

# ***TRANSNATIONAL CONTROLLED DELIVERIES IN DRUG TRAFFICKING INVESTIGATIONS***

## **Manual**

**JUST/2013/ISEC/DRUGS/AG/6412 “Enhancing the cooperation of  
European Union Legal Enforcement Agencies for successful drug  
controlled deliveries”**



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## Table of Contents

<b>INTRODUCTION .....</b>	<b>6</b>
<b>CHAPTER I: THE INTERNATIONAL CONTEXT OF CONTROLLED DELIVERIES OF DRUGS.....</b>	<b>8</b>
<b>1. THE NEED FOR CONTROLLED DELIVERIES IN THE CONTEXT OF INTERNATIONAL DRUG TRAFFICKING .....</b>	<b>8</b>
<b>1.1. BACKGROUND.....</b>	<b>8</b>
<b>1.2. DRUG ROUTES.....</b>	<b>8</b>
<b>1.3. CURRENT CHALLENGES.....</b>	<b>11</b>
<b>1.4. THE IMPORTANCE OF POLICE AND JUDICIAL COOPERATION .....</b>	<b>14</b>
<b>1.5. TRAFFICKING METHODS .....</b>	<b>16</b>
<b>1.6. CONTROLLED DELIVERIES IN THE CONTEXT OF DRUG TRAFFICKING .....</b>	<b>17</b>
<b>2. LEGAL REGULATION OF CONTROLLED DELIVERY AT INTERNATIONAL LEVEL.....</b>	<b>18</b>
<b>CHAPTER II: NATIONAL REGULATIONS CONCERNING CONTROLLED DELIVERIES WITHIN THE EU MEMBER STATES</b>	<b>26</b>
<b>1. AUSTRIA.....</b>	<b>26</b>
<b>2. BELGIUM.....</b>	<b>28</b>
<b>3. BULGARIA .....</b>	<b>31</b>
<b>4. CROATIA.....</b>	<b>35</b>
<b>5. CYPRUS .....</b>	<b>37</b>
<b>6. CZECH REPUBLIC.....</b>	<b>38</b>
<b>7. DENMARK .....</b>	<b>40</b>
<b>8. ESTONIA.....</b>	<b>44</b>
<b>9. FINLAND.....</b>	<b>47</b>
<b>10. FRANCE .....</b>	<b>49</b>
<b>11. GERMANY .....</b>	<b>51</b>
<b>12. GREECE.....</b>	<b>54</b>
<b>13. HUNGARY.....</b>	<b>55</b>
<b>14. IRELAND.....</b>	<b>58</b>
<b>15. ITALY.....</b>	<b>60</b>
<b>16. LATVIA .....</b>	<b>61</b>
<b>17. LITHUANIA .....</b>	<b>63</b>
<b>18. LUXEMBOURG.....</b>	<b>67</b>
<b>19. MALTA .....</b>	<b>68</b>
<b>20. NETHERLANDS.....</b>	<b>69</b>
<b>21. POLAND .....</b>	<b>71</b>
<b>22. PORTUGAL .....</b>	<b>74</b>
<b>23. ROMANIA.....</b>	<b>76</b>
<b>24. SLOVAKIA.....</b>	<b>80</b>
<b>25. SLOVENIA.....</b>	<b>82</b>
<b>26. SPAIN .....</b>	<b>83</b>
<b>27. SWEDEN.....</b>	<b>87</b>

28.	UNITED KINGDOM.....	88
CHAPTER III: THE PRACTICAL ASPECTS OF TRANSNATIONAL CONTROLLED DELIVERIES OF DRUGS.....		91
1.	OPERATIONAL OBJECTIVES AND TYPES OF CONTROLLED DELIVERIES.....	91
1.1.	OPERATIONAL OBJECTIVES.....	91
1.2.	TYPES OF CONTROLLED DELIVERIES.....	92
2.	PLANNING AND ORGANIZATION OF CONTROLLED DELIVERIES.....	97
3.	SPECIAL INVESTIGATIVE TECHNIQUES USED IN THE CONTEXT OF CONTROLLED DELIVERIES.....	101
4.	THE OUTCOME OF CONTROLLED DELIVERIES. PARALLEL CRIMINAL INVESTIGATIONS IN COUNTRIES INVOLVED.....	108
5.	OBSTACLES AND DIFFICULTIES (LEGAL AND PRACTICAL) IN THE FIELD OF CONTROLLED DELIVERIES .....	111
5.1.	DIFFICULTIES AT INTERNATIONAL LEVEL. ....	111
5.2.	DIFFICULTIES AT EUROPEAN LEVEL.....	113
5.3.	SUMMARY OF THE OBSTACLES AND DIFFICULTIES .....	115
6.	THE ROLE OF INTERNATIONAL AND EUROPEAN INSTITUTIONS IN THE COORDINATION AND SUPPORT OF CONTROLLED DELIVERIES.....	117
6.1.	EUROJUST .....	117
6.2.	EUROPEAN JUDICIAL NETWORK IN CRIMINAL MATTERS .....	121
6.3.	EUROPOL.....	122
6.4.	SELEC.....	123
6.5.	NETWORKS OF PRACTITIONERS.....	124
CHAPTER IV: CONCLUSIONS AND RECOMMENDATIONS .....		125
1.	RECOMMENDATIONS IN ORDER TO ACHIEVE THE PROJECT'S GOALS .....	127
2.	COMPLEMENTARY ACTIONS TO ENSURE THE EFFECTIVENESS OF CDS .....	128
ANNEX I: LIST OF NATIONAL CONTACT POINTS IN THE FIELD OF CDS .....		130
ANNEX II: DRAFT STANDARD FORM FOR CD PURPOSES.....		136
ANNEX III: SCENARIOS (HYPOTHETICAL CASES) PRESENTED AT THE WORKSHOPS .....		137
ANNEX IV: BIBLIOGRAPHY .....		140

## **Abbreviations**

CBI – Central Bureau of Investigation  
CCP – Container Control Programme  
CD – Controlled delivery  
CND – Commission on Narcotic Drugs  
DIICOT – Directorate for Investigating Organised Crime and Terrorism  
EAW – European Arrest Warrant  
ECHR – European Court of Human Rights  
EJN – European Judicial Network  
EMCDDA – European Monitoring Centre for Drugs and Drug Addiction  
EU – European Union  
JHA – Justice and Home Affairs  
HONLEA – Heads of National Drug Law Enforcement Agencies  
LEAs – Legal Enforcement Agencies  
MLA – Mutual Legal Assistance  
MS – Member State  
NCA – National Crime Agency  
NEBEK – National Police International Law Enforcement Cooperation Centre  
NPS – New psychoactive substances  
SIT – Special investigative technique  
SODN – Central Anti-Drug Coordination Unit  
UK – United Kingdom  
UN – United Nations  
UNODC – UN Office on Drugs and Crime  
US – United States  
WCO – World Customs Organization

## INTRODUCTION

The project JUST/2013/ISEC/DRUGS/AG/6412 *“Enhancing the cooperation of European Union Legal Enforcement Agencies for successful controlled deliveries”*, whose main objectives are to encourage LEAs in combating drug trafficking and to enhance their cooperation in the matter of controlled deliveries (CDs), commenced in September 2015 with the first activity – *“Theoretical analysis of the current legal situation in the EU Member States”*.

To that end, the two experts selected from the EU MSs in the field of drug trafficking investigation and CDs have carried out a research-based study by gathering data pertaining to the legal provisions in all 28 MSs related to CDs of drugs. The experts who drafted the research report are Mr. Ignacio Miguel de Lucas Martín (prosecutor at the Spanish Anti-drug Prosecution Office, Spain) and Mr. Cristian-Eduard Ștefan (Associate Professor at the Police Academy “Alexandru Ioan Cuza” in Bucharest, Romania).

The initial report was discussed during the three Regional Meetings of the project by the two experts and the participants from the LEAs (Romanian Prosecutor’s Office attached to the High Court of Cassation and Justice, Office of the General Prosecutor of the Republic of Estonia and the Lithuanian Criminal Police Bureau) and practitioners in the area from other EU Member States (Italy, Belgium, Bulgaria, Poland, Hungary and Latvia). The experts have added the findings of each workshop to the manual to be presented at the final conference of the project.

The manual presents both the theory and practice behind CDs of drugs and the instruments for cooperation used in each of the 28 MSs. The manual also describes the rules and national legislation applicable to CDs of drugs as well as the practitioners involved in this field (prosecutors, judges, police, customs, border guard agencies/border police, etc.).

The methodology used to draft the manual is based on a scientific analysis of the data collected by the experts during the first stage of the project, followed by the contribution of the participants and practitioners who attended the three Regional Meetings of the project held in Tallinn (Estonia), Poiana Brasov (Romania) and Druskininkai (Lithuania). The validation of data collected at the first stage and the development of the final manual would not have been possible without the contribution of the participants and practitioners in the field of CDs.

During the Regional Meetings of the project, the experts drafted and distributed to the participants a questionnaire in order to identify the main practical challenges, obstacles and recommendations in drug trafficking investigations involving CD. In addition, hypothetical cases (scenarios) were presented to the participants, divided into groups, in order to ascertain how the participants would use CDs in the context of drug trafficking investigations.

The manual is divided into four chapters. The first chapter sets out the international context of CDs of drugs, including the need for CDs and the legal regulation of this special investigative technique (SIT) at international level. The second chapter describes the rules and national legislation applicable to CDs of drugs. The third chapter contains an analysis of the practical aspects of transnational CDs. It also includes a discussion of operational objectives and types of CDs, the planning and organisation of CDs, the SITs used in the context of CDs, the outcome of CDs, the role of international and European institutions in this field. The last chapter presents the final conclusions and recommendations. The annexes to this report comprise a list of national contact points for CDs (Annex I), a proposed standard form for CD purposes (Annex II), the hypothetical cases used for discussion purposes during the workshops (Annex III) and the bibliography (Annex IV).

## **CHAPTER I: THE INTERNATIONAL CONTEXT OF CONTROLLED DELIVERIES OF DRUGS**

### **1. The need for controlled deliveries in the context of international drug trafficking**

#### **1.1. Background**

The investigation and prosecution of organised crime are especially complex endeavours because they usually require several lines of investigation to be run in parallel, including cross-border investigations conducted by different authorities and under different legislation. Against this background, SITs, such as CDs, play a key role in dismantling organised crime, but properly integrating them into domestic legal systems requires national legislators to make a host of difficult decisions.

International drug trafficking continues to be one of the biggest challenges for law enforcement agencies worldwide. This criminal activity is extremely profitable for the drug trafficking networks, exacerbates threats to the security of the States and poses a serious threat to the public health. According to the data provided by Europol, drug trafficking was the main area of crime in 2013 and 2014 in terms of the cases initiated and the flow of information. As set out in the EMCDDA's 2016 Report, drugs are estimated to contribute about one-fifth of global crime proceeds. In Europe, they have been estimated to account for 0.1–0.6 % of the gross domestic product (GDP) of the eight Member States for which published data are available. It is estimated that the EU retail drug market was worth at least EUR 24 billion (range EUR 21 to 31 billion) in 2013, with the cannabis market being the largest, making up about 38 % of the total, followed by the heroin (28 %) and cocaine (24 %) markets.

Most world States have long realised the importance of international cooperation in the fight against this offence, trying to find the most effective methods and tools for prevention and control. In the context of international drug trafficking, States on the drug trafficking routes are affected equally, whether States origin, transit or final destination.

#### **1.2. Drug routes**

In the global context, Europe is an important market for drugs, being supported both by domestic production, and by the drugs trafficked from other regions. Latin America, Western Asia and Northern Africa represent important sources for the drugs arriving in Europe, and some drugs and precursors of drugs are transiting through Europe on the way to the other continents. Europe is also a producer region of cannabis and synthetic drugs, cannabis being produced in particular for



local consumption, while some synthetic drugs are produced to be exported to other areas of the world<sup>1</sup>.

In addition to the illicit drugs which come from the EU, there are two main drugs routes through which they enter the EU. That is the “cocaine route” (from Latin America through West Africa in the EU) and the “heroin route” (from Afghanistan either through the Western Balkans, either through Central Asia in the EU).

As regards the “cocaine route”, in 2010 as part of the initiative entitled “Counteracting Global and Trans-regional Threats of the long term component of the Instrument for Stability (IfS)”, the European Commission launched the Terms of Reference “Fighting against drug trafficking route: Ameripol<sup>2</sup>”. According to the Terms of Reference, the main noticeable trends in drug trafficking reported by various law enforcement agencies were (i) a major shift in the popularity of sending consignments to Europe rather than the US (price differential and fear of extradition to the US are major factors influencing this move); and (ii) a major increase in air-traffic and the use of clandestine airstrips – often from Venezuela via West Africa to Europe.

As pointed out in this initiative, *“to reach the consumer market, the cocaine route has shifted from traditional routes to the Afro-European corridor. South American traffickers have relocated to fragile West Africa States, using the area as a hub for cocaine trafficking, benefitting from corruption, political instability, poverty, and enjoying impunity, derived from the lack of resources, basic skills or coordination of West African law enforcement agencies. Two main flows are clearly present. The first involves maritime, land and air shipments, managed by South American groups, moving vast quantities of drugs through West Africa. The second, stemming from the payment for assistance of West African recruits, conveys cocaine to Europe, usually through couriers in commercial air flights”*.

According to the analysis of specialists in the field, drug traffickers change trafficking routes and methods of smuggling or laundering of the revenues coming from illicit drug trafficking. At the same time, *“uncoordinated clamp-downs may force traffickers to move drug production sites to neighbouring countries or to shift trafficking routes, but these measures cannot disrupt trafficking sustainably”*<sup>3</sup>.

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<sup>1</sup> European Drug Report 2015: Trends and Developments, EMCDDA, Lisbon, June 2015, p. 19.

<sup>2</sup> This programme followed the initiative launched in 2008 “New cocaine routes: Latin America, Caribbean and West Africa” under the IfS Lot 1. One of the objectives identified was to *“improve prosecutors’ and law enforcement agencies’ capability to carry out complex investigations and related exchange of information on money laundering and financial crimes”*.

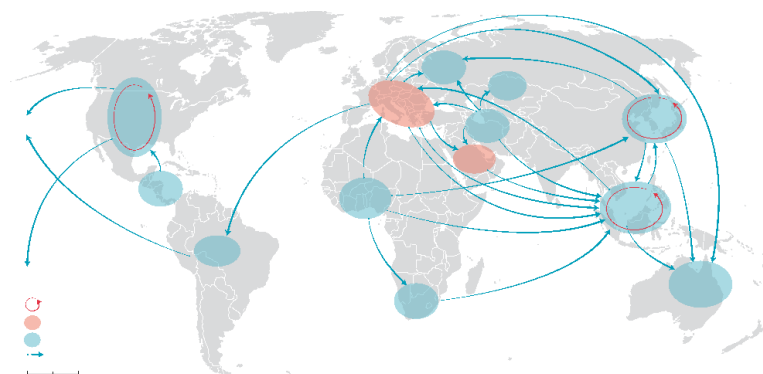
<sup>3</sup> COM (2011) 689: Communication from the Commission to the European Parliament and the Council. Towards a stronger European response to drugs, p.2.



Heroin trafficking routes

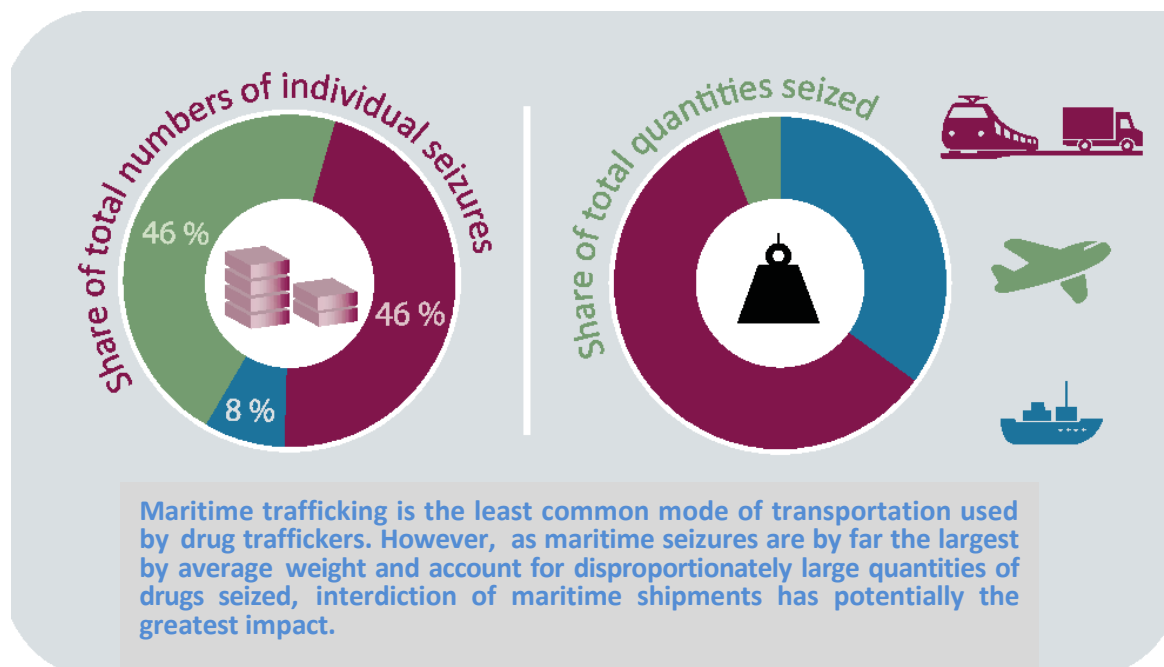
Cocaine trafficking routes

Source: UNODC World Drug Report 2016, pp. xiii-xiv



Routes for trafficking amphetamines

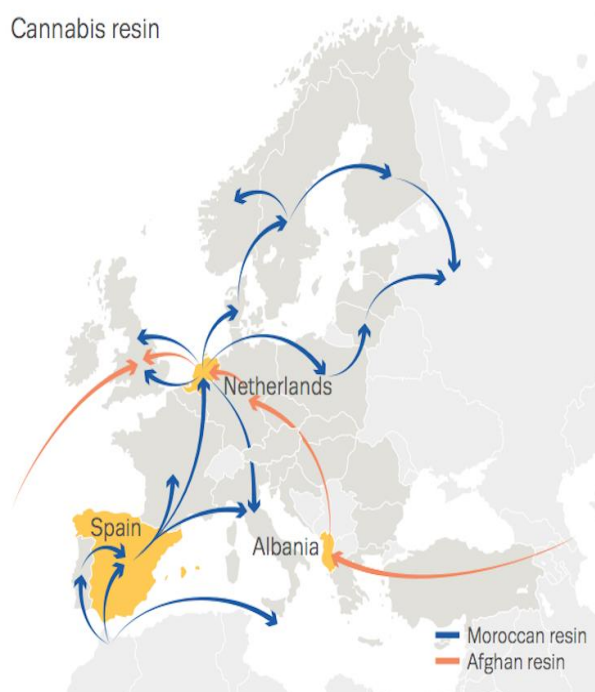
Source: UNODC World Drug Report 2016, p. xv.



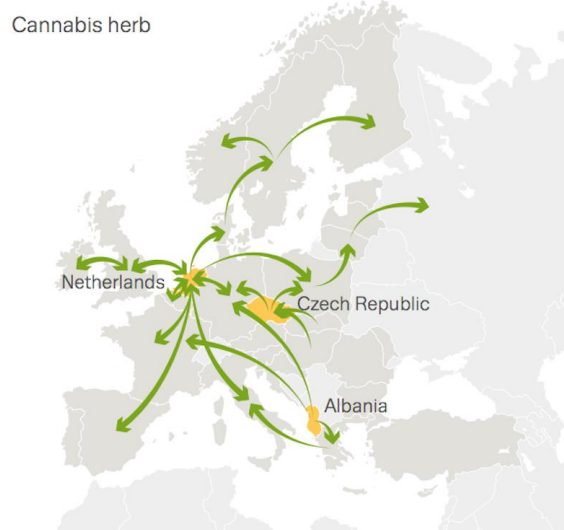
Share of total numbers of individual seizures and quantities seized<sup>4</sup>

<sup>4</sup> The 2016 UNODC World Drug Report states that “a direct indicator of drug law enforcement activity, drug seizures are the result of those successful operations that end in drug interceptions and are thus influenced by law enforcement capacity and priorities. At the same time, drug seizures are one of the key elements in understanding illicit drug market dynamics, drug availability and drug trafficking patterns and trends, particularly if broad geographical entities are

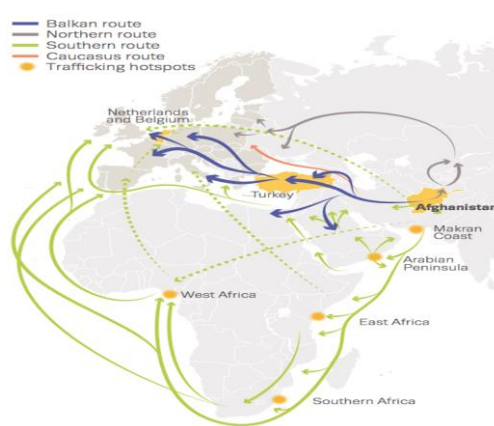
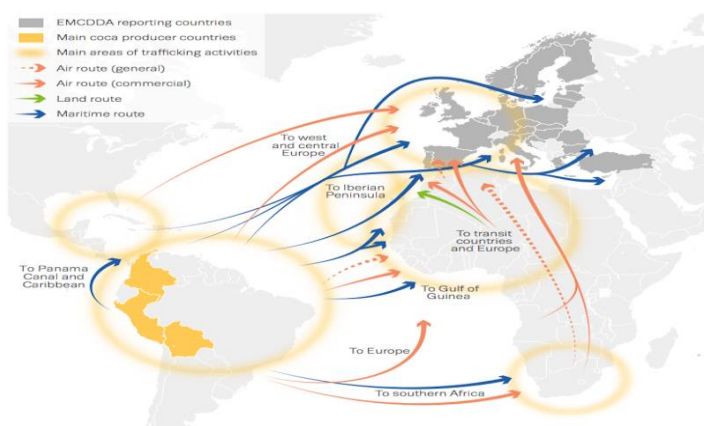
Cannabis resin



Cannabis herb



Source: EMCDDA 2016 Report



### 1.3. Current challenges

Presently, one of the main challenges in the fight against drug trafficking is the *evolution of the Internet as an online market of drugs*. In the last few years, more than half of the EU countries have targeted in particular the offenses related to drugs on the internet, a number of these aiming the internet sites selling synthetic drugs and other illegal substances<sup>5</sup>. New developments in the field are represented by the use by drug traffickers of advanced technologies, as well as the codified

*considered and long periods are analysed*". However, this indicator does not seem to be sufficient in terms of measuring the number of organised crime groups dismantled as a result of the seizure.

<sup>5</sup> COM(2015) 584: Report from the Commission to the European Parliament and the Council on progress in the EU's 2013-2020 Drugs Strategy and 2013-2016 Action Plan on Drugs, p. 8.

transmission of e-mails, the use of the internet cafes in order to avoid computer and electronic surveillance, etc.

The Council of Europe, through its Pompidou Group Work Programme 2015-2018 entitled “Drug policy and human rights: New trends in a globalised context<sup>6</sup>” is working on different thematic priorities as identified by the 16th Ministerial Conference. One of these topics is “identifying opportunities and challenges for drug policies arising from internet”. The work to be carried out will address this phenomenon because, according to the Pompidou Group’s Work Programme, *“recent developments in information and communication technologies (ICT) have enabled the emergence of a new global black market for drugs sales which is rapidly growing. Easy access and anonymity reduce the threshold to buy drugs via the internet and have created new distribution ways and payment systems that present new challenges for law enforcement and customs. Thus the growing number of websites offering drugs and/or promoting drug use has become a main area of concern”*.

Another important challenge, as reported by the EMCDDA in its 2016–18 strategy, work programme and 2016 annual work programme, is represented by new psychoactive substances (“NPS”). As stated in this document<sup>7</sup>, *“a total of 101 NPS were detected on the EU drug market for the first time in 2014 (the last year for which complete data were available at the time of writing), which is almost 25 % of the total number of NPS monitored by the EWS since 1997. This brings the total number monitored by the EMCDDA to more than 450 – close to double the number of substances controlled under the United Nations international drug control conventions – with more than half of these being reported in the last three years alone”*. As a result of this situation, the European Commission has highlighted the need for a more effective system to tackle the threat posed by NPS. In September 2013, the Commission adopted a legislative package to meet this objective and since then the package has been subject to discussions by EU legislators<sup>8</sup>.

In addition, the 2016 UNODC World Drug Report states that *“increases in trafficking have been even greater in the group of NPS in recent years. Accounting for 3 per cent of all drug seizure cases in 2014, seizures of NPS are still comparatively small (up from 1 per cent in 2009 and 0.1 per cent in 1998). In terms of the quantity seized, seizures of NPS (excluding plant-based NPS such as khat (Catha edulis) and kratom (Mitragyna speciosa)) rose 15-fold between 1998 and 2014.*

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<sup>6</sup> The Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs (Pompidou Group) is an inter-governmental body formed in 1971 at the initiative of the late French President Georges Pompidou. Initially, this informal forum consisted of seven European countries – France, Belgium, Germany, Italy, Luxembourg, Netherlands, United Kingdom – looking to share their experience of combating drug abuse and drug trafficking. The cooperation was subsequently extended to include new countries. In 1980 the Group was incorporated into the institutional framework of the Council of Europe and at present it comprises 35 Member States. [http://www.coe.int/T/DG3/Pompidou/Source/Documents/P-PG\\_MinConf%20\(2014\)%204%20WorkProgramme%202015-18\\_ENGLISH.pdf](http://www.coe.int/T/DG3/Pompidou/Source/Documents/P-PG_MinConf%20(2014)%204%20WorkProgramme%202015-18_ENGLISH.pdf)

<sup>7</sup> <http://www.emcdda.europa.eu/system/files/publications/2095/TDAX16001ENN.pdf>

<sup>8</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52015DC0584>

*Ketamine and synthetic cannabinoids have been seized the most; the total quantity of ketamine seized worldwide increased from an annual average of 3 tons in the period 1998-2008 to 10 tons in the period 2009-2014”.*

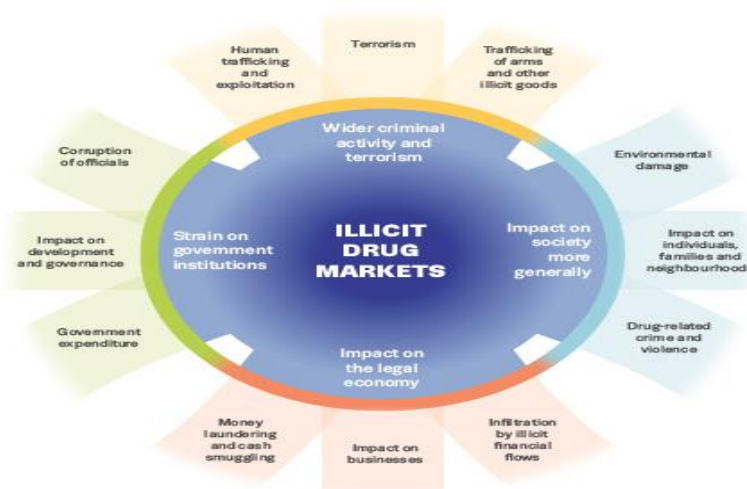
Furthermore, according to the most recent EMCDDA report (March 2016), the ramifications of the illicit drug market are wide ranging and go beyond the harms caused by drug use, including:

- involvement in other types of criminal activities and in terrorism;
- impacts on legitimate businesses and the wider economy;
- strain on and corruption of government institutions; and
- impacts on wider society.

There are many ways in which drug markets and those involved in them interact with other areas of illegal activity. These interactions can be viewed as being of three broad types:

- When those involved in drug supply engage in other illicit trades, such as firearms or migrant smuggling;
- When drug supply is used as a means to a different end, as when it provides financing for other criminal activities or terrorism, or when drugs are used as a means to control people being exploited;
- When other criminal activity is integral to the drug trafficking activity, for example when trafficked individuals are coerced into participation in drug production or trafficking; when corruption is used to facilitate trafficking; when profits from dealing are laundered; when cash is smuggled to pay for supplies; or when violence is used to maintain the market position.

**FIGURE 1.2**  
The widespread ramifications of illicit drug markets on society



Source: EMCDDA.

#### **1.4. The importance of police and judicial cooperation**

In the fight against drug trafficking and criminal groups involved in this criminal activity, police and judicial cooperation is essential. The Member States acknowledge that an effective fight against drug trafficking can only be achieved by an active cooperation among the authorities of the States where the production, transit and destination of drugs take place. According to the **EU Drugs Strategy (2013-20)**, strengthening cooperation and coordination at strategic and operational levels among law enforcement agencies, should include: improving cross-border real-time information sharing (including operational information), best practices and knowledge, as well as conducting joint investigations and operations. Furthermore, this Strategy considers it necessary to strengthen EU drug-related judicial and law enforcement cooperation and the use of existing practices by establishing faster and more accurate responses and to support judicial and law enforcement cooperation activities and exchange of information and intelligence<sup>9</sup>.

*It is crucial to highlight the need to “reinforce international cooperation efforts and to ensure that the available legal and judicial mechanisms, tools and platforms are used effectively. Efforts to improve the sharing of information and intelligence on a strategic and operational basis ... Efficient use of resources can be achieved through the identification and targeting of geographical locations where drug market-related activities are concentrated. Such specific locations, which include large container ports, parcel delivery hubs, specific land or air border points, and relatively discrete geographical areas used for drug production, represent priority targets for interdiction efforts”<sup>10</sup>.*

Most States strengthen the system of preventing and combating organised crime – drug trafficking in particular, by equipping the authorities with legislative, institutional and procedural tools. Organised crime groups employ many counter measures when engaging in or preparing criminal activities in order to deflect the attention of law enforcement agencies. Traditional methods of investigation are often inadequate because of the special structures and professionalism of organised crime groups. From a strategic, tactical and operational perspective, it is therefore necessary to resort to SITs such as controlled deliveries, covert investigations, interception of communications (wiretapping), the use of bugging devices, covert surveillance and undercover agents and informants.

In the first workshop of the project held in Tallinn, the participants identified **the following main investigative challenges** they faced in drug trafficking cases:

- Differences between the legislation of EU Member States and also as regards cooperation with third parties (*Lithuanian participants*);

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<sup>9</sup> EU Drugs Strategy (2013-20), sections 22.1 and 22.8.

<sup>10</sup> European Drug Report 2016: EMCDDA, Lisbon, March 2016.

- Investigations should focus not only on drug trafficking but also on money laundering resulting from drug trafficking (*Romanian participants and Belgian practitioner*);
- Differences in the ways evidence is handled in different Member States, the bureaucracy of cooperation between States (including judicial assistance) (*Bulgarian practitioner*);
- The need to use controlled deliveries to seize the proceeds of drug trafficking. As the Italian practitioner mentioned, “*if you are seizing drugs, the traffickers will produce others, but if you are seizing money, it will be more difficult for them to replace it*”.
- The use of the Internet and modern technologies by drug traffickers and the problems caused by the communication of criminals by Smartphones, through WhatsApp and other social networks (*Estonian and Romanian prosecutors*);
- Difficulties in cooperation between law enforcement/judicial authorities and Internet service providers based in other States (especially those outside the EU);
- Identification of the criminal network leader, due to the fact that in most cases, only couriers or small criminal cells are identified by the LEAs.

**Most of the above investigative challenges were confirmed during the second workshop of the project** held in Poiana Brasov (22-24 June 2016). The most important challenges identified by participants include the following:

- Time restrictions for planning and organisation of the operations;
- Dismantling of the money flow involved in drug trafficking cases (according to a Lithuanian criminal police officer, “*if you cannot seize the drugs, it is useful to seize money*”);
- Unjustified refusal of a State for transfer of proceedings in a drug trafficking case (*opinion expressed by a Romanian prosecutor*);
- The lack of resources could lead to prioritise them only for some cases (*Estonian prosecutor*);
- According to a Romanian prosecutor, “*any barrier for communication and cooperation between LEAs is an advantage for the drug traffickers*”.

