirement or not. The EJN database has proved unreliable.

o Nine Member States reported ***difficulties related to differences between the requirements of the Member States with regard to the substitution of unlawful drugs in the context of controlled deliveries:***

- IE and LV indicated that complete substitution of drugs is not permitted in their Member States, but partial substitution is.

- In PT, partial substitution is permitted only when all countries involved in the operation agree.

- ES suggested introducing the possibility for substitution of substances in all Member States' legislation to avoid problems in judicial cooperation. Such problems, mainly related to admissibility of evidence, may appear in cases involving transfer of proceedings when the legislation of the Member State receiving the proceedings does not permit the substitution of drugs.

- HU highlighted that its legislation permits substitution of drugs. Nevertheless, HU is cautious in using such practice as it may hamper the prosecution and detention of perpetrators. If HU seizes a transport that doesn't contain any drugs, it then relies only on evidence from the country where the drugs were substituted. Such evidence is very unlikely to be sent to HU within 72h, the maximum time required by HU law for a decision regarding detention.

- The UK indicated that, by prior agreement, appropriate methods of substitution and preservation of evidence have posed challenges in the ability to pursue judicial outcomes in some cases.

o Nine Member States reported ***difficulties related to insufficient resources when controlled deliveries take place at an unexpected moment/during the night/over a weekend***:

- LT encountered such problems due to shortage of resources during the night.

- CY mentioned that a controlled delivery in another Member State could not be conducted due to lack of human resources at that specific moment.

- HU indicated that some of their requests for controlled deliveries have been refused by other Member States due to the absence in HU of a duty prosecutor on a 24/7 basis that could amend MLA requests in accordance with the requirements specified by the requested Member State.

- DE referred to one negative experience determined by a combination of factors: last-minute gathering of intelligence and a public holiday in one of the other three Member States involved in the case.

o Seven Member States reported ***difficulties related to differences between the requirements of the Member States with regard to the postponement of drug seizures in the context of controlled deliveries***:

- FR, CZ and IE indicated that there can be issues with Member States when they detect a (sizeable) quantity of drugs en-route to another Member State. Differences in legislation lead to unexpected drug seizures that affect criminal investigations. The temptation of the authorities is to seize the drugs upon detection, even though they have a request to let it run. In some Member States it is not a mere temptation but an obligation for police authorities to seize the drugs upon detection. This prevents the identification of the final recipient of the drug consignment.

- Furthermore, LT mentioned cases where Member States refused to execute the controlled delivery on their territories and consequently seized the drugs immediately after the consignment entered their territory.

- HU describe their practice, which works very well. Foreign counterparts are informed that all necessary measures will be executed on HU territory to ensure that the drug consignment reaches its final destination. HU also suggested the application of Article 40 of the Schengen Convention, by using cross-border surveillance instead of cross-border delivery, in cases where drugs are completely substituted and the purpose of the operation is only to verify or detect the itinerary of the consignment and its final recipients.

- SK indicated problems in relation to drug seizure encountered in a case involving a third State. These problems will be described in the sub-section dedicated to cooperation with third States (1.3.5.).

o Six Member States reported ***difficulties related to the cross-border deployment of undercover officers in the context of controlled deliveries.*** In this respect:

- BG explained that the problems are related to the need to comply with the requirements of Bulgarian legislation, which provides that undercover officers must provide written declarations in a specific form provided by the law. This situation leads to extensive communication and exchanges of letters with foreign authorities to explain the Bulgarian legal requirements and the necessity of compliance.

- ES referred to Spanish legislation that requires the testimony in court of undercover officers if the evidence gathered by them is to be admissible in court. Cooperation with other Member States is difficult, as this is not a requirement in many Member States. Problems have been encountered in cases of transfer of proceedings to Spain, as the file did not contain evidence of court testimonies provided by undercover officers.

- Moreover, ES highlighted the differences between the legislation of Member States with regard to the status of undercover officers. "Civil" undercover officers are not recognised by the Spanish law, while the legislation of other Member States permits their employment. In one case, the request to transfer proceedings to ES was not approved by ES as the undercover officer that operated in another Member State was a civilian.

- LT indicated that only police officers may be used as observers or infiltrators in some Member States, while in others both police and civilian agents may be involved. Some Member States guarantee anonymity and protection to both police officers and civilian agents, while other Member States do not; this creates difficulties in cross-border cooperation.

