

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

INTERNATIONAL LEGAL INSTRUMENTS:

1. UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, 1988

- Definition [art. 1 (g)]:
 - the technique of allowing
 - illicit or suspect consignments of,
 - **narcotic drugs, psychotropic substances, ..., or substances substituted for them,**
 - through or into the territory of,
 - one or more countries,
 - with the knowledge and under supervision of competent authorities,
 - with a view of identifying persons involved

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

2. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME AND THE PROTOCOLS THERETO, 2000

- Definition [art. 2 (i)]:
 - the technique of allowing
 - illicit or suspect consignments of,
 - through or into the territory of,
 - one or more **States**,
 - with the knowledge and under supervision of competent authorities,
 - with a view to **the investigation of an offence**
 - the identification of persons involved

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

3. UNITED NATIONS CONVENTION AGAINST CORRUPTION, 2003

- Definition [art. 2 (i)]:
 - the technique of allowing
 - illicit or suspect consignments of,
 - through or into the territory of,
 - one or more **States**,
 - with the knowledge and under supervision of competent authorities,
 - with a view to **the investigation of an offence**
 - the identification of persons involved

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4. POLICE COOPERATION CONVENTION FOR SOUTH EAST EUROPE (PCC-SEE), 2006

- Article 15: upon Letter of Rogatory, especially transport of narcotic drugs, precursors, firearms, explosives, counterfeit currency, items originating from a crime, intended to be used to commit a crime, identification of perpetrators, distributing routes not otherwise hampered
 - special conditions
 - possibility to seize

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5. UNITED NATIONS SINGLE CONVENTION TO NARCOTIC DRUGS, 1961

6. UNITED NATIONS CONVENTION ON PSYCHOTROPIC DRUGS, 1971

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COUNCIL OF EUROPE LEGAL FRAMEWORK:

1. RECOMMENDATION REC 10 OF THE COMMITTEE OF MINISTERIES TO MEMBER STATES ON SPECIAL INVESTIGATION TECHNIQUES IN RELATION TO SERIOUS CRIMES INCLUDING ACTS OF TERRORISM

- Only to be used if sufficient reason to believe a serious crime has been committed or prepared or is being prepared by one or more persons or as-yet-unidentified individual or group on individuals

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

2. THE EUROPEAN CONVENTION ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS, 1959

3. SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS (ETS No. 182), 2001

- Article 18: to ensure, at the request, of another Party, controlled deliveries may be permitted, in criminal investigations, into extraditable offences
 - decision in each individual case

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

4. CRIMINAL LAW CONVENTION ON CORRUPTION, 1999

5. CONVENTION ON LAUDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME, 1990

6. THE CONVENTION ON CYBER-CRIME, 2001

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

EU LEGAL FRAMEWORKS:

- 1. CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION (2000 MLA CONVENTION), 2000**
 - Article 12: ensure, at the request, of another Member State, controlled deliveries may be permitted, in the framework of criminal investigations, into extraditable offences
 - decision in each individual case

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

2. THE CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT OF 14 JUNE 1985 BETWEEN THE GOVERNMENTS OF THE STATES OF THE BENELUX ECONOMIC UNION, FEDERAL REPUBLIC OF GERMANY AND THE FRENCH REPUBLIC ON THE THE GRADUAL ABOLITION OF CHECKS AT THEIR COMMON BORDERS,

- Article 73: to adopt measures to allow controlled deliveries, illicit trafficking in narcotic drugs and psychotropic substances
 - decision in each individual case

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

3. CONVENTION DRAWN UP ON THE BASIS OF ARTICLE K.3 OF THE TREATY ON EUROPEAN UNION, ON MUTUAL ASSISTANCE AND COOPERATION BETWEEN CUSTOMS ADMINISTRATIONS (NAPLES II CONVENTION), 2009

- Article 22: ensure, at the request, of another Member State, controlled deliveries may be permitted, in framework of criminal investigations, into extraditable offences
 - decision in each individual case

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

4. CONVENTION BETWEEN THE KINGDOM OF BELGIUM, THE FEDERAL REPUBLIC OF GERMANY, THE KINGDOM OF SPAIN, THE FRENCH REPUBLIC, THE GRAND DUCHY OF LUXEMBURG, THE KINGDOM OF THE NETHERLANDS AND THE REPUBLIC OF AUSTRIA ON THE STEPPING UP OF CROSS-BORDER COOPERATION, PARTICULARLY IN COMBATING TERRORISM, CROSS-BORDER CRIME AND ILLEGAL MIGRATION (PRÜM CONVENTION), 2005