**At the last Regional Meeting of the project**, one of the Lithuanian participants stated that “*we must learn not only from the best practices, but also as a result of bad experiences in the topic. It is necessary to improve the efficiency of human resources management, especially as regards undercover agents. It is not possible to perform successful antidrug operations without the support of undercover officers and informants... One of the most essential challenges is identifying of the*

*whole criminal group, because most frequently we arrest only the courier and seize the parcel containing drugs*". The Polish practitioner mentioned some challenges with respect to the need for MLA requests, since in Poland CDs are purely police measures and thus no such requests are required. He also mentioned that some States do not investigate the drug trafficking of small amounts (i.e. small parcels of drugs). The Romanian prosecutors who attended the workshop in Druskininkai mentioned the following challenges: the identification of relevant laws in the EU and also in non-EU MS; differences between national regulations governing the use of undercover officers and informants; the need to identify relevant contact points in States situated along the trafficking route; the development of new technologies (social networks, WhatsApp, etc.); improving drug detection.

### **1.5. Trafficking methods**

In the context of international illicit trafficking, drugs are trafficked by air, sea or land, drug detection by the law enforcement agencies is often made after customs control, by several methods such as risk analysis, the use of X-ray scanners or other methods of proactive profiling. The concealment of drugs by the drug traffickers is accomplished by hiding them in locations either difficult to reach or especially set up. The modes and places to hide the drugs in the illicit traffic depend on many factors such as the quantity of drugs, the means of transport, ingeniousness of traffickers or final destination of the drugs. Also, according to the studies conducted at EU level, *"... traffickers use advanced techniques to conceal drugs, for instance, by mixing liquid cocaine into commercial goods (clothes, liquids, plastic), converting it into powder cocaine in laboratories in Europe, or making it odourless.... Criminal networks change their trafficking routes frequently in order to circumvent controls. ..."*<sup>11</sup>.

Airports are a main entrance point for drugs used by drug trafficking organizations. Furthermore, drug trafficking by sea remains a basic method used by traffickers, who proceed to conceal the drugs in containers<sup>12</sup>.

According to the World Customs Organization<sup>13</sup>, the methods of concealing drugs in maritime containers are divided into three main categories:

- *In the cargo:* inside or among the goods transported;
- *In the means of transport:* in the structure of the container, including mechanical department of the refrigerated containers;

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<sup>11</sup> COM (2011) 689: Communication from the Commission to the European Parliament and the Council. Towards a stronger European response to drugs, p. 3.

<sup>12</sup> To tackle drug trafficking using containers, UNODC together with the WCO are responsible for implementing the Container Control Programme (CCP). The purpose of this programme is to build capacity in countries seeking to improve trade security and facilitation standards and controls at their borders. The CCP provides capacity building to profile, target and examine containers being used for the transport of illicit goods.

<sup>13</sup> UNODC–WCO Global Container Analysis Report 2008, p. 29.



- “Rip off”<sup>14</sup>: the drugs are placed inside the container, near the container’s door and without the knowledge of the sender/recipient.

In 2014, Spain’s Terrorism and Organised Crime Intelligence Centre (*Centro de Inteligencia contra el terrorismo y el crimen organizado*, “CICO”) drafted a report on “Cocaine maritime trafficking using containers”. Between 2011 and 2013, cocaine seizures in Europe were structured as follows<sup>15</sup>:

YEAR	PLACE and WEIGHT (kg) OF SEIZURE				
	LAND	AIRPORTS	SEA	CONTAINERS	TOTAL
2011	10 234	6 223	14 897	20 279	51 633
2012	8 358	8 707	11 149	31 682	59 897
2013	8 481	7 200	11 902	33 872	61 455

### 1.6. *Controlled deliveries in the context of drug trafficking*

One of the SITs that has stimulated the international cooperation of police and judicial authorities in the fight against international drug trafficking is controlled delivery. Controlled deliveries are generally defined as the techniques whereby illicit or suspect consignments are permitted to enter, move within and exit the territory of one or more States, with the knowledge and under the supervision of the competent authorities, with a view to investigating an offence and identifying the persons involved in the commission thereof. The method of controlled delivery has been identified as an investigative tool by which an illicit drug transport is allowed to transit through the territory of one or more States, under the supervision of the competent authorities, in order to identify all components of the drug trafficking criminal organizations, existing in the States of origin, transit or destination of the drugs.

In contrast to other SITs, controlled deliveries do not have an impact on fundamental rights in the same way as, for example, wire-tapping. However, the use of this technique may be problematic in some countries because it facilitates the transit of illicit goods through the territory of a State which would otherwise be intercepted by law enforcement authorities. As controlled

<sup>14</sup> In the last few years, it has been noticed an expansion of the “rip-off” modus operandi in drug trafficking. As a reaction to this modus operandi, the World Customs Organization has developed a secure system for communicating information between the customs authorities (ContainerCOMM), through which they could cooperate by disseminating the sensitive information (alert warning messages) relating to high risk containers. On the basis of this information, in the past few years the customs authorities in some States seized significant captures of drugs (especially cocaine).

<sup>15</sup> Among the 17 Recommendations made in this report, two specifically related to controlled deliveries:

“16. *Strengthen police investigations to fight against the use of containers to transport illicit goods, using controlled deliveries more frequently. In the implementation of this investigation technique, coordination between police, customs, judicial and prosecutorial authorities should be improved.*

17. *In the international environment, it is essential to carry out controlled deliveries. In order to make them possible, it is necessary that national legal frameworks provide legal basis for the effective and quick implementation of this investigation technique.”*

Given the significance of this threat, the European Union decided to establish a sub group under the Cocaine EMPACT group exclusively focused on cocaine trafficking via containers: Target Group Conex.

deliveries involve the movement of illicit goods across one or more countries there is a high associated risk of losing track of them.

On balance, the added value of this investigation technique outweighs the risks associated with its implementation, in particular where the illicit goods are transported through different countries. Consequently, the use of this technique has become widespread among law enforcement agencies when dealing with drug offences, both domestically and internationally.

Controlled deliveries may enter both in the sphere of police cooperation, as well as in the judicial proceedings, given that in a number of Member States for the execution of such operations is required a judicial authorisation, and in others only the permission of the heads of the national police units.

In order to ensure the efficiency of the measures to combat criminal networks involved in drug trafficking, in 2007, at the seventh meeting of HONLEA (Heads of National Drug Law Enforcement Agencies), a proposal was made to increase the use of international controlled deliveries<sup>16</sup>.

According to the Manual on cross-border operations, *“there are different types of controlled deliveries, depending on national law. Not all types are known to all Member States: with undercover agents, with physical control, without physical control (sometimes called monitored delivery), with informants, using substitutions”*<sup>17</sup>.

In referring to the CD’s added value compared with other SITs, one practitioner who attended the last workshop of the project mentioned: *“CDs let us covertly observe the transportation or production of drugs, can generate false impressions among organised crime group members, and allow us to identify the those involved, their modus operandi, the vehicles used, enabling us to collect data about other crimes committed”*.

## **2. Legal regulation of controlled delivery at international level**

Controlled delivery is regulated at both UN and EU level. Its first appearance was in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 20 December 1988) (“the Vienna Convention”), with a view to combating drug trafficking. It was subsequently included in the UN Convention against Transnational Organised Crime (New York, 15 November 2000) and the UN Convention Against Corruption (Merida, 2003). At EU level, provision for controlled delivery was first made in the Convention implementing the Schengen

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<sup>16</sup> This was also proposed in the CCP Annual Report 2014. One of the main objectives of the programme, as identified in this Report, for Latin America is to build closer links between the region and Europe, in particular to develop operational “controlled delivery” capabilities with Panama and Ecuador.

<sup>17</sup> Manual on cross-border operations, General Secretariat, Council of the EU, Brussels, 14 December 2009, p. 18.

Agreement (14 June 1985, signed at Schengen on 19 June 1990), followed by the Convention on Mutual Assistance and cooperation between Customs Administrations (Naples, 18 December 1997) and the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (29 May 2000).

The definitions of controlled delivery appearing in the UN legal instruments enacted after the Vienna Convention were mostly based on Article 1(g) of that convention. The main difference between these definitions lies in the broader field of application of this investigative method, which is not only limited to drugs in later instruments. The comparative table below illustrates the different definitions of controlled delivery, together with the provisions on the conditions for the use and implementation of controlled deliveries at transnational level.

Convention name (legal act)	Definition of controlled delivery	Conditions for implementation
UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) <sup>18</sup>	Article 1 (g): “Controlled delivery” means the technique of allowing illicit or suspect consignments of narcotic drugs, psychotropic substances, substances in Table I and Table II annexed to this Convention, or substances substituted for them, to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences established in accordance with article 3, paragraph 1, of the Convention.	Article 11:  1. If permitted by the basic principles of their respective domestic legal systems, the Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in offences established in accordance with article 3, paragraph 1, and to taking legal action against them.  2. Decisions to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the Parties concerned.  3. Illicit consignments whose controlled delivery is agreed to may, with the consent of the Parties concerned, be intercepted and allowed to continue with the narcotic drugs or psychotropic substances intact or removed or replaced in whole or in part.
UN Convention against Transnational Organised Crime (2000)	Article 2 (i): “Controlled delivery” shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the	Article 20:  1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate

<sup>18</sup> Unlike the previous international regulations (Single Convention Narcotic Drugs, 1961), the 1988 Convention has revolutionised the fight against drug trafficking by a total change of paradigm in the matter of judicial investigation.

	<p>investigation of an offence and the identification of persons involved in the commission of the offence.</p>	<p>use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organised crime.</p> <p>2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.</p> <p>3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.</p> <p>4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or re-placed in whole or in part.</p>
UN Convention against	Article 2 (i): “Controlled delivery” shall mean the technique of allowing illicit or suspect	Article 50:

Corruption (2003)	<p>consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence.</p>	<ol style="list-style-type: none"> <li>1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.</li> <li>2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.</li> <li>3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.</li> <li>4. Decisions to use controlled delivery at the international level may, with the consent of the States</li> </ol>
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		Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.
Convention implementing the Schengen Agreement (1990)	None	<p>Article 73:</p> <ol style="list-style-type: none"> <li>1. The Contracting Parties undertake, in accordance with their constitutions and their national legal systems, to adopt measures to allow controlled deliveries to be made in the context of the illicit trafficking in narcotic drugs and psychotropic substances.</li> <li>2. In each individual case, a decision to allow controlled deliveries will be taken on the basis of prior authorisation from each Contracting Party concerned.</li> <li>3. Each Contracting Party shall retain responsibility for and control over any operation carried out in its own territory and shall be entitled to intervene.</li> </ol>
Convention on Mutual Assistance and cooperation between Customs Administrations (1997)	None	<p>Article 22:</p> <ol style="list-style-type: none"> <li>a. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.</li> <li>b. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that State.</li> <li>c. Controlled deliveries shall take place in</li> </ol>

		<p>accordance with the procedures of the requested Member State. Competence to act and to direct operations shall lie with the competent authorities of that Member State.</p> <p>The requested authority shall take over control of the delivery when the goods cross the border or at an agreed hand-over point in order to avoid any interruption of surveillance. During the rest of the journey it shall ensure that the goods are kept permanently under surveillance in such a way that at any time it has the possibility of arresting the perpetrators and seizing the goods.</p> <p>d. Consignments the controlled delivery of which is agreed to may, with the consent of the Member States concerned, be intercepted and allowed to continue with the initial contents intact or removed or replaced in whole or in part.</p>
Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000)	None	<p>Article 12:</p> <p>1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.</p> <p>2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.</p> <p>3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. The right to act and to direct and control operations shall lie</p>



		with the competent authorities of that Member State.
The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8.XI.2001)	None	<p>Article 18:</p> <ol style="list-style-type: none"> <li>1. Each Party undertakes to ensure that, at the request of another Party, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.</li> <li>2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Party, with due regard to the national law of that Party.</li> <li>3. Controlled deliveries shall take place in accordance with the procedures of the requested Party. Competence to act, direct and control operations shall lie with the competent authorities of that Party.</li> </ol>

## **CHAPTER II: NATIONAL REGULATIONS CONCERNING CONTROLLED DELIVERIES WITHIN THE EU MEMBER STATES**

### **1. Austria**

#### ***Definition and legal provisions***

In Austria, the controlled deliveries are permitted in accordance with the EU-JZG<sup>19</sup> provisions, which include the main instruments of mutual recognition<sup>20</sup>.

§ 71 EU-JZG provides that the controlled delivery consists in delivering (transport) the prohibited goods or of those subject to limited traffic from or through the Austrian territory, without the obligation of the Public Prosecutor's Office to intervene.

#### ***Implementation at national level***

According to the EMCDDA<sup>21</sup> website, the conditions required for the authorisation of the controlled delivery are the following:

- Ensuring continuous surveillance of the transport;
- The delivery shall be intercepted if there is a risk of losing the transport;
- In case that Austria is the State of origin or transit, the controlled delivery shall be authorised only if an assurance is given regarding the transport confiscation and arrest of the people involved;
- Controlled deliveries on the national territory are to be undertaken and led by the Austrian authorities<sup>22</sup>;
- Supervising the transport on the entire route travelled, up to its handing over to the authorities of another State.

When the request comes from a foreign body (if there is no investigation in progress in Austria), the controlled delivery must be authorised by the Public Prosecutor's Office with competence in the district in whose jurisdiction the border is expected to be crossed, or the district from whose jurisdiction the controlled delivery route is to start. If these places could not be established, the

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<sup>19</sup> Federal law on judicial cooperation in criminal matters with the Member States of the European Union (EU-JZG), 2004.

<sup>20</sup> Katalin, Ligeti, *Toward a Prosecutor for the European Union Volume 1: A Comparative Analysis*, Hart Publishing Ltd, 2013, p. 42.

<sup>21</sup> <http://www.emcdda.europa.eu/html.cfm/index44352EN.html>

<sup>22</sup> According to § 72 (4) EU-JZG, controlled deliveries carried out on the Austrian territory are conducted by the Austrian authorities (in most cases by the police). In practice, coordination of the controlled deliveries is carried on by a special unit within the BKA.

Prosecutor from Vienna has competence<sup>23</sup> in this matter. Also, § 72 (1) sentence (3) EU-JZG provides that criminal police must inform without any delay the competent prosecutor with respect to any controlled delivery planned.

The implementation of controlled delivery shall be carried out by police or tax authorities and the customs offices.

After completing the controlled delivery, the prosecutor will examine whether there is reason for requesting the State in which the suspects were detained to take over the conduct of a criminal prosecution.

### ***International cooperation***

Austria has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the UN Convention against Transnational Organised Crime (2000). In addition, in 2012 Austria signed the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, but thus far the Protocol has not been ratified. Austria also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 20 April 1959 which entered into force on 31 December 1968.

The Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union has been ratified and came into force with the adoption of the Austrian Federal Law Gazette, Part III, No 65 and 66/2005. With regard to the application of Article 12 of the Convention, Austrian authorities issued the statement in terms of which *“the competent authorities for requests under Article 12 is the public prosecutor's office in whose jurisdiction the border is expected to be crossed or from whose jurisdiction the controlled delivery is to start”*.

For the authorisation of the controlled deliveries in Austria, it is necessary to send a request for MLA.

§ 72 (2) EU-JZG provides that the controlled deliveries through Austria or from Austria to another State shall be authorised at the request of another Member State or under the agreement with another Member State, if (a) the reasons which are the basis of the controlled delivery may lead to the issuance of an European arrest warrant; (b) the controlled delivery shall contribute to confirmation of the offenses and to the identification of the people involved.

Furthermore, according to § 72 (3) EU-JZG, controlled delivery is not permitted when it endangers the life, health, or physical integrity of a person.

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<sup>23</sup> Austria has emphasised the problem of jurisdiction conflicts that arise in practice. In these cases, Austria is based on legal regulations which provide for a general competence of the Prosecution Service in Vienna.

Within Austrian borders, foreign agents are permitted to participate as observers in the controlled deliveries investigations. Likewise, the use of undercover agents is allowed, but they are banned from committing or inciting to commit offenses. According to § 73 (1) EU-JZG, deployment of an undercover officer of another Member State operating covertly in Austria, shall be admitted at the express request of the judicial authority of the Member State, based on a previous order issued by the prosecutor in the jurisdiction of the area where the operation is planned. Authorisation shall be granted for a period of time necessary to achieve the purpose of the operation, but not exceeding a month. Extension of the authorization is possible only if the initial reasons shall be maintained, and continuing of the operation will enable the acquisition of important evidence in the case.

## **2. Belgium**

### ***Definition and legal provisions***

In Belgium, the meaning of the term “controlled delivery” is not the same as the meaning defined in the Schengen Convention (that is, the non-interception of, for example, a consignment of illegal substances with the intention of intervening at the final destination or at a checkpoint previously agreed on). In Belgium, the concept of “controlled delivery” under Schengen is expressed as “monitored delivery” while the “controlled delivery” refers to another type of intervention: infiltration. Consequently, in dealings with the Belgian authorities, it is necessary to draw this distinction (whether reference is being made to Schengen-type controlled delivery (surveillance) or controlled delivery under Belgian law (infiltration)).

In Belgium, monitored deliveries and controlled deliveries derive from Royal Decision of 28 March 2003 implementing the Law of 6 January 2003 on special investigation methods and other investigative methods and their preliminary texts.

Within the broad category of monitored deliveries, a distinction must be drawn between monitored deliveries (consisting in the surveillance of persons or goods in circulation with intervention at the final destination) and the supervised assisted deliveries (consisting in the surveillance of persons or goods in circulation without intervention at the final destination).

Besides monitored deliveries, the Royal Decision also mentions controlled deliveries, which are taken to mean infiltration (involving undercover police) with intervention at the destination point. The Royal Decision also mentions controlled assisted deliveries (involving undercover police) without intervention at the destination point. The sole purpose of this last option is to identify itineraries and participants.

The Law of 6 January 2003 also envisages a third possibility by introducing art. 40bis of the Criminal Code of Procedure concerning the delayed intervention. This is where the arrest of the suspects or the seizure of goods linked to the offence is postponed or delayed. The difference between delayed intervention and controlled or monitored (assisted) deliveries lies in the fact that the former does not involve any surveillance or infiltration. Arrests or seizures are made within an ordinary ongoing investigation without resort to infiltration or surveillance.

Goods other than narcotic drugs may be the subject of a controlled delivery. The law refers to the “illegal transport of goods or persons”.

### ***Implementation at national level***

#### ***Role of the prosecutor***

The public prosecutor of the place from where the consignment originates and the public prosecutor of the planned place of intervention are responsible for authorising controlled deliveries. If there is a difference of opinion between them, the federal magistrate will be asked to intervene. If the starting point of the controlled delivery is a foreign State, the public prosecutor of the place where the delivery will enter Belgian territory, if this location is known, is responsible. If the location of entry into the territory is not known at the time of the request from the foreign authorities, it is for the federal magistrate to decide 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 has jurisdiction. Similarly, if the seizure of goods has to be postponed in order to carry out a controlled delivery originating from Belgium or in transit within Belgian territory, the federal magistrate has jurisdiction to authorise the postponement of the seizure.

The federal prosecutor must therefore:

- Ensure coordination of the judicial proceedings and facilitate international cooperation, together with the relevant local public prosecutors;
- Take all urgent and necessary measures. These decisions are then binding on the relevant local prosecutors;
- If the final destination is not known in advance, the federal prosecutor will take control of the investigation himself.

He is required to apply two fundamental principles: first, the principle of proportionality –this process/technique can only be applied in cases of serious and organised forms of crime; and secondly,

the principle of subsidiarity – this process can be applied only if other techniques do not allow the necessary proof to be obtained.

### *Practicalities*

The following details must accompany a request for a controlled delivery:

- Reason for the operation,
- Factual information justifying operation,
- Type and quantity of drugs / other goods,
- Anticipated means of transport and itinerary,
- Expected point of entry into and exit from the requested State,
- Identity of each suspect (name, date of birth, domicile, nationality, description),
- Identification of the authority who authorised the operation,
- Identification of the Head Investigator in charge of the operation and contact details,
- Details of police, customs or other law enforcement officers supporting the operation,
- Details of any special techniques proposed.

With the consent of the competent judicial authorities, a replacement substance may be used in a delivery.

### ***International cooperation***

Belgium has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the 2000 European Convention on Mutual Assistance in Criminal Matters and its 2001 Additional Protocol. Belgium also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 20 April 1959 which entered into force on 11 November 1975.

The public prosecutor of the place of intervention is the responsible for the case. He or she decides on how the operation will progress. As far as possible, the public prosecutors of the places through which the delivery will pass are informed of the operation. During the operation, the criminal investigation department officer in charge of the case may, at any time, decide to seizure the goods if there is a serious risk of losing track of them. It is important to highlight the role of the federal prosecutor for all the CD's where or the place of entry into the Belgian territory is not known beforehand.

The controlled delivery of persons is prohibited in principle, but can be carried out in exceptional cases under certain conditions: the police departments must, at all times, have a clear

insight into the circumstances and conditions under which the transport is carried out and must monitor the actual situation; intervention must take place at the end destination; there must be sufficient guarantees with regard to the physical integrity (security) of the persons being transported; execution of the measure falls within the competence of special police units; the prior agreement of the State prosecutor is required.

International assistance is possible in principle; it is assessed on a case-by-case basis. Involvement may be in the form of joint investigation teams. A judicial authority from the requesting country must issue the request for co-operation in the form of a rogatory letter. If the controlled delivery starts in or transits Belgium, the following guarantees have to be given by the judicial authorities of all countries involved:

- Guarantee that the illegal goods will be under permanent police observation and control;
- Assurance that the illegal goods will be seized in the country of destination (or wherever if there is a risk of losing control over the goods) and that the persons involved in the offence will be prosecuted.

The presence of law enforcement agencies of a requesting country on Belgian territory is subject to the permission of the competent judicial authorities, who will also decide on practicalities such as the carrying of firearm. A formal request to this end must be lodged beforehand. Given that these delicate operations must be very carefully prepared, the Belgian authorities prefer that contact be made as soon as possible. In cases of extreme urgency, an agreement in principle may be secured within a matter of minutes. As regards the preparation of the operation, the timeframe may be anywhere between 30 minutes to several hours (depending on the complexity of the case).

### **3. Bulgaria**

#### ***Definition and legal provisions***

Controlled delivery is a special form of mutual assistance under the investigation of criminal offenses which gives rise to extradition. Controlled delivery is an operative method regulated by Article 172(1) of the Code of Criminal Procedure. Applying the controlled delivery is possible within the international judicial assistance in terms of Article 12 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>24</sup>.

The main legal regulations concerning controlled deliveries are contained in the Code of Criminal Procedure, the Special Intelligence Means Act, the Law on Drug Control and Precursors, the Law on the State Agency for National Security, Customs Law.

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<sup>24</sup> [http://www.ejn-crimjust.europa.eu/ejn/EJN\\_FichesBelgesResult.aspx?measure=804&country=239&other=-1](http://www.ejn-crimjust.europa.eu/ejn/EJN_FichesBelgesResult.aspx?measure=804&country=239&other=-1)

Controlled delivery consists of the export, transit or import of drugs, precursors or other goods (as applicable). These operations are only allowed in the case of offenses punishable by imprisonment of more than 5 years.

Section VII entitled “*Special Intelligence Means*” of the Code of Criminal Procedure specifies the instruments regarding the use of special intelligence – technical means (mechanical devices and electronic equipment) and operative methods (surveillance, interception, control of correspondence, controlled delivery, etc.). According to Article 172(4) of the Code of Criminal Procedure, controlled delivery can contribute to obtaining evidence, and undercover officers must be examined as witnesses.

#### ***Implementation at national level***

Under the provisions of Article 10a of the Special Intelligence Means Act, “*a controlled delivery shall be performed by an intelligence body and shall be used by an investigating or body within the limits of their competence in the presence of interrupted strict control on the territory of the Republic of Bulgaria or another country within the context of international cooperation, during which a controlled individual shall be import, export, carry or effect transit transportation through the territory of the Republic of Bulgaria of an object of a criminal offence, with a view of detecting those involved in a trans-border crime*”.

In Bulgaria, the request for MLA is mandatory only in cases where the controlled delivery is required for a criminal trial or a criminal investigation. The requests for legal assistance are not necessary when the controlled delivery is requested in the context of operational investigations<sup>25</sup>.

Deployment of the controlled delivery shall be done only after the authorization is issued by the court.

In the domestic legislation there are no fixed time limits concerning the controlled delivery.

Initiation and execution of the controlled delivery shall be carried out, after obtaining the approval of the competent court, by the personnel of the following authorities:

- Intelligence authorities – the State Agency for National Security, the Ministry of Interior,
- Investigative authorities (under the Special Intelligence Means Act) - Prosecution Office in Bulgaria, investigative authorities within the State Agency for National Security, the Ministry of Interior and the National Customs Agency.

After approval of the controlled delivery by the competent court, the initiating authority shall inform all competent law enforcement agencies, in order to coordinate the operation.

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<sup>25</sup> Issue in focus number 1 “Cross-border controlled deliveries from a judicial perspective”, Eurojust, 2015, p. 2.



The prosecutor may, on a case-by-case basis, suspend the controlled delivery if the originating conditions change.

According to Article 11 of the Special Intelligence Means Act, the application of the operative methods (including controlled delivery) shall be accompanied by recording on audio, video and film tapes, and by photographing. The same Act also lists other operative methods as observation, tapping, surveillance, penetration, marking and interception of mail and computerised information, trusted transaction and investigation through an undercover officer.

### ***International cooperation***

Bulgaria has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has entered into force on December 1, 2007. Bulgaria also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 30 September 1993 which entered into force on 15 September 1994.

In the event where a foreign authority sends a request for authorization of the controlled delivery, the authority competent to receive the request is the Supreme Cassation Prosecutors' Office in Bulgaria. After acceptance of the request for assistance, the Supreme Cassation Prosecutors' Office shall immediately submit to the competent court a request for authorization of the controlled delivery.

When the controlled delivery is carried out within a police operation of international cooperation, the authorisation of this measure is given by a decree by the Supreme Cassation Prosecutors' Office. The decree shall be issued in two copies – one shall be sent to the requesting authority and one to the National Customs Agency, which shall allow the entry into the Bulgarian territory of the transport of drugs<sup>26</sup>.

The requests for conducting controlled deliveries received from other States must be made in writing and must contain the following information<sup>27</sup>: the reason for the operation, factual information justifying the operation, the type and quantity of drugs, means of transport and route used, point of entry on and exit from the Bulgarian territory, identity of the suspects, who authorised the operation,

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<sup>26</sup> Evaluation report on the sixth round of mutual evaluations: "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters" Report on Bulgaria, Brussels, 26 September 2014, p. 51.

<sup>27</sup> Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations - Part II: National fact sheets, Council of the European Union, Brussels, 5 October 2015, p. 18.

data of the investigator which coordinates the operation, the technical means proposed to be used during the controlled delivery.

The Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations includes some particulars relating to the guarantees required by the Bulgarian authorities for authorising the controlled deliveries, namely:

- The guarantee that all countries of transit have given their consent for carrying out the controlled delivery is necessary;
- Moreover, there are demanded guarantees that the controlled delivery is under constant supervision, as well as the immediate intervention in the case there is a risk of losing the transport;
- Are requested guarantees regarding the final confiscation of the transport, as well as the legal accountability of offenders.

According to the EJM website<sup>28</sup>, *“the request and enclosed documents shall be accompanied by translation in Bulgarian language or in one of the official languages of the Council of Europe. With regard to the prompt administration and fulfilment of the request it is recommended the latter to be translated in Bulgarian language in advance”*.

According to Article 476(7) of the Code of Criminal Procedure, *“the execution of requests from other States for controlled delivery shall be carried out by the competent investigating authority. It may ask for assistance the police, customs and other administrative authorities”*.

The initiating or the destination State is required to inform the competent authorities about the outcome of the controlled delivery.

Foreign agents may take part in the controlled delivery within the Bulgarian territory as observers. The participation of foreign agents shall be assessed and allowed by a decree of the Supreme Cassation Prosecutors’ Office. The authorisation of foreign undercover officers requires information such as their expertise, their real and covert identity<sup>29</sup>.

In Bulgaria, undercover officers must give written statements in a specific form provided for by law. This situation may lead to extensive communication and exchange of letters with the foreign authorities for description of the Bulgarian system<sup>30</sup>.

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<sup>28</sup> [https://www.ejm-crimjust.europa.eu/ejm/EJM\\_FichesBelgesResult.aspx?measure=804&country=239&other=-1](https://www.ejm-crimjust.europa.eu/ejm/EJM_FichesBelgesResult.aspx?measure=804&country=239&other=-1)

<sup>29</sup> Overview of replies to questionnaire on undercover officers, Council of the EU, Brussels, 1 October 2008.

<sup>30</sup> Issue in focus number 1 “Cross-border controlled deliveries from a judicial perspective”, Eurojust, 2015, p. 7.

Foreign technical support is allowed with the fulfilment of certain conditions. Data and information obtained by the technical support can be used as evidence in criminal process in compliance with the provisions of the Code of Criminal Procedure in Bulgaria.

Under the provisions of Article 476(4) of the Code of Criminal Procedure, *“the Supreme Cassation Prosecutors’ Office shall file requests to other States for investigation through an undercover officer, through controlled delivery and cross-boundary observation, and shall pronounce itself on such requests from other States”*.

The exchange of information within the controlled delivery operations at international level shall be carried out by means of the following channels of cooperation - Europol, Interpol, representatives of the Bulgarian authorities abroad, SELEC, Eurojust (in the case of receiving requests for rogatory commissions). The Bulgarian authorities<sup>31</sup> have shown that controlled deliveries typically start through Europol or SELEC channels, and in case of a legal requirement, the assistance of Eurojust is requested.

## **4. Croatia**

### ***Definition and legal provisions***

Controlled delivery is not regulated by the Law on Mutual Assistance in Criminal Matters and shall be conducted under the internal criminal proceedings, whereas *“it is not regarded as a form of international legal assistance provided by local judicial authorities”*<sup>32</sup>.

### ***Implementation at national level***

For the authorisation of the controlled delivery in Croatia, a request for MLA is not necessary.

Article 332(1) of the Code of Criminal Procedure lists the measures which temporarily restrict certain constitutional rights of citizens, respectively monitoring and interception of phone calls, interception and recording of electronic data, undercover tracking and technical recording of people and objects, use of undercover agents and informants, controlled transport and delivery of objects coming from offenses.

According to the provisions of the Criminal Procedure Code, controlled delivery and transportation are authorised by a decision of a competent court.

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<sup>31</sup> Evaluation report on the sixth round of mutual evaluations: "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters" Report on Bulgaria, Brussels, 26 September 2014, p. 52.

<sup>32</sup> Evaluation report on the sixth round of mutual evaluations: "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters." Report on Croatia, Brussels, 27 November 2014, p. 47.

If the investigation cannot be conducted in any other way or would present great difficulties, the investigating magistrate may, at the request of the State Prosecutor, order against the people under the suspicion for committing or participating in the commission of a crime covered by Article 334 of the Code of Criminal Procedure, controlled transport and delivery of objects coming from offenses.

The prosecutor requests the investigating magistrate for the implementation of special measures. The request must contain the name of the offense, its description, duration of the measure, the reason for choosing it. If the request is approved, the judge issues a written order. The order issued by a judge is implemented by the police in cooperation with other institutions such as customs or the post office<sup>33</sup>.

This investigative method may be approved for a period up to 3 months. At the request of the State Prosecutor, the judge may extend this measure for a further period of 3 months and for serious offenses, another 6 months. This measure ceases when the reasons that led to its approval<sup>34</sup> have stopped.

In operational times, the operation is carried out by the police under the supervision of a competent State prosecutor.

During the controlled delivery, technical assistance and exchange of information, as well the use of foreign undercover agents are possible.

In addition, total and partial replacement of the drugs are allowed.

### ***International cooperation***

Croatian authorities have signed and ratified the most important agreements and conventions for cooperation in the fight against organised crime and drug trafficking, such as the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Conversely, Croatia has not accepted the application of Articles 17, 18 and 19 from the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Croatia also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 7 May 1999 which entered into force on 5 August 1999.

Up to the present time, Croatia has not ratified the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (May 29, 2000).

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<sup>33</sup> For further information, please see Controlled delivery manual for SELEC Member States, SELEC, 2014.