- HR mentioned that the deployment of undercover officers takes place only within the framework of police cooperation. The information gathered within this framework cannot be used as evidence in legal proceedings.

o Five Member States encountered ***problems related to admissibility of evidence in the context of cross-border controlled deliveries.*** In this respect:

- IE and the UK explained that their adversarial legal systems are different to the systems in most Member States and this can create issues during prosecutions. IE went further and mentioned that law enforcement agencies from other Member States are reluctant to provide "statements of proposed evidence" or attend Irish Courts to give evidence.

3.2.3. Other obstacles reported by the Member States

Six Member States (CZ, EE, DE, HU, SI and the UK) referred to other problems in controlled deliveries that were not included in the list of eight obstacles in the questionnaire. Most of these problems are a consequence of ***differences between the legislation of Member States***:

- CZ indicated obstacles encountered (i) in relation to the ***sharing of information*** and (ii) in relation to the ***declassification of information***. On many occasions, the vast majority of information collected during a controlled delivery is classified and not shared among the involved Member States; only fragments and hardly exploitable records of the controlled delivery are transmitted after the operation. Furthermore, requests for declassification of information necessitate a lengthy process and hamper the evidence-gathering process, arrest and prosecution.

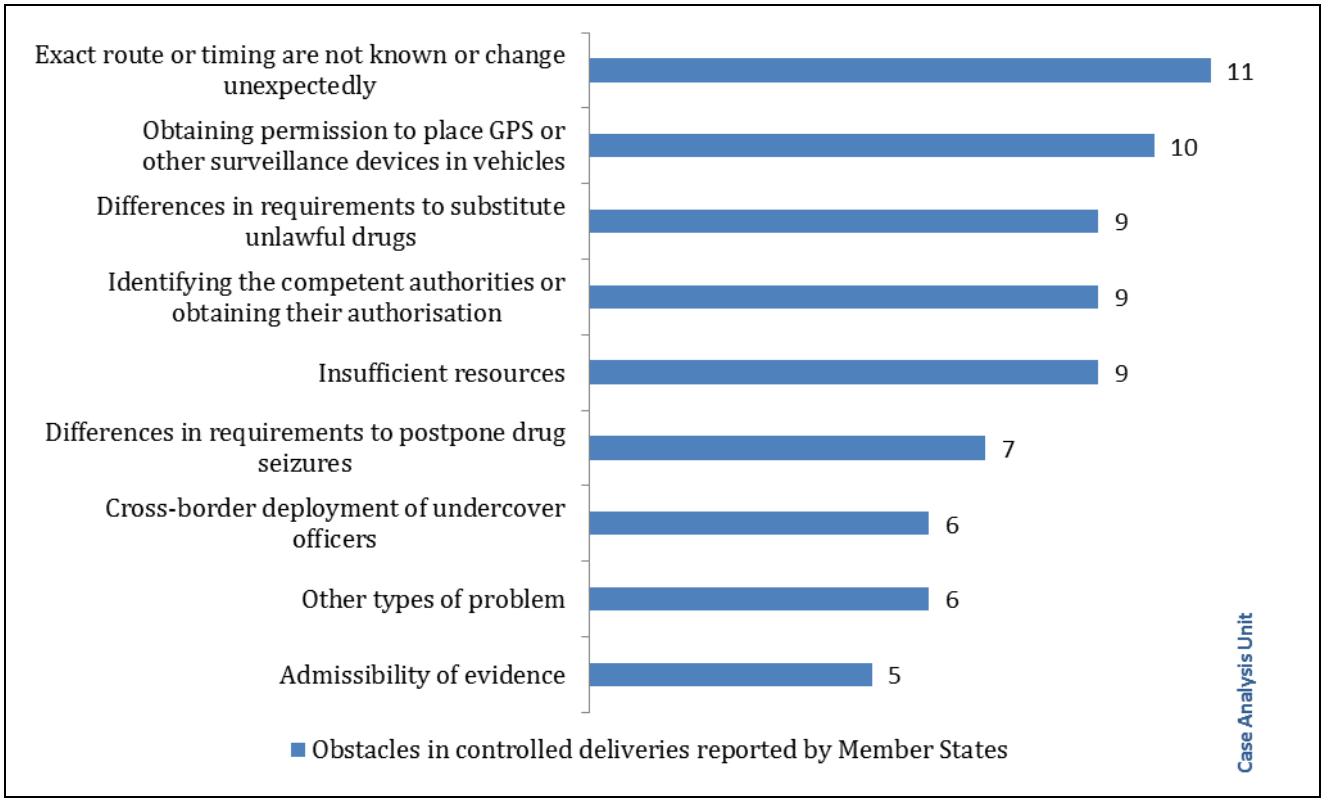
- EE indicated problems encountered due to ***differences between the technical equipment*** used by the Member States. For this reason, in one case, GPS data could not be handed over.