- Exchange data (DNA, fingerprints and vehicle registration of concerned persons)

LEGAL FRAMEWORKS FOR CONTROLLED DELIVERIES

5. COOPERATION AGREEMENT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART, AND THE SWISS CONFEDERATION, OF THE OTHER PART, TO COMBAT FRAUD AND ANY OTHER ILLEGAL ACTIVITY TO THE DETRIMENT OF THEIR FINANCIAL INTEREST, 2004

6. DIRECTIVE 2014/41/EU REGARDING THE EUROPEAN INVESTIGATION ORDER IN CRIMINAL MATTERS, 2014

- Cover investigative measures
 - exceptions related JITs

LEGAL OBSTACLES REGARDING CONTROLLED DELIVERIES

- Differences in legal frameworks
 - Requirements for implementing controlled deliveries (e.g. type of request and seizure)
 - Possible impact on the admissibility of evidence in another country
 - The possibility of replacing drugs in controlled deliveries (partial / complete – allowed, required or forbidden)
 - The implementation of other special investigation techniques
 - E.g. undercover agents (foreign / national), surveillance (physical / control by technical means only) or informants (foreign / national)

JOINT INVESTIGATION TEAMS (JITs)

- JIT is an international cooperation tool
- Based on agreement between competent authorities – both judicial and law enforcement
- Of two or more States
- Established for a limited duration and
- For a specific purpose,
- To carry out criminal investigations
- In one or more of the involved countries

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

INTERNATIONAL LEVEL:

1. UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, 1988

- Article 2(1): illicit traffic in narcotic drugs and psychotropic substances
- Article 9(1)(c): in appropriate cases ... establish joint teams

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

2. UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, 2000

- Articles 2(b) & 3: serious crime (penalty at least 4 years or more), transnational and involves an organized criminal group
- Article 19: bilateral or multilateral agreements or arrangements, matters that are subject of investigations, prosecutions or judicial proceedings, in one or more States -> establish joint investigative bodies

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

3. UNITED NATIONS CONVENTION AGAINST CORRUPTION, 2003

- Article 3: corruption
- Article 49: bilateral or multilateral agreements or arrangements, matters that are subject of investigations, prosecutions or judicial proceedings, in one or more States -> establish joint investigative bodies

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

EUROPEAN LEVEL:

1. POLICE COOPERATION CONVENTION FOR SOUTH EAST EUROPE (PCC-SEE), 2006

- Article 27: by mutual agreement, law enforcement authorities, of two or more Parties, for a specific purpose, a limited period, carry out criminal investigations -> set up a joint investigation team
 - in particular: difficult and demanding investigations, necessity of coordination

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

EU LEVEL:

1. CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION (2000 MLA CONVENTION)

- Article 13: by mutual agreement, competent authorities, of two or more Member States, for a specific purpose, a limited period, carry out criminal investigations -> set up a joint investigation team

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

2. COUNCIL FRAMEWORK DECISION ON JOINT INVESTIGATION TEAMS, 2002

- Article 1(1): by mutual agreement, competent authorities, of two or more Member States, for a specific purpose, a limited period, carry out criminal investigations -> set up a joint investigation team
- Article 8: JIT needs assistance from MS (not member of JIT) or from a third State -> with relevant instruments or arrangements

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

3. AGREEMENT BETWEEN THE EUROPEAN UNION AND THE REPUBLIC OF ICELAND AND THE KINGDOM OF NORWAY ON THE APPLICATION OF CERTAIN PROVISIONS OF THE CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN MEMBER STATES OF THE EUROPEAN UNION AND THE 2001 PROTOCOL THERETO

- Article 1: 2000 MLA Convention & its article 13 applicable in relations between Iceland, Norway and Member States

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

4. THE SECOND ADDITIONAL PROTOCOL TO THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, 1959

- Article 20: by mutual agreement, competent authorities, of two or more Parties, for a specific purpose, a limited period, to carry out criminal investigations -> set up a joint investigation team
 - in particular: difficult and demanding investigations, necessity of coordination

LEGAL FRAMEWORKS: JOINT INVESTIGATION TEAMS (JITs)

5. AGREEMENT ON MUTUAL LEGAL ASSISTANCE BETWEEN THE EUROPEAN UNION AND THE UNITED STATES OF AMERICA, 2003

- Article 5: to facilitate criminal investigations or prosecutions, involving one or more Member States and USA -> establish joint investigative teams

Q & A

Thank you for your attention!
Any Questions?

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