<sup>34</sup> [http://www.ejn-crimjust.europa.eu/ejn/EJN\\_FichesBelgesResult.aspx?measure=804&country=432&other=-1](http://www.ejn-crimjust.europa.eu/ejn/EJN_FichesBelgesResult.aspx?measure=804&country=432&other=-1)

## 5. Cyprus

### *Definition and legal provisions*

Controlled deliveries may be carried out under the Crime Suppression (Controlled Delivery and other special provisions) Law of 1995 (“the 1995 Law”). The 1995 Law defines a “controlled delivery” as the technique of allowing prohibited substances or prohibited articles to pass from, towards, or through the territory of one or more countries with the knowledge and under the supervision of the competent authorities with a view to identify persons involved in the commission of prescribed offences.

The 1995 Law allows the appropriate use of “controlled delivery” at local and international level as a legal technique for identifying persons involved in offences associated with narcotic drugs, as well as the illicit trafficking of other prohibited articles, such as arms and ammunitions. This law was drafted in accordance with the provisions of Article 11 of the UN Convention against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances (Vienna Convention of 1988), which the Republic of Cyprus ratified with Law 49/1990.

The Cypriot Council of Ministers may issue regulations for the better application of the provisions of this Law, in particular to regulate the commencement and termination of controlled delivery; and the supervision and keeping of records regarding the trafficking of prohibited substances or prohibited articles.

Section 3(2) of the 1995 Law defines the prescribed offences as follows:

- The offences listed in Article 3(1) of the Vienna Convention, provided that they constitute a criminal offence under domestic law;
- Offences relating to the illegal import, export, possession, usage, trade, transfer or traffic of firearms and ammunition;
- Offences relating to the import, possession, usage, trade, transfer or traffic of stolen objects;
- Offences relating to the import, export, possession, usage, trade or transfer of nuclear material, as defined in the Convention on the Physical Protection of Nuclear Material (Ratification and other Provisions) Law 1998 (L.3 (III)/1998).

Section 7 of the 1995 Law provides that persons who participate in controlled deliveries at any stage will not be liable for any damage that may be caused to any person or any property by reason of *bona fide* mistake in the transmission of information.

### ***Implementation at national level***

Section 6 of the 1995 Law sets out the procedure for decisions on controlled deliveries. In essence, decisions on controlled deliveries are taken on a case-by-case basis by the Chief of Police or his representative, with notification of his decision to the Director of the Department of Customs; by the Director of the Department of Customs, with notification of his decision to the Chief of the Police; or by both officials acting jointly.

The Attorney-General of Cyprus must be informed of every decision on controlled deliveries and he may give such directions as he deems necessary or appropriate.

### ***International cooperation***

Cyprus has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organised Crime (2000), as well as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its 2001 Additional Protocol. Cyprus also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 27 March 1996 which entered into force on 24 May 2000.

Section 5 of the 1995 Law provides that a controlled delivery in cooperation with other States may take place only pursuant to mutual agreements or arrangements for the identification of persons involved in the prescribed offences, with a view to taking legal proceedings against them. If no mutual agreement has been signed or other formal arrangement has been made with a country, controlled deliveries may be carried out on the basis of standard terms of mutual co-operation.

Requests for controlled deliveries must include as much information as possible (justification of the operation, type and quantity of drugs or other goods, border crossing points affected, how the transportation will take place, etc.).

## **6. Czech Republic**

### ***Definition and legal provisions***

According to the provisions of the Code of Criminal Procedure (Article 87b – Monitored Consignment), *“in pre-trial proceedings the public prosecutor may order to track a consignment that is reasonably believed to contain items referred to in Section 87a, if it is necessary for clarification of a criminal offence or to reveal all its perpetrators, and ascertaining the necessary matters of fact in other ways would be ineffective or substantially more complicated”*.

### ***Implementation at national level***

Controlled deliveries may be used only within the activities in the area of judicial cooperation in criminal matters and for the purpose of a criminal proceeding. For the authorisation of a controlled delivery, a request for MLA is required. In urgent situations, the request may be issued during the operation as well. The request must contain detailed information with regard to: motivation of the operation, type and quantity of the drugs which are the subject of the delivery, means of transport and route, the border point, identity of the suspect, the officer responsible for initiating the operation, contact details of the foreign authority, data of the foreign officer responsible for supporting the operation, other special investigation techniques proposed.

Authorisation of the controlled deliveries is granted by the prosecutor. The measure may be ordered only under preliminary proceedings.

Deployment of the controlled delivery shall be carried out by the Police of the Czech Republic, and the Customs Administration (only the staff which holds police authority), and coordination of the project is under the responsibility of the Sirene Bureaux of the Police or the General Directorate of Customs.

Police can begin monitoring a transport without the order of the prosecutor if there is a danger of delay and if the order cannot be obtained in due time in advance. The police shall inform the prosecutor immediately and shall proceed according to the instructions of the latter.

In the stage of deploying the controlled deliveries, the following rules are in effect:

- Replacing the drugs is possible, but only with the authorization of a judge;
- If there is a risk of losing the transport, the Czech authorities will stop the controlled delivery;
- The participation of foreign agents to the controlled delivery is only permitted as observers, to the extent that this issue is stipulated in a treaty or in an international convention. They have no legal power on the territory of the Czech Republic;
- Foreign agents may possess weapons, but they can use them only in cases of self-defence.

### ***International cooperation***

The Czech Republic has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The Convention on Mutual Assistance in Criminal Matters between the Member

States of the European Union entered into force on June 12, 2006. The Czech Republic also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 13 February 1992 which entered into force on 1 January 1993.

Providing that the criminal procedure takes place in the Czech Republic, the case prosecutor is responsible for issuing the request for assistance relating to the controlled delivery from the authorities of another State<sup>35</sup>. In the situation in which the criminal procedure takes place in another State, the authority competent with authorising the controlled delivery is the Regional Public Prosecutor's Office in Prague<sup>36</sup>. According to Article 65(1) of Law IJCCMI, the Regional Public Prosecutor's Office in Prague is the only prosecution office from the Czech Republic designated for executing the requests relating to controlled deliveries.

When the Czech Republic is a State of origin or transit for the controlled delivery, the concerned foreign authorities require the guarantee that the drugs shall be confiscated, and the people involved shall be held accountable. If the Czech Republic is the State of transit, than is required the consent of all countries that will be affected by the operation.

The authorities of the Czech Republic have not noticed any problem concerning the direct communication of a request for legal assistance. Prosecutors under the Regional Prosecutor's Office in Prague have a 24/7 continuous schedule (on 24/7 duty), so there are no problems in the event of an emergency request for a controlled delivery. In ordinary cases, it is under the competence of the public prosecutor to assess the appropriateness and necessity of using the controlled delivery method<sup>37</sup>.

## **7. Denmark**

### ***Definition and legal provisions***

According to instructions issued by the Danish Police, Denmark may participate in controlled deliveries of narcotic substances as well as other kinds of goods as the State of entry, exit or transit. As a general rule, that mandatory prosecution is a precondition for a controlled delivery.

In Denmark, there are no specific national rules on controlled deliveries. The Danish Administration of Justice Act regulates the police investigation of criminal matters in general terms

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<sup>35</sup> Any case prosecutor from the Czech Republic may issue a request for legal assistance in order to carry out a controlled delivery. If a prosecutor has any issues relating to drafting the request for legal assistance, he may request the assistance of the prosecutors from the Department of International Affairs of the Prosecutor General's Office.

<sup>36</sup> Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations - Part II: National fact sheets, Council of the European Union, Brussels, 5 October 2015, p. 34.

<sup>37</sup> Evaluation report on the sixth round of mutual evaluations: "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters" Report on the Czech Republic, Brussels, 29 July 2014, p. 54.



and, by analogy, these rules also apply when dealing with controlled deliveries. However, the Danish rules on agent activity (agent provocateurs), which are found in Article 754 a-e of the Danish Administration of Justice Act, sets the limits on the use of civil informants and police agents. The use of such informants or agents may affect both the admissibility of evidence in court, as well as the actual sentencing. In particular, the Danish Administration of Justice Act provides that:

- Undercover agents must be police officers;
- Foreign police officers may be allowed to act as undercover agents but they do not possess any executive powers in Denmark;
- Foreign police officers are only allowed to carry firearms according to a specific permission;
- Undercover agents may be used only in cases in which a prior agreement on consignment has been made between the deliverer, the courier and the receiver and where there are concrete indicators that the receiver will most likely carry out the criminal act.

On 31 July 2002, the Danish Ministry of Justice issued guidelines on cross-border controlled deliveries dealing with the admissibility and the general handling of incoming and outgoing requests for controlled deliveries.

### ***Implementation at national level***

#### ***Role of the police commissioner***

The power of decision generally lies with the police commissioner in the district where the delivery is to take place. If another police district – perhaps in cooperation with foreign authorities – is already investigating or has participated in the investigation of the matter or other matters relating to it, the decision to carry out a controlled delivery must be made in close co-operation with that police district.

If it is not clear where the delivery is to take place, the power of decision lies with the police commissioner in the district which is investigating matters relating to the controlled delivery, if such an investigation exists. If the police district with the power of decision cannot be determined from the criteria mentioned above, but the available information – for example the whereabouts of the suspects or other connections to a geographic area – indicates that delivery will take place in a certain area, the power of decision lies with the police commissioner in that specific district.

In cases where the information is not sufficient to determine in which police district the delivery will take place, and several districts may be possible, the police commissioners of the

different indicated police districts will coordinate and distribute their involvement amongst the districts in accordance with the general regulations.

In cases where the request relates only to a controlled delivery through Denmark, the power of decision lies with the police commissioner in the first police district through which the delivery is to pass in Denmark. If the information is insufficient to establish which police district has the power of decision, the power of decision lies with the Police Commissioner of Copenhagen. If the available information suggests that the delivery will take place in Jutland, however, the Police Commissioner of Aarhus has the power of decision.

### *Practicalities*

Requests must be sent to the national police (authorisation must be obtained from the regional chief constable whose jurisdiction is expected to be involved in the case). If permission is given to carry out a controlled delivery, the national police, in co-operation with the relevant regional chief constable, are responsible for the initiation, operational command, actual control and the decision to terminate an operation.

Both total and partial substitution of goods is allowed. Substitution is decided whenever possible. There are no restrictions on the contraband that can be subject to controlled deliveries, e.g. narcotics/drugs, guns, tobacco, other contraband and even – if it is deemed safe enough – trafficking in human beings.

A request for a controlled delivery may be refused in the following circumstances:

- When the final destination is known to be in another State and there is no confirmation to the effect that those involved will be prosecuted;
- When there is a risk of losing the consignment;
- If an undercover agent, who is not a police officer, is participating in the controlled delivery.

### *International cooperation*

Denmark has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organised Crime (2000), as well as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its 2001 Additional Protocol. Denmark also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 20 April 1959 which entered into force on 12 December 1962.

The channel for communications prior to and during a controlled delivery is through Interpol, Nordic LO, or the Danish Liaison Officers at EUROPOL.

The transportation of deliveries of drugs through Denmark, as part of operations planned by the authorities of other countries, may only be allowed subject to prior permission from the Danish authorities and with the involvement of the Danish police. Within the framework of Danish legislation, the competent Danish authorities will try to carry out the measure in keeping with the wishes of the requesting State. MLA requests can be sent directly to the competent authority i.e. the relevant police district.

Requests from foreign authorities to carry out a controlled delivery to or through Denmark must include the following information:

- The particulars of the authority making the request.
- The reason for the request and the contents of the request, including a specific statement of the reasons for requesting a controlled delivery.
- The contents, including quantity, etc. of the controlled delivery.
- Personal data of the persons involved, including Danish nationals (supplier, courier, receiver etc.).
- The time and route of the delivery, including the suspected place where the delivery will be completed.
- Which other countries are involved, if any.
- Information about the permission of the country where the delivery will be completed.
- Information about criminal prosecution in the country where the delivery will be completed.
- A description of the methods of transportation – car (registration number, brand, colour, etc.), train (train number, seat, etc.), aircraft (aircraft number, seat, etc.) ship (name, type, colour, etc.).
- Any information about previous contact with the Danish authorities, if any.
- Names and telephone numbers of persons from foreign authorities responsible for the controlled delivery, including those responsible for the practical execution of the controlled delivery.
- Information about foreign police officers who might follow the delivery into or through Denmark.

Other than including the above information, there are no specific or official procedures or other requirements to the form of the rogatory letter in which the requesting State asks for Danish participation in handling and executing a controlled delivery.

## **8. Estonia**

### ***Definition and legal provisions***

In Estonia, controlled delivery is perceived as a delayed monitored delivery passing through the country, the measure being possible within the judicial assistance and conducted in conjunction with other surveillance measures.

Therefore, *“the approach of the relevant authorities regarding controlled deliveries is very pragmatic and flexible, and they are conducted relatively effortlessly and efficiently, especially when requested by Finland where the authorities and procedures are familiar”*<sup>38</sup>.

According to the EMCDDA website<sup>39</sup> and to those mentioned by the Estonian prosecutors who participated at the first workshop in the project, there is no legal basis on the controlled deliveries, the requirements regarding any type of surveillance relating to criminal investigations (including using the controlled delivery) being provided in the Code of Criminal Procedure (CCP) and the Law on Surveillance.

### ***Implementation at national level***

According to the Estonian prosecutors who attended the first Regional Meeting of the project held in Tallinn, *“surveillance activities may be conducted with a written permission of a prosecutor's office or a preliminary investigation judge. The preliminary investigation judge shall decide the grant of permission by a ruling on the basis of a reasoned application of the prosecutor's office”*.

The relevant legislation is set out in:

*(a) CCP § 126'5. Covert surveillance, covert examination and replacement of things.*

Section 1 provides that a prosecutor's office shall issue a permission for covert surveillance of persons, things or areas, covert collection of comparative samples and conduct of initial examinations and covert examination or replacement of things for up to two months.

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<sup>38</sup> Evaluation report on the sixth round of mutual evaluations: "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters.". Report on Estonia, Brussels, 26 April 2013, p. 34.

<sup>39</sup> <http://www.emcdda.europa.eu/html.cfm/index44352EN.html>

According to Section 2, in the course of the surveillance activities specified in this section, the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way.

*(b) CCP § 126'6. Covert examination of postal items.*

Under Section 1, upon covert examination of a *postal item*, information derived from the inspection of the item is collected.

Section 2 sets out that after the covert examination of a postal item, the item shall be sent to the addressee.

According to Section 3, in the course of the activities specified in this section, the information collected shall be, if necessary, video recorded, photographed or copied or recorded in another way.

Section 4 provides that in the course of covert examination of a postal item, the item may be replaced.

Under Section 5, a preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.

*(c) CCP § 126'7. Covert observation of information.*

Section 1 provides that information obtained by wire-tapping or covert observation of messages or other information transmitted by the public electronic communications network or communicated by any other means shall be recorded.

According to Section 3, a preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.

*(d) CCP § 126'8. Staging of criminal offence.*

According to Section 1, staging of a criminal offence is the commission of an act with the elements of a criminal offence with the permission of a court.

Under Section 2, if possible, a staged criminal offence shall be photographed, filmed or audio or video recorded.

According to Section 3, a preliminary investigation judge grants permission for the surveillance activities specified in this section for up to two months. After expiry of the specified term, the preliminary investigation judge may extend this term by up to two months.

As the Estonian participants mentioned, *“formal request for legal assistance is the basis for authorisation of controlled delivery”*.

The requirements for any kind of surveillance related to criminal investigation include:

- contact details of the authority that issued particular permission;
- reason for the operation;
- kind and amount of goods that are the subject of the operation;
- identity of the suspect;
- information about the authority responsible for the operation.

Controlled deliveries are deployed by the investigative competent authorities (police, customs administration and tax administration).

### ***International cooperation***

Estonia has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organised Crime (2000), as well the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has entered into force on August 23, 2005. Estonia also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 4 November 1993 which entered into force on 27 July 1997.

In general, the participation of foreign undercover officers is not mandatory, but can be allowed (on a case-by-case basis) in the deployment of controlled deliveries in Estonia. For their authorization, the required information is their true and undercover identity<sup>40</sup>.

In the event where the national authorities require a controlled delivery abroad, the prosecutor shall send a request for judicial assistance to another State through SIENA or Interpol channels. Coordination and negotiations with other Member States shall be carried out by the competent investigative authorities<sup>41</sup>.

In Estonia, the Office of the Prosecutor General and Eurojust's National Member for Estonia are competent to submit a request for setting up a joint investigation team.

The Office of the Prosecutor General or Eurojust's National Member for Estonia with the permission of the Office of the Prosecutor General shall make a decision concerning setting up a joint investigation team on the basis of a proposal made to Estonia and enter into a corresponding agreement with the competent judicial authority of a foreign State.

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<sup>40</sup> Overview of replies to questionnaire on undercover officers, Council of the EU, Brussels, 1 October 2008.

<sup>41</sup> Evaluation report on the sixth round of mutual evaluations: "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters.". Report on Estonia, Brussels, 26 April 2013, p. 34.

## **9. Finland**

### ***Definition and legal provisions***

The Police, Customs and Border Guard Cooperation Act entered into force in early 2010<sup>42</sup>. This new act replaces the 2001 Decree on cooperation between these authorities. The act provides a new, clear legal basis for cooperation between Finnish law enforcement authorities.

This Act contains specific provisions on controlled delivery and on the possibility of law enforcement authorities forming national data acquisition and investigation teams. The Act also contains provisions on joint intelligence and analysis functions as well as joint databases.

Prior to this Act, controlled delivery was a strategic procedure and had no specific statutory basis in Finnish law.

Under Section 30(a) of the Finnish Police Act, a police officer, as referred to in Articles 40 and 41 of the Schengen Agreement, from another State, including Norway and Iceland, is authorised to continue observation on Finnish territory, as laid down in the international agreement which binds Finland. However, a Finnish police officer may not immediately continue observation on Finnish territory.

Equipment which Finnish police officers are entitled to use in accordance with rules on technical observation may be used for the purposes of cross-border observation. A report on any observation carried out must be submitted to the police authority of the district in which the observation activities were mainly carried out. A police officer from another State must submit a report to the police unit in Finland in charge of the observation activities, which will deliver the report to the local police authority concerned.

Competent authorities may, on the basis of a request and also in other cases, allow foreign authorities to participate in controlled deliveries. Foreign officers may, with the permission of the competent authorities, also participate as observers.

### ***Implementation at national level***

The chief of the National Bureau of Investigation, the chief of the Security Intelligence Service, police chiefs, and officers specially trained in covert collection of intelligence have the power to take decisions on controlled deliveries conducted by the police. Controlled deliveries will be authorised if they are necessary in order to identify persons participating in an offence or in order to clarify the extent of a larger offence.

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<sup>42</sup> Finnish Customs Intelligence and Investigation Report 2009.

Controlled deliveries will be allowed if there are grounds to suspect the commission of an offence punishable by at least four years imprisonment. This four-year-requirement applies only to domestic controlled deliveries, not to international controlled deliveries, since in international cases the applicable convention prevails.

It must be possible for the delivery to be controlled and, if necessary, for intervention to take place. In addition, the measure must not cause significant danger to the life, health or freedom of any person or significant danger or extensive damage to the environment, property or assets.

### ***International cooperation***

Finland has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organised Crime (2000), as well as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its 2001 Additional Protocol. The 1959 European Convention on mutual assistance in criminal matters entered into force in Finland on 29 April 1981.

Cooperation between the police, customs and border guard service is based on rules governing the areas of authority of various national bodies, based on the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, signed in Vienna on 20 December 1988, Article 73 of the Schengen Agreement, and other agreements signed by Finland.

Finland has also signed bilateral agreements with the Russian Federation and the Baltic States on customs and police cooperation, which allow controlled deliveries. In order to ensure a uniform national procedure, and the coordination and integration of actions between different authorities, the police, customs and border guard service have signed a mutual assistance agreement.

If the continued observation of a controlled delivery is carried out on Finnish territory by police officers from another of the Contracting Parties, or by Finnish police officers on the territory of another Contracting Party, under Article 40 of the Schengen Agreement, the Schengen Agreement will apply in accordance with Finnish national regulations and regulations governing Finnish officers.

Under Article 40(1) of the Schengen Agreement, police officers of one of the Contracting Parties who, within the framework of a criminal investigation, are keeping under observation in their country, a person who is presumed to have taken part in a criminal offence to which extradition may apply, are authorised to continue their observation in the territory of another Contracting Party where the latter has authorised cross-border observation in response to a request for assistance which has previously been submitted. Conditions may be attached to the authorisation.

Upon request, observation will be entrusted to officers of the Contracting Party in whose territory it is carried out. Under Article 40(2), officers carrying out the observation shall be authorised



to continue the observation where, for particularly urgent reasons, prior authorisation of the other Contracting Party cannot be requested.

The measure is applied in accordance with the provisions of the 2000 MLA Convention. The measure may also be taken in relation to a Member State not applying the Convention. The competent authority of the requesting State is consulted on the practical methods of execution before the measure is carried out. In relation to Member States applying the provisions of the Convention on Mutual Assistance and Cooperation between Customs Administrations, controlled deliveries may be carried out pursuant to the Convention.

The National Bureau of Investigation serves as national contact point in the European Judicial Network and therefore all requests concerning controlled deliveries sent via Interpol, Europol or national Schengen centres will be directed to National Bureau of Investigation. Requests for controlled delivery must be in writing and must contain an adequate and clear description of the facts required to assess the lawfulness, feasibility and possibility of execution of the request. As in all rogatory letters concerning coercive measures, special attention will be paid to the fulfilment of prerequisites.

## **10.France**

### ***Definition and legal provisions***

The legislation governing controlled deliveries is set out in Article 706-80 of the Code of Criminal Procedure (*code de procédure pénale* or “CPP”), which provides:

*“Judicial police officers and, under their authority, judicial police agents, after having informed the public prosecutor thereof and provided he does not object, may extend to cover the whole of the national territory the surveillance of persons against whom one or more plausible reasons exist to suspect that they have committed one of the crimes or misdemeanours falling within the scope of Articles 706-73,706-73-1 or 706-74 or the surveillance of the conveyance or transportation of objects, goods or products deriving from the commission of any of these offences or used to commit them.*

*Advance notice of any extension of competence provided for in the preceding paragraph must be given, by any means, to the public prosecutor of the regional court in whose jurisdiction the surveillance operations are liable to begin or, where applicable, to the public prosecutor seised in accordance with the provisions of Article 706-76.”*

Under Article 706-80 CPP, officers of the judicial police are able to pursue, outside the boundaries of their territorial jurisdiction, the surveillance of:

- persons suspected of having committed certain offences relating to organised crime;

- objects, goods or products deriving from the commission of such offences or used to commit them.

Surveillance is a relatively wide concept as it covers not only persons, but also goods used in the commission of these offences or deriving therefrom. As regards the persons targeted by this provision, the requirement is that “one or more plausible reasons [must] exist to suspect that they have committed one of [these offences]”, a requirement which, if met, enables the person in question to be placed in custody.

In practice, these provisions are often used in the fight against drug trafficking.

*Offences covered:*

This investigation technique is reserved for the offences set out in Articles 706-73, 706-73-1 and 706-74 CPP, which cover the entire spectrum of organised crime:

- Article 706-73 CPP: Murder committed by an organised gang, drug trafficking, human trafficking, procuring, theft committed by an organised gang, aggravated crimes of extortion, acts of terrorism, crimes and misdemeanours involving weapons, etc.;
- Article 706-73-1 CPP: Fraud committed by an organised gang, illegal employment committed by a criminal gang, money laundering, failure to justify resources, etc.;
- Article 706-74 CPP: Misdemeanours committed by criminal associations as well as all crimes and misdemeanours committed by organised gangs.

***Implementation at national level***

Before a controlled delivery can be set in motion, the law requires that the public prosecutor be notified first. This notification may take any form, including a telephone call. The public prosecutor is entitled to lodge objections.

These limited formalities are due to the limited powers of officers and agents of the judicial police in this context, who have only a passive role to play and who are not entitled to exercise any coercive powers.

The competent public prosecutor is the prosecutor:

- In whose jurisdiction the surveillance operations are liable to begin. Thus, where goods are sent from abroad, the relevant public prosecutor will generally be the prosecutor of the place of entry of the goods. Where the operation involves goods which are already present in France, competence will in principle lie with the public prosecutor of the place where the goods are found.

- With specialist inter-regional jurisdiction (*juridiction interrégionale spécialisée* or “JIRS”) on account of the complexity of the case.

### ***International cooperation***

France has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organised Crime (2000), as well as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its 2001 Additional Protocol. France also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 28 April 1961 which entered into force on 21 August 1967.

At the level of practitioners, France has signed a Memorandum of Understanding with the Spanish Special Antidrug Prosecution Office with a view to working at bilateral level as central contact point dealing with all matters related to international cooperation to combat drug trafficking, including controlled deliveries.

Practitioners<sup>43</sup> have 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 France with nationwide jurisdiction in this area. They also pointed out that some countries systematically request authorisation to use real-time location technology on French territory. From the opposite perspective, some countries have difficulty in executing French requests to place surveillance devices on vehicles. 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 them 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.

## **11. Germany**

### ***Definition and legal provisions***

The conditions and procedure for controlled deliveries are regulated by administrative guidelines (no. 29 a-d of the guidelines on regulating criminal prosecutions and fines). Germany has not enacted any special statutory framework for controlled deliveries. However, individual provisions of the German Code of Criminal Procedure also apply to controlled deliveries.

In Germany, there are three different types of controlled delivery: controlled transit, involving the illegal transport of drugs, weapons, stolen property or goods and similar (excluding human beings)

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<sup>43</sup> Report provided by the French Liaison Magistrate in Spain, Ms Helène Davo.

from abroad via Germany to a third country under surveillance by the criminal prosecution authorities; controlled export, involving the illegal transport of such goods from Germany to foreign countries under surveillance; and controlled import, involving the illegal transport of such goods from foreign countries to Germany under surveillance.

### ***Implementation at national level***

Responsibility for implementation at national level depends on whether we are dealing with a controlled transit, export or import, and whether investigative proceedings are already pending in Germany.

In cases of controlled transit, implementation is generally managed by the public prosecutor in whose area the border crossing point is located through which the goods are imported, unless investigative proceedings are already pending before the German public prosecution office for the offence. The same applies to controlled import. If no other indications as to the probable location of the border crossing exist, the authority in whose area the most favourable traffic connection is located will take a decision when they receive a mutual assistance request. As for controlled export, implementation is generally managed by the public prosecution office in whose district the transport starts. The public prosecutor responsible for implementation also has the power to decide whether to permit the controlled transport.

### ***Subject-matter of controlled deliveries***

Controlled deliveries can be carried out for narcotic drugs, weapons, stolen goods and similar substances and items. Controlled deliveries involving humans, in particular in investigations into human trafficking and migrant smuggling, are prohibited, as the danger to the life of the persons concerned cannot be safeguarded with sufficient security.

### ***Legal requirements***

This guidelines provide that “surveillance of transportation” (controlled delivery) is only permitted if there is no other way of identifying the instigators or the distribution routes; if the possibility of intercepting the perpetrator of the offence and seizing the *corpus delicti* is guaranteed at all times; and if the competent office of the public prosecutor authorises use of the “surveillance of transportation” method.

Supervision must be exercised in a way that ensures full control over the perpetrator and subject-matter of the offence at all times. Consequently, the mere surveillance by GPS of a vehicle which is presumed to transport large amounts of narcotic drugs does not constitute a controlled delivery within the meaning of the guidelines.

### ***International cooperation***

Germany has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organised Crime (2000), as well as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its 2001 Additional Protocol. Germany also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 28 April 1961 which entered into force on 1 January 1977.

Mutual assistance requests between Germany and the Baltic Sea States – apart from the Russian Federation – can be exchanged directly between the judicial offices of the relevant countries. No translations need to be enclosed in requests or letters rogatory exchanged between Germany on the one hand and Denmark and Finland on the other. However, translations into the language of the relevant country must be included if letters rogatory are exchanged with the other countries, although translations into English language suffice for Estonia and Norway.

Mutual assistance requests on controlled deliveries must always be made in writing, although advance notice of the request by telephone should suffice in urgent cases. Requests for and consent to controlled delivered need not take any special form.

In the event of transit through and export from Germany, the following declarations from all foreign countries involved must be on file:

- Consent to the import or transit;
- Assurances that the transport will be controlled at all times;
- Assurances that investigations will be conducted into the couriers, instigators and receivers, that the narcotic drugs, weapons, stolen goods and the like will be seized, and that steps will be taken to secure convictions and enforce sentences;
- Assurances that the German criminal prosecution authorities will be constantly kept up-to-date about the status of the relevant proceedings.

## 12. Greece

### *Definition and legal provisions*

In the Greek system, controlled delivery (monitored transport of drugs) consists in monitoring the transit through Greece of narcotic drugs and other hallucinogenic substances, if the confiscation or partial replacement of the goods transported illegally is necessary<sup>44</sup>.

The method of controlled delivery of drugs is regulated in the Hellenic legislation in different legal acts, such as Article 253A(1) of the Code of Criminal Procedure, Law No 2145/1993 (Article 38), as amended by Law No 2331/1995 and Law No 1990/91 (by which the Greek State has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances).

In agreement with the provisions of the domestic law, controlled delivery is an investigative activity carried out in full secrecy, with regard to certain crimes (including also drug trafficking). The provisions of Article 38 of Law No 2145/93 (as amended by Article 15, paragraph 1 of Law No. 2331/1995) shall be applicable only to the controlled deliveries of drugs.

### *Implementation at national level*

The authorization of carrying out the controlled delivery is issued by the General Prosecutor of the Prosecutor's Office under the Court of Appeal in Athens. The necessary conditions for the authorisation of this operation are the following:

- Fulfilment of the formal conditions imposed by Article 11 of Law 1990/91<sup>45</sup>;
- The existence of serious indications on committing a crime, the method of controlled delivery being absolutely necessary for prosecuting the criminals.

The implementation of controlled delivery shall be achieved by the Central Anti-Drug Coordination Unit (SODN). According to Article 15 of Law No 2331/1995, SODN will carry out the specific activities under the controlled deliveries, after obtaining authorisation from the prosecutor.

The specialist personnel within the SODN will ensure monitoring of the transport, from the time of entry into and up to exiting the country. Within 48 hours from the moment the drugs exited the country, SODN shall draw up a detailed report on the facts concerning the controlled transport, the date, period of time and place where the drugs entered and exited the country. Furthermore, a copy of

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<sup>44</sup> [http://www.ejn-crimjust.europa.eu/ejn/EJN\\_FichesBelgesResult.aspx?measure=804&country=279&other=-1](http://www.ejn-crimjust.europa.eu/ejn/EJN_FichesBelgesResult.aspx?measure=804&country=279&other=-1)

<sup>45</sup> According to Article 11 of Law 1990/91, "if is permitted by the basic principles of the internal corresponding legal systems, the Parties shall take the necessary measures according to their competences, to permit the use of controlled delivery at international level, on the basis of agreements or regulations mutually agreed upon, in order to identify the people involved in the offense. The decisions concerning using controlled delivery shall be issued on a case by case basis and the Parties concerned shall be able to take into account, where necessary, financial agreements or arrangements relating to the exercise of jurisdiction".

this confidential report shall be sent to the Public Prosecutor at the Prosecutor's Office under the Court of Appeal in Athens.

### ***International cooperation***

Greece has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the UN Convention against Transnational Organised Crime (2000). Furthermore, Greece has signed in 2001 the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, but up to the present time this protocol has not been ratified. Greece also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 20 April 1959 which entered into force on 12 June 1962. Up to now, Greece has not ratified the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (29 May 2000).

The authorization to carry out a controlled delivery on Greek territory is given after sending a MLA request, directly or through the communication and cooperation channels (Interpol), to the Central Anti-Drug Coordination Unit (SODN). According to Article 38 of Law No 2145/1993, requests of foreign States in compliance to Article 11 of the Vienna Convention of 1988 are sent, by any way but always in writing, directly or through the Interpol, to the Central Anti-Drug Coordination Unit (SODN), which after verifying the legality and validity of the request, shall immediately inform the Public Prosecutor of the Court of Appeal in Athens.