- DE stated that in some cases it was ***difficult to deploy armed police officers*** in another Member State to provide a smooth hand-over of the delivery.

- HU and the UK referred to ***participating informants*** in controlled deliveries and highlighted the difficulties that appear in practice due to different legal or operational views regarding the appropriateness of their involvement in operations.

- SI indicated experiencing difficulties linked with the ***unacceptance to prosecute*** on the part of another Member State despite the fact that the offence had been committed in the territory of that Member State.

Chart 2: The most reported obstacles in controlled deliveries



3.3. Central contact point for authorisation of controlled deliveries

The questionnaire *(Question 1(c))* asked the competent national authorities to indicate whether a central contact point has been established in their Member State to authorise controlled deliveries and, irrespective of the answer, to indicate whether such contact point may bring or brings added value to international cooperation. The responses show that 14 Member States do have such a central contact point, while 13 Member States have not established one.

Member States that have a central contact point are: BE, BG, CZ, EE, EL, IT, LV, LT, MT, PL, PT, RO, SI and the UK.

Six Member States (DE, IE, HR, LU, AU and SK), where central contact points do not exist, indicated the reasons for not establishing them. These reasons include: the federal systems in place, the small size of the countries, or the fact that their systems work well in practice without a central contact point. Furthermore, CY indicated that their national law provides for the establishment of a central contact point. However, in practice, the CY authorities nominate for each controlled delivery a contact person that needs to be experienced in conducting drug trafficking investigations and controlled deliveries.

HU, ES and FR do not have a central contact point but recognise its potential for increasing the efficiency of international cooperation in the field of controlled deliveries. A contact point in HU could overcome the problems encountered in responding to requests due to the absence of prosecution services on a 24/7 basis. In ES, the Antidrug Prosecution Office based in the Spanish National Court operates as an informal central contact point and holds competence to authorise controlled deliveries requested by foreign authorities. FR is currently studying the advantages of a central contact point, as it considers that a central contact point could avoid negative conflicts of jurisdiction. In the opinion of FR, it would also minimise the risk of compromising an operation due to a decision taken by a local prosecutor with jurisdiction in the area where the controlled delivery takes place.

As indicated in the introduction, the **Annex** to this Issue in focus includes a table that provides an overview of the central contact points and the authorities to be contacted in each Member State for authorising controlled deliveries.

3.4. Controlled deliveries executed within the framework of a JIT

The questionnaire *(Question 1(c))* asked the competent national authorities to indicate whether they have executed controlled deliveries within the framework of JITs and, if so, what their experience was. Most of the respondents indicated that their Member States have not executed controlled deliveries within JITs or are not aware of such cases. Only four Member States (BE, EE, IT and LT) responded in the affirmative to this question, and:

- EE indicated that a JIT between EE and another Member State facilitated an efficient exchange of information on incoming and outgoing deliveries of drugs and good coordination of the drugs seizure.
- IT stated that a controlled delivery was executed within a JIT between IT and a third State.
- LT executed a controlled delivery within a JIT, but the operation could not be completed due to the refusal of another Member State to execute it within its territory. The shipment was seized on the territory of that Member State.

3.5. Practical and legal obstacles in cooperation with third States

The questionnaire *(Question 2)* asked the national competent authorities to indicate obstacles, if any, in cooperation with third States in controlled deliveries. Only nine respondents (BE, CZ, EE, FR, HR, CY, SK, SE and the UK) indicated such obstacles. At the same time, 15 respondents experienced no difficulties in cooperation with third States and two did not respond to this question.

The ***main obstacles*** reported in cooperation with third States in controlled deliveries are:

- MLA requests for the authorisation of controlled deliveries are, on many occasions, not answered by a number of third States or take too long to be processed by them. These third States include: Latin American countries (e.g. Venezuela, Belize and Bolivia), countries from South-East Asia (e.g. Vietnam), Morocco, Lebanon and the Russian Federation. Solutions may be found only through diplomatic channels.

- In one case with a controlled delivery of drug precursors involving Turkey, problems were encountered resulting in the forced cessation of the operation on Turkish territory, because the Turkish police authorities could not establish cooperation with the Turkish customs offices.

