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# OUTCOME REPORT OF THE EUROJUST STRATEGIC SEMINAR ON DRUG TRAFFICKING

*Krakow, Poland, 5 – 6 October 2011*

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## **1. Introduction and background to the strategic seminar**

The strategic seminar on drug trafficking, jointly organised by Eurojust with the Polish Presidency of the European Union, took place on 5 – 6 October 2011 in Krakow, Poland, at the School of Magistrates. The seminar was organised in the framework of the strategic project on “Enhancing the work of Eurojust in drug trafficking cases” (hereinafter “the Eurojust project”) initiated in February 2011 by Eurojust’s Trafficking and Related Crimes Team. The goal of the seminar was to identify possible solutions for increasing the effectiveness of judicial cooperation, with support from Eurojust, in the fight against illicit trafficking of drugs. The seminar combined practical presentations with in-depth discussions in five workshops. A total of 103 participants attended the strategic seminar, including experts on drug trafficking from the national authorities of the Member States and of third States, as well as representatives from the Council of the European Union, the European Commission, Eurojust, Europol and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).

## **2. Opening session and welcoming speeches**

Opening remarks were given by *Ms Marzena Kowalska, Deputy Prosecutor General, Poland; Mr Grzegorz Walejko, Under-Secretary of State, Polish Ministry of Justice; Ms Michèle Coninx, Vice-President, Eurojust and National Member for Belgium; Mr Ola Laurell, National Member for Sweden, Eurojust; and Mr Mariusz Skowroński, National Member for Poland, Eurojust.* All speakers highlighted that drug trafficking is a serious crime that continues to be a major concern for the safety and well-being of EU citizens. Indeed, out of the eight EU priorities in the fight against organised crime between 2011 and 2013, three concern drug trafficking. The number of drug trafficking cases is gradually increasing every year both in the Member States and in the caseload at Eurojust. Judicial cooperation in the fight against drug trafficking is essential and must involve all national authorities from the Member States.



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### **3. Plenary session**

#### **EU priorities and strategy in the fight against drug trafficking**

*Ms Daniela Spinant, Head of Anti-Drugs Unit, European Commission*, reported that the scale of the problem is very large and action is needed against drug trafficking at EU level, first through stronger legislation. The Commission is planning to present in autumn 2012 a legislative proposal on minimum rules on offences and sanctions related to drug trafficking. The Commission will also present legislative proposals to enable the European Union to more effectively tackle new psychoactive substances, and strengthen the EU rules on control of production and trade in drug precursors and the legislation on confiscation and asset recovery. As highlighted during the presentation, the fight against drug trafficking relies very much on effective operational cooperation between law enforcement agencies and judicial authorities, with support from Eurojust and Europol. To link the structures targeting drug trafficking and enable them to develop synergies, the European Union adopted the “European pact to combat international drug trafficking – disrupting cocaine and heroin routes”. Before the end of 2011, a “European Pact on synthetic drugs” was set to be adopted.

#### **Parallel investigations: cooperation between Poland and other countries**

Based on the experience of Polish authorities, *Mr Waldemar Kawalec, Senior Public Prosecutor, Poland*, showed how parallel investigations can be considered effective tools for cooperation in drug trafficking cases. Cooperation in parallel investigations begins when information is transmitted between the concerned countries via police channels, often with the participation of liaison officers. Experience has shown that the exchange of information via this route is faster, does not require translation and does not need to comply with the usual required formalities. Nevertheless, Mr Kawalec stressed that Poland has encountered several problems in conducting parallel investigations. These problems were discussed in more detail by the participants in workshop one of the seminar.

#### **Differences in the legislation of the Member States and their impact on the fight against drug trafficking**

*Mr Brendan Hughes, Senior Scientific Analyst, EMCDDA*, explained how differences in national drug legislation can create many difficulties in judicial cooperation. Indeed, legislation shows a lack of harmonised approach to the meaning of a “controlled drug” and penalties vary considerably from one country to another. Furthermore, the abstract penalties foreseen in drug-related legislation are not effective as long as their implementation in the sentencing process is not effective. The continuous amending of national laws related to controlled drugs is also an issue for a harmonised EU drug control policy. When one Member State decides to introduce stricter rules on a new drug without coordination with other



Member States, trafficking will probably move to those Member States where the laws are more permissive. Nonetheless, objective evaluation of the impact of Member States' legislation on the fight against drug trafficking is difficult to evaluate. A number of indirect indicators are currently used (e.g. seizures, arrests, etc), but data are partial and not consistently available.