Technical assistance from other States under the controlled transport of drugs on the territory of Greece is allowed. An important regulation is also the one according to which on Greek territory, the participation of agents from the State requesting the controlled delivery is not allowed.

Requests of the Hellenic authorities to carry out controlled deliveries outside Greece shall be sent to SODN, which shall request authorization of the operation by the Public Prosecutor at the Prosecutor's Office under the Court of Appeal in Athens.

## **13.Hungary**

### ***Definition and legal provisions***

Police Law (Law No 34/1994) and the Law of the National Tax and Customs Administration regulate the general framework for deploying the controlled deliveries. Starting 2008 Border Guard was integrated in the Police, while in 2011 Customs was merged with the Tax Authority and the National Tax and Customs Administration was established (NTCA).

Act on Penal Proceedings, Act on International Legal Assistance in Criminal Matters, Act on Cooperation in Criminal Matters with the Member States of the European Union, Police Cooperation

Convention for Southeast Europe (PCC SEE), Vienna and Palermo Convention, respectively offer also a legal framework.

According to the domestic law, police and customs<sup>46</sup> ensure coordination and exchange of information in the case of international controlled deliveries.

Article 64(1f) of Police Law defines the special investigative methods, including controlled delivery.

### ***Implementation at national level***

The Hungarian practitioner who attended the last Regional Meeting mentioned that *“the national legislation regarding controlled deliveries (e.g. question of approval) has been revised, nowadays the general rule is that each controlled delivery has to be authorized by a prosecutor”*.

According to the Eurojust<sup>47</sup> study, in Hungary, *“legislation permits substitution of drugs. Nevertheless, Hungary is cautious in using such practice as it may hamper the prosecution and detention of perpetrators. If Hungary seizes a transport that does not 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 Hungary within 72h, the maximum time required by Hungarian law for a decision regarding detention”*.

In the case of controlled deliveries in which there is a risk that the transport is uncontrollable, the intervention of Hungarian authorities is allowed.

According to the same Hungarian practitioner, *“a controlled delivery may be used for drugs and all other objects that are related to criminal activities, with the exception of nuclear material and human beings. Controlled delivery shall also be rejected if drug is smuggled via body packers (swallowers)”*.

### ***International cooperation***

Hungary has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), the UN Convention against Transnational Organised Crime (2000). Instead, Hungary has signed in 2003 the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, but up to the present this protocol has not been ratified. Hungary also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 19 November 1991 which entered into force on 11 October 1993. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has entered into force on November 23, 2005.

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<sup>46</sup> The customs shall participate in the controlled deliveries on the basis of the provisions of Law No. 19/2004.

<sup>47</sup> Issue in focus number 1 “Cross-border controlled deliveries from a judicial perspective”, Eurojust, 2015, p. 6.



In order to carry out the controlled deliveries, a request for assistance is required, which, in urgent cases, can be sent also during the operation. According to Article 17-19 of Law LIV from 2002 on international cooperation of the law enforcement agencies, in order for the controlled deliveries to be authorised, the requesting authority shall send a request for assistance at the headquarters of the National Police-International Law-Enforcement Cooperation Centre (NEBEK).

In the event where the delay in obtaining the approval could endanger the interests of the investigation, the request for assistance made by the foreign competent authority could be sent directly to the competent law enforcement agency in Hungary. In such cases, it shall be proceeded to the immediate subsequent notification of NEBEK<sup>48</sup>.

Requests for controlled delivery must contain detailed information with regard to the reasoning of the operation, type and quantity of drugs, means of transport (the identification data) and itinerary (route), border points affected, identity of the suspects, details of the case officers, contact method of the foreign authority, special investigation techniques proposed.

In cases where the controlled deliveries start in Hungary or are in transit through this country, the foreign authorities must ensure that the drugs will be confiscated, and the people involved shall be prosecuted. For the controlled deliveries transiting through Hungary, all States affected by the operation must give their consent<sup>49</sup>.

Foreign officers may participate in the controlled deliveries only as observers. However, they do not have law enforcement powers and are acting under the authority of the Hungarian officials. They can carry weapons with prior permission, but the use of weapon can be made only in the event of legitimate self-defence.

Foreign equipment and technical devices can be used under the Hungarian law. The foreign authorities may provide technical assistance, as well as technical surveillance or tracking devices under the supervision of the law enforcement services of Hungary.

Police Law, Law of the National Tax and Customs Administration, as well as the Code of Criminal Procedure allow the use of undercover agents. The agent may be an Hungarian or foreign officer, the operation requiring approval by a prosecutor.

The use of informants in the context of deploying the controlled deliveries is not allowed.

The central point of contact for the controlled deliveries is NEBEK, institution that coordinates the activity of all law enforcement agencies in the field of international cooperation. NEBEK is

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<sup>48</sup> Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations - Part II: National fact sheets, Council of the European Union, Brussels, 5 October 2015, p. 160.

<sup>49</sup> For further information, please see Controlled delivery manual for SELEC Member States, SELEC, 2014; European Union manual on controlled deliveries, The Hague, Europol, 2004.

operational 24/24, and after being approached, this body shall inform and coordinate the controlled deliveries conducted by the national police or NTCA,.

According to the Hungarian practitioner, *“if there is no ongoing criminal proceeding neither in the requesting nor in the receiving Member State the cooperation concerns the intelligence phase, therefore, the provisions of the act on the international co-operation of the law enforcement agencies shall be applied within the frame of the bilateral and multilateral international agreements. If there is an ongoing criminal proceeding in any of the Member States involved, the controlled delivery can be carried out exclusively in the frame of judicial cooperation”*.

The practitioner also shared with the other participants the procedure of using evidence resulted from controlled delivery. If the requesting country wishes to obtain evidence that can be used as a document with regards to the controlled delivery, it can be done within the frame of judicial cooperation, only. In case of judicial cooperation the rogatory letter with regards to the controlled delivery shall be sent to the public prosecutor:

- to the competent public prosecutor in case of EU MSs,
- to the Office of the Prosecutor General (acting as a central authority) in case of non-EU States.

## **14.Ireland**

### ***Definition and national provisions***

Section 88 of the Criminal Justice (Mutual Assistance) Act 2008 defines “controlled delivery” as a delivery permitted in the State in accordance with this Act or in a designated State in accordance with the relevant international instrument for the purposes of an investigation into an offence. This Act goes on to describe the procedure for making requests in these two circumstances (Sections 89 and 90).

The Garda Síochána Act 2005, as amended, enables members of An Garda Síochána to serve outside the State as members of a joint investigation team, including in order to carry out a controlled delivery.

### ***Implementation at national level***

The authorities competent to authorise or coordinate controlled deliveries are An Garda Síochána and the Office of Revenue Commissioners (for offences that fall under their jurisdiction). The National Member of Eurojust, as prosecutor, is not empowered to authorise or coordinate controlled deliveries. He indicated that it was not possible to coordinate from Eurojust controlled deliveries between Irish authorities and the other Member States.

Communication prior to and during a controlled delivery may be sent through Interpol, Europol, Police and Customs. Official requests for rogatory letters must be made through the Department of Justice, Equality & Law Reform (Mutual Assistance Section). There is no expected delay for clearance of a controlled delivery request.

The Irish national investigative authorities (including the Office of the Revenue Commissioners) reported that controlled deliveries were mostly, and successfully, carried out on the basis of the 1998 Convention on Mutual Assistance and Cooperation between Customs Administrations and the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

### ***International cooperation***

Ireland has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the UN Convention against Transnational Organised Crime (2000). It also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 15 October 1996 which entered into force on 26 February 1977, but did not sign the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union or its Second Additional Protocol.

Requests for controlled deliveries sent to the Irish authorities must contain the following information:

- Reason for the operation,
- Factual information justifying operation,
- Type and quantity of drugs / other goods,
- Anticipated means of transport and itinerary,
- Expected point of entry into and exit from the requested State,
- Identity of each suspect (name, date of birth, domicile, nationality, description),
- Identification of the authority who authorised the operation,
- Identification of the Head Investigator in charge of the operation and contact details,
- Details of police, customs or other law enforcement officers supporting the operation,
- Details of any special techniques proposed.

## **15.Italy**

### ***Definition and legal provisions***

Article 98 of Presidential Decree No 309/90 was the legal provision governing controlled deliveries. It allowed the continuance of criminal activity in order to obtain key items of evidence and locate or capture those responsible for any of the offences listed in that Decree. In particular, this provision permits the omission or delay in the issue or execution of measures of arrest or detention. This article of the law was replaced by article 8 of Law 13 August 2010, n. 136. Controlled deliveries in field of drugs, now, with the new legislation are regulated together the controlled deliveries in the other fields (terrorism, money laundering, etc ). The regulation has not significantly changed.

### ***Implementation at national level***

Public Prosecutor's Office of the area in which controlled delivery is going to be carried out, is the competent authority. The Prosecutor will issue an order (decreto) giving grounds to delay capture, arrest or seizure measures or arrange for their execution to be delayed. In cases where different regions will be involved, the Procura Nazionale Antimafia e Antiterrorismo will act as central authority to authorise the CD implementation.

### ***International cooperation***

Italy has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), and the 1959 European Convention on mutual assistance in criminal matters. Since March 2016, the Italian authorities have been empowered to establish joint investigation teams (JITs). On 5 August 2016, new legislation ratifying and implementing the European Union Convention on Mutual Assistance in Criminal Matters, in particular concerning extradition, entered into effect in Italy (Law No. 149 of 21 July 2016 Ratifying and Implementing the Convention on Mutual Assistance in Criminal Matters Between Member States of the European Union of May 29, 2000, and Delegating Powers to the Government for Its Implementation). Law No. 149 also delegates powers to the Executive Branch to amend Book XI of the Criminal Procedure Code on the execution of judicial decisions, amends provisions on extradition, and sets deadlines in connection with coercive measures.

The Law No. 149 includes several amendments to the Italian Code of Criminal Procedure to facilitate international cooperation in criminal matters. According to the amendments, the EU Convention on Mutual Assistance in Criminal Matters and the Treaty on the Functioning of the EU governs the relations between Italy and other EU Member States concerning international extradition

requests, the effects of foreign criminal decisions, the enforcement of Italian criminal decisions overseas, and other relations with foreign authorities related to the administration of criminal justice.

Based on the international reciprocity principle, the Italian Ministry of Justice may reject requests for judicial assistance, extradition, or other matters related to the administration of criminal justice. (Art. 4(1)(b).) The power to reject requests for international judicial assistance must be exercised in accordance with Italian treaties with EU Member States and, in the case of non-EU Member States, based on potential danger to national sovereignty or security or Italy's essential interests (Art. 4(1)(c)(1) and Art. 4(1)(d)(1)).

A request for MLA is not required for controlled delivery. In particular, where a prosecutor from another country wants a consignment of drugs to transit through Italy without action being taken to effect seizure, there is no need for a MLA request; direct written contact (e.g. fax or mail) is sufficient. However, a formal MLA request is needed where a foreign prosecutor wants to seize or take control of a consignment of drugs. In those circumstances, the request must be formally addressed to the Ministry of Justice or, where the request comes from a European country, to the competent Court of Appeal.

The relevant authorities are the Ministry of Justice/Interior and the Direzione Centrale per i Servizi Antidroga D.C.S.A (Anti-drug Central Directorate). Under Article 725 of the Italian Code of Criminal Procedure, the measure may be executed in accordance with the form requested by the requesting State, provided that this does not conflict with fundamental principles of Italian law.

## **16.Latvia**

### ***Definition and legal provisions***

According to the Latvian practitioner who attended the last Regional Meeting of the project, within the law there are two ways in which controlled deliveries can be organised in Latvia: (i) Operational activities Law – Article 15(1). *Controlled delivery*; and (ii) Criminal Procedure Law – Article 227. *Control of criminal activity*.

In the category of investigative (operational) measures referred to in Article 6 (1) of the Operational activities Law, we find also the controlled delivery. The definition of controlled delivery is given in the content of Article 15(1) of the same law: “*controlled delivery is the movement of goods or other valuables (including substances, means of payment or other financial instruments) in the territory of Latvia or across the State borders and the control of persons associated with such movement the purpose of which is to prevent or detect criminal offences and to ascertain the persons*

*committing such offences if information has been received or there are justified suspicions regarding the association of the goods or other valuables to be moved with criminal offences”.*

The Criminal Procedure Law is also relevant as regards the control of criminal activity. Article 227 provides that *“if, on the basis of a decision of an investigating judge, a separate stage of a single criminal offence or mutually connected criminal offences is determined, but, in immediately discontinuing such stage, the opportunity to prevent another criminal offence, or ascertain all involved persons, especially the organisers and commissioning parties thereof, or all the purposes of the criminal activity, will disappear, control of the criminal activity may be performed”.*

### ***Implementation at national level***

For the authorisation of controlled delivery within a criminal procedure or a criminal investigation, a written request is required. The authorisation request must include the essence of the case and the approval of the prosecutor/judge that monitors the case. The guarantee that all transit States have given their consent to the controlled delivery on their national territory is a requirement.

In ordinary cases, using the controlled delivery is approved by the investigating magistrate. In urgent cases, use of the controlled delivery may be approved by the designated prosecutor, with the subsequent approval of the investigating magistrate<sup>50</sup>.

Controlled deliveries shall not be authorised when there is a risk of endangering the life or health of people, of spreading certain substances hazardous for the life of people or of generating environmental disasters.

In the situation in which during deployment of the controlled delivery are necessary other investigative measures as well, their authorization shall be made in compliance with the provisions of the Operational activities Law.

Operational performance measures, during which are substantially violated fundamental rights of individuals, are taken special methods which have been approved with Chief Justice or a specially authorised Supreme Court judge or, if provided by law, the approval of a prosecutor.

According to Article 212 of the Criminal Procedure Law, *“special investigative actions shall be performed on the basis of a decision of an investigating judge, except cases determined in this Chapter. In emergency cases, a person directing the proceedings may commence special investigative actions by receiving the consent of a public prosecutor, and, not later than the next working day, a decision of an investigating judge”.*

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<sup>50</sup> Evaluation report on the sixth round of mutual evaluations: "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters." Report on Latvia, Brussels, 23 May 2014, p. 37.

The measures for ensuring special investigative actions are regulated by Article 228 of the Criminal Procedure Law. In order to ensure a special investigative action, the officials and persons involved in such special investigative action may use information and documents specially prepared beforehand, organisations or undertakings specially established beforehand, imitations of objects and substances, specially prepared technical means, as well as imitate participation in the committing of a criminal offence, or participation in the manner of a supporter.

Controlled deliveries shall be put into effect by the State Police or Customs Police Department, State Revenue Service.

In performing such controlled delivery of goods and substances, the free sale and purchase of which is prohibited by law and regulations or the referred-to activities require a special permit, the goods or substances may be fully or partially seized or exchanged.

### ***International cooperation***

Latvia has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Latvia also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 30 October 1996 which entered into force on 31 August 1997. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has entered into force on August 23, 2005.

In Latvia, the request for MLA is mandatory only in the cases where controlled delivery is requested within a criminal procedure or of a criminal investigation. The requests for legal assistance are not necessary when the controlled delivery is requested in the context of operational investigations<sup>51</sup>.

Foreign agents may participate in controlled deliveries as observers, but may be required to testify as witnesses in the court of law.

## **17.Lithuania**

### ***Definition and legal provisions***

Controlled deliveries are permitted by the national legislation, in the context of the import, export and transit of illicit goods or other suspicious objects.

According to the Lithuanian prosecutor who attended the last Regional meeting of the project, *“controlled delivery could be used during the criminal intelligence and also pre-trial investigation”*.

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<sup>51</sup> Issue in focus number 1 “Cross-border controlled deliveries from a judicial perspective”, Eurojust, 2015, p.2.

The legal framework is represented by the Lithuanian Law no. XI-2234/2012 on criminal intelligence and the Code of Criminal Procedure.

According to Article 2 of the Law on criminal intelligence, controlled delivery is the authorised way for gathering information allowing illicit or suspect goods and other objects to pass into, through or out of the territory of the Republic of Lithuania under the control of an entity of criminal intelligence activities with a view to the detection of criminal acts and the identification of the persons preparing, committing or having committed the acts.

### ***Implementation at national level***

#### *(a) Controlled delivery pursuant to the Law on criminal intelligence*

The Law on criminal intelligence is used for the collection of the data in the absence of the elements of crime. All data obtained during the criminal intelligence procedures are usually treated as State or official secrets.

The prosecutor controls and coordinates the acts performed by the subjects of criminal intelligence and either addresses the court for the approval of certain criminal intelligence acts (e.g. interception of telecommunications, covert access to premises) or personally approves certain acts (e.g. surveillance, imitation of the criminal act, controlled delivery).

The methods of collecting criminal intelligence information regulated by law are as follows: use of agents, interview, inspection, controlling verification, controlled delivery, imitation of a criminal act, stakeout, surveillance, covert operation, law enforcement institution assignment, use of technical means (monitoring or recording economic, financial operations of a natural or legal person, the use of financial instruments and means of payment, personal conversations, other communication or actions).

Article 6 of Law no. XI-2234/2012 regulates the rights of the entities of the criminal intelligence: *“Para 3, Point 4) apply ways of gathering criminal intelligence information: controlled delivery, imitation of a criminal act, surveillance, task of the law enforcement institution”*.

The legal requirements relating to conducting a controlled delivery are as follows<sup>52</sup>: data relating to the need for a controlled delivery, the suspects, the countries involved on the traffic route, the expected time duration of the controlled delivery, objectives of the operation, type of drugs, means of transport, provided that the transport to be confiscated if there is a risk of losing thereof, ensuring the safety of people and of the means involved, the guarantee of penal prosecution or extradition (upon request).

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<sup>52</sup> <http://www.emcdda.europa.eu/html.cfm/index44352EN.html>



According to Article 14(1) of the Law no. XI-2234/2012, controlled delivery shall be authorised by the prosecutor subject to a reasoned application by the head of an entity of criminal intelligence or his authorised deputy. Section 2 of Article 14 sets out that the application shall indicate: the name, surname and position of the officer who has filed the application; the data and (or) reasoning, substantiating the necessity of controlled delivery and the sought result; the data concerning a natural or legal person (persons) who is carrying controlled items; the names of the countries from which and to which a controlled item is being carried; the anticipated duration of controlled delivery; the result aimed at as well as the intermediate and final objectives of controlled delivery.

Upon the authorisation of controlled delivery, the head of an entity of criminal intelligence or his authorised deputy shall not later than next working day after the authorisation send one copy of the application to the Prosecutor General or his authorised prosecutor of the Prosecutor General's Office.

Under Article 14(4) of the Law no. XI-2234/2012, *“where a prosecutor refuses to authorise the actions specified in paragraph 1 of this Article, the head of an entity of criminal intelligence or his authorised deputy shall have the right to refer to a superior prosecutor who is controlling the legality of the actions of criminal intelligence entity. The refusal by the prosecutor must be substantiated in writing. The prosecutor who has taken a decision not to authorise the mentioned actions must inform thereof the Prosecutor General or his authorised prosecutor of the Prosecutor General's Office”*.

An essential regulation is that indicated in Article 14(5) of the same law, which provides that it shall be prohibited to carry out controlled delivery, where it poses a direct danger to human life and health or may give rise to other serious consequences.

Controlled deliveries shall be put into effect by Police and Customs.

*(b) Controlled delivery pursuant to the Code of Criminal Procedure*

Evidence is collected upon establishment of the elements of crime. Pre-trial investigation is conducted by pre-trial investigation officers.

Prosecutors lead the pre-trial investigations, organise and control them. All principal decisions during the pre-trial investigation are passed by the prosecutor (the prosecutor addresses the court for the approval of the acts which restrict the person's rights, decides on the referral of the case to court, discontinues the pre-trial investigation).

As the Lithuanian prosecutor said, *“definition “controlled delivery” is not used in the Code of Criminal Procedure. There are no special rules in the Code of Criminal Procedure”*.

The same requirements are provided for a controlled delivery as well as for other covert measures of investigation specified in the Code of Criminal Procedure.

A controlled delivery is authorised under Article 158 of the Code of Criminal Procedure. A controlled delivery is authorised by the pre-trial judge upon the reception of the requests of the prosecutor organizing the pre-trial investigation.

In urgent cases, a controlled delivery may be carried out pursuant to the decision of the prosecutor, however, the judge's approval / affirmation regarding the carried out actions must be obtained within three days.

The following data shall be indicated in the prosecutor's request/application to the judge: the persons who will carry out covert actions; a person against whom the actions to be carried out; information on the person's criminal offences; specific actions allowed to be performed; the result sought; duration of the covert actions.

According to the Lithuanian prosecutor above mentioned, *“every year less than 10 controlled deliveries are sanctioned pursuant to the Law on Criminal Intelligence. Information on how many controlled deliveries are sanctioned pursuant to the Code of Criminal Procedure is not available”*.

### ***International cooperation***

Under Article 14(6) of the Law no. XI-2234/2012, controlled delivery may be carried out only on the basis of international treaties or agreements.

Lithuania has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Lithuania also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 9 November 1994 which entered into force on 16 July 1997. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has entered into force on August 23, 2005.

In order to authorise controlled deliveries in the criminal proceedings, it is necessary to send a request for MLA.

The participation of foreign officers (including undercover) is allowed, but only as observers in deployment of the controlled delivery, with the prior permission granted by the General Prosecutor of the Republic of Lithuania.

Also, the use of foreign and national telephone equipment is allowed.

## **18.Luxembourg**

### ***Definition and legal provisions***

In the Luxembourg system, controlled delivery consists in “*observation during which an illegal transport of goods or persons is carried out with the knowledge and under permanent watch of the police*”<sup>53</sup>.

According to the Europol manual on controlled deliveries, the legislation in Luxembourg does not contain specific provisions relating to the method of carrying out controlled deliveries. The legal basis for carrying out controlled deliveries is comprised of Article 12 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and Article 11 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

### ***Implementation at national level***

These categories of operations are allowed in the case of any type of drugs trafficked. Authorisation of the controlled deliveries on the territory of Luxembourg is subject to the following conditions:

- The controlled delivery is authorised only in cases where obtaining evidence could not be achieved by conventional methods;
- The request of another State must include information relating to the place, date and time period during which the delivery shall be carried out, details on the case, the packaging of the drugs, the exact tasks required, the staff of the requesting State that will participate in carrying out the delivery (including the means of contact, address);
- Ensuring that the transport of drugs will be under continuous surveillance is a requirement.

Controlled deliveries are authorised and coordinated in accordance with the progress of the proceedings (investigation) by the General Prosecutor, Prosecutor<sup>54</sup> or the investigating magistrate.

In the case in which there is a risk of losing control over the transport, it shall be proceeded to its seizure.

### ***International cooperation***

Luxembourg has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) and the UN Convention against Transnational Organised Crime (2000). In exchange, Luxembourg has signed in 2008 the Second Additional Protocol to the European

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<sup>53</sup> [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_FichesBelgesResult.aspx?measure=804&country=314&other=-1](https://www.ejn-crimjust.europa.eu/ejn/EJN_FichesBelgesResult.aspx?measure=804&country=314&other=-1)

<sup>54</sup> The Department of Public Prosecution (the Prosecutor's Office attached to the Court of the region of Luxembourg - with competence in the south, the Prosecutor's Office attached to the Court in the region of Dukirch - with competence in the north).

Convention on Mutual Assistance in Criminal Matters, but up to now the protocol has not been ratified. Luxembourg also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 20 April 1959 which entered into force on 16 February 1977. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has entered into force on March 6, 2011.

The request for MLA is necessary for the authorisation of controlled deliveries in Luxembourg. This request is addressed to the Grand Ducal Police, through the Interpol. In urgent cases, the request may be addressed verbally, providing that a written request subsequently will follow<sup>55</sup>.

In principle, the competent authorities of Luxembourg shall not proceed to the substitution of the drugs unless they are requested to do so by the State of destination or transit.

## **19. Malta**

### ***Definition and legal provisions***

National legislation comprises of regulations relating to controlled deliveries in the following regulatory documents: the Dangerous Drugs Ordinance (Chapter 101, Article 30 B(1)) and the Criminal Code, Chapter 9, Article 435E).

Controlled delivery takes place in order to identify the people involved in committing a crime incriminated by the laws of Malta or of another State. According to Article 435e(1) of the Criminal Code, the General Prosecutor shall authorise the Executive Police and, where appropriate, the customs authorities to carry out a controlled delivery in order to identify the people involved in committing any crime in accordance with the legislation of Malta or of another country<sup>56</sup>.

### ***Implementation at national level***

The legal requirements concerning the authorisation of these operations shall include any information relating to the case, people and materials/substances involved, the motive for the operation<sup>57</sup>. Also, according to the aspects listed in the Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations, it is necessary to ensure fulfilment of the guarantees relating to: the consent of all countries of transit for carrying out the controlled delivery, permanent surveillance of the transport, immediate intervention in the case where there is a risk of losing the transport, final confiscation of the transport and legal accountability of the offenders.

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<sup>55</sup> For further information, please see European Union manual on controlled deliveries, The Hague, Europol, 2004.

<sup>56</sup> Evaluation report on the sixth round of mutual evaluations: Report on Malta, Brussels, 3 December 2013, p. 34.

<sup>57</sup> <http://www.emcdda.europa.eu/html.cfm/index44352EN.html>

These operations are authorised by the General Prosecutor or by a magistrate and are deployed by police or customs.

Controlled delivery is also regulated by Article 30b(2) of the Dangerous Drugs Ordinance, which additionally provides for the replacement of the drugs during a controlled delivery.

Special techniques may also be permitted in the execution of a controlled delivery. Such techniques may comprise of a variety of procedures, however, if the interception of communications is involved, authorisation must be obtained from the Minister responsible for Justice and Home Affairs, in accordance with the Security Services Act (Chapter 391 of the Laws of Malta – Article 6).

### ***International cooperation***

Malta has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Malta also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 6 September 1993 which entered into force on 1 June 1994. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has entered into force on July 3, 2008.

In Malta, for the authorisation of controlled deliveries summoned by other States, the request for MLA is necessary.

Execution of the technique in compliance with the procedures applicable in the requesting State is possible, if they are not contrary to the legislation of Malta.

Article 435E(3) of the Criminal Code provides for the possibility that the competent authorities of another State to use undercover agents or under false identity on the territory of Malta, for controlled deliveries, with the permission of the General Prosecutor.

## **20. Netherlands**

### ***Definition and legal provisions***

The Instruction on Investigation Powers (Aanwijzing opsporingsbevoegdheden) regulates controlled deliveries.

The Code of Criminal Procedure (Wetboek van Strafvordering) is also relevant to controlled deliveries. Article 126ff provides that investigating officers are obliged to exercise the powers of seizure conferred on them by law if, pursuant to the execution of a warrant, they become aware of the location of objects or substances whose presence or possession is prohibited. However, such seizure may be postponed in the interest of the investigation with a view to carrying it out at a later date, such

as in the case of controlled deliveries. Under this article, the seizure obligation may be disapplied if a public prosecutor issues an order to that effect.

Because delaying seizure of prohibited objects or substances may only occur provided that the seizure is carried out at a later date, measures must be taken to effect such subsequent seizure. The objects / substances must always be under constant surveillance, the transit countries (if any) must give assurances to this effect beforehand, and the objects / substances must never reach the open market.

### ***Implementation at national level***

The LIRC (National Agency for Cross-border Observation)/NIC (National Information Coordinator) receive the request. The designated public prosecutor of the National Public Prosecutor's Office gives permission or refuses. Consent must be confirmed in an administrative order under Article 126g / 126o of the Code of Criminal Procedure.

There are two possible scenarios:

(i) the location of the delivery is unknown. In this scenario, 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 prosecutor can revoke permission and order seizure of the goods to be seized. The local prosecutor also takes over the lead on the Schengen surveillance team.

(ii) if the location is known beforehand the local public prosecutor decides if the controlled delivery can take place or not. When dealing with special circumstances "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.

### ***Case-law***

- **07-03-1998, ECLI:NL:HR:1998:ZD0975** In this case, the suspect was involved in the importation of cocaine into the Netherlands. During the import procedure, the cocaine was seized by the police and replaced with fake cocaine. The question was whether complicity could be proven even though the indictable offence had not been completed. In this case, the cocaine had already been seized and the actions of the suspect no longer had any effect on the crime. According to Supreme Court of the Netherlands, "*acts to be performed after the substance containing cocaine is seized can by definition no longer serve to further transport and transfer the substance placed within the territory of the Netherlands and the objects in which the substance is packaged*".

- **04-07-2006, ECLI:NL:HR:2006:AX2032** The investigating police officers had left a small amount of the original substance in the shipment. Approximately 5 kg of cocaine in a postal package were replaced in the controlled delivery by approximately 10 g of cocaine. The defendant was convicted of introducing 5 kg of cocaine into the Netherlands.

### ***International cooperation***

The Netherlands has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the 2000 European Convention on Mutual Assistance in Criminal Matters and its Additional Protocol. The Netherlands also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 21 January 1965 which entered into force on 15 May 1969.

## **21. Poland**

### ***Definition and legal provisions***

In Poland, legal regulations concerning controlled deliveries exist in the normative acts of each institution (police, border police, customs and intelligence services) which can conduct controlled deliveries. In this respect, the main regulations are the following:

- The Law on Police of April 6, 1990 (Article 19b), and its subsequent amendments<sup>58</sup>,
- The Law on Border Police of October 12, 1990 (Article 9g), and its subsequent amendments,
- The Internal Security Agency and Intelligence Agency Law of May 24, 2002 (Article 30), and its subsequent amendments,
- The Law on Customs Service of July 24, 1999 (Article 68J), and its subsequent amendments.

Controlled delivery consists of the secret control of production, transport, storage and movement of objects deriving from the criminal activity, in order to obtain evidence of the offenses referred to in Article 19(1) of the Law on Police or for establishing the identity of the people participating in such crimes or who appropriate the objects of the offense<sup>59</sup>, while ensuring that these do not create a danger to endanger the life or health of humans.

According to the Polish practitioner who attended the 3rd Regional Meeting in Druskininkai (Lithuania), *“in general to the law enforcement perspective, controlled delivery is understood as*

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<sup>58</sup> Controlled delivery is one of the methods of police work appeared in 1995 in amendments to the Law on Police.

<sup>59</sup> [http://www.ejn-crimjust.europa.eu/ejn/EJN\\_FichesBelgesResult.aspx?measure=804&country=351&other=-1](http://www.ejn-crimjust.europa.eu/ejn/EJN_FichesBelgesResult.aspx?measure=804&country=351&other=-1)

*covert surveillance of shipment or load containing drugs or other crime objects, with respect to which the LEAs intend to first intervene covertly to achieve a specific target in combating drug crime”.*

The Law on Police lists the following crimes which justify ordering a controlled delivery:

- illegal production, possession or distribution of weapons, ammunition, explosives, intoxicant or psychotropic substances and nuclear and radioactive materials;
- economic crimes that cause significant damage to property, crimes against property of significant value and fiscal crimes that involve significant loss in tax or other levies due to State Treasury;
- counterfeiting/forging money and securities, and putting them into circulation;
- crimes investigated under international agreements.

### ***Implementation at national level***

In Poland, controlled delivery is not a judicial measure.

The Law on Police defines who and for what purpose may order the use of this measure of police work. A provision also states that controlled delivery is launched in order to: document the offenses referred to in Article 19 b of the Law on Police, determine the identity of persons involved in these crimes, intercept the objects of crime.

As the Polish practitioner mentioned, *“it is important to underline that in Poland the responsible for establishing controlled delivery operation authority is Commander in Chief not Prosecutor’s Office”.*

In Poland the law does not allow to use controlled delivery operation in order to detect crime, because prior to launch controlled delivery the offense must already be disclosed or it must be reasonably likely to have been committed. According to the Polish practitioner, *“before making a decision to carry out controlled delivery, we must have a verified information that the offense of smuggling, production or transportation of drugs will be committed. Such information may come from law enforcement authorities of another country or confidential sources of information, or could be the result of an own criminal investigation”.*

The competent authority to authorise the controlled delivery is the Commander-in-Chief of the Police, or the commander of the regional police<sup>60</sup> who, in terms of Article 19b(2) of the Law of Police will notify without any delay the prosecutor (the General Prosecutor or District Prosecutor) of any taken decision.