- In another case involving Turkey, problems were encountered due to the double jeopardy issue regarding the crime of exporting illegal commodities from Turkey and the impact this has on UK prosecutions for such offence. The UK is currently working on this issue with the Turkish authorities.

- Risk of corruption of officials from South American countries.

3.6. The role of Eurojust and Europol in controlled deliveries

The questionnaire *(Question 3)* asked the competent national authorities to indicate their views on the role of Eurojust and Europol in controlled deliveries, specifying whether support from one or both of them has been requested in the execution of such operations.

The responses show that 10 Member States (BG, CZ, FR, IT, CY, LT, SI, SK, FI and SE) have requested Eurojust's support in controlled deliveries and found it very useful. At the same time, 11 Member States (BE, BG, CZ, EE, IE, LT, NL, FI, SI, SE and the UK) have addressed requests for assistance in controlled deliveries to Europol and received valuable support. The type of assistance received by national authorities from Eurojust and Europol is presented below.

Eurojust's support in controlled deliveries:

- Agreement between national authorities on the execution of a cross-border controlled delivery reached through communication between National Members of Eurojust;

- Identification of competent authorities in a foreign country;

- Coordination meetings and coordination centres;

- Coordination and speeding-up of the execution of MLA requests on controlled deliveries;

- Coordination of several investigations involving execution of controlled deliveries;

- Clarification of specific legal requirements on controlled deliveries in the countries involved;

- o Mediation of communication between the countries involved, translations of documents;
- o Assistance in identifying and contacting competent authorities in third States;
- o Assistance for the exchange of information and documents;
- o Eurojust is a useful tool in anticipating and resolving problems in controlled deliveries. In one case, the national authorities benefitted from Eurojust's advice to make combined use of Article 40 of the Schengen Convention (cross-border surveillance of the drug consignment on its way to the destination country) and of Article 12 of the 2000 MLA Convention (controlled delivery of the drug consignment on its return);
- o Eurojust communicates efficiently with Europol's liaison officers to assist in the execution of controlled deliveries.

Europol's support in controlled deliveries:

- o Support in identifying and establishing contact with competent police or custom authorities in other countries;
- o Support in exchanging, processing and analysing information obtained during controlled deliveries;
- o Support for the operative part of the delivery, facilitation of communication among police units in different Member States, coordination of joint actions;
- o Real-time support when, for example, the route of controlled delivery changed and another Member State needed to be involved in the operation;
- o Coordination through SIRENE and Europol's liaison officers in many controlled deliveries.

3.7. Further comments from competent national authorities

The questionnaire *(Question 4)* asked the competent national authorities to provide comments, if any, related to their experiences with controlled deliveries. Seven respondents provided comments:

- o LT suggested the harmonisation of legal requirements on controlled deliveries. IT, in particular, suggested addressing the differences between the legislation of Member States with regard to the authorities competent for authorising controlled deliveries (*i.e.* law enforcement in some Member States and judiciary in others);
- o DE suggested a list or map of competent authorities for controlled deliveries in all Member States (similar to the EJN Atlas);

- HU suggested introducing a system based on mutual recognition for the purpose of controlled deliveries; in this respect, a solution would be to adopt a form similar to the EAW form;

- FR suggested that Eurojust could be asked to play the role of a central contact point for authorising controlled deliveries, as this would contribute to their effectiveness;

- ES described two initiatives: (1) the recently established Network of Prosecutors on Drug Trafficking within the Ibero-American Association of Public Prosecutors (July 2014); and (2) Manual on Good Practices in the Fight against Drug Trafficking developed by the Ibero-American Association of Public Prosecutors (2013);

- EE suggested that contact details of persons participating in the controlled delivery teams should be made available on both sides of the border to enable fast information exchange.

4. The question to Eurojust's National Members on controlled deliveries

Eurojust's National Members were asked whether they have exercised the power to authorise and/or coordinate controlled deliveries, and:

1. If yes, to indicate in how many cases and under which circumstances this power was exercised:
    a) In agreement with the competent national authority under Article 9c(1)(d) of the Eurojust Decision?
    b) In urgent cases under Article 9d(a) of the Eurojust Decision?
2. If no, to describe briefly the reasons for not exercising this power.