### **Problems identified in cooperation with third States in drug trafficking cases**

*Mr Ignacio De Lucas Martín, Red de Fiscales contra el Crimen Organizado (REFCO)* highlighted some of the problems encountered in judicial cooperation with drug production and transit countries. Indeed, many Latin American and Caribbean (LAC) countries appear to be unstable, with weak institutions and dysfunctional judicial systems. Public prosecution offices are poorly structured, hampering judicial cooperation at national level and international mutual legal assistance. Furthermore, reductions in illegal drug activity in one country often lead to increases in another country (the so-called "balloon effect"). Mr De Lucas Martín stressed the need to support the reinforcement of national structures to prosecute organised crime. REFCO, a recently established network of prosecutors specialised in organised crime, active mainly in Central America, could be used by the European Union as a privileged partner in cooperation in drug trafficking cases with LAC countries.

### **Preliminary results of the Eurojust strategic Project on drug trafficking**

*Mr Benedikt Welfens, Deputy National Member for Germany, Eurojust,* presented the Eurojust project, which has analysed and evaluated data and outcomes of all coordination meetings on drug trafficking cases held by Eurojust between 1 September 2008 and 31 August 2010 with a view to identifying the main challenges that arose and the solutions found. Mr Welfens reported that the obstacles identified by the Eurojust project include, amongst others: different procedural stages in linked investigations; difficulties in instigating investigations in other countries; reluctance to exchange information spontaneously; execution of simultaneous EAWs and other investigative activities; difficulties in setting up and coordinating JITs; difficulties in reaching agreements to concentrate criminal proceedings; and delays in the execution of MLA requests. All these obstacles will be addressed in an action plan, with measures to be adopted at Eurojust. The conclusions of the seminar will be taken into consideration when drafting the action plan.

## **4. Outcome of workshops**

### **WORKSHOP 1: PARALLEL INVESTIGATIONS AND THE ROLE OF COORDINATION**

*Chair: Mr Waldemar Kawalec, Senior Public Prosecutor, Poland*



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*The goal of the workshop was to examine whether parallel investigations and JITs provide effective cooperation tools in investigating serious cross-border drug trafficking cases.*

Both tools, JITs and parallel investigations, have proven to be beneficial. The choice will depend on the needs of the investigation. “Parallel” investigations are particularly used in drug trafficking cases to ensure detection and disruption of the entire criminal organisation by prosecuting all phases of drug trade (production, processing, transport and distribution of drugs) and ensuring that money launderers are indicted and their criminal assets are seized.

Parallel investigations provide a fast and direct exchange of information through all available channels. Furthermore, the informal exchange of information at operational level is followed by the sending of requests for legal assistance to ensure that the evidence collected is admissible in court. Nonetheless, several problems in conducting parallel investigations could appear, including: (i) the execution of EAWs; (ii) language barriers; (iii) the fact that information disclosed to a suspect and his attorney in one Member State could jeopardise the investigation in another Member State when the stages of proceedings differ. Furthermore, participants identified difficulties related to JITs, including the fact that their set-up requires compliance with a number of rules and conditions. The conclusion was reached that Eurojust’s role should be increased, providing support to JITs and also to parallel investigations.

## **WORKSHOP 2: EUROJUST’S ROLE IN COORDINATING AND SOLVING CONFLICTS OF JURISDICTION**

*Chair: Mr Filippo Spiezia, Deputy National Member for Italy, Eurojust*

*The goal of the workshop was to discuss the coordinating role of Eurojust in drug trafficking cases and to identify the challenges encountered in coordination meetings with a view to enhancing Eurojust’s support to national authorities.*

Eurojust’s coordination meetings are a very useful tool, especially for information exchange. The agreements reached by the national authorities are usually implemented (e.g. letters rogatory are sent, and “action days” for simultaneous actions are organised). The exchange of information during such meetings is a tool for triggering parallel investigations and a basis for issuing MLA requests. Nonetheless, difficulties have been encountered, including: reluctance by national authorities to share information; focus by the national authorities on the domestic dimension of the case; and different views and experiences on the use of minutes and the nature of agreements reached during coordination meetings. Additionally, legal differences exist related to the use of information exchanged during coordination meetings. Participants concluded that EU legislative proposals are needed to ensure that, in the investigation phase, disclosure of information should always be possible between law enforcement and judicial authorities with secrecy maintained towards private suspects and



defence lawyers. Another problematic point identified is that the follow-up of coordination meeting conclusions is usually dealt with only by the Member States without involving Eurojust, although a follow-up by Eurojust would be beneficial, especially for coordinating the actions agreed by the Member States. Participants also recognised that Eurojust plays an important role in preventing and solving conflicts of jurisdiction. An increased involvement of the College of Eurojust in solving such conflicts through non-binding written opinions is needed. Nonetheless, participants considered that, in line with the Treaty of Lisbon, binding decisions to solve conflicts of jurisdiction, based on objective criteria, would be even more beneficial.