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<sup>60</sup> In accordance with the law, a controlled delivery may be ordered by the Commander-in-Chief or Provincial Commander of the Police or Commander of PCBI following a request from a competent KGP Bureau or Head of PCBI Department or Head of Department of the Provincial Police Headquarters (KWP).



The domestic legislation provides for the obligation to inform the prosecutor with regard to any authorization of controlled delivery issued, as well as with regard to the conduct of the action and the results obtained.

The Law on Police does not specify for how long have to be ordered controlled delivery, only specifies that it must be implemented for a limited period of time.

Every controlled delivery is registered with the Regional Prosecutor's Office, National Police Headquarters (KGP) and Provincial Police Headquarters (KWP) across the country.

The Regional Prosecutor may order the procedure to be discontinued at any stage. So, in contrast to other advanced methods of operational work, the Law only requires the Regional Prosecutor be notified that a controlled delivery has been ordered. In this case, the supervisory function of the Regional Prosecutor is manifested in that the Prosecutor may order the controlled delivery procedure to be discontinued.

In Poland, controlled delivery can be conducted by agencies and LEA: Police, Border Guards, Internal Security Agency, Customs, Military Police.

Under the controlled deliveries carried out in Poland, in accordance with the provisions of Article 19b(4) of the Law on Police, the total or partial replacement with other harmless substances is possible.

Controlled deliveries shall not endanger the life or health of people.

According to the Polish practitioner, *“nearly 100% of controlled deliveries are carried out by the police, including about 90% by the Central Bureau of Investigation (CBI). This is undoubtedly due to the CBI experience in combating organised crime and the possibility of using such units as observation (surveillance teams) or special technical units. For comparison services such as border guards, customs and military police do not have such opportunities. Each year in Poland, Police launches about 10 to 15 CD operations”*.

### ***International cooperation***

Poland has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Poland also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 9 May 1994 which entered into force on 17 June 1996. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union entered into force on the date of October 26, 2005.

Poland also appointed the Commander-in-Chief of the Police (“Komendant Główny Policji”) as Central Authority competent to receive and execute requests for controlled delivery and covert investigation<sup>61</sup>.

## 22. Portugal

### *Definition and legal provisions*

The applicable provisions are found in Article 160-A, §9 of Law No 144/99 of 31 August 1999, as amended by Law No 104/2001, in the Chapter entitled “Controlled deliveries or deliveries under surveillance”.

At the request of one or more foreign States, in particular if the wording of an agreement so provides, the Public Prosecutor’s Office may authorise the criminal police on a case-by-case basis to refrain from taking any action within the context of cross-border criminal enquiries concerning offences which could give rise to extradition for the purpose of establishing, in co-operation with one or more foreign States, the identity and criminal responsibility of the greatest number of perpetrators of the offence.

### *Implementation at national level*

The Public Prosecutor’s Office of Lisbon is responsible for authorising controlled deliveries. Once authorisation has been secured and the request of foreign authorities has been received, the Judicial Police formalises the documentation it has to dispatch as soon as possible and, at the same time, arrange for the controlled delivery of luggage and passenger by air.

Upon arrival, the passenger is monitored by authorities of the country of destination in order to detain as many perpetrators as possible and seize the drugs.

Thereafter, those authorities communicate the outcome of the steps taken and report on the full identity of the suspects, the nature and characteristics of the seized products and any other information relevant to the investigation.

Such situations can occur not only at the airport but also in containers transported by sea and detected by customs.

Practitioners<sup>62</sup> identified **procedures of a practical nature adopted in order to permit controlled deliveries**. If confirmed that no Portuguese nationals are in transit to another country and if there is no evidence suggesting that the suspects are carrying drugs inside their body, or are not in transit to a country where the facts constituting the offence are punished with life imprisonment or the

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<sup>61</sup> [http://www.coe.int/t/dghl/standardsetting/pc-oc/Country\\_information1\\_en\\_files/Poland%20%20Mutual%20Legal%20Assistance.pdf](http://www.coe.int/t/dghl/standardsetting/pc-oc/Country_information1_en_files/Poland%20%20Mutual%20Legal%20Assistance.pdf)

<sup>62</sup> Joao Paulo Centeno and Manuel F. Goncalves, Prosecutors at the Lisbon Public Prosecution Office.

death penalty (Article 33 of the Portuguese Constitution) the Judicial Police immediately contact the authorities of the country of destination to enable them to indicate whether they have an interest in authorising a controlled delivery.

At the same time, the Judicial Police make telephone contact with the Public Prosecutor's Office in Lisbon (*Departamento Central de Investigação e Ação Pena DIAP*) in order to obtain the relevant authorisation for the steps in question.

### ***International cooperation***

Portugal has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Additional Protocol. Portugal also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 10 May 1979 which entered into force on 26 December 1994.

Requests for mutual assistance sent to Portugal are implemented in accordance with Portuguese law. However, if the foreign State expressly requests, or if there is an international agreement, treaty or convention covering the matter, mutual assistance may be given in accordance with the law of the foreign State provided this is not incompatible with the fundamental principles of Portuguese law and does not inflict serious loss or damage on the persons affected by the proceedings.

Authorisation will only be granted when the country of destination so requests on condition that the competent foreign authorities: a) provide an assurance that their legislation provides for adequate criminal penalties and that criminal action will be pursued; b) guarantee the safety of the substances and property in question against the risk of removal and accidental loss; and c) give an undertaking that they will urgently communicate detailed information on the outcome of the operations and details of the subsequent activities of each of the perpetrators of the offences, in particular those who acted in Portugal.

Notwithstanding the aforementioned authorisation, the criminal police will intervene if safety margins are substantially reduced or if circumstances arise which render it more difficult to detain the perpetrators of offences or to seize substances or property. If the authority giving authorisation is not informed in advance of the said intervention, it must be informed in writing within 24 hours thereof.

Upon agreement with the country of destination, prohibited substances or substances which are hazardous in transit may be partially replaced by inoffensive substances and a report to this effect must be provided. Failure by the foreign authorities to perform these obligations may result in future requests for authorisation being denied.

The participation of foreign legal authorities and the criminal police in actions associated with criminal proceedings which have to be carried out on Portuguese territory may be authorised by the Minister of Justice. Such participation is permitted exclusively by way of assistance to the competent Portuguese legal authority or criminal police responsible for such activities and their presence is always compulsory. The provisions of Portuguese criminal procedural law must be complied with and the condition of reciprocity must be met.

- The competent authorities in the countries of destination and the transit countries must guarantee the security of the substances concerned against risks of theft or removal;
- The competent authorities in the countries of destination or transit must ensure that their legislation provides for adequate criminal sanctions against the accused and that criminal action will be taken;
- The competent judicial authorities in the countries of destination or transit undertake to communicate, without delay, detailed information regarding the outcome of the operation and details of the acts of each person involved in the crimes, particularly those acting in Portugal.

International contacts are made by the Judicial Police through the National Interpol Office (GNI). Any other entity that receives requests for controlled deliveries, namely the Customs Directorate-General (DGA), through the Customs Cooperation Council (*Conselho de Cooperação Aduaneiro*) or its foreign counterparts, and without prejudice to the handling of information of a customs nature, should immediately send these requests to Judicial Police for the purposes of execution. In practice, requests for controlled deliveries by the Portuguese authorities in cases of drug trafficking arise as follows: the Judicial Police learns through the Tax Authority, ex DGA, that narcotics have been detected in a passenger's luggage at the airport which is in transit to another country.

## **23.Romania**

### ***Definition and legal provisions***

Until 2014, controlled deliveries were carried out in compliance with the provisions of Law no.143/2000 on preventing and combating the illicit drug use and trafficking, of Law no.39/2003 on preventing and combating organised crime and of Law no.218/2002 on the organization and functioning of the Romanian Police.

Starting with 2014, with the entry into force of the new Code of Criminal Procedure, the investigative method of controlled delivery was regulated in this Code, the other provisions from the special laws being repealed.

Controlled delivery is part of the special surveillance or investigation methods provided by Article 138(1) of the Code of Criminal Procedure. According to the general provisions regulated by this article<sup>63</sup>, *“the special surveillance or investigation methods are the following:*

- (a) interception of communications or of any type of remote communication;*
- (b) accessing of a computer system;*
- (c) video, audio or photo surveillance;*
- (d) tracking or tracing by technical devices;*
- (e) obtaining information regarding the financial transactions of individuals;*
- (f) withholding, delivery or search of mail deliveries;*
- (g) use of undercover investigators and collaborators<sup>64</sup>;*
- (h) authorised participation in specific activities;*
- (i) controlled delivery;*

*(j) obtaining data generated or processed by providers of public electronic communication networks or by providers of electronic communication services intended for the public, other than the content of communications, stored by these under the special law on storing data generated or processed by providers of public electronic communication networks and by providers of electronic communication services intended for the public”.*

The definition of controlled delivery is given in the content of paragraph (12) of Article 138 of the Code of Criminal Procedure: *“Controlled delivery means the technique of surveillance and investigation allowing the entry, transit and exit from the country of goods for which there is a suspicion concerning the unlawful nature of holding or obtaining them, under supervision or authorization of the competent authorities, in order to investigate an offense or for identifying the people involved in committing such offense”.*

### ***Implementation at national level***

Article 151(1) of the Code of Criminal Procedure (amended 2016) provides that *“the controlled delivery may be authorised, by an ordinance, by the prosecutor which oversees or is in charge of the criminal prosecution, at the request of the competent institutions, with or without the*

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<sup>63</sup> [www.just.ro/wp-content/uploads/2016/01/Noul-cod-procedura-penala-EN.doc](http://www.just.ro/wp-content/uploads/2016/01/Noul-cod-procedura-penala-EN.doc) romanian criminal procedure code

<sup>64</sup> In exceptional situations, when the use of undercover investigators is not sufficient for obtaining information or such obtaining is not possible, the prosecutor which oversees or is in charge of the criminal prosecution may authorise the use of a collaborator, to whom an identity different from their real one can be attributed.

*total or partial substitution of goods subject of the delivery*”. As regards the controlled deliveries in drug trafficking cases, these operations are authorised by the prosecutor within the DIICOT which is in charge of the criminal prosecution.

The necessary conditions to be met for authorising controlled deliveries, referred to in Article 151(2) of the Code of Criminal Procedure are the following:

(a) if discovery or arrest of the people involved in the illegal drug transport could not be made in any other way or would encounter particular difficulties which would prejudice the investigation or would be a danger to the safety of people or of some valuables;

(b) if the discovery or proof of the offenses committed in connection with the delivery of illegal or suspicious transportations would be impossible or very difficult in any other way.

The information required for requesting a controlled delivery are the following: motive for the operation, type and quantity of the drugs/other goods, means of transport and itinerary, expected point of entry and exit of the requested State, identity of each suspect, data on who authorised the operation, information on the police, customs or other law enforcement agencies which support the operation, the special techniques of investigation proposed.

The controlled delivery may be deployed on the Romanian territory only if the prosecutor which oversees or is in charge of the criminal prosecution ensures that the competent authorities with the checking or surveillance of entry to, passage or exit from the national territory of the goods:

- keep confidentiality of the activities deployed;
- ensure that the illicit or suspicious transport is permanently under surveillance.

The relevant national provisions in cases of cross-border controlled deliveries are regulated by Article 151(3) of the Code of Criminal Procedure (amended 2016). In these cases, the prosecutor which oversees or is in charge of the criminal prosecution takes measures and makes sure that the authorities of the State of transit:

- agree with the entry of the illegal or suspicious transport on their territory and with its exit from the territory of the State;
- guarantee that the illicit or suspicious transport is permanently under surveillance by the competent authorities;
- guarantee that the prosecutor, police bodies or other competent authorities are informed of the results of the criminal prosecution against persons accused of the offense subject to this special investigation method.

The prosecutor must issue an ordinance for each controlled delivery authorised. According to Article 151(5) of the Code of Criminal Procedure (amended 2016), the prosecutorial ordinance must include: *“name of the suspect or defendant, if known; the reason of the operation; indication of the goods subject of controlled delivery and of the evidence from which it results the illegal character of the goods, data in respect of the goods that will be substituted and also of the goods which will replace them, if appropriate; the time and place of the operation or, if appropriate, the route of the transport, if known; the ways in which the surveillance shall be carried out; identification of the persons authorised with the surveillance of the transport”*.

Controlled delivery is deployed by the police or other competent authority<sup>65</sup>. In all cases, the prosecutor shall delegate the competent judicial police bodies which carry out the controlled delivery and shall inform the National Customs Authority in order to provide them with the specialised support needed. The prosecutor shall establish, coordinate and control the manner of deploying the controlled delivery.

In Romania, the total or partial substitution of drugs in a controlled delivery is permitted.

The technical equipment, as well as the audio-video recordings or locating devices and GPS tracking may be used under the controlled deliveries with the authorisation of the judge for rights and liberties. In urgent cases, authorisation may be given by the prosecutor for a time period of maximum 48 hours, with the confirmation of the judge for rights and liberties in the following 24 hours.

At practical level, transport surveillance shall be made permanently, both by technical means, as well as through personnel specialised in surveillance operations, in order to eliminate any risk of losing the drugs or precursors. In Romania it is possible to perform also the domestic controlled delivery of drugs, not only in the context of international judicial cooperation.

Also, the decisions concerning completion, interruption or continuation of the controlled delivery or other such decisions are taken by the prosecutor ex-officio or after consulting the authorities that have requested the controlled delivery, only in the case where the request comes from a foreign authorised body.

The data obtained as a result of deploying the controlled delivery shall be drafted by the institution which has carried out the action, in a report, containing the activities undertaken and any appropriate proposals, following the latter to be submitted to the prosecutor.

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<sup>65</sup> According to the provisions of Article 151(7) of the Code of Criminal Procedure, *“deployment of the controlled delivery does not constitute an offense”*.

### ***International cooperation***

The Romanian State is a party and has ratified most of the international conventions and legal acts in preventing and combating organised crime and illicit drug trafficking and consumption. Romania has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Romania also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 30 June 1995 which entered into force on 15 June 1999. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union has entered into force on December 1, 2007.

The measure of controlled delivery is regulated in the context of international judicial cooperation in criminal matters, by Article 180 of Law no. 302/2004. According to paragraph (1), *“The Romanian judicial competent authorities shall authorise, upon request, in compliance with the conditions provided by Romanian law, controlled deliveries under criminal proceedings concerning criminal offenses which may give rise to extradition”*. Also, paragraph (2) states that the controlled deliveries shall be conducted according to the Romanian law. The provisions of paragraph (3) of Article 180 shall apply accordingly also in the case where assistance is requested by the Romanian judicial authorities.

At practical level, the applicant authority shall send to the prosecutor the written documentation justifying the controlled delivery as quickly as possible<sup>66</sup>.

Participation of foreign officers is permitted, with the authorization of the prosecutor. They shall be assisted to the deployment of the controlled delivery by an officer of the Romanian Police.

Undercover officers and collaborators may be authorised to participate within the controlled delivery, but their hearing is required as witnesses in court without being physically present, with their voice and image distorted.

## **24.Slovakia**

### ***Definition and legal provisions***

The legal framework concerning controlled deliveries is the Code of Criminal Procedure (Law No. 301/2005, Article 111). Controlled delivery implies following the movement of a delivery from sender to recipient in the import, export or transit thereof, if the circumstances of the case may lead to

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<sup>66</sup> The request for carrying out a controlled delivery can be sent by fax, followed by sending on the official channels, of the formal request of the prosecutor in the requesting country.



the assumption that the transport contains drugs, psychotropic substances, precursors, for the purpose of identifying the people involved in these activities by means of the delivery.

### ***Implementation at national level***

Requests for authorizing such controlled deliveries shall contain the following information: the name and contact details of the judicial authority, reason for the operation, type and quantity of the goods which are the subject of the operation, place of entry and of exit of the transport, the type of transport and route, identity of the suspects. It is also necessary to ensure fulfilment of the guarantees relating to the: consent of all the countries of transit for carrying out a controlled delivery, permanent supervision of the transport, immediate intervention in the case where there is a risk of losing the transport, final confiscation of the transport and legal accountability of offenders.<sup>67</sup>

Controlled delivery may be authorised by the president of the court or by the prosecutor (in this case, only before beginning the prosecution and in the early stages of the investigation)<sup>68</sup>. In urgent cases, the police can start the operation without fulfilling these conditions, but must inform the prosecutor with regard to starting the operation. The prosecutor must confirm the operation within 2 days<sup>69</sup>. Otherwise, the controlled delivery will cease and the information obtained will not be able to be used in legal proceedings.

There is the possibility for the request to be rejected if there is no adequate information on the transport, if there is the risk of losing thereof or if other States do not agree with the operation.

Supervision of the transport during the delivery must be carried out by the police in collaboration with customs administration.

Throughout deployment of the controlled delivery, the replacement of the drugs with other harmless substances is allowed.

### ***International cooperation***

Slovakia has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Slovakia also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 13 February 1992 which entered into force on 1 January 1993. The Convention on Mutual

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<sup>67</sup> Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations - Part II: National fact sheets, Council of the European Union, Brussels, 5 October 2015, p. 232.

<sup>68</sup> According to Article 111, paragraph (2) CCP, controlled deliveries may be authorised by the prosecutor before the penal trial and in the pre-trial proceeding, or by the president of the court during the penal trial.

<sup>69</sup> <http://www.emcdda.europa.eu/html.cfm/index44352EN.html>

Assistance in Criminal Matters between the Member States of the European Union has entered into force on October 1, 2006.

For the authorisation of controlled deliveries in Slovakia, it is necessary to submit a request for MLA.

According to the EJM website<sup>70</sup>, “*in case of existence, the bilateral or other multilateral treaty covering the specific subject matter may be applicable. In the absence of legal framework, the principle of reciprocity may be applicable*”.

The exchange of information on controlled deliveries with other States shall be carried out directly by the National Drug Service or by other channels of cooperation (Europol, Interpol, liaison officers).

## **25.Slovenia**

### ***Definition and legal provisions***

The legal basis for conducting controlled deliveries is represented by the Code of Criminal Procedure, the Law on Police and the Law on Cooperation.

According to national legislation, controlled delivery is possible in cases in which the seizure of assets or arrest of people is delayed in order to identify (discover) a larger criminal activity.

### ***Implementation at national level***

The legal requirements for authorising controlled deliveries are as follows<sup>71</sup>:

- The existence of a serious suspicion;
- Details on the offense;
- The impossibility of investigating the deed through other methods;
- The aim of the activity is to discover the people involved in committing the offense;
- Ensuring continuous monitoring of the transport during a controlled delivery;
- In the case of transit operations, the permission of the States involved is required;
- Ensuring the initiation of a penal trial;
- Ensure the immediate confiscation in the case there is a risk of losing the goods.

In the situation in which Slovenia is the State of origin or transit for the controlled delivery, such operation is possible only if all the States involved give their consent.

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<sup>70</sup> [https://www.ejm-crimjust.europa.eu/ejm/EJM\\_FichesBelgesResult.aspx?measure=804&country=368&other=-1](https://www.ejm-crimjust.europa.eu/ejm/EJM_FichesBelgesResult.aspx?measure=804&country=368&other=-1)

<sup>71</sup> <http://www.emcdda.europa.eu/html.cfm/index44352EN.html>

The competent authority for approving controlled deliveries is the Public Prosecutor's Office<sup>72</sup>. In cases where it is necessary to use also other investigation means such as technical devices, the measure shall be authorised by the court.

Controlled delivery shall not be authorised or shall be suspended where there is a risk to the health or life of people.

The police shall lead the deployment of all operations. Also, in the context of controlled deliveries there is a mutual cooperation agreement between police and customs authority.

The replacement of the drugs under controlled deliveries carried out in Slovenia is permitted.

### ***International cooperation***

Slovenia has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. Slovenia also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 26 February 1999 which entered into force on 17 October 2001. The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union entered into force on the date of September 26, 2005.

Controlled deliveries are authorised at the request of the competent authorities of the Member States or on the basis of the agreement with other Member States, by submitting a request for MLA.

Participation of foreign officers to the conduct of such operation is possible.

## **26.Spain**

### ***Definition and legal provisions***

Controlled delivery is a technique regulated by Article 263 bis of the Spanish criminal procedure law (*ley de enjuiciamiento criminal* or “LECrim”). This provision allows illicit consignments of goods to leave, enter or move within Spanish territory without any intervention on the part of the authorities or their officers, but under their surveillance, in order to ascertain or identify the persons involved in the commission of an offence in relation to these consignments, and to lend help and assistance to foreign authorities for the same purposes. The law also permits the delivery of suspicious consignments without interference, as well as the opening of such consignments and the substitution of the illicit goods, often drugs, with another object, the repackaging of the goods (so that they appear as

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<sup>72</sup> Controlled deliveries shall be authorised by the State district prosecutor of the region where the delivery shall be executed or of the region where the delivery shall be initiated, or by a prosecutor within the specialised State Prosecutor's Office.

if they have not been tampered with) and their controlled delivery to their destination. The relevant national provisions are as follows:

**“Article 263 bis.**

*1. The competent investigating judge and the Public Prosecutor’s Office, as well as the heads of the central or provincial organisational units of the judicial police, and their superior officers, may authorise the controlled delivery or movement of toxic drugs, narcotic or psychotropic substances and other prohibited substances. The grant of this measures shall be based on a reasoned decision which expressly states, where possible, the subject-matter of the controlled delivery or authorisation as well as the type and quantity of the substance at issue. In taking these measures, their necessity for purposes of the investigation having regard to the seriousness of the offence and the feasibility of control shall be taken into account. The judge who delivers the decision shall forward a copy thereof to the senior judge within his jurisdiction, who shall maintain a register of such decisions.*

*Authorisation may also be granted in respect of the controlled delivery or movement of the equipment, materials and substances referred to in Article 371 of the Criminal Code, of the property and proceeds referred to in Article 301 of the Criminal Code, in all the cases provided for therein, and of the property, materials, objects and animal and plant species referred to in Articles 332, 334, 386, 566, 568 and 569 of the Criminal Code.*

*2. Controlled delivery or movement shall mean the technique of allowing illicit or suspect consignments of toxic drugs, psychotropic substances and other prohibited substances, the equipment, materials and substances referred to in the preceding paragraph, the substances for which the foregoing have been substituted, as well as the property and proceeds deriving from the criminal activities laid down in Articles 301 to 304 and 368 to 373 of the Criminal Code, to travel across, leave or enter Spanish territory without preventive interference by the authorities or their agents and under their supervision, with a view to ascertaining or identifying the persons involved in the commission of any offence relating to such drugs, substances, equipment, materials, property and proceeds, and to provide assistance to foreign authorities for the same purposes.*

*3. The decision to have recourse to controlled delivery shall be made on a case-by-case basis and, at an international level, shall comply with the provisions of international treaties.*

*The heads of the central or provincial organisational units of the judicial police or their superior officers shall immediately inform the Public Prosecutor’s Office of the authorisations*

*granted in accordance with paragraph 1 of this article and, if court proceedings are under way, the competent investigating judge.*

*4. The interception and opening of mail items suspected to contain narcotics and, where appropriate, the subsequent substitution of any drugs present therein shall be carried out at all times in accordance with the judicial safeguards established in the legal system, with the exception of the provisions of Article 584 of this Law.”*

**“Article 588 quinquies b. Use of technical media or devices for tracking and tracing.**

*1. Where there are well-founded reasons based on need and provided that the measure is proportionate, the competent judge may authorise the use of technical media or devices for tracking and tracing.*

*2. The authorisation must specify the item of technical media that is to be used.*

*3. The service providers, agents and persons referred to in Article 588 ter e are required to provide the judge, the Public Prosecutor’s Office and officers of the judicial police designated to implement the measure the necessary assistance and cooperation to facilitate execution of the tracking orders, failing which criminal proceedings may be brought for disobedience.*

*4. In urgent cases where there are reasonable grounds for considering that the failure to immediately install the technical media or device for tracking and tracing is likely to frustrate the investigation, the judicial police may carry out such installation and shall provide a report thereon as soon as possible and in any event within 24 hours to the court, which may confirm the measures implemented or order its immediate withdrawal. In this latter scenario, any information obtained from the device shall be excluded from the proceedings.”*

***Implementation at national level***

The delivery as well as the movement and substitution of the drugs may be authorised by the prosecutor or the investigating judge of the place where the goods are located or the place to which they are addressed, or by the head of the relevant unit of the judicial police.

The measure is only intended for offences relating to the trafficking of narcotic drugs; precursors; endangered species of plants or animals; counterfeit money; the possession, trafficking or storage of weapons, munitions or explosives; and for assets or earnings that are the subject of the money laundering.

In practice, the following conditions must be fulfilled:

- Guarantee of permanent surveillance on the transportation, and assurance that everything possible will be done to track down and bring to justice those responsible. The requesting authority must undertake to seize the drugs and arrest all those involved,

especially where there is a risk that the drugs may be stolen at any given moment of the operation.

- Full information on the vehicle or means of transport which will be used for the operation (including the number plate).
- Full information on those likely to drive the vehicles, especially the name to be used at the border crossing.
- The date of likely arrival in Spain and the probable border crossing.
- The fullest information possible on the investigation so far in the requesting country.
- If Spain is the final destination, it is important that information be supplied regarding the persons involved and the exact final destination.
- Prior authorisation from the countries through which the transportation under surveillance will pass.
- Precise information on additional facts which may emerge during the operation.

### ***International cooperation***

Spain has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Additional Protocol. Spain also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 24 July 1979 which entered into force on 16 November 1982.

The request must always refer to an identifiable consignment and must be duly justified, specifying the relevant and known information relating to its execution (final destination, dates, surveillance possibilities, prior substitution of the drug, etc.).

In practice, the Special Antidrug Prosecution Office, which has jurisdiction over the whole of Spain, works as a central contact point to implement mutual legal assistance requests in connection with this special investigation technique.

Both in the EU and in Latin America, the Special Antidrug Prosecution Office plays a significant role through the European Judicial Network in criminal matters and IberRed contact points working in this specialised unit. It also leads the Iberoamerican Network of Antidrug Prosecutors, a specialised platform made up of prosecutors dealing with drug trafficking cases. In this context, the Network has launched an operational initiative to strengthen the exchange of information in order to facilitate controlled deliveries regardless of differences in legislation.

## **27.Sweden**

### ***Definition and national provisions***

Controlled deliveries for all goods are permitted as a standard police and customs technique. There is no legislative basis for controlled deliveries, although there is a manual for the handling of cases in which controlled deliveries may be considered. Furthermore, the definition of controlled delivery in Article 1 (g) of the UN Convention Against Illicit Traffic in Drugs and Psychotropic Substances of 1988 is applied because Sweden has ratified the convention.

### ***Implementation at national level***

The channel for communications prior to or during a controlled delivery may be through Interpol, DLO, Europol, and Customs. Continued surveillance can be guaranteed for controlled deliveries. Total substitution is allowed for drugs. This can sometimes result in difficulties in proving a crime where a consignee defends himself by claiming an absence of knowledge of illicit goods being involved.

### ***International cooperation***

Sweden has ratified the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), UN Convention against Transnational Organised Crime (2000), as well as the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Additional Protocol. Sweden also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 20 April 1959 which entered into force on 1 May 1968.

The provisions on international legal assistance in criminal matters are mainly contained in the International Legal Assistance in Criminal Matters Act (2000:562). There are supplementary provisions on legal assistance in certain cases in the Act on Joint Investigation Teams for Criminal Investigations (2003:1174) section 10-14.

Official requests for rogatory letters may be made through Interpol, DLO, Europol, and customs. A guarantee of seizure of the object of the controlled delivery and prosecution of suspected persons at the end of the operation is a precondition for controlled deliveries originating, transiting or destined for Sweden.

Since investigation and prosecution are mandatory, a preliminary investigation will always be conducted in Sweden concerning a controlled delivery, whether the delivery is originating, transiting or destined for Sweden. A request for a controlled delivery may be refused in the following circumstances:

- If the benefit is judged not to be proportional to the effort and/or results.

- If the intended measure may turn out to be against Swedish law in that a situation may develop which provokes a crime.
- If the act is not punishable in all countries involved.
- If security cannot be guaranteed.

Applications for controlled deliveries are decided jointly by police, customs and prosecutors. If any one of these is not in favour then the controlled delivery is not carried out. Foreign personnel are not permitted to take any action in relation to a controlled delivery. Use of undercover agents is only possible when using a Swedish police or customs officer as an undercover agent.

## **28. United Kingdom**

### ***Definition and national provisions***

In the United Kingdom, a “controlled delivery” is considered to be a technique for allowing illicit or suspect consignments of substances or objects or substitutions to pass out of, through or into the territory of one or more countries, with the knowledge and under the supervision of the competent authorities, for the purposes of establishing who is criminally involved. Controlled deliveries can also include people.

As controlled deliveries are treated as a facet of criminal investigation, there are no specific guidelines in place. In the UK it was not necessary to introduce legislation specially to provide for the conduct of controlled deliveries because powers to conduct controlled deliveries were already provided for in existing legislation. Each agency dealing with controlled deliveries in the UK has guidelines for the control of such operations which take account of the competencies and resources of the agencies involved. Therefore there are written guidelines for internal UK police/customs controlled deliveries – but these only reflect the split of responsibilities between police and customs. They do not give guidance on how the controlled delivery should be carried out.

### ***Implementation at national level***

All cases that involve the controlled delivery of prohibited or restricted goods (including all drugs and firearms) either into or out of the United Kingdom must have prior approval from the UKBA Enforcement and Crime Directorate, specifically Criminal and Financial Investigations - Borders (CFI).

Substitution of drugs in consignments is allowed in whole or in part. The substitution process must be carried out in such a manner as will satisfy the evidential requirements of the UK courts. Usually, in the case of class A drugs in large quantities (heroin, cocaine, ecstasy etc.), the expectation



would be that the load would be substituted. In the case of smaller parcels, they may be allowed to run. Any necessary authorities would be obtained by the investigators.

Undercover work and participation in crime are permitted within limits prescribed for UK agencies.

### ***International cooperation***

The UK is a signatory to the UN Convention against illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the '1988 Convention'); the UN Convention against Transnational Organised Crime 2000 (the '2000 Convention') and the UN Convention against Corruption 2003 (the '2003 Convention') and the English Common Law allows their provisions to be given effect. The UK has also signed the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union and its Additional Protocol. It also signed the 1959 European Convention on Mutual Assistance in Criminal Matters on 21 June 1991 which entered into force on 27 November 1991.

Requests for a controlled delivery should be directed to the National Crime Agency (NCA) who will make the necessary arrangements via their Multilateral Operations Department. Multilateral is a single department which performs a variety of roles, including those of the INTERPOL National Crime Bureau (NCB), the EUROPOL National Unit and the SIRENE Bureau for the United Kingdom. The United Kingdom (NCA) Liaison Officers and Europol UK Liaison Bureau can also provide advice and assistance.

Multilateral provide a 24/7 Gateway for international communication and tasking and they will advise on the most appropriate course of action. Controlled delivery activity that falls under an existing NCA operation will be routed through the United Kingdom (NCA) Liaison Officers directly into the (NCA) International Planning Teams and will not be routed through (NCA) Multilateral.

Official requests for rogatory letters should be made to (NCA) or Her Majesty Revenue & Customs (HMRC) via the United Kingdom Central Authority. Officials from other Member States are allowed to assist in controlled deliveries acting under the powers of the particular UK enforcement agency. They are subject to the same restrictions as employees of those agencies. The recipient country is expected to give a substantial operational/surveillance commitment (particularly in the case of chemicals)

Although (NCA) is the principle point of contact in cases involving requests for controlled delivery activity, both Her Majesty Revenue & Customs (HMRC) and the United Kingdom Police Service provide another option to manage controlled delivery activity.