The TRC Team received 18 responses to the question on controlled deliveries from the National Members of BE, BG, CZ, DE, DK, EE, EL, FI, HU, IE, IT, LU, NL, PL, PT, RO, SE and the UK. The main findings of the analysis of responses received from Eurojust's National Members are:

- One respondent (SE) out of 18 has used the ***power to authorise a controlled delivery*** granted by the Eurojust Decision. This authorisation was given in the context of a coordination centre organised by Eurojust.
- Two respondents (DE and the UK) mentioned that the National Members have been involved in the ***coordination*** of cases involving controlled deliveries in support of law enforcement and/or judicial authorities.
- National Members who have not authorised and/or coordinated a controlled delivery indicated various reasons for not using these powers, including:

- The Eurojust Decision has not yet been implemented at national level or national legislation implementing the Eurojust Decision that would grant such powers to the National Member only recently came into force;
- The National Member has never come across situations where it would have been required or appropriate to use the power to authorise and coordinate a controlled delivery. This is mainly because the systems in the Member States are well organised and the competent national authorities are easily reachable and able to act within a very short time. Some Member States reached the conclusion that the "distance" between the National Member and national law enforcement authorities is too large to allow a timely and informed authorisation of controlled deliveries by National Members.
- Only the power to authorise controlled deliveries in urgent cases has been granted to the National Member and no urgent situations have occurred (*i.e.* when the national competent authority could not be identified and contacted in time by the requesting authority).
- The power to authorise controlled deliveries has not been granted to the National Member as this would be contrary to fundamental aspects of the criminal justice system regarding the division of powers between the police, prosecutors and judges; or
- The power to authorise controlled deliveries has not been granted to the National Member as national legislation provides for exclusive competence of the national authorities in this area.

TABLE

"NATIONAL APPROACHES TO AUTHORISING CONTROLLED DELIVERIES"

INFORMATION ON THE SYNOPTIC TABLE HAS BEEN COMPILED FROM THE FOLLOWING SOURCES:

Eurojust. Questionnaire on controlled deliveries, March 2014.

European Judicial Network. Last visited at http://www.ejn-crimjust.europa.eu/ejn/Atlas on 20 August 2014.

European Monitoring Centre for Drugs and Drug Addiction. Last visited at http://www.emcdda.europa.eu/html.cfm/index44352EN.html on 21 August 2014.

Europol. Manual on controlled deliveries, 2001.

Member State	**MLA request is a pre-condition for controlled delivery**	**MLA request is necessary, but will be accepted also after the controlled delivery**	**Who to contact in controlled delivery cases** (In urgent cases, Interpol, Eurojust and Europol are always appropriate channels)	
			Central contact point exists in Member State in controlled delivery situations	**Other contact points**
AT	Yes (Source: Eurojust questionnaire)	Yes (Source: Europol)		The Competent body to authorize the measure is the Public Prosecutors´ Office competent for the district where the border presumably will be crossed, or the district from which the controlled delivery shall start.

				In some cases, however, the requesting state does not know about the relevant plans of the suspects so the routes can change at very short notice. In these cases domestic conflicts of competence have arisen but the legal provisions foresee a subsidiary competence of the Vienna Prosecution Service when there are no indications about the presumed place of crossing the Austrian border. The functions of a central authority in practice are carried out by the police forces who are usually the first addressees of a request for controlled delivery and who are selecting the competent domestic prosecution service. (Source: Eurojust questionnaire) Other sources Europol, EJN, EMCDDA confirm the above information.
BE	No	Yes	The Federal Prosecution Office (Source: Eurojust questionnaire). Federal prosecutor and a copy to the Federal Police DGJ-DJO (Source:Europol). The public prosecutor of the location from which the consignment originated and the public prosecutor of the planned location of intervention. If there is a difference of opinion between these two magistrates, the intervention of the federal magistrate is called upon. If the starting point of the controlled delivery is in a foreign state, the public prosecutor of the location at which the delivery	

			enters Belgian territory, if this location is known. If the location of entry into the territory is not known at the time of request from the foreign authorities, the federal magistrate decides whether or not to grant authorisation. If the case is the subject of a judicial inquiry, authorisation from the examining magistrate is necessary. If a seizure is necessary and the destination location is unknown in the territory, the federal magistrate is competent. (Source: EJN)	
BG	Yes	No	The International Department of the Supreme Prosecutor's Office at Cassation (in cases where MLA requests are required) or The Ministry of Internal Affairs and the State National Security Agency (for controlled delivery in the framework of police cooperation). (Source: Eurojust questionnaire) Ministry of Justice, Public Prosecutor (Sources: Europol, EJN, EMCDDA).	
HR	No	Yes		