### **WORKSHOP 3: CHALLENGES POSED IN THE PROSECUTION OF DRUG TRAFFICKING CASES**

*Chair: Ms Dana Spinant, Head of Anti-Drugs Policy, European Commission*

*The goal of the workshop was to identify the main problems (and solutions thereto) in judicial cooperation as a consequence of differences in national legislation on drugs.*

Differences in national legislation often create “proportionality issues”, which cause delays/refusals to execute MLA requests when the quantity of drugs involved is not considered significant by a Member State. Moreover, the poor implementation/ratification of EU and international law instruments hampers effective prosecution of drug-related cases. Participants agreed that stronger EU legislation on drug trafficking, with a focus on “large-scale” drug trafficking cases, is needed. The “ownership” of cases might also hamper cooperation between the Member States. A possible solution discussed during the workshop was the introduction of “incentives”, enabling the national authorities to focus on the “big fish” in the drug trade (i.e. a reporting mechanism acknowledging the Member States’ contribution to the drug seizure). Participants also agreed upon a need for training and specialisation of national judicial authorities in cross-border cases. Eurojust and Europol could work together to draft a training manual on instruments of judicial cooperation, the role of Eurojust and the EJM, etc. (similar to the “JIT Manual”).

### **WORKSHOP 4: JUDICIAL OBSTACLES CONCERNING SPECIAL INVESTIGATIVE TECHNIQUES**

*Chair: Mr Hans Nilsson, Head of Criminal Judicial Cooperation, Council of the EU*

*The goal of the workshop was to discuss the obstacles arising from the use of special investigative techniques in drug trafficking cases, with a view to proposing solutions that would bring progress in judicial cooperation regarding these techniques.*

Obstacles to cooperation in the area of controlled deliveries are often due to differences in Member States’ practices and legislation. Several practical problems were identified, including: identification of competent authorities; lack of resources/interests; the need for fast decisions; and unexpected changes of routes. In a large number of Member States, judicial authorisation is needed to execute controlled deliveries, while in others, the police provide



such authorisation. Close cooperation is also needed to ensure that problems related to the admissibility of evidence are solved. Good experiences have been encountered when using cross-border observation rather than controlled delivery; moreover, use of the “money line” rather than the “drug line”, by observing a transfer of money that might reveal profits from drug trafficking, is sometimes advisable. Furthermore, the legal basis and practices for deployment of undercover officers vary considerably in the Member States. Participants recognised a need to harmonise legislation, providing equal status to national and foreign officers and guaranteeing the protection of officers’ identities in all Member States. While the rights of suspects must be protected, disclosure of information must not endanger the investigation or the life of the officer(s) involved in a controlled delivery or undercover operation. Proposals were made to designate central contact points in each Member State (possibly at judicial level) to authorise controlled deliveries and undercover operations and thus provide faster and easier communication and cooperation.

#### **WORKSHOP 5: COOPERATION WITH THIRD STATES IN DRUG TRAFFICKING CASES**

*Chair: Mr Pedro Pérez Enciso, Seconded National Expert at Eurojust*

*The goal of the workshop was to explore and discuss ways to enhance and strengthen judicial cooperation with third States, taking into consideration their involvement in the production, transport and distribution of drugs within the European Union.*

The involvement of third States in drug trafficking cases is essential, particularly because the cultivation, production and transit process usually involves third States. When necessary, third States should be invited to attend coordination meetings at Eurojust to discuss legal obstacles and find solutions. The participation of third States in coordination meetings could be impaired by lack of trust, differences in legal framework and data protection issues. Eurojust could play a role in raising awareness about the need to involve third States, ensuring consistency through a common approach and building trust. Furthermore, success in cooperating with a third State depends to a large extent on whether the third State has established functional and robust judicial structures and central authorities. The use of all existing contacting mechanisms should be encouraged, while, at the same time, avoiding overlapping. Early contact with the authorities in the third State is advisable when a request for MLA is sent. Eurojust could assist, if requested, particularly in cases where the measures requested are lengthy, complicated or require coordination. Another identified difficulty relates to extradition agreements with third States. To avoid impunity, the need to proactively seek prosecution in the third State or execution of the sentence in compliance with the principle “*aut dedere, aut iudicare*” has been identified. Few bilateral agreements between Member States and third States allow the setting up of JITs. The experience of a successful JIT between Bulgaria and FYROM shows the need to conclude bilateral agreements with third States that provide for the use of JITs. Fostering spontaneous exchange of information with third States is vital to reach the high echelons of the organised criminal groups and, in



particular, for asset recovery purposes. Participants expressed the belief that an evaluation by Eurojust of the involvement of third States in drug trafficking cases would assist in identifying problems and best practices in cooperation.

## 5. Conclusions

*Professor Krzysztof Indeck, Lodz Faculty of Law, Poland*, addressed the final conclusions and mentioned that the outcomes of the workshops should be read in conjunction with the results of the analysis of the drug trafficking cases at Eurojust. When obstacles to judicial cooperation appear, practitioners need to carefully analyse the solutions identified by the Eurojust project and by the discussions during the seminar. Furthermore, Professor Indeck stressed the importance of increasing the involvement of Eurojust in coordinating drug trafficking cases and of strengthening judicial cooperation with drug producing and transit countries outside the European Union.

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