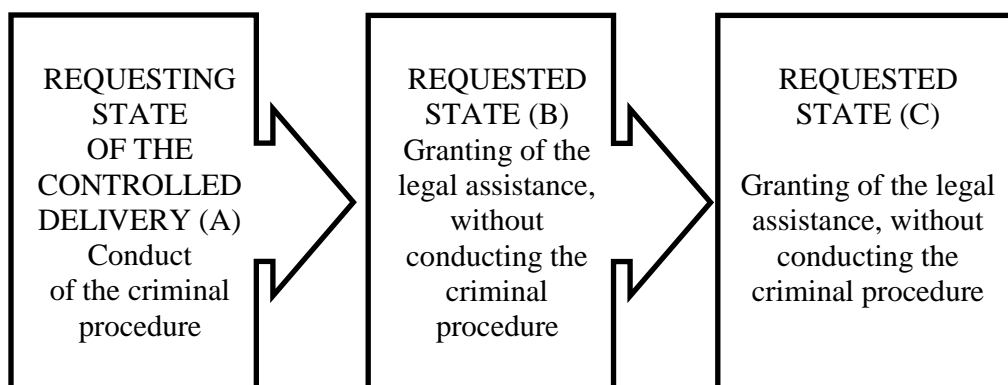
Article 9d of the Eurojust Council Decision sets out possibility for the national members to authorise and to coordinate in urgent cases controlled deliveries and to execute a request for or a decision on judicial cooperation in relation to the UK.

## CHAPTER III: THE PRACTICAL ASPECTS OF TRANSNATIONAL CONTROLLED DELIVERIES OF DRUGS

### 1. Operational objectives and types of controlled deliveries

#### 1.1. Operational objectives

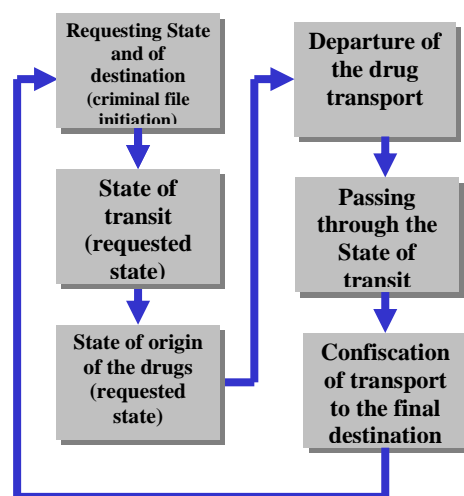
Controlled deliveries are investigative methods used by LEAs in the context of international drug trafficking. Cooperation between States shall be carried out at most frequently based on the MLA request. The criminal procedure against traffickers is carried out by the authorities of *the requesting State* that initiated the criminal case and summoned another State (*requested State*) to carry out the controlled delivery of drugs.



*The relationship between the authorities of the States involved in the controlled deliveries of drugs*

In order to understand the above graph, let us imagine the following scenario:

*The competent authorities of State A obtain an information according to which in a short time, a large quantity of cocaine concealed in a shipping container will stop in a port in State B, transiting also State C until reaching the final destination (State A). In this context, the authorities in State A conduct the investigation or criminal procedure with regard to the people involved in the drug trafficking in State B, which is transiting State C until its destination (State A). To the extent that they deem necessary to use the method of controlled delivery for establishing the criminal activities and identifying the final recipients of the drugs, the competent authorities in State A shall address requests for judicial assistance (for allowing the passage of the transport of drugs and carrying out the controlled delivery) to the authorities in States B and C. The authorities in States B and C will comply with the request and assistance, by cooperating with State A, without having to conduct the criminal procedure with regard to the participants in the drug trafficking.*



*The algorithm of cooperation between States (left) and route of the drugs in the State of origin to the State of destination (right)*

The **operational objectives** of controlled deliveries consist mainly in:

- Identifying the members of the drug trafficking criminal group, in particular those based in the transit and destination countries as well as the final recipients of the drugs;
- Obtaining information with regard to the modus operandi and the organizational structure of the criminal group;
- Confiscating the drugs at the end, after establishing the entire criminal chain<sup>73</sup>.

Frequently, the conduct of controlled deliveries involves the cooperation of LEAs in the States supplying drugs (State of transit and State of destination).

## **1.2. Types of controlled deliveries**

A. *Controlled deliveries based on the different types of drug trafficking routes (by land, sea or air);*

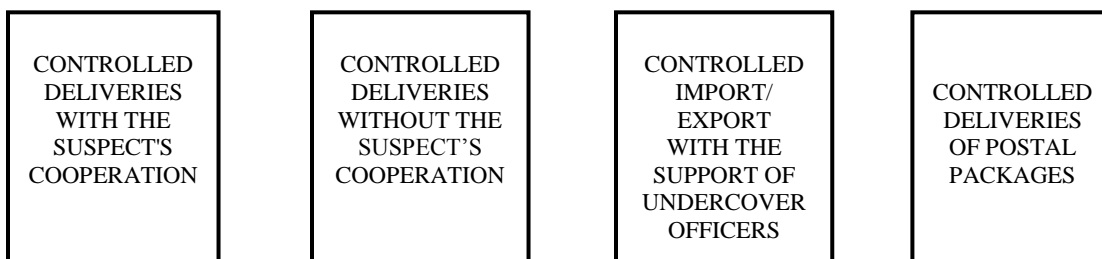
Controlled deliveries by air (as compared to those by land or by sea) have the advantage of avoiding the transit through the territories of all States on route, the only issue required is obtaining permission from the State where the drugs have been detected, from the authorities of the State of landing (of destination) and possibly from the authorities in the point of transit of the aircraft. Another issue generated by the controlled deliveries by sea is also the legislation specific to maritime law,

<sup>73</sup> If the method of controlled delivery is not used, drugs may be seized prematurely and the organised crime group leaders and final recipients of the drugs may not be identified.

which involves a bureaucratic procedure, where there is a risk of changing the travel route. A possible situation to solve these problems is provided in the model below.

*Let us assume that the authorities in State A (State of origin) find in a sea port a container in which drugs are being transported in a concealed way. These authorities take the decision to cooperate with the authorities in the States of transit (States B and C) and those in the State of destination (State D). In order to avoid any potential risks, the competent authorities in the State of origin, based on the request of the authorities in the State of destination, take the decision of total replacement of the drugs before conducting the controlled delivery. Afterwards, the drugs are brought in the State of destination by air, by an investigator from the State of destination.*

The main **practical arrangements** for deploying controlled deliveries are the deliveries monitored through the suspect's cooperation, without the suspect's cooperation, controlled import/export and those conducted by courier/mail services.



*Practical arrangements for achieving the controlled deliveries*

- B. *Controlled deliveries carried out with the cooperation of a suspect (carrier<sup>74</sup>, courier of drugs) after the detection by customs, police or border police of an illicit drug transport, concealed in means of transport or in the case of drugs concealed on the body by the suspect.*

At international level, possible scenarios employing controlled deliveries through the carrier's cooperation are those where drugs are discovered in the checked luggage, when the substances are trafficked by air. The best opportunities are those in which the check is carried out when handling the checked baggage within the airport of transit (for flights with stopover). As a general rule, drugs are discovered based on the risk analysis or by using sniffer dogs.

In these cases, the suspect might agree to cooperate with LEAs by sending the replaced drugs or the goods to the recipient, in order to identify the drug-trafficking group leaders.

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<sup>74</sup> Generally, the carriers are vulnerable individuals, possibly without a criminal record, who, in exchange for a sum of money (advanced repeatedly by the recruiters who contacted them in order to "lure" them), will agree to carry drugs to the specified destinations.

The carrier's cooperation is essential for a positive end of the controlled delivery in such cases. He must be trained by the staff of the law enforcement agencies to comply with any of the previous agreements which he has agreed with the organiser or recipient of the transport (scheduled stops, calls for confirmation with the traffickers, etc.). The purpose of investigators is to obtain as many evidence with regard to the network of traffickers, and confiscation of the transport and the flagrant operation to be carried out at the final destination<sup>75</sup>.

It is preferable that the decision concerning the initiation of the controlled delivery based on the suspect's cooperation (carrier) to be taken by the LEAs in the State in which the investigation is conducted.

The decision of cooperating with the carrier for the purpose of identifying the recipients, organisers or sponsors of the drug traffickers groups may, depending on the outcome of the operation, reduce the penalty of the carrier for the offence committed. This decision may be taken based on Article 4 of the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, according to which *“Each Member State may take the necessary measures to ensure that the penalties referred to in Article 3 may be reduced or that the offender may be exempted from penalties if he, for example: (a) renounces criminal activity; and (b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to: (i) prevent, end or mitigate the effects of the offence; (ii) identify or bring to justice the other offenders; (iii) find evidence; (iv) deprive the criminal organisation of illicit resources or of the proceeds of its criminal activities; or (v) prevent further offences referred to in Article 2 from being committed”*.

Moreover, according to Article 26 (1) of the UN Convention against Transnational Organised Crime, *“Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organised criminal groups:*

*(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as: (i) The identity, nature, composition, structure, location or activities of organised criminal groups; (ii) Links, including international links, with other organised criminal groups; (iii) Offences that organised criminal groups have committed or may commit;*

*(b) To provide factual, concrete help to competent authorities that may contribute to depriving organised criminal groups of their resources or of the proceeds of crime”*.

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<sup>75</sup> Dennis G., Fitzgerald, *Informants, Cooperating Witnesses and Undercover Investigations. A practical guide to law, policy and procedure*, Second edition, CRC Press, Taylor & Francis Group, 2015, pp. 394-395.

C. *Controlled deliveries carried out by covert monitoring of the trafficked drugs.*

In these cases (*“the cold convoys”*)<sup>76</sup>, the person culpable for transporting the drugs is not aware of the drugs being discovered and of authorities allowing the consignment to travel in order to identify the members of the drug trafficking network. Controlled deliveries are carried out where the authorities have uncovered drugs concealed in cargo consignments, containers, etc.

According to an opinion<sup>77</sup>, *“by far the best opportunities for controlled delivery occur when customs officials detect drugs concealed in consignments of goods that are moving unaccompanied by a “courier”, for example in freight consignments, unaccompanied baggage, unaccompanied motor vehicles and the parcel post. Without the use of controlled delivery such detections would normally result in the seizure of the goods only; those responsible for the smuggling would not be discovered, and the smuggling organization would lose only the drugs”*.

In most of these cases, LEA personnel do not know the final recipient of the drugs.

Special reference must be made to controlled deliveries of drugs carried out using mail / transport and courier services (unaccompanied packages). There are situations in which controlled deliveries by this method are carried out only within the borders of a single country (the so-called internal controlled delivery, without a foreign component). Controlled deliveries of mail packages are similar to the controlled deliveries carried out with regard to the transport of goods containing concealed drugs (case presented in letter b)).

As a general rule, in these cases LEAs are notified *ex officio*, or by the postal, transport or courier services, or by information received from the human intelligence sources/collaborators, or information that transpired in the investigation of other cases, or by reason of denunciation. Once the prosecutor and the law enforcement personnel have analysed the primary information relating to the case, than a search of the package could be ordered. If by virtue of search, substances appearing to be drugs are found, than the substances are send to a specialised laboratory for a forensic examination. Following confirmation that the substances are classified as illegal drugs, on a case-by-case basis the operations would involve: substitution of the drugs, repacking, placement of GPS device inside the package, and continuity of the covert controlled delivery for identifying the consignee. On a case-by-case basis, the activity and behaviour of consignee would be monitored by physical and technical supported surveillance.

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<sup>76</sup> [https://www.unodc.org/pdf/india/publications/training\\_Guidelines/18\\_controlleddelivery.pdf](https://www.unodc.org/pdf/india/publications/training_Guidelines/18_controlleddelivery.pdf)

<sup>77</sup> P.D. Cutting, *The technique of controlled delivery*, 1983.

*D. Controlled import / export (“the pass through”<sup>78</sup>) carried out together with other special investigation techniques such as undercover agents.*

In these instances, the illicit goods are imported/exported for a stratagem in which during the controlled deliveries, undercover agents will be infiltrated into the drug traffickers groups, and will purchase drugs from drug traffickers based in other countries (if it is allowed by the national law). Often, an infiltrate is made by an informant/a collaborator, who – depending on the case – may establish the contact of the undercover officer with the drug traffickers.

*E. Controlled deliveries with / without replacement of the drugs.*

As indicated in the comparative legislative analysis, controlled deliveries may be deployed by LEAs by (total/partial) replacement of the drugs or without replacing the drugs, depending on the legislation of each State located along the drug trafficking route. The decision whether to replace the drugs should be taken by mutual agreement between the authorities of the States located along the trafficking route. If the drugs are to be replaced, the LEAs should replace them with other substances before allowing the transport to proceed (“clean controlled delivery”)<sup>79</sup>.

CONTROLLED  
DELIVERIES  
WITH  
SUBSTITUTION OF  
THE DRUGS

CONTROLLED  
DELIVERIES  
WITHOUT  
SUBSTITUTION OF  
THE DRUGS

The risk of losing the transport or unexpected changes in the trafficking route are elements that led to the development of “*clean controlled deliveries*”. The advantage of replacing the drugs is to minimise the risk of the consignment being distributed if the operation fails, and at the same time, having a sufficient amount from the consignment in order to prosecute.

The replaced drugs are packed and sealed for their forensic examination in specialised laboratories. It is recommended that the substitution of drugs to be made by the law enforcement personnel of the first State which discovered the drugs. Drug replacement shall be carried out by qualified personnel in assembly of packages, substitution of substances (drugs could be swapped with

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<sup>78</sup> Andrea, Di Nicola, Philip, Gounev, Michael, Levi (project coordinators), et al., *Study on paving the way for future policy initiatives in the field of fight against organised crime: the effectiveness of specific criminal law measures targeting organised crime (final report)*, Evaluation financed by the European Commission, 2015, p. 282.

<sup>79</sup> “Clean” controlled deliveries are always preferable to “dirty” ones, in order to avoid the risk of losing the transport. For further details, please see P.D. Cutting, *The technique of controlled delivery*, 1983.



coffee, salt, sugar, flour or any other substance), and repacking of packages. Replacement should be done in locations with full security (replacement of the drugs can be done safely at the headquarters of a law enforcement agency), so that members of the drug trafficking groups are not aware of the fact that drugs were replaced.

When the transport of drugs is allowed to pass without the drugs being replaced by similar substances, we are dealing with a controlled delivery without replaced drugs (*“dirty or live controlled delivery”*). These types of deliveries can generate high stress or risk, especially for the transit States (located on the trafficking routes), where there is a risk of losing the transport. In this context, when there is danger of losing the controlled delivery of the drug transport, automatic capture should be executed.

The participants in the second workshop of the project underlined the considerable risks of CDs without substitution of drugs, especially in cases where the consignment must pass through the territory of many transit States: *“It’s a high risk, we could assume it, but even if we are taking the surveillance and investigative measures, there is a risk of losing of the consignment”*.

The findings of analysing the legislation of the Member States illustrate that in the event of a State being the destination State for controlled delivery, it is desirable the partial substitution and leaving the remaining drugs in the mail package, container or the means of transport. The rationale for this practice entails the admissibility of the evidences obtained through controlled delivery in the State of destination.

## **2. Planning and organization of controlled deliveries**

The decision to initiate and conduct a controlled delivery must be based on factors such as: if there is information pertaining to a case of drug trafficking, validity of the preliminary information obtained, exchange of information and cooperation of the States located on the trafficking route, the absence of legal obstacles in the path of conducting the controlled delivery.

According to the Manual on cross-border operations, *“due to the fact that the handling of controlled deliveries is a complicated task, both from a practical and a legislative point of view, these cases ought to be handled by specialised contact points and units”*<sup>80</sup>.

In all international operations for investigating drug trafficking activities, early planning and the exchange of information between the key partners constitute essential aspects. Establishing personal contacts between practitioners within the LEAs of different States remains an essential pre-condition for the subsequent exchange of information, based on formal contacts.

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<sup>80</sup> Manual on cross-border operations, General Secretariat, Council of the EU, Brussels, 14 December 2009, p.20.

As mentioned by most of the participants in the workshop held in Tallinn, the primary cooperation channel is through the police, because it is more fluid and quicker than other cooperation channels. Practitioners stated that they first have to determine whether the controlled delivery is possible at operational level. If so, the legal aspects of cooperation between States will subsequently be taken into consideration.

One of the topics discussed at the second workshop related to the fastest cooperation channels in drug trafficking cases. The Lithuanian participants mentioned that police channels operating 24/7 are the fastest tools for exchanging data. The Estonian prosecutors added the following comments: *“We should combine both the police and judicial cooperation channels and choose the channels that work better. We should also take into consideration the liaison officers channel. Lastly, we should consider the Europol's ability to exchange classified information”*. The Romanian prosecutors who participated in the second workshop mentioned that, in almost all cases, cooperation begins at an informal level through the police channels.

The first step in attaining an international investigation is achieved by the detection of a quantity of drugs: most often, concealed in unaccompanied packages or in a means of transport; or, by virtue of information originating from collaborators or human intelligence sources about the existence of international connections between drug traffickers.

In some States traversed by trafficked routes, an essential element for commencement of a controlled delivery is knowledge of the route and final destination of the drugs. In this regard, according to the Eurojust study<sup>81</sup>, *“Lithuania 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... Hungary 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 Hungary 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... ”*.

At the same time, in the context of controlled delivery, the requesting authorities must provide the requested authority with information such as: full description of the containers - size, weight, colour, structure; the method of concealing the drugs; copies of any documents relating to the transport (invoices, letter of transport, etc.); shipping company or name of the airline company; flight number; route and estimated time of arrival, etc.

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<sup>81</sup> Issue in focus number 1 “Cross-border controlled deliveries from a judicial perspective”, Eurojust, 2015, p. 4.

A practitioner at the first workshop stated that the planning and organisation of controlled deliveries by air or by train is easier than the planning and organisation of controlled deliveries by land: *“In the first case, you already know the route and estimated time of arrival of the flight or of the train, in contrast to the unexpected change of the route by road”*.

**Case study: the planning and organisation of controlled deliveries at practical level  
in Amsterdam Schiphol airport**

**Step 1.1: Report that drugs have been found**

- Drugs are found during a criminal investigation or are reported by third parties
- Drugs are seized and a police report filed

**Step 1.2: Sampling**

- Sampling and weighing the drugs

*The investigative agency that has detected the drugs, if necessary, take samples, secures and stores the counter-samples, weighs the drugs and forwards them to a forensic laboratory.*

- A police report is filed

**Step 1.3: Examination of trace evidence**

- Investigate trace evidence

*The investigative agency that has taken care of the sampling and weighing, also arranges for the examination of trace evidence (dacty, DNA).*

**Step 2: Assess controlled deliveries - Is a controlled delivery possible?**

- Assess
- Approach the CargoHarc-team

*The investigative agency contact the CargoHarc team at Schiphol. There will be informed whether agreements have been or can be reached with the country of destination. The flight route is also cleared. This may involve securing the consent of the countries where a stopover will be made.*

- Secure the consent of the Public Prosecutions Department

*The investigative agency that has detected the drugs or has been approached to carry out a controlled delivery informs the Public Prosecutions Department of the place of seizure and requests verbal permission for a controlled delivery.*

**Step 3: Make contact with the receiving body - Contact with the KLPD (National Police Services Agency) or liaison officers**

- Inform the KLPD or Dutch Liaison Officer

*The investigative agency contacts the KLPD in Zoetermeer, which places the contact between the investigative authorities and the DLOs. Contact may also be made via “direct” contacts such as DLOs or foreign liaison officers working in the Netherlands. For controlled deliveries in Europe contact needs to be made with Europol in the Hague.*

- Fax the necessary data to the KLPD
- The KLPD will send the fax to the contacts in the country of destination.

**Step 4: The country of destination agrees to the controlled delivery**

- The authorities in the country of destination make direct contact, or via the KLPD, with the investigative agency that has the shipment.
- The authorities in the country of destination make a request for legal assistance.
- The authorities in the country of destination write a letter in which they state that the crew on the plane carrying the package will not be prosecuted in the host country in

respect of the concerned shipment.

- The foreign authorities fax the form directly to the investigative agency or to the KLPD.
- Inform the IRC (International Legal Assistance Centre)

*The investigative agency will send the request for legal assistance through the intervention of the attending public prosecutor to the IRC.*

**Step 5: Approval and signature public prosecutor**

- The investigative agency creates a form “relating to controlled deliveries abroad”.
- The investigative agency faxes the forms to the Public Prosecutor in the relevant district for approval and signature.
- The Public Prosecutor signs the form and faxes the signed form to the investigating authority.

**Step 6: Make contact with the CargoHarc-team**

- The investigative agency makes contact by phone with the information desk of the CargoHarc-team for further arrangements on the transfer / transport.
- The investigative agency faxes the forms to the CargoHarc-team.

**Step 7: Activities Cargo Harc-team**

- The CargoHarc-team makes contact with the airlines for further arrangements on the transfer / transport.
- The CargoHarc-team creates a form “Request cooperation” that will be faxed to the airlines concerned.
- Once the relevant flight, date and time has been confirmed, the CargoHarc team contacts the investigative agency and agrees when the investigative agency must be present at the airport with the package.
- The employee of the CargoHarc-team prepares the package for sending.

**Step 8: Placing of the package on the plane**

- The forms are delivered to the captain of the plane.
- The investigative agency puts the package on the plane.
- Immediately after placing the package, the investigative agency will inform the relevant investigating officer in the destination country that the package is on its way.
- The foreign investigative agencies inform via fax or phone that the package has arrived safely.

**Step 9: A police report is filed**

**Best practices model – the Polish system**

According to the Polish practitioner, “one should note that the Police Act of 6 April, 1990 permits ordering a CD only as part of the investigative actions prior to the institution of penal proceedings, which start with issuing a decision to open preparatory proceedings. This means that prior to starting the procedure of covert surveillance of movement of crime objects, no actions may be undertaken related to the legal proceedings - i.e. interrogate witnesses, conduct a search or inspection. All police actions are documented by memos or technical means (video or photographic material, initial instrument examination at forensic laboratories)”.

When using the CD procedure, the Police may covertly make the following alterations in shipments or items that contain crime objects:

(1) Remove (extract) the shipments and other items from distribution or production, open them in order to inspect and evaluate their contents, mark them, remove crime objects or replace all or some parts of the objects, detect and record forensic traces,

(2) Reseal the shipments and other items after they were opened, and reintroduce them into distribution or production.

Every action performed in the framework of CD operations must be documented through photos, memos, recordings and minutes of research. Research and analysis of forensic evidence and chemicals are conducted in Central Police Forensic Lab. Research and measures are conducted by experts of chemistry, photography and fingerprinting.

As the Polish practitioner mentioned on the occasion of the last meeting during the project, *“the successive stages of controlled delivery are as following:*

- *preliminary information, initiating activities (conducted case, WT, LO, Europol, information from other country),*
- *preparation of documentation, information for P.P.O.,*
- *information for B.G., Customs, Post Office or C.Comp.*
- *seizure (take over) the subject of controlled delivery, opening and evaluation of content,*
- *replacement of drug by substitution other substance, examination and evaluation,*
- *installing of technical devices (GPS, WT, radiolocation, opening indicator, fluorescent powder),*
- *developing a plan of action,*
- *re-introduction of the consignment in the distribution (on the market),*
- *execution of the plan, arrest the perpetrators, liquidation of drug trafficking route,*
- *transferring of the obtained evidences to the prosecutor and the court,*
- *transferring in the framework of law assistance after the decision of the Prosecutor’s Office obtained evidences to the countries, that cooperated in the controlled delivery operation”.*

### **3. Special investigative techniques used in the context of controlled deliveries**

Although CDs are distinct investigative methods, their complexity involves simultaneous use of other techniques, such as human intelligence sources (informants)/collaborators, physical surveillance, technical surveillance (interception of communications and GPS location), interception of e-mail, undercover officers.

According to the Council of Europe Recommendation Rec(2005)10<sup>82</sup>, SITs are *“the techniques applied in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, meant to collect information so as not to alarm the people concerned”*. The Council of Europe identifies the following as SITs: *“controlled deliveries, covert investigations, interception of telecommunications (wire-tapping), bugging of premises, covert investigations; interception of communications (wire-tapping); bugging of premises; covert surveillance; covert storefront operations which appear to offer opportunities for crime; and undercover agents and informants”*<sup>83</sup>.

<sup>82</sup> Recommendation Rec(2005)10 of the Committee of Ministers to Member States on “special investigation techniques” in relation to serious crimes including acts of terrorism.

<sup>83</sup> White Paper on Transnational Organised Crime, Council of Europe, (CDPC 2014 11 Fin), section 3.2, p. 30.

Furthermore, Article 20 of the UN Convention against Transnational Organised Crime identifies controlled deliveries, electronic or other forms of surveillance and undercover operations as SITs<sup>84</sup>.

Extending the use of SITs in the context of combating organised crime and the drug traffickers groups is an essential element of the reaction of authorities against the improvement and specialisation of criminal groups.

To gather information about the activity of a criminal group, it is necessary to resort to certain special methods of investigation, based on operational needs. Some techniques such as interception of communications or controlled delivery are generally used to understand the role of the suspects in the criminal group, and to identify and dismantle the criminal group. Although these measures are intrusive by nature, they are limited to certain serious offenses often committed in an organised manner<sup>85</sup>.

According to the results of recent research, *“in the majority of cases other tools such as the interception of communications, undercover investigation and informants are used to gather the intelligence needed to successfully carryout a controlled delivery”*<sup>86</sup>.

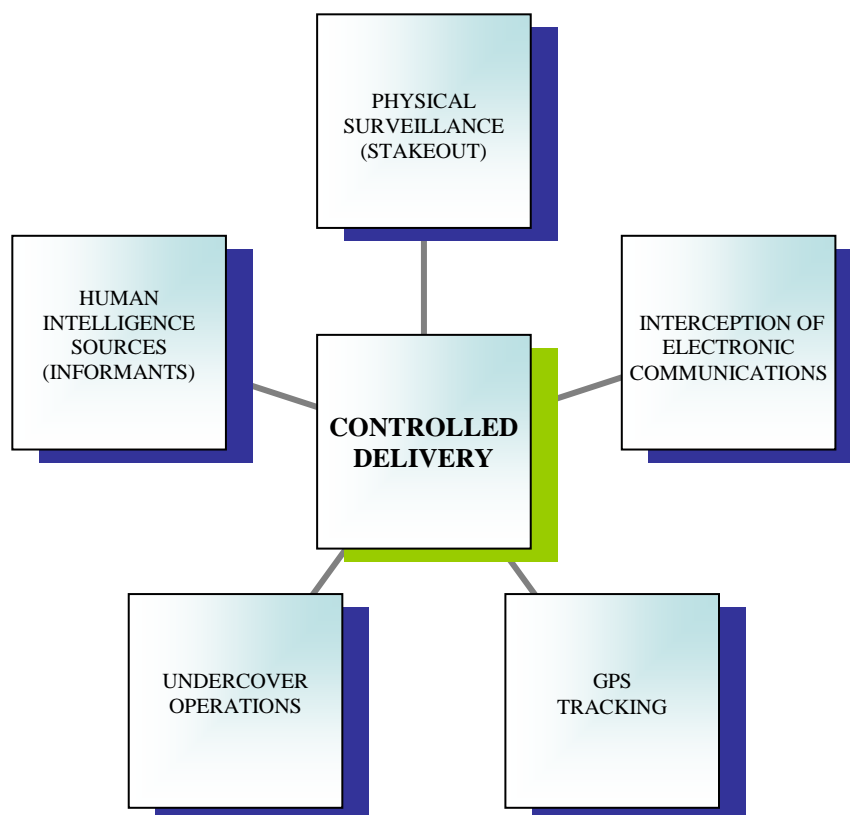
The use of these SITs is permitted in most Member States, particularly in the case of organised crime offenses and drug trafficking. These SITs are used to gather evidence about the criminal activities in a proactive manner, so as the people covered by the investigation should not be aware of their use by LEAs.

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<sup>84</sup> Article 20.1 of the UN Convention against Transnational Organised Crime establishes “if permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations (...)”.

<sup>85</sup> White Paper on Transnational Organised Crime, Council of Europe, 2013.

<sup>86</sup> Andrea, Di Nicola, Philip, Gounev, Michael, Levi (project coordinators), et al., *Study on paving the way for future policy initiatives in the field of fight against organised crime*, p. 284.



*The main SITs used in controlled deliveries*

Investigating cases of international drug trafficking is often initiated on the basis of the information provided to the LEAs by **human intelligence sources (informants)/collaborators**.

The practice of LEAs has revealed the fact that the networks of drug traffickers usually recruit only reliable persons, being quite difficult to determine based on clear evidence the criminal activities in some other way than by using informants. The informant may be a person who wishes to provide information in order to benefit from a reduced sentence or a person who provides information based on the civic spirit. From the experience of the LEAs, it has resulted that informants are the people who know best both the traffickers, but also the drug consumers<sup>87</sup>. After receiving the information and evaluating the source, begins the phase of verifying the information. The responsibility of investigators is to verify the information and to establish the motivation of the source. When using informants, investigators must realise the difference between *an informant* (person who only provides information to investigator(s)) and *a participant informant* (person who participated directly in committing offenses within the criminal group - for example, in the case of a carrier, courier or driver)<sup>88</sup>.

<sup>87</sup> Michael D., Lyman, *Practical drug enforcement, 3rd ed.*, CRC Press, Taylor & Francis Group, 2007, p.3.

<sup>88</sup> Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants, UNODC, 2010, p. 75.

According to the Europol Review 2011, the informant has a crucial importance within the police activities, the quality of the information collected is directly proportional to that of the informant.

During the workshop held in Poiana Brasov, a Romanian antidrug police officer presented the main challenges in and obstacles to cooperation between the police and informants. He stressed that any informant wants something (often money) for providing information: “*We are trying to use other methods – approaching the informant, trying to convince him to collaborate because of the civic spirit, not for money.*”

**Physical surveillance (stakeout)** is another technique used in the context of deploying controlled deliveries. Any investigator knows that an effective way to obtain information is pursuing a person or monitoring a transport, places or objects which have links with a criminal offense. This method shall be used in the context of monitoring the drug transport and the activity of the people receiving the drugs which are to present themselves at a post office/customs office/courier company to take possession of the suspect package, etc. Physical surveillance is generally less-intrusive than technical surveillance and involves placing a target (person, means of transport) under surveillance, for establishing the places visited, the route travelled, the people contacted, etc.<sup>89</sup>

As it apparent from the study conducted, *technical surveillance* includes, in particular, the interception of communications and electronic conversations, the bugging of premises, as well as of some tracking tools and GPS location.

**The interception of telecommunications** is an essential technique to which the LEAs resort for obtaining evidence during a controlled delivery. From the interceptions of telecommunications may result data according to which the people involved have knowledge about the drugs trafficked, being frequent the situations in which, after being detected by the authorities, couriers plead that were paid to perform a transport, without having knowledge about the substances transported. Moreover, after analysing the telephone conversations may result information relating to a rerouting of the transport based on the information received by the courier from the transport organiser, in order to avoid detection by the police. As a result of technology development in the last period, the competent authorities in a Member State may intercept communications and electronic conversations carried out in another Member State, without the technical assistance of this State. The main legal regulations in this area are those contained in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. The Convention regulates the interception of telecommunications on the national territory by means of the providers of services (Article 19) and the interception of telecommunications without technical assistance from another Member State (Article

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<sup>89</sup> *Deployment of special investigative means*, Council of Europe, 2013, p. 12.



20). According to the opinion expressed by experts<sup>90</sup>, “*regardless of where the subject of the interception is located, the interception of telecommunications, carried out through a satellite system, requires only a single operation, by means of a technical installation called “Gateway” (“portal”). This portal allows the establishment of a satellite connection, which allows the use of telecommunications equipment in very large geographical areas. In order to intercept telecommunications directly, the State must have a portal. If it does not, then it may request the assistance of the State on the territory of which the portal is located, for each interception that they wish to carry out or the operator installs “remote access” to the portal. This facility enables a country to issue a remote interception order via a portal located outside its own territory. It may be given to the company or companies (“providers of services”), who shall provide the service of satellite telecommunications on each national territory, provided to carry out the orders of interception which are required under the law by the competent authorities. Technically it is possible to restrict the use of the remote access to telecommunications made from the or received in the territory of the Member State who uses it”*”.

In order to prevent LEAs from intercepting and recording telecommunications, drug traffickers (organisers, distributors, couriers, etc.) often use the following methods: multiple mobile phones and multiple SIM cards (including prepaid cards); Internet-based messaging services, instant messaging services such as WhatsApp and Blackberry, or encrypted systems e.g. PGP (“pretty good privacy”). Also, in order to make it more difficult for the LEAs to understand drug traffickers’ modus operandi, these criminals often use a coded/conspiratorial language (in one case, the drug traffickers kept in touch by mobile phones with prepaid cards and their disguised discussions made reference to “fruit juices”, “files”, “chocolate”, “candies”, and not to drugs certifying through this coded common language that both knew the actual contents of the packages).