CY	No	No		Ministry of Foreign Affairs, Ministry of Justice and Public Order, Drug Law Enforcement Unit. The authority to apply such a method vests on the Chief of Police or the Director of the Customs and Excise Department or both of them acting in common (Section 6 para 2 of the Crime Suppression Law), pursuant to prior notice to the Attorney General of the Republic, who is in turn allowed to give any necessary orders or instructions. (Source: EJN)
CZ	Yes	No	The Regional Public Prosecution Office in Prague (Source: Eurojust questionnaire). Public prosecutor in region or district where the entry of consignment into the territory of the Czech Republic is expected unless an international treaty stipulates otherwise (i.e. under the bilateral treaty with Austria the competent authority is the Regional Prosecutor's Office in Prague). The same procedure is to be followed in urgent cases. (Source: EJN)	
DK				The police authority. The transportation of deliveries of drugs through Denmark, as part of operations planned by the authorities in other countries, may only be

				accepted subject to prior permission from the Danish authorities and with the involvement of the Danish police. (Source: EJN) Request must be sent to national police (authorisation must be obtained from the regional chief constable whose jurisdiction is expected to be involved in the case). (Source: EMCDDA)
EE	Yes	No	The International Department of the Prosecutor General Office. A hotline for controlled deliveries functions at the Estonian Tax and Custom Board (Source: Eurojust questionnaire). Judicial authorities (Source: Europol). A court on the request of prosecutor. (Source: EJN). The permission of preliminary investigation authority or a prosecutor who directs the proceedings is necessary (Source: EMCDDA).	
FI	Yes	No		The Police: SIRENE, national units, central authorities, judicial authorities (Source: Europol) The chief of the NBI, the chief of the Security Intelligence Service, or a police chief, or an official especially trained in covert collection of intelligence and assigned with this

				function, decides on controlled delivery conducted by the police. Competent authorities to authorize controlled deliveries in Finland based on the request of another country are Police, Customs and Border Guard. Due to the operational nature of the matter, a request for controlled delivery should primarily be sent to the Police, Customs or Border Guard. Obviously a request of this kind may also be sent to other judicial authorities. The same procedure is to be followed in urgent cases. The Communication Centre which is the part of the National Bureau of Investigation serves 24 hours / day and 7 days / week. (Source: EJN)
FR	Yes	No		The police force of the O.C.R.T.I.S. (Source: Europol) Authorisation is issued by the Justice Mission (under the Department of Criminal Affairs and Pardons) in collaboration with the state prosecutors of the courts within whose jurisdiction the observation operation takes place. The authorisation is then handed over by the Central Directorate of the criminal investigation department (Source: EJN).
DE	No	Yes		The Police (Source: Europol). Controlled import and transit: The public prosecution office in whose district the transport begins. Controlled import and transit: The public prosecution office in whose

				district the border crossing is located across with the objects of the offence are to be transported, unless investigation proceedings in respect of the offence are already pending at another German public prosecution office (Source: EJN).
EL	Yes	No	The Central Anti-Drug Coordinative Unit – National Intelligence Unit (SODN-EMP) (Sources: Eurojust questionnaire, Europol). Authorisation issued by the competent Public Prosecutor at Court of Appeal of Athens (Source: EJN).	
HU	No	Yes		Centre for International Cooperation in Criminal Matters('*NEBEK*') or in urgent case a request may be directly received by the competent law enforcement authority. (Source: EJN) Police, if no undercover detective involved, but public prosecutor, when undercover detective involved (Source: EMCDDA).
IE	No	Yes		Central Authority for Mutual Assistance, Department of Justice, Equality and Law Reform (Source:Europol). An *Garda Siochana* (Irish Police Force) (Source: EJN).
IT	Yes	No	Ministry of Justice/Interior, the *Direzione Centrale per i Servizi Antidroga* D.C.S.A. [Central Directorate for Drug Enforcement Services] (Sources: Eurojust	

			questionnaire, Europol). Public Prosecutor's Office or court, depending on the stage reached in the proceedings, by order (decreto) giving grounds to delay capture, arrest or seizure measures or arrange for their execution to be delayed. The same measures may be adopted in urgent cases by Criminal Investigation Department officers in charge of specialist anti-drug units and customs authorities by immediately notifying the judicial authority, which may also take different measures. (Source: EJN)	
LV	Yes	No	The Ministry of Interior is the central authority. An investigative judge authorises the deliveries where there is a criminal case. A designated prosecutor from the Prosecutor's General Office authorises deliveries in the framework of operational investigatory files. (Source: Eurojust questionnaire) The Police, The Border Police, The Customs (Source: Europol). Investigative judge. (Source: EJN)	
LT	Yes	No	The Prosecutor General's Office. A pre-trial judge authorises the deliveries where there is a pre-trial investigation in the case. In urgent cases, this is done by a prosecutor's decision that needs to be later approved by the pre-trial judge. For deliveries conducted on the basis of Criminal Intelligence	