Another surveillance technique is also the ***GPS location, by placing special devices on the illicit drug transport, as well as locating the users of mobile phone stations***<sup>91</sup>. Locating or tracking by technical means involves the use of devices that determine the place where the person or object to which these are attached is located. Attaching the tracking devices on the drugs transports is essential for determining the exact location and for avoiding losing control on the transport. Attaching the GPS device to a drug transport may be done by the staff of the law enforcement agencies of a State, and

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<sup>90</sup> Ulrike, Kathrein, Cătălina-Gabriela, Miron, Ana, Ploscă, et al., *International judicial cooperation in criminal matters. Manual drawn up within the Twinning project between Romania and Austria PHARE RO 2005/IB/JH 03, entitled “Strengthening the institutional and legislative framework in the field of international judicial cooperation”*, the Center of Legal Competence, Vienna, 2007, p. 79.

<sup>91</sup> *Locating people based on mobile phones* may facilitate the investigation by establishing the approximate area in which the drug trafficker is located, at the time of using the phone in question.

location of the transport to be made until final destination, based on the device placed in the State of origin. Generally, placement of the locating technique shall be made by the staff of the law enforcement agencies of the Member State where the transport is departing, where the detection of drugs was made, being much more difficult to place the tracking device later in complete conspiracy. On a case by case basis, there are situations where some States receive the location data of the transport or States that wish to take control over this data. The most effective measures for monitoring drug transports in the context of controlled deliveries are those which combine physical surveillance with surveillance based on GPS location. When the GPS device is placed on the suspect's vehicle in one State and travels to another State (State of destination), the use of the information deriving from those devices might require the authorisation of the competent authorities in the States of transit and destination. When drafting requests for legal assistance, LEAs from one State could ask other States for permission to monitor and collect information from the GPS and, if it is necessary, to change the batteries.

The experts from Lithuania pointed out *“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”*. Furthermore, experts from Bulgaria underlined 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”*<sup>92</sup>.

**Using undercover officers** to infiltrate into the criminal networks, in particular within the drug trafficking groups, is an efficient and proactive operational method. According to some authors<sup>93</sup>, *“infiltration constitutes the deed of the police officer to maintain, under a false identity, sustainable relations with one or more persons in respect of whom there are strong grounds for believing that are committing offenses within a criminal organization”*. In the context of using undercover investigators, ECHR case law has decided to prohibit the incitement or the instigations of a person to commit offenses. Thus, in the case of *Teixeira de Castro v Portugal* (9 June 1998), ECHR considered that *“... the two police officers' actions went beyond those of undercover agents because they instigated the offence and there is nothing to suggest that without their intervention it would have been committed...”*. Also, in the case of *Constantin and Stoian v Romania* (29 September 2009), *“... the*

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<sup>92</sup> Issue in focus number 1 “Cross-border controlled deliveries from a judicial perspective”, Eurojust, 2015, p.5.

<sup>93</sup> Michel, Franchimont, Ann, Jacobs, and Adrien, Masset, *Manuel de procedure penale*, Editions Larcier, Bruxelles, 2006, p.331.

*Court considers, having regard to the foregoing, that the actions of the undercover police officer and his collaborator had the effect of inciting the applicants to commit the offence of which they were convicted, going beyond the mere passive investigation of existing criminal activity, and that the domestic courts did not investigate sufficiently the allegations of incitement... ”.*

Undercover operations are used, as a general rule, to attain the following objectives:

- Identifying the members of the organised crime group and obtaining information about their criminal activities;
- Corroborating information obtained by the LEAs through other methods;
- Procurement of drugs along with the informants or collaborators from traffickers (if it is allowed by law, depending on each State legislation).

Undercover investigators infiltrated in cases investigated by the method of controlled delivery may be allowed to come into contact with members of the criminal group, to coordinate and monitor the activity of other officials (Customs staff, courier services, etc.), to buy drugs together with collaborators from drug traffickers, to transport drugs as a carrier (drivers) in order to identify the final recipients of the drugs etc. There are also controlled delivery operations in which undercover agents of a State shall be authorised to engage in activities for gathering information, procurement of drugs or transport thereof in another State, accompanying or monitoring the controlled delivery, etc. On the occasion of the 9th meeting of HONLEA (held on 16-18 June 2009), it has been proposed that the governments of the States to take measures for ensuring that the framework necessary to facilitate the operations on the movement and use of foreign undercover officers in other jurisdictions has been established.

In these situations, activities of the undercover agents are carried out under strict coordination of the LEAs staff of the State in question (they support the undercover operation, drug delivery and reception, their expertise, etc.). As a general rule, in the situation in which the undercover agent procures drugs from another State in the context of a controlled delivery, they shall be handed over after purchase to the LEAs personnel of the State in question. The drugs are subject to forensic expertise in that State, and the latter shall send the report (bulletin) of expertise to the authorities in the requesting country who initiated the controlled delivery and the undercover operation.

The main problems caused by the deployment of undercover officers on the territory of another State consist of the following aspects<sup>94</sup>:

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<sup>94</sup> Council Resolution 6678/3/07 on simplifying the cross-border deployment of undercover officers in order to step up Member States' cooperation in the fight against serious cross-border crime, Council of the EU, Brussels, 25 May 2007.

- Distinct requirements and procedures of the State concerning the movement of the undercover officers;
- Legislative differences with regard to protection of the identity of the undercover officers;
- Granting an equal status to the domestic and foreign undercover officers;
- The possibility to second (assist) the undercover officers abroad;
- Cross-border assistance in ensuring the operational coverage for undercover officers.

#### **4. The outcome of controlled deliveries. Parallel criminal investigations in countries involved**

Among the most important activities carried out in connection with completing the controlled deliveries, is the *catching in the act* activity which will ensure obtaining evidences and prosecution of traffickers. The operations of catching in the act (*in flagrante operations*) involve catching drug traffickers at the time of conducting transactions, when taking possession of the drug transports, of the amounts of money derived from the sale of drugs delivered in a controlled operation, when opening postal packages delivered in a controlled operation, etc. As a general rule, this operation takes place in the State of destination of the drugs or when there is a risk of losing the transport (by ceasing the controlled delivery in any State located on the drugs trafficking route). Flagrant operations ensure the operative detection of the offenses committed and retention of the traffickers involved, in order to avoid their escape and evading investigation.

Completion of the controlled delivery operation will lead to legal measures against the drug trafficking group members. As mentioned previously, most commonly the authorities of the State requesting the controlled delivery are conducting the criminal procedure with regard to the drugs delivered in controlled operations by other States of origin or transit. However, there may be exceptions to this rule:

- in the case where there is a risk of losing the drug transport under the delivery controlled by LEAs personnel of a State of transit, it may be decided upon the confiscation of the drug transport and cessation of the controlled delivery. In this situation, the authorities of the State of transit are competent to carry out the criminal prosecution with regard to the offenses committed only for the time period between entry of the transport in the country and confiscation thereof. With regard to the other criminal activities in which the drug trafficking group members are involved, the

competent authorities of the requesting State of controlled delivery will carry out the criminal prosecution. As a general rule, confiscation of the transport in the State of transit shall be made after consulting the authorities of the State of destination. For example, if a drug transport by road monitored by the police of the State of transit, shall enter in a warehouse in which the police does not know and does not have control over the activities carried out there, is taken the decision of immediate capture, by prior notification of the authorities initiators of controlled delivery.

- in the case in which during the period of passage of the drug transport through the State of transit, between the country of origin and the country of destination, shall be committed other offenses or are identified other participants to committing the offenses.
- in the case of the transfer of procedures between the States affected by the drug trafficking route, in the meaning that it is estimated that the judiciary evidence can best be administered in a particular State. According to Article 8 of the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972, a Contracting State may request<sup>95</sup> another Contracting State to start criminal prosecution in the following cases:

*“a) if the suspected person is ordinarily resident in the requested State;*

*b) if the suspected person is a national of the requested State or if that State is his State of origin;*

*c) if the suspected person is undergoing or is to undergo a sentence involving deprivation of liberty in the requested State;*

*d) if proceedings for the same or other offences are being taken against the suspected person in the requested State;*

*e) if it considers that transfer of the proceedings is warranted in the interests of arriving at the truth and in particular that the most important items of evidence are located in the requested State;*

*f) if it considers that the enforcement in the requested State of a sentence if one were passed is likely to improve the prospects for the social rehabilitation of the person sentenced;*

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<sup>95</sup> It is important to note that there is no specific mechanism enabling a State to ask another State to transfer criminal proceedings.

- g) if it considers that the presence of the suspected person cannot be ensured at the hearing of proceedings in the requesting State and that his presence in person at the hearing of proceedings in the requested State can be ensured;*
- h) if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the requested State could do so.”*

Important rules on the transfer of criminal procedures are provided also in the UN Conventions. Article 8 of the 1988 UN Convention establishes that *“the Parties shall give consideration to the possibility of transferring to one another proceedings for criminal prosecution of offences established in accordance with Article 3, paragraph 1, in cases where such transfer is considered to be in the interests of a proper administration of justice”*. As for the UN Convention against Transnational Organised Crime, Article 21 states that *“States Parties shall consider the possibility to mutually transfer the procedures relating to the prosecution of a criminal offense covered by the Convention in cases where such transfer is considered necessary in the interests of a good administration of justice and in particular, when the cause concerns multiple jurisdictions, in order to centralise such prosecutions”*.

In addition, Article 21 of the European Convention on Mutual Assistance in criminal Matters (Strasbourg, 1959), makes the following provision for the laying of information in connection with proceedings:

- “1. Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.*
- 2. The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.”*

In other cases, solving the cases through the transfer of procedure can be done also by means of bilateral agreements for cooperation.

Possible solutions in the case of jurisdiction and of coordination of the actions of criminal prosecution are offered also by the application of Article 7 (2) of the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime: *“When an offence referred to in Article 2 falls within the jurisdiction of more than one Member State and when any one of the States concerned can validly prosecute on the basis of the same facts, the Member States concerned shall cooperate in order to decide which of them will prosecute the offenders, with the aim, if possible, of centralising proceedings in a single Member State. To this end, Member States may have recourse to*

*Eurojust or any other body or mechanism established within the European Union in order to facilitate cooperation between their judicial authorities and the coordination of their action. Special account shall be taken of the following factors: (a) the Member State in the territory of which the acts were committed; (b) the Member State of which the perpetrator is a national or resident; (c) the Member State of the origin of the victims; (d) the Member State in the territory of which the perpetrator was found”.*

Finally, Eurojust’s role in providing assistance to resolve conflicts of jurisdiction is enshrined in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings. Article 12 of this Framework Decision provides:

*“1. This Framework Decision shall be complementary and without prejudice to the Eurojust Decision.*

*2. Where it has not been possible to reach consensus in accordance with Article 10, the matter shall, where appropriate, be referred to Eurojust by any competent authority of the Member States involved, if Eurojust is competent to act under Article 4(1) of the Eurojust Decision”.*

## **5. Obstacles and difficulties (legal and practical) in the field of controlled deliveries**

The research carried out within the project has led to the identification of several obstacles and difficulties (both legal and practical) which the practitioners in this field are experiencing.

### **5.1. Difficulties at international level.**

At international level, the UN has adopted a number of initiatives to identify the main obstacles faced by practitioners in the implementation of controlled deliveries.

- The Commission on Narcotic Drugs (CND)<sup>96</sup> passed Resolution 45/4 on controlled deliveries in March 2002. According to this Resolution, one of the key elements to successfully implement controlled deliveries is the “timely and quick exchange of information between law enforcement agencies”.

In addition, Resolution 45/4 recommends “swift and effective action in dealing with requests for international assistance in controlled delivery operations and [the establishment of] effective mechanisms for its implementation”. Accordingly, having

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<sup>96</sup> The CND was created by Economic and Social Council (ECOSOC) Resolution 9(I) in 1946 to assist the ECOSOC in supervising the application of international drug control treaties. In 1991, its mandate was extended by the General Assembly of the United Nations and it was empowered to function as the governing body of the United Nations Office on Drugs and Crime (UNODC).

regard to the wording of this Resolution, it is essential that procedures be established which involve both police and judicial authorities and ensure the timely and quick exchange of information with a view to dismantling criminal organisations.

Subsequently, the CND adopted Resolution 47/6 in 2004 in which it recalled Resolution 45/4 and made a number of additional findings on the notion of *effective* controlled delivery. In particular, it identified the key obstacles that hamper the effectiveness of controlled deliveries:

- The limited availability of resources to gather technical evidence;
  - Lack of knowledge of the different legal systems and that requirements represent further obstacles;
  - Poor cooperation and coordination between competent authorities in order to streamline procedures for approving and conducting effective controlled delivery operations.
- A Paris Pact Expert Working Group meeting was held on 21-22 June 2011 in Islamabad, at which 63 experts from 25 countries and organizations shared their opinions on the legal and operational challenges associated with controlled deliveries<sup>97</sup>. One of the topics which received special attention at the meeting was the threat posed by opium trafficked through Central Asia, Afghanistan, Iran and Pakistan. Whilst acknowledging the differences existing between this region and the European Union, it is nevertheless instructive to highlight the main obstacles identified by the experts:
  - Differences in legal requirements and procedures between States may pose difficulties when carrying out controlled deliveries. Obviously, this problem is more acute when the legal rules of the State of origin differs drastically from those of the States of transit or destination.
  - Lack of trust among States in cases involving undercover operations often results in a poor exchange of information on seizures and on operational issues which, in turn, hampers operations.

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<sup>97</sup> The Paris Pact Initiative is one of the most important frameworks in the fight against opiates originating in Afghanistan. It aims at the reduction of illicit traffic in opiates including opium poppy cultivation, production and global consumption of heroin and other opiates, and at the establishment of a broad international coalition to combat illicit traffic in opiates. Efforts under this initiative are aimed at the strengthening of international and regional cooperation to support its sustained efforts, including on a national level, to address illicit traffic in opiates, recognizing the threat they pose in different regions of the world and the important role played by UNODC in these efforts.



- Once the controlled delivery has taken place, States often do not share information about the progress of the case, including information on arrests or seizures.
- Difficulties in identifying the correct focal point for controlled deliveries, especially when several law enforcement agencies are legally authorised to carry out this type of investigation technique.

## 5.2. *Difficulties at European level.*

At European level, there have been several attempts to improve the effectiveness of controlled deliveries by identifying the most significant obstacles.

**According to a study**<sup>98</sup> completed in 2015, the main issues in the field of controlled deliveries are:

- The temptation to LEAs in some States to confiscate prematurely a drug transport, thus preventing the activity of identifying the final recipients of the drugs;
- The possibility of occasional losing the transport within the controlled deliveries;
- The difficulty generated by the bureaucracy of the process of international judicial cooperation. Thus, the information analyzed show that sometimes the process of cooperation is complicated and difficult. Especially within the context of the need for reactions and quick responses from similar authorities in other States, personal and informal contacts are considered to be the most effective;
- Issues generated by the mutual confidence between the LEAs, particularly in respect of disseminating confidential data and information (concerning informants, undercover officers, etc.);
- The lack of relevant information with regard to the points of contact and the type of authorization and conditions required in each MS. Practical difficulties may arise in identifying the competent authorities to approve the use of controlled deliveries. In some MSs, for the purposes of controlled deliveries is required a judicial authorisation, while in others the authorisation is granted by police authorities<sup>99</sup>. Therefore, identifying the competent authorities of a MS may raise certain issues<sup>100</sup>;

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<sup>98</sup> Andrea, Di Nicola, Philip, Gounev, Michael, Levi (project coordinators), et al., *Study on paving the way for future policy initiatives in the field of fight against organised crime*, p. 287.

<sup>99</sup> In such cases, the requested Member State, whose judicial system provides for judicial cooperation in the case of controlled deliveries, can not comply only with a police request.

<sup>100</sup> Eurojust Annual Report 2011, p. 28.

- The difficulty in using evidence obtained through controlled delivery in another State;
- The lack of resources or inadequate resources (technical and human) in some States.

**At the same time, the analysis carried out by Eurojust** among the competent authorities of the EU MSs and Norway has identified several categories of obstacles in respect of controlled deliveries, as they have been indicated by the national agencies personnel<sup>101</sup>:

- Not knowing the exact route and time period when the drug transport will cross the border of a State or unexpected change of these variables<sup>102</sup>;
- Difficulties or delays in obtaining permission from the authorities of other MSs for placing GPS devices in the vehicles involved in the drug transport and trafficking;
- Difficulties or delays in identifying the competent authorities of another MS or in obtaining authorisation on the controlled delivery;
- Legal differences between requirements of the MSs relating to the substitution of the drugs in the context of controlled deliveries;
- Insufficient resources in the context of requests for authorization of a controlled delivery performed at unexpected times/during the night/weekend;
- The differences between the requirements of MSs for delaying the confiscation of drugs in the context of controlled deliveries;
- Difficulties on the deployment and use of undercover officers in other MSs in the context of controlled deliveries;
- Admissibility of the evidence obtained in the context of cross-border controlled deliveries;
- The confidential nature (classified) of the information obtained through the method of controlled delivery in some States;
- Difficulties on the movement of armed police officers in other States within the cross-border controlled deliveries;
- Legal and operational issues on the acceptance of informants' participation in the controlled deliveries.

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<sup>101</sup> Issue in focus number 1 “Cross-border controlled deliveries from a judicial perspective”, Eurojust, 2015, pp. 4-8.

<sup>102</sup> One of the problems generated by the controlled deliveries of drugs (especially those by sea and road), is changing the travel route. In this situation, the authorities in the State of transit where the changing of the travel route is found shall have to inform as quickly as possible the authorities in the State that has initiated the controlled delivery, so that the latter to take in due time the necessary steps for obtaining permission to transit the new State.

The Eurojust Annual Report 2011 identified difficulties in organising controlled deliveries involving third party countries, and Eurojust has supported in this respect the practitioners in the Member States, by relying on its experience in the field of cross-border operations carried out beyond the borders of the EU.

**One of the main outcomes of the workshop held in Tallinn (16-18 May 2016) was the confirmation by participants of most of these obstacles.** They referred to (1) the different powers of the authorities involved in the implementation of CDs; (2) difficulties in implementing technical surveillance and especially in intercepting modern communication technologies; (3) difficulties in identifying the competent LEAs in urgent cases; (4) lack of trust; (5) lack of resources; (6) language barriers in communication between the LEAs from different countries; and (7) differences in Member States' legal frameworks.

**Most of the above obstacles were also confirmed also during the second workshop of the project.** In that workshop, the participants referred, among others, to: (1) lack of permanent cooperation between States situated along the trafficking route; (2) fear of losing consignments during the CDs; (3) the desire of some LEAs to seize the drugs and initiate criminal proceedings; (4) lack of common procedures in respect of CDs; (5) lack of a common legal framework as regards SITs; (6) language barriers; (7) impossibility of substituting the drugs because of the method of concealment or time restrictions; and (8) belated permission for a CD from a State situated along the trafficking route.

**During the last Regional Meeting, the participants also identified the following obstacles:** (1) lack of essential data for performing a CD; (2) difficulties in understanding wiretapped communications due to the differing nationalities of and languages spoken by those involved in international drug trafficking; (3) non-criminalisation of certain drugs in some States; (3) time needed to prepare the surveillance team; (4) lack of LEA staff with expertise in CDs.

### **5.3. *Summary of the obstacles and difficulties***

In view of all of the foregoing, both at international and European level, it is possible to summarise the main obstacles as follows, distinguishing between those related to practical or operational issues and those linked to the legal requirements for implementing controlled deliveries.

- ***Operational/practical obstacles:***
  - Lack of trust between those involved in the implementation of controlled deliveries in view of the confidential nature of the data to be transmitted (classified information). This may also lead to the premature confiscation of the substances in question.

- Difficulties in identifying the relevant competent authorities for carrying out a controlled delivery in another Member State.
- Lack of coordination between LEAs in the context of the need for exchanging information and taking speedy action to secure authorisation, set up effective surveillance mechanisms and jointly decide on when to confiscate the illicit substances.
- Different type of authorities involved in the implementation of controlled deliveries e.g. customs officers, police officers, drug trafficking police units, prosecutors and judges.
- Lack of information on legal requirements for obtaining authorisation for a controlled delivery in another Member State.
- Difficulties in ascertaining where and when the illicit substance will cross the territories of the Member States involved.
- Difficulties in placing GPS devices in vehicles to facilitate the surveillance and control of the substance.
- The risk of losing the controlled deliveries.
- ***Legal obstacles:***
  - Differences in Member States' legal frameworks as regards the requirements for implementing this investigation technique. These differences might have an impact on the admissibility of evidence obtained in another country in the context of cross-border investigations.
  - Differences in Member States' legal frameworks as regards the possibility of replacing drugs in controlled deliveries.
  - Differences in Member States' legal frameworks as regards the implementation of other special investigation techniques (e.g. undercover agents, GPS surveillance or informants) which might be used together with a controlled delivery. This is particularly relevant because CDs themselves always need to be monitored by means of other investigation techniques.

## **6. The role of international and European institutions in the coordination and support of controlled deliveries**

### **6.1. *Eurojust***

Eurojust was established by Decision 2002/187/JHA of the Council as a body of the EU with legal personality to promote and improve coordination and cooperation between the competent judicial authorities of Member States.

In order to strengthen the operational capacity of Eurojust, it was adopted the Decision 2009/426/JHA of the Council of 16 December 2008<sup>103</sup>.

According to this provision, one of the new powers which may be conferred to national members, with the agreement of the competent national authorities, is to authorise and coordinate controlled deliveries in their Member States. Also, in agreement with the regulations in Article 9d(a) of Decision 2009/426/JHA, national members, in their capacity as competent national authorities, in urgent cases and to the extent that it is not possible to identify or contact in good time the competent national authorities, shall have the right to authorise and coordinate the controlled deliveries in their own Member States. As soon as it is identified or contacted the competent national authority, the latter shall be informed on the exercise of this competence by the national officials.

Article 13 of Decision 2009/426/JHA provides for exchanges of information with the Member States and between national members. In accordance with Article 13(7), letter b), the Member States shall ensure that their national member is informed on the controlled deliveries affecting at least three States, of which at least two are Member States. The types of minimum information to be transmitted, when available, are the following: the Member States and the competent authorities concerned; data allowing identification of the person, group or entity which is the subject of an investigation or criminal prosecutions; type of delivery; type of the offense in connection with which the controlled delivery is conducted.

In respect of the concrete exercise of these powers conferred by Decision 2009/426/JHA, existing data show that until now in very few cases national members have authorised a controlled delivery (in a single State at EU level), and in only two Member States of the EU, national members have exercised their right to coordinate controlled deliveries.

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<sup>103</sup> Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.

The situation on the implementation of the provisions of Decision 2009/426/JHA on the authorisation and coordination of controlled deliveries by national members in their own Member States, according to the evaluation reports, is as according to the table below:

MEMBER STATE	The implementation of Article 9d (a) of DECISION 2009/426/JHA
Austria	The national member has to date no power to authorise controlled deliveries.
Belgium	According to the current legal framework, the national Member cannot authorise controlled deliveries. In practice, there were some cases in which the national member has coordinated controlled deliveries.
Bulgaria	There were no cases in which the national member has coordinated controlled deliveries. In the event of requests for a rogatory commission sent through Eurojust, they were communicated promptly to the Bulgarian competent authorities.
Croatia	According to the Croatian law, controlled deliveries are not regarded as an instrument of judicial cooperation.
Cyprus	In practice, there was a single case in which the support of Eurojust was requested.
Czech Republic	In case of problems, it is possible to request the assistance of Eurojust.
Denmark	As a general rule, the national member to Eurojust does not participate in the deployment of the controlled deliveries. The national member facilitates and initiates contacts, when necessary.
Estonia	In the controlled deliveries organised until to now, there has been no involvement of Eurojust.
Finland	There were no cases coordinated by Eurojust.
France	Until now, the French national member has not authorised or coordinated controlled deliveries.
Germany	The national member is not entitled to authorise or to coordinate controlled deliveries. However, the national member may submit proposals to that effect to the competent national authorities.
Greece	The national member is not entitled to authorise or to coordinate controlled deliveries.
Hungary	Until now, the national member has not authorised or coordinated controlled deliveries.
Ireland	The national member is not entitled to authorise or to coordinate controlled deliveries.
Italy	The national member is not entitled to authorise or to coordinate controlled deliveries.
Latvia	The national member is not entitled to authorise controlled deliveries. Until now, the national member only facilitated the controlled deliveries in some cases.

Lithuania	The national member (prosecutor) is not entitled to authorise controlled deliveries. By order of the General Prosecutor of December 2009, the national member may act as a competent national authority of communication in the coordination of controlled deliveries.
Luxembourg	Until now, the national member has not authorised or coordinated controlled deliveries.
Malta	The national member is not entitled to authorise controlled deliveries.
Netherlands	Until now, the national member has not authorised or coordinated controlled deliveries.
Poland	Eurojust is not involved in the cases of controlled delivery, because in Poland controlled delivery is not considered to be a judicial measure.
Portugal	According to Law no. 20/2014, the national member has the right to authorise and coordinate controlled deliveries in agreement with the competent national authority.
Romania	According to Law no. 35/2012, in cases of urgency the national member has the right to authorise controlled deliveries.
Slovak Republic	The national member has not coordinated any controlled delivery in the Slovak Republic. However, the judicial authorities of the Slovak Republic have contacted it in connection with requests for controlled delivery by other Member States.
Slovenia	In urgent cases and to the extent that it is not possible to identify or to contact the competent national authority, the national member may have a right to authorise and coordinate the controlled deliveries and to carry out or to propose the execution of a request for judicial cooperation without the consent of the competent authority. The national member has not made use of this possibility to the present.
Spain	Each time the national members were involved in the controlled deliveries, this competence has always been exercised in agreement with the competent authority.
Sweden	The Swedish National Bureau has been requested in the past to facilitate several controlled deliveries.
UK	The National Bureau in the UK is not involved in the authorisation or coordination of controlled delivery cases.

*Table adapted after analysis of all assessment reports of the Member States<sup>104</sup>*

In addition to the possible competencies which may be exercised by the national members, Eurojust has offered assistance in the matter of controlled deliveries in the past few years, mainly as

<sup>104</sup> Evaluation report on the sixth round of mutual evaluations: "The practical implementation and operation of the Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime and of the Council Decision 2008/976/JHA on the European Judicial Network in criminal matters".

regards clarification of the legal requirements in the field, offering recommendations to the Member States concerned, facilitating the execution on time and in an efficient manner of the requests for legal assistance.

The Eurojust Annual Report 2014 analyzes in a distinct section the controlled deliveries component, in order to identify the most effective methods of managing the challenges and good practices in the field. As shown in the contents of the report, *“solutions to address these problems included increased communication and mutual trust between the competent authorities of the Member States; harmonisation of legislation on controlled deliveries; mapping the competent authorities and clarifying the legal requirements on controlled deliveries in all Member States; gathering reflections on a unified set of requirements for controlled deliveries; increased involvement of Eurojust and Europol in cross-border operations, particularly in organising operational meetings and coordination meetings; identification of contact points for controlled deliveries in the Member States; analysis of information; and legal, tactical and technical support”*<sup>105</sup>.

In September 2014, Eurojust organised a “Strategic meeting on drug trafficking” involving prosecutors, law enforcement authorities and experts in the drug trafficking area. The participants were drawn from across the EU Member States as well as Brazil, USA and international institutions such as the Council of Europe (Pompidou Group), Europol, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and the United Nations Office on Drugs and Crime (UNODC). This strategic meeting followed Eurojust’s seminar on drug trafficking, held in Krakow in October 2011 organised together with the Polish Presidency of the EU.

At the 2014 strategic meeting, one of the key areas for discussion was controlled deliveries. A workshop entitled “Judicial aspects of controlled deliveries and the role of Eurojust and Europol”, the starting point for which was a Eurojust questionnaire on judicial aspects of controlled deliveries. This questionnaire shone light on a number of obstacles that hamper the effectiveness of this investigation technique, such as the complexity of the case; the involvement of multiple jurisdictions; a reluctance to execute requests for placing vehicle tracking devices; and cooperation with third States. Participants in this workshop considered that Eurojust and Europol could contribute added value in this area by organising operational and coordination meetings in order to ensure the effectiveness of controlled deliveries, particularly where third States were involved.

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<sup>105</sup> Eurojust Annual Report 2014, p. 50.



*“Several Member States in Central Europe were investigating an organised crime group that was supplying associates in Turkey with acetic anhydride, an essential precursor for heroin production. The investigation had established that more than 30 tons of the precursor were involved. (Approximately 400-600 kg of heroin can be produced from one ton of acetic anhydride.) The heroin produced was then distributed for sale in the European Union. Previous attempts to organise a controlled delivery of the precursor in Turkey had not been successful.*

*When the Slovak authorities received information about a new plan to ship 10 tons of acetic anhydride to Turkey and to take a return delivery of 300 kg of heroin via Italy, Bulgaria, Romania, Hungary, the Slovak Republic and Austria, they contacted Eurojust so that a cross-border controlled delivery under judicial supervision could be arranged. Eurojust involved Europol in providing intelligence cross-match analysis, with the result that links to investigations in other countries were established. In November 2011, all affected countries (including Turkey) attended a coordination meeting at Eurojust to agree a plan of action. The controlled delivery of acetic anhydride across the Member States proceeded as agreed, but once in Turkey the shipment was seized and the innocent truck driver arrested, contrary to the agreements reached at the coordination meeting. Eurojust played a crucial and active role in the release of the truck driver. Although the operation was not able to continue in Turkey, eight ringleaders were arrested in the European Union, and in total 32 tons of acetic anhydride, together with drugs, illegal weapons and false documents, were seized.”*

Some of the participants at the workshop held in Tallinn mentioned that the added value of Eurojust in the context of controlled deliveries is especially beneficial in cases involving multiple Member States, in terms of ensuring and expediting judicial cooperation between LEAs.

## **6.2. European Judicial Network in criminal matters**

The European Judicial Network (EJN) is a network of national contact points with the aim of facilitating judicial co-operation in criminal matters. The network was created by Joint Action 98/428 JHA of 29 June 1998 in order to fulfil recommendation No 21 of the Action Plan to Combat Organised Crime adopted by the Council on 28 April 1997. The EJN was the first practical structured mechanism of judicial co-operation to become truly operational.

The EJN is composed of contact points of the Member States and of the European Commission and its secretariat is based in The Hague. National contact points are appointed by each Member State from among the central authorities responsible for international judicial co-operation, judicial authorities and other competent authorities with specific duties in the field of international judicial co-operation. The contact points are drawn from all areas of serious crime, including corruption, drug trafficking and terrorism. The result is the existence of more than 300 national contact points throughout the 28 Member States.

One of the most useful EJM tools are the “*Fiches Belges*”. These comprise very practical information on the legal framework governing the rules on criminal procedure in each EU Member State. In particular, they contain information on cross-border operations including surveillance, hot pursuit, tracking (by placing a device on a vehicle or a person), controlled deliveries and joint investigation teams.

The EJM facilitates international judicial cooperation in criminal matters, particularly through direct contact between its contact points who ensure coordination from a judicial perspective in the implementation of investigation techniques, such as controlled deliveries. Therefore, when controlled delivery only requires coordination between the relevant authorities, EJM contact points become a very effective tool to ensure the exchange of information and the fulfilment of legal requirements.

### **6.3. *Europol***

The creation of Europol was established with the adoption of the Maastricht Treaty concerning EU on 7 February 1992. Initially, its actions were limited to the cooperation on combating drug-related offenses, under the aegis of the Europol Drugs Unit (EDU). Subsequently, the competence of Europol extended to other important areas of crime. At present, the activity of the Europol is regulated by Council Decision 2009/371/JHA on the setting up of the European Police Office (Europol).

Europol may grant operational support by means of operational meetings and may facilitate the coordination of operational activities. Furthermore, Europol provides analytical support and secure exchange of operational information through the SIENA system.

The operational support of Europol in the cases of drug trafficking may include the coordination and initiation of criminal investigations, but also on-the-spot assistance granted to the national LEAs in the course of dismantling the illicit drug production units and of collating evidence<sup>106</sup>.