			Law of the Republic of Lithuania, the requests for controlled deliveries are exceptionally authorised by prosecutors. (Source: Eurojust questionnaire) The Police, The Border Police, The Customs (Source: Europol) Controlled delivery is permitted by the chief public prosecutor, his deputy or the head of the public prosecutors office of the regions/districts (Source: EMCDDA). The prosecutor general or his designated deputy prosecutor general or the region chief prosecutors or region deputy chief prosecutors designated by them, shall authorise controlled deliveries according to the reasoned motion of the chief of an operational entity or his designated deputy chief. It is possible to apply the measure while executing the requests for MLA. The pre-trial investigation judge shall authorise controlled deliveries according to the reasoned motion of the competent public prosecutor. In urgent cases these measures may be applied under Decision of a competent public prosecutor. In such cases, within three days after the application of a measure authorization by pre-trial judge must be received. If	

			such authorization is not given, actions must be terminated and all records must be destroyed immediately. (Source: EJN)	
LU	Yes	No		*Le Parquet du Tribunal d'Arrondissement de Luxembourg* (The public prosecutor for the Luxembourg area), which covers the south of the country. *Le Parquet du Tribunal d'Arrondissement de Diekirch* (The public prosecutor for the Diekirch area), which covers the north of the country. Requests may also be sent through the OIPC-INTERPOL network. (Source: Europol)Depending on the stage in the proceedings: the general prosecutor, the prosecutor or the investigating magistrate. The head of the prosecution department who has the territorial jurisdiction where the entry of the delivery is expected to happen. (Source: EJN)
MT	Yes	No	Requests may be received by the Police although it is the Attorney General who authorises such requests and in fact it is the Office of the Attorney General which is the central judicial authority entrusted with the receipt of such requests. (Source: Eurojust questionnaire)	Attorney General's Office or a Magistrate (Sources: EJN, Europol) Executive Police and, where appropriate, the Customs Authorities with the consent of the Attorney General or of a magistrate (Source: EMCDDA).
NL	Yes	No		*Landelijke Coordinatie Grensoverschrijdende Observatie*, National State Prosecutor via the National Agency for Cross-border Observation (Source: Europol). The Public Prosecutor (Source: EMCDDA). Two situations cover cross border controlled delivery:

				1. It is unknown where the delivery will take place. 2. It has been established where the delicery will take place. According to the Dutch directive: The national public prosecutor gives temporary permission. When the location of the delivery has been established the local public prosecutor takes over the case and can either agree with the temporary decision or not. The local public porsecutor can waive the granted permission and order the goods to be seized. The local prosecutor also takes over the lead on the Schengen surveillance team. If the location is known beforehand the local public prosecutor decides if the controlled delivery can take place or not. When dealing with special cirumstances "higher level verification" (Minister of Justice) is required. If a serious investigative interest is at stake the public prosecutor can give permission for a controlled delivery. This measure is regulated by a stringent approval procedure: a decision must be in advance presented to the Minister of Justice. (Source: EJN)
PL	No	Yes	At the Police Headquarters. There is no such central contact point at prosecution level (Source: Eurojust questionnaire). The Chief Commander of the Police or a Voivodship Commander of the Police promptly notifies the decision concerning a controlled delivery to the regional prosecutor having a territorial competence over the area in which the Police	

			body which orders the action is based. The prosecutor may order to refrain from executing the measure at any time. (Source: EJN) 1.The Police (Police commander-in-chief or relevant regional Police commander) 2. The Border Guard (Border Guard commander-in-chief or relevant Border Guard unit commander) 3. The Internal Security Service (Chief of Internal Security Service) 4. Customs Service (minister for public finances) (Source: EMCDDA)	
PT	Yes	No	The first section of the Prosecution Office in Lisbon (Source: Eurojust questionnaire). The competent prosecuting magistrate for the judicial district of Lisbon (Sources: Europol, EJN, EMCDDA)	
RO	Yes	No	The International Cooperation Office of the Directorate for Investigating Organised Crime and Terrorism (Source: Eurojust questionnaire). The Prosecution Office	