In the category of instruments made available by Europol for the coordination of operations within the scope of drug trafficking are the joint investigation teams, the Europol Illicit Laboratory Comparison System (EILCS) and the Europol Synthetic Drug System (ESDS).

According to a recent study<sup>107</sup>, the support and assistance offered by Europol in the cases of controlled drug deliveries are the following:

- Identification and establishment of contact between the national police and customs authorities,

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<sup>106</sup> Europol Review. General Report on Europol activities, European Police Office, 2011, p. 30.

<sup>107</sup> Issue in focus number 1 “Cross-border controlled deliveries from a judicial perspective”, Eurojust, 2015, p. 11.

- Support for the exchange of information, processing and analysis of the information obtained during the deployment of controlled delivery,
- Support for the operative part of the controlled delivery and coordination of joint police actions,
- Support in real time, especially in situations of unexpected change of the transport route, when it is urgently necessary to involve another State in the operation,
- Coordination of the controlled deliveries via the liaison officers.

Furthermore, according to the practitioners in the Member States of the HONLEA, in recent years, the Europol Manual concerning controlled deliveries has constituted an useful and practical tool relating to legislation and national contact points which can facilitate these operations.

*The assistance of Europol in a case of controlled delivery*  
Source: Europol Review. General Report on Europol activities,  
European Police Office, 2011, p. 32.

*“On 22 September 2010, an air freight cargo consignment containing 217.3 kilos of coffee powder arrived in Estonia from Venezuela via Germany. German Customs had already found that the consignment tested positive for cocaine and in cooperation with the investigation department of the Estonian Tax and Customs Board, a controlled delivery was organised.*

*Europol promptly provided two very comprehensive reports on cocaine conversion laboratories, cocaine extraction and conversion procedures, chemicals and equipment used, and details on the risks involved during the cocaine extraction and conversion process. In addition to daily contact, additional information was also provided on laboratories discovered in other EU countries where similar consignments had been processed.*

*Based on these reports and associated advice, and during subsequent house searches, investigators found and identified a list of chemicals used for the conversion and purification of cocaine.*

*In total, 48 kilos of cocaine were seized, while two Estonian citizens and two others are suspected of drug-related crimes. Three further suspects have been in custody at the prosecutor’s request.”*

#### **6.4. SELEC**

SELEC aims to support the activities of its Member States in preventing and combating organised crime in the region. With effect from 7 October 2011, along with the signing of the SELEC Convention, SECI Centre was transformed into the new SELEC.

SELEC is an international organization which brings together representatives of the police and customs authorities of 12 States, both EU Member States (Bulgaria, Croatia, Greece, Hungary, Romania), as well as non-EU countries (Albania, Bosnia and Herzegovina, FYROM, Moldova, Montenegro, Serbia, Turkey).

Among the multiple facilities of cooperation offered to the 12 Member States, the most efficient have proved to be the network of liaison officers and the joint working groups (task-force) with operative character, meant to annihilate the main networks of cross-border crime.

In the last few years, SELEC has supported several operations of controlled drug deliveries between Member States. Also, in addition to the operational support offered to the national authorities in the Member States, SELEC has drafted a manual on controlled deliveries carried out by Member States. The manual has a practical and applicative nature and is designed to facilitate the work of law enforcement personnel in the Member States.

### **6.5. *Networks of practitioners***

Due to the transnational nature of organised crime, the development of international cooperation and mechanisms to exchange experiences in the investigation and prosecution of serious offences linked to organised crime at the regional level is essential. There is a pressing need for a joined-up and effective approach towards tackling the criminal groups scattered around South America and extending beyond that region.

The importance of regional networks is supported by the Resolutions of the Commission on Crime Prevention and Criminal Justice (CCPCJ) and of the Conference of the Parties to the Organised Crime Convention in 2010 and 2012.<sup>108</sup> These resolutions have called for UNODC, in cooperation with member States, to promote the development of regional networks and other mechanisms to facilitate formal and informal cooperation, such as regional and interregional meetings and exchanges of experience among practitioners, and to facilitate cooperation among all such networks.

At present, there are different platforms of practitioners to promote the exchange of information and to build trust, key elements in the area of controlled deliveries in particular with third countries.

These platforms include:

- Network of specialised prosecutors against organised crime in the Balkans.
- Iberoamerican Network of Antidrug Prosecutors, focused on the fight against drug trafficking. This network, with contact points in 17 different countries (including Spain and Portugal) specifically promotes the exchange of information on drug trafficking cases using containers through a standard common form.

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<sup>108</sup> See Resolution 19/7 of the Commission on Crime Prevention and Criminal Justice and Resolutions 5/8 and 6/1 of the COP.

## CHAPTER IV: CONCLUSIONS AND RECOMMENDATIONS

As set out in the ToR of the project, *“the project’s objective is to stimulate EU LEAs to target drug trafficking and to enhance their cooperation by creating a list of national contact points in the case of controlled deliveries (...) The main project goal is thus to facilitate the communication between the LEAs of the EU MS by creating a list of contact points responsible for the authorization of the controlled deliveries as well as common rules for transmission /execution of such requests”*.

Consequently, the project identifies a twofold objective:

- To create a list of contact points to ensure and facilitate communication between LEAs in the effective implementation of CDs; and
- To identify common rules for the transmission /execution of CDs requests.

One of the findings of this manual is that the controlled delivery of drugs is one of the main and most effective tools in respect of investigating criminal activities with international component.

An essential element concerning the success of controlled delivery operations is the cooperation and coordination among LEAs of the Member States. In the last few years, based on the experience acquired at European level, there have been developed contacts at formal level, but also at informal level among the LEAs. Cooperation at the formal level is achieved by means of the instruments made available by Eurojust, Europol, EJM, Interpol, SELEC, and also via the liaison officers. Cooperation at informal level is based especially on the exchange of information among law enforcement agencies personnel. One of the participants in the first workshop observed that, in controlled deliveries, mutual trust between LEAs from different States is a very important factor in reaching successful results. According to another participant, *“the more countries are involved in the CD, the more difficult it is to be successful”*. The same aspect of mutual trust was stressed in the second workshop of the project. According to a participant, *“we have to exchange confidential data between us. We have to trust each other in the cooperation process and exchanging of sensitive data as regards the suspects name, the undercover identity, the drugs routes, etc.”*.

The rapidity in conducting criminal activities from the scope of drug trafficking involves an extremely operative reaction from the LEAs personnel. Often, the decision to confiscate a transport of drugs or to carry out a controlled delivery thereof, must be taken very quickly, while formal and bureaucratic understandings and agreements could lead to failure of the operation. This issue affects the responsiveness of LEAs. In order to streamline operations and to initiate and implement expeditiously controlled deliveries, it is necessary to identify best practices and recommendations.

**Practitioners who participated in the workshop held in Tallinn identified the following recommendations:**

- To ensure permanent coordination between competent authorities;
- To raise awareness between practitioners by promoting specialised training on CDs with a view to eliminating concerns over losing the drugs and to disseminate information on EU legal instruments;
- To identify (good/reliable) contact points;
- To have a central authority that could authorise the CDs (according to one participant, *“a single point of contact is not enough, because the reaction time of the authority is also very important. It is practically impossible to have a successful CD if you need authorisation from several regional prosecutors’ offices”*);
- To strengthen coordination with third (non EU) countries;
- To emphasise the importance of jointly planning the CDs to secure their effectiveness.

In addition to the above recommendations, **the participants in the second workshop identified the following proposals:**

- To ensure the rapid exchange of data between LEAs, followed by a speedy criminal investigation;
- To draft a practical guide/best practices manual to implement CDs;
- To organise joint meetings of practitioners involved in CDs (prosecutors, police, customs, border police, etc.);
- To harmonise national legal frameworks; and
- To implement a common procedure at practical level and establish national contact points.

**At the last Regional Meeting held in Druskininkai, the participants underlined the following proposals and recommendations:**

- To use all available investigative tools (wire-tapping, GPS, Internet research, correspondence checks, informants, etc.);
- To plan all stages of CDs meticulously;
- To maintain permanent contact with the respective counterparts involved in CD operation. As one practitioner mentioned, *“for successful CDs it is important to have a direct contact points in other countries”*; and
- To harmonise national legal frameworks and procedures.

Conclusions and recommendations will be presented by distinguishing between those related to the achievement of the project's goals and those that will support the effectiveness of CDs at EU level. Based on this analysis and on discussions with practitioners during the workshops, the following recommendations can be identified:

## **1. Recommendations in order to achieve the project's goals**

### **1.1. *Contact points***

First of all, two key issues must be clarified: (1) what type of contact point are we looking for? (2) which is preferable: the establishment of a list of contact points or the establishment of a network of experts in CDs in every MS?

As regards the **type of contact point** we are looking for to ensure and facilitate communication between LEAs in the effective implementation of CDs, discussions with practitioners showed that there are two main options.

- contact points as the competent authorities to effectively authorise the implementation of the CD when a foreign request is received; or
- contact points as the “channel” through which requests are received and forwarded to the competent authority in the country, ensuring close follow up of their implementation and providing technical advice on any legal or practical issues that might arise at transnational level.

**In the light of the discussions held during the workshops with practitioners and the research conducted in this manual, the second option is preferable (contact points as the channel through which requests are received and forwarded to the competent authorities).** The reasons behind this recommendation are that, in many countries, the authority with competence to authorise a CD cannot known in advance, as there is no single competent authority and, in the end, the competent authority depends on the territory through which the CD passes or is destined.

As regards the question whether preference should be given to the **establishment of a list of contact points or the establishment of a flexible and informal network of experts in CDs in every MS, discussions with practitioners lead us to recommend the second option.**

These experts would act as a central contact point (in countries where no such contact points exist) for controlled deliveries and would ensure the smooth exchange of information as well as the effectiveness of this special investigation technique. One other advantage of a network like this would

be that it could communicate with other platforms existing in non-EU countries where the CD involves a third country. The network, through its contact points, would be well-placed to

- Identify best practices and provide technical advice at national and transnational level where required.
- Ensure sustainable assessment of the manual in terms of its implementation and updating, amending it where necessary in the light of changes in national legislation or international instruments with an impact on the implementation of CDs.
- Build a database of CD cases in order to obtain an accurate view of the importance of this investigation technique.

### ***1.2. Identification of common rules for the transmission / execution of CD requests.***

Discussions with practitioners demonstrated the added value of a common standard form for the transmission of information.

Before deciding whether it is appropriate or expedient to propose a legislative initiative requiring amendments to national legislation, a common language must be established between practitioners involved in controlled deliveries. One such possibility involves the establishment of a standard form translated into all EU languages (such as that used in the context of EAWs) for the transmission of the necessary information on controlled deliveries between the law enforcement / judicial authorities of the EU Member States.

This form could contain practical information on the relevant authorities (e.g. contact details) as well as standard fields on, for instance, the route, identification of the consignment, suspects, intended destinations and the use of undercover agents. The standard form could be accompanied by guidelines or a protocol on how to make best use of it.

A draft standard form (Annex II) was discussed with practitioners attending the three workshops. It is important to underline that the objective of this standard form is not to replace mutual legal assistance requests to implement CDs at international level but to exchange information in an informal and rapid manner to start the planning of this investigation technique. In addition, some of the participants mentioned that this standard form could be very useful at the beginning of the investigations or in urgent cases.

## **2. Complementary actions to ensure the effectiveness of CDs**

### ***2.1. Statistical database on controlled deliveries.***

In order to ascertain the magnitude of any problems linked to controlled deliveries which hamper the investigation of drug trafficking at EU level, it is necessary to gather and subsequently



analyse statistics on the number of transnational EU controlled deliveries which take place in the EU over a given period of time. The existence of a network of experts in controlled deliveries would facilitate the collection of statistics for this purpose.

## **2.2. *Awareness raising***

In other words, raising awareness of the practical and legal requirements for implementing CDs at international level among EU practitioners by carrying out a programme of specialised training at EU level. This training will build mutual trust between practitioners and will disseminate the outcomes of the manual, including the identification of contact points for the effective implementation of CDs.

This training could be developed in the form of different workshops in Member States in order to disseminate the manual, improve cooperation between practitioners as well as familiarity with this special investigation technique.

## ANNEX I: LIST OF NATIONAL CONTACT POINTS IN THE FIELD OF CDs

**NOTE - the information below is compiled from different sources:**

- Directory of Competent National Authorities under the UN Convention against Transnational Organised Crime and the Protocols Thereto and Articles 6,7 and 17 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;
- European Union manual on controlled deliveries, The Hague, Europol, 2004;
- Eurojust Issue in Focus No 1 “Cross-border controlled deliveries from a judicial perspective”, 2015, pp. 13-25;
- Handbook for the Naples II Convention on mutual assistance and cooperation between customs administrations - Part II: National fact sheets, Council of the European Union, Brussels, 5 October 2015;
- Manual on cross-border operations – national fact sheets, General Secretariat, Council of the EU, Brussels, 26 October 2012;
- [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_FichesBelges.aspx](https://www.ejn-crimjust.europa.eu/ejn/EJN_FichesBelges.aspx;);
- [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/182/declarations?p\\_auth=bilU27aN](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/182/declarations?p_auth=bilU27aN).

**Please take note that in urgent cases Eurojust, the Single Point of Contact (SPOC) within the MS’ law enforcement authorities and the different national offices (the Europol National Unit, the Interpol National Central Bureau, the SIRENE Bureau, the national liaison officers posted abroad, etc.) are always appropriate cooperation channels.**

Member State	National Contact Points	
	Central Contact Point responsible for authorising CDs	Contact Points responsible for exchanging information/sending request for MLA in CDs
Austria	CDs must be authorised by the Public Prosecutor's Office with competence in the district in whose jurisdiction the border is expected to be crossed, or the district from whose jurisdiction the CD route is to start. If these places could not be established, the Prosecutor from Vienna has competence.	<p>Public Prosecutor’s Office in Vienna Landesgerichtsstraße 11 Postfach 400 A-1082 Vienna Phone: +43 (1) 40127 Fax: +43 (1) 4027911</p> <p>Federal Ministry of the Interior General Directorate for Public Security Criminal Intelligence Service Josef Holaubek-Platz 1 1090 Vienna Phone: +43 1 24836 85025, +43 1 24836 85026, +43 1 24836 85027 Fax: +43 1 24836 85190, +43 1 24836 85191 E-mail: BMI-II-BK-SPOC@bmi.gv.at</p>
Belgium	The public prosecutor of the place from where the consignment originates and the public prosecutor of the planned place of intervention are responsible for authorising CDs.	<p>Federal Judicial Police – DGJ/DJO/Perm Rue Fritz Toussaint 8 B-1050 Ixelles Phone: +32 2 642 78 09 - +32 2 642 78 10 - +32 2 642 78 11 Fax: +32 2 642 69 53 E-mail: dgj.djo.perm@pcnip.be</p>
Bulgaria	In criminal proceedings: the competent court.	<p>The Supreme Cassation Prosecutor's Office Palace of Justice, 2 Vitosha Blvd. 1061 Sofia Phone: +359 2 9370 337 Fax: +359 2 988 5895 E-mail: mpp_vkp@prb.bg</p>

	In the context of international police co-operation: the Supreme Cassation Prosecutor's Office.	Chief Directorate for Countering Organised Crime Phone: +359 982 85 93 E-mail: 170@mvr.bg
Croatia	CD and transportation are authorised by a decision of a competent court.	Criminal Police Directorate, Drug Division Phone: +385 1 3788 188 Fax: +385 1 3788 979 E-mail: droga@mup.hr, interpol@mup.hr
Cyprus	Decisions on CDs are taken on a case by-case basis by the Chief of Police or his representative, with notification of his decision to the Director of the Department of Customs; by the Director of the Department of Customs, with notification of his decision to the Chief of the Police; or by both officials acting jointly. The Attorney-General of Cyprus must be informed of every decision on CDs and he may give such directions as he deems necessary or appropriate.	Drug Law Enforcement Unit International Cooperation and European Union Office Cyprus Police Headquarters, 1478 Nicosia Phone: +357 22 607378 (office hours 07.15 – 14.30 Monday - Friday); +357 22 607361 (24 hours/7days) Fax: +357 22 607377 /22 607368 E-mail.: dleu@police.gov.cy dleuico@police.gov.cy
Czech Republic	Regional Prosecutor's Office in Prague Husova 11 110 01 Praha 1 Phone: +420/222 111 700 Fax: +420/222 220 075 E-mail: podatelna@ksz.pha.justice.cz	Regional Prosecutor's Office in Prague Husova 11 110 01 Praha 1 Phone: +420/222 111 700 Fax: +420/222 220 075 E-mail: podatelna@ksz.pha.justice.cz
		Police Presidium of the Czech Republic Bureau of Criminal Police and Investigation Service Europol National Unit P.O.BOX 62/MPS 170 89 Prague 7 Phone: +420 974 834 210 (24/7) Fax: +420 974 834 716 (24/7) E-mail: europol@mvr.cz (working hours)
		General Directorate of Customs Section of Investigation and Supervision (based on Naples II Convention) Budějovická 7 140 96 Prague Phone: +420 261 333 333, +420 261 333 853, +420 261 333 854 Fax: +420 261 333 800 E-mail: operacni@cs.mfcr.cz
Denmark	Authorisation must be obtained from the regional chief constable whose jurisdiction is expected to be involved in the case.	Danish National Police National Centre of Investigation Anker Heegaards Gade 5 DK-1577 Copenhagen V Phone: +45 4515 4200 Fax: +45 3332 2771 E-mail: interpol@interpol.dk
Estonia	Office of the Prosecutor General (Riigiprokuratuur) Wismari 7, 15188 Tallinn E-mail: <a href="mailto:piret.paukstys@prokuratuur.ee">piret.paukstys@prokuratuur.ee</a>	The Tax and Customs Board (based on Naples II Convention) Narva mnt 9j, 15176 Tallinn Phone: +372 613 9440 +372 676 2998

	<a href="mailto:info@prokuratuur.ee">info@prokuratuur.ee</a>	Fax: +372 676 2833 E-mail: neeme.rohtjarv@emta.ee
Finland	The chief of the National Bureau of Investigation, the chief of the Security Intelligence Service, police chiefs, and officers specially trained in covert collection of intelligence have the power to take decisions on controlled deliveries conducted by the police.	National Bureau of Investigation, Sirene Box 285, 01301 Vantaa Phone: +358 71 878 6910 Fax: +358 71 878 6911 E-mail: sirene.krp@poliisi.fi
France	There is no single judicial authority in France with nationwide jurisdiction in this area.	Direction Centrale de la Police judiciaire 101 rue des Trois Fontanot 92000 Nanterre Phone: +33 1 409788-00 Fax: +33 1 409788-11
Germany	Police and the public prosecutor office in whose district the transport will be carried out.	Bundeskriminalamt [Federal Criminal Police Office] (Interpol NCB) 65173 Wiesbaden Phone: +49 611.55-13101 (24h), Fax: +49 611.55-12141 (24h), E-mail: mail@bka.bund.de
Greece	General Prosecutor of the Prosecutor's Office under the Court of Appeal in Athens	The Central Anti-Drug Coordinative Unit (SODN) Phone: +30 2106977113 Fax: +30 2106917910 E-mail: sodn.emp@minocp.gov.gr minocp.gov.gr sodn.emp@.gov.gr
Hungary	The general rule is that each CD has to be authorized by a prosecutor.	Centre for International Cooperation in Criminal Matters (NEBEK) 1903 Budapest, Pf.: 314/22. Phone: +36-1 443-838 (non-stop) Fax: +36-1 443-5815 E-mail: intercom@nebek.police.hu
Ireland	The authorities competent to authorise or coordinate CDs are An Garda Síochána and the Office of Revenue Commissioners (for offences that fall under their jurisdiction).	Central Authority for Mutual Assistance Mutual Assistance & Extradition Division Department of Justice and Equality 51 St. Stephen's Green Dublin 2 Phone: +353 87 254-5235 (24 hours) Fax: +353 1 476-8665 E-mail: mutual@justice.ie
Italy	Ministry of Justice/Interior, the Direzione Centrale per i Servizi Antidroga D.C.S.A. [Central Directorate for Drug Enforcement Services III Unit "Operazione Antidroga"] direzione.antidroga@interno.it Phone: +390646523000 Procura Nazionale Antimafia e Antiterrorismo]	
Latvia	In ordinary cases, using the CD is approved by the investigating magistrate. In urgent cases, use of the CD may be approved by the designated prosecutor, with the subsequent approval of the investigating magistrate.	International Cooperation Bureau of the Central Criminal Police Department of the State Police Ciekurkalna 1.linija 1 K-4, Riga Phone: +371 67829535; +371 67829407 Fax: +371 67829532 E-mail: ssp@vp.gov.lv
		Customs Police Department State Revenue Service

		(based on Naples II Convention) Talejas str.1, Riga, LV-1978 Phone: +371 67120687 Fax: +371 67120780 E-mail: ncp@vid.gov.lv
		Prosecutor - General Office Kalpaka Boulevard 6 Riga, LV-1801 Phone: +371 6 704 4400 Fax: +371 6 704 4449 E-mail: gen@lrp.gov.lv
Lithuania	Prosecutor's General Office of the Republic of Lithuania Rinktinės str. 5A, LT-01515, Vilnius Phone: + 370 5 266 2305 Fax: + 370 5 266 2317 E-mail: generaline.prokuratura@prokuraturos.lt	Organised Crime Investigation 3rd Board Lithuanian Criminal Police Bureau Saltoniskiu str. 19 LT-08105, Vilnius Phone: +370 5 271 9905, +370 5 271 9912 Fax: +370 5 271 7917 E-mail: drugs@policija.lt
Luxembourg	CDs are authorised and coordinated in accordance with the progress of the proceedings (investigation) by the General Prosecutor, Prosecutor or the investigating magistrate.	The Chief Public Prosecutor, Cité judiciaire, Bâtiment CR, L-2080 Luxembourg
		Police Grand-Ducale Direction Service de Police Judiciaire 2957 Luxembourg Phone: +352 4997 6000 Fax: +352 4997 6099
Malta	Attorney General's Office Triq ir-Repubblika, Valletta, VLT 2000 Phone: +356 2122 5841 Fax: +356 2124 0738 E-mail: ag@gov.mt	Attorney General's Office Triq ir-Repubblika, Valletta, VLT 2000 Phone: +356 2122 5841 Fax: +356 2124 0738 E-mail: ag@gov.mt
		International Relations Unit within the Malta Police Force Police Headquarters Floriana, Malta Phone: +356 2122 4001 Fax: +356 2122 3376 E-mail: sirene.police@gov.mt
Netherlands	The designated public prosecutor of the National Public Prosecutor's Office gives permission or refuses.	Landelijke Coördinatie Grensoverschrijdende Observatie, National State Prosecutor via the National Agency for Cross-border Observation
Poland	The Chief Police Commander (Komendant Główny Policji) ul. Puławska 148/150, 02-624 Warszawa NIP: 521-31-72-762 Phone: (22) 60 148 79 Fax: (22) 60 129 21 E-mail: kancelaria.gabinetkgp@policja.gov.pl	The Chief Police Commander (Komendant Główny Policji) ul. Puławska 148/150, 02-624 Warszawa NIP: 521-31-72-762 Phone: (22) 60 148 79 Fax: (22) 60 129 21 E-mail: kancelaria.gabinetkgp@policja.gov.pl
Portugal	The first section of the Prosecution Office in Lisbon	Polícia Judiciária through the Interpol national central bureau Mobile Phone: +351 966020055/ +351 962500577 Fax: +351 213304254

Romania	<p>Directorate for Investigating Organised Crime and Terrorism (DIICOT) Central Structure 24 Grivitei Avenue, district 1, Bucharest Phone: +40 (0) 21.319.38.67 Fax: +40 (0) 21.319.38.58 E-mail: diicot@mpublic.ro</p>	<p>Directorate for Investigating Organised Crime and Terrorism (DIICOT) Office for Cooperation, Representation and International Legal Assistance Phone: +40 21 4123132, +40 21 4123133, +40 21 4123207, +40 21 4123208, +40 21 4123271 Fax: +40 21 3193905, +40 21 3193920 E-mail: diicot_cooperation@mpublic.ro</p>
Slovakia	<p>CDs may be authorised by the president of the court or by the prosecutor (in this case, only before beginning the prosecution and in the early stages of the investigation).</p>	<p>The requests for CDs shall be addressed directly to the district Prosecutor's Office for the district where the requested assistance shall be carried out and a copy thereof shall be sent to the General Prosecutor's Office.</p>
		<p>Presidium of the Police Force Bureau for International Police Co-operation SPOC (Single Point of Contact) Pribinova 2 812 72 Bratislava Phone: +421 9610 564 50 Fax: +421 9610 564 59 E-mail: spocumps@minv.sk</p>
Slovenia	<p>CDs shall be authorised by the State district prosecutor of the region where the delivery shall be executed or of the region where the delivery shall be initiated, or by a prosecutor within the specialised State Prosecutor's Office.</p>	<p>International Police Cooperation Division of the Criminal Police Directorate (within the General Police Directorate) Štefanova 2, 1501 Ljubljana Phone: +386 1 4284 835, +386 41713699 Fax: +386 1 2517 516, +386 1 4284 790 E-mail: interpol.ljubljana@policija.si sirene.slovenija@policija.si (24/7)</p>
Spain	<p>In practice, the Special Antidrug Prosecution Office, which has jurisdiction over the whole of Spain, works as a central contact point to implement mutual legal assistance requests in connection with this special investigation technique.</p>	<p>Unidad Central de Estupefacientes (Central Narcotics Unit). Departamento de Aduanas e Impuestos Especiales (Special Customs and Excise Department) of the Servicio de Vigilancia Aduanera (Customs surveillance service).  Special Antidrug Prosecution Office Fiscalia Especial Antidroga calle Garcia Gutierrez, Audiencia Nacional 28004 Madrid Fiscalia.antidroga.sjf@fiscal.es Phone: (34) 91 709 6704</p>
Sweden	<p>Applications for CDs are decided jointly by police, customs and prosecutors. If any one of these is not in favour then the CD is not carried out.</p>	<p>NBI, IPO (National Bureau of Investigation, International Police Cooperation Division) POB 122 56 10226 Stockholm Phone: + 46 10 56 37 000 Fax: + 46 10 56 41 239 E-mail: ipo@rkp.police.se</p>
		<p>Swedish Customs Intelligence and Communication centre (based on Naples II Convention) PO Box 12854 SE-112 98 Stockholm Phone: +46-8-4050570 Fax: +46-8-6540611</p>

		E-mail: <a href="mailto:ncp@customs.se">ncp@customs.se</a>
UK	All cases that involve the CD of prohibited or restricted goods (including all drugs and firearms) either into or out of the United Kingdom must have prior approval from the UKBA Enforcement and Crime Directorate, specifically Criminal and Financial Investigations - Borders (CFI).	National Crime Agency (NCA) International Criminal Bureau (ICB) and the NCA Border Policing Command Phone: +44 370 496 7622 (24 hours) E-mail: <a href="mailto:communications@nca.x.gsi.gov.uk">communications@nca.x.gsi.gov.uk</a>
		For Scotland: Head of Intelligence, Scottish Crime and Drug Enforcement Agency (SCDEA) Phone: +44 141 302 1000 (Office hours) or via Strathclyde Police Force Overview +44 141 800 4880 (Out of hours SCDEA Senior Duty Officer Contact)

## ANNEX II: DRAFT STANDARD FORM FOR CD PURPOSES

Authorities	
Requesting authority	Requested authority
Information about date and route	
Date of the CD Day / Month / Year	Tentative route and destination
Place of origin / transit / destination	
Type of transport	
Identification of the type of vehicle / flight / vessel	
Identification of the person /company that carry out the package	Destination: Identification of the person /company
Type of goods / Replacement of drugs	
Type of illegal substance	Weight
Request for use of SITs	
The surveillance measures Interception of telecommunications GPS Undercover agents	



## ANNEX III: SCENARIOS (HYPOTHETICAL CASES) PRESENTED AT THE WORKSHOPS

### Scenario no. 1

Filippo is a well known drug trafficker under investigation in your country. Your informants reported that he is trying to find a driver to send 50 kgs of heroine to Spain.

After your investigation, police officers in your country carry out surveillance of a meeting between Filippo and other suspects in a restaurant.

Through surveillance/video recording and exchange of information with the Spanish Police, one of the suspects is identified.

He is Dante/Brazil with criminal records in different countries, based in Marbella (Spain).

It seems that Dante has made a first payment/40% as a guarantee and the second payment will be made when he receives the drug in Spain.

After several meetings, an undercover police officer is recruited by Filippo to drive the lorry with the heroine. Filippo doesn't trust him much, so he says that is important that one of his men will go in the lorry to protect the drug.

Filippo gives the undercover agent some information about the route and the date, but he is very cautious and changes the plan at the last minute: they will travel next Sunday and will cross two European countries before arriving in Spain.

#### Questions

1. *Would you implement a controlled delivery ?*
  - a) *Objectives,*
  - b) *How do you plan it ?*
2. *Identify the main problems:*
  - a) *Legal,*
  - b) *Practical.*
3. *How/to whom would you send the request for a controlled delivery ?*
4. *How would you ensure surveillance ?*
5. *Would you replace the substance ?*

### Scenario no. 2

The customs officers of State A find 2 kg of cocaine in a luggage of a passenger who travels by plane to the State C, with stopover at an airport in State B. The cocaine is concealed among the passenger's belongings in checked baggage.

The participants will be divided in three working groups, representing States A, B and C.

#### 1. Questions for group A (State of origin):

- a) *What are the investigative options ?*
- b) *Which State are you going to contact for initiating a CD in this case ?*
- c) *How will you identify the authorities from those States ?*
- d) *What are you going to do with the luggage containing drugs ?*
- e) *What are you going to do with the passenger (courier) ?*

**2. Questions for group B (transit State):**

- a) *In case of receiving of a request from the State A for CD, what kind of information are you going to request ?*
- b) *What is the channel used for receiving of the information ?*
- c) *Will you initiate a criminal file in this case ?*

**3. Questions for group C (State of destination):**

- a) *In this case, will you be interested to put in place a CD ? What kind of CD will be put in place in this case (with/without the substitution of drugs, with/without the courier's cooperation) ?*
- b) *Are there any problems and obstacles as regards the CD ?*
- c) *Which authorities must send the MLA request in this case ?*
- d) *What kind of data are you going to exchange with the other States ?*
- e) *Is it possible to have a CD without the transit State ?*

**4. Common questions**

- a) *Which State authorities will conduct the criminal procedure as regards the courier and the final recipient of the drugs ?*
- b) *Please mention the role of police, customs officers and judicial bodies in each State.*

<b>Scenario no. 3</b>
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a) The customs officials of State B detect a vehicle in which are concealed 5 kg of heroin. The driver is taken to the police station. The police officers draft an initial report and inform the prosecutor who decide to hearing the suspect.

**Common question**

*What are the questions that will be addressed during interrogation of the driver ?*

b) After the preliminary hearing, the driver recognises the crime and agrees to cooperate with the investigators from the State B in order to identify the other members of the organised criminal group. During the interrogation of the suspect, it has resulted that he was paid by drug traffickers in State C to transport drugs from State A by transiting the State B.

The prosecutor from the State B decides to extend the investigation and contact the authorities of the State C.

**Questions for group 1 (State B)**

*How will you identify the authorities from State C ?*

*What is the channel used for exchanging the information ?*

*What are you going to do with the drugs ?*

*What other kind of special investigative techniques could you use in the CD ?*

*Will you initiate a criminal file in this case ?*

*Is it still necessary to contact the authorities of the A ? Why?*

**Questions for group 2 (State C)**

*In this case, will you be interested to put in place a CD ? What kind of CD will be put in place in this case (with/without the substitution of drugs) ?*

*Are there any problems and obstacles as regards the CD ?*

*What kind of data are you going to request to the State B for sending the MLA request ?*

*Is it still necessary to contact the authorities of the A ? Why?*

*What other kind of special investigative techniques could you use in the CD ?*

*Please, mention the role of law enforcement agencies in this case.*

*Which are the steps to be taken by the law enforcement after the driver will meet the recipient of drugs ?*

**Common question**

*Which State authorities will conduct the criminal procedure as regards the driver and the final recipient of the drugs ?*

## **ANNEX IV: BIBLIOGRAPHY**

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