			attached to the High Court of Cassation and Justice (Sources: Europol, EJN, EMCDDA)	
SK	Yes	No		The National Drugs Service (Source: Europol). The measure will be authorised by the presiding judge, and prior to commencing the prosecutor and in the preparatory action by the prosecutor (Source: EJN, EMCDDA).
SI	Yes	No	Yes, a central contact point exists (Source: Eurojust questionnaire).	Ministry of Justice, Public Prosecutor's Office District State Prosecutor in the area of which the controlled delivery is to cross the State border, or from the territory of which it shall be dispatched, or a group of state prosecutors for the prosecution of organised crime. But in cases when measures include special investigative means and methods with the use of technical devices for the transmission and recording of sound in the application of the measure the measure shall be order by court. (Source: EJN)
ES	No	Yes		*Unidad Central de Estupefacientes* (Central Narcotics Unit). Where controlled delivery is to be made in a customs zone, the requesting authority should channel applications to the Central Narcotics Unit via the *Departamento de Aduanas e Impuestos Especiales* (Special Customs and Excise Department) of the *Servicio de VigilanciaAduanera* (Customs surveillance service). (Source: EUROPOL)

				Public Prosecution Office together with the central and provincial heads of the organisational units of the judicial police and their senior officers and the competent magistrate (Source: EMCDDA). The decision to carry out a controlled delivery in Spain may be taken by these authorities: - Competent Judge in charge of the investigation. - Public Prosecutors. - Chiefs of Central or Provincial Police Units and their superiors. Police authorities should immediately report the decision to the Prosecution Service and, in case legal proceedings are pending, to the competent Judge. The territorial competence of these authorities is usually determined by the place where the controlled delivery is going to be carried out. A Court order is essential, whenever suspect postal mail is concerned, either for its interception, opening or further substitution of its contents. As far as certain decisions by the Supreme Court have made subtle distinctions in order to establish which kind of packages are protected by the right to privacy, it is in all events advisable, to ask for a Court

				order authorizing the measure. In international cases, the same rule applies, unless the treaty in question otherwise stipulates. In extremely urgent cases, the police may direct the request to the Police or Night Court. (Source: EJN)
SE	Yes	No		Police, Customs (Source: Europol). Chief Public Prosecutor or other prosecutors assigned by a chief public prosecutor (Source: EJN). A request for a controlled delivery in Sweden is dealt with by a prosecutor. It is also the prosecutor who applies to undertake a delivery of this kind abroad. The Police Authority, Customs and Coast Guard can make a request of this kind only after a prosecutor has given consent. (Source: EMCDDA)
UK	No	Yes	The National Crime Agency (NCA) International Criminal Bureau (ICB) in Manchester undertakes this role and works closely with the NCA Border Policing Command (Source: Eurojust questionnaire). NCIS (Source: Europol) Requests may be sent to the UK Central Authority or the Crown Office in Scotland as appropriate (Source: EJN). SOCA overseas liaison	

			network (Source: EMCDDA).	
NO			The competent authority to receive or issue a Rogatory Letter is the Public Prosecutor at the District level. If the location is unknown or in urgent cases, the Rogatory Letter should be sent to the National Criminal Investigation Service (NCIS), Kripos, P.O. Box 8163 Dep, 0034 Oslo, Norway, Tel: +47 23208000 or +47 23208888 (24/7 service), Fax: +47 23208880, Email: desken.kripos@politiet.no Eurojust may also assist in urgent cases. EU States may send Rogatory Letters electronically by email or fax. No Court order is needed in Norway for conducting a controlled delivery, or for issuing or accepting a Rogatory Letter which concerns controlled delivery. (Source: Eurojust questionnaire)	Norway applies the conventions which regard direct sending of Rogatory Letters to the competent Authority in Norway, such as the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters Article 6. The Public Prosecutor at the District level decides on the admissibility of cross-border controlled deliveries. The proposal to the Public Prosecutor is made by the Chief of Police or the Vice Chief of Police. The competent authority to receive or issue a Rogatory Letter is the Public Prosecutor at the District level. Rogatory Letters to/from one of the other Nordic countries may be forwarded directly to/from the local Police District, or if the location is unknown, to the NCIS (Kripos). (Source: Eurojust questionnaire)