



# MARKETING SEMINAR

A Practical case: the role of Eurojust  
in reaching a solution

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# An example of Eurojust experience in dealing with Trafficking in Human Beings and conflicts of jurisdiction



**An illustration of coordination  
between national authorities  
(using the powers granted by article 6 of EJ  
Decision)**



# A criminal investigation involving Portugal and Spain

- Portuguese authorities noticed that several criminal complaints were made in different regions of Portugal.
- All these complains regarded generically the same offenders and the same way of acting.
- Following a Police analysis, a criminal organization acting in the north of Portugal and in Spain (La Rioja and the Basque Country) was identified.

Bay of Biscay



Portugal

Spain

Balearic Isles

Porto

Coimbra

Lisboa

Madrid

Logroño

Barcelona

Valencia

Córdoba

Sevilla

Murcia

Granada

Málaga

Cádiz

Faro

Evora

Tomar

Aveira

Viana do Castelo

Vigo

La Coruña

Badajoz

Castell Branco

Pontevedra

Ourense

Lugo

Merida

Plasencia

Salamanca

León

Gijón

Cádiz

Huelva

Sevilla

Almería

Granada

Alcázar

Albacete

Valencia

Alicante

Murcia

Almería

# Facts 1



- A single criminal investigation was undertaken in Portugal, unifying all the ongoing proceedings.
- Abduction, swindling, exploitation and abuse of Portuguese workers were the main activities of this criminal organization.
- All the victims and offenders were Portuguese.
- Nevertheless, the most important part of the criminal activity was taking place in Spain

# Facts 2



- The victims were enlisted for farm work in Spain. They were promised advantageous working conditions (tasks and pay) and decent living conditions.
- Once in Spain (Rincón de Soto, La Rioja), they were denied any employment contract, and they were housed in a shed.
- They spent the nights in that shed, with the door locked.

# Facts 3



- They were forced to work around 13 hours a day under inhumane conditions and suffered constant threats of death and violence.
- In order to avoid any attempt of escaping, they were kept under constant and close observation.
- The victims did not receive any kind of remuneration for the services rendered.

# Contacting Eurojust



- Eurojust was contacted by the Portuguese Prosecutor in charge of the case
- Asking for support in the preparation of a LoR to be sent to Spain.
- A draft of the request was sent to the Portuguese desk at Eurojust.

# Aim of the letter rogatory



- The aim of the request was very broad:
  - ✓ The hearings of the suspects already identified at that stage
  - ✓ Identification of other possible suspects
  - ✓ The gathering of information and evidences regarding criminal records, bank accounts, administrative information from social security and tax services
  - ✓ The identification of other workers being in the same situation of exploitation
- Detailed and complex investigations in Spain were needed.

# How Eurojust Acted - 1



- A level II meeting between the national members for Portugal and Spain was organized in order to discuss the case
- It was agreed that the national member for Spain would ask Spanish authorities to consider undertaking an investigation concerning the exploitation and abuse of workers (Art 6.a.i EJ Decision).
- Therefore a Spanish investigation was opened.
- NM for Spain and Portugal asked their authorities to coordinate between themselves (Art 6.a.iii EJ Decision)

# How Eurojust Acted - 2



- The PT NM asked additional information from his domestic authorities (Art 6.a.v EJ Decision).
- Information was exchanged between PT and ES national authorities through Eurojust (Art 6.b and 13 EJ Decision).
- Both investigations were coordinated with the support of Eurojust (Art 6.c\_EJ Decision).
- In the context of the coordination four level III meetings took place in Spain and Portugal (excellent cooperation at police and judicial level).
- Parallel investigations were carried out in PT and ES.
- It was possible to define a coordinated strategy and take coordinated actions to both investigations.

# Outcome



- According to this strategy, EAWs were issued by PT and 19 people were arrested in Spain on 21<sup>st</sup> of April 2008
- On the same day, 12 people were arrested in Portugal
- In accordance with previous agreement achieved through NM of ES and PT, Spain will not use grounds for EAW refusal (pending investigations related to same facts).
- This criminal organization was dismantled, half a million Euro was seized and confiscated, tens of individuals were arrested and charged

# Conflict of jurisdiction



- The criminal activity spread across PT and ES.
- It was carried out by Portuguese citizens against Portuguese citizens.
- Alongside with ES, PT has jurisdiction regarding the facts committed in Spain (nationality principle vs territoriality principle).
- Only PT has jurisdiction over the facts committed in PT.



# Conflict of jurisdiction

## How Eurojust helped to solve it

A recommendation grounded on Article 6.a.ii of Eurojust Decision was made to the involved national authorities by ES and PT national members.

According to this recommendation Spanish authorities should recognize that PT is in better position to prosecute.

At the same time, Spain should accept to transfer the proceedings to PT.

Both proceedings should be concentrated in PT for a single trial of all the crimes and defendants.

# Conclusions



- Eurojust must be involved in the investigations from the very beginning, as occurred in this case.
- Without effective domestic coordination it is not possible to ensure a good level of European coordination.
- National members must be proactive and take the initiative in the field of coordination between national authorities.
- It is necessary to use regularly all the instruments available concerning international cooperation matters.



# WHICH SOLUTIONS WITH THE NEW EUROPEAN TEXTS?

Eurojust Decision (2002/187/JHA, 28 February 2002):



- SOLUTIONS REACHED UNDER THE FORMER VERSION OF EJD.

ARTICLE 6 (Tasks of Eurojust acting through its national members):

- 1. When Eurojust acts through its national members concerned, it:
- (a) may ask the competent authorities of the Member States concerned to consider:
  - (i) undertaking an investigation or prosecution of specific acts;
  - (ii) accepting that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
  - (...)

Eurojust Decision (2002/187/JHA, 28 February 2002):



ARTICLE 7 (Tasks of Eurojust acting as a College):

1. When Eurojust acts as a College, it:

- (a) **may** in relation to the types of crime and the offences referred to in Article 4(1) **ask the competent** authorities of the Member States concerned, giving its reasons:
  - (i) **to undertake** an investigation or prosecution of specific acts;
  - (ii) **to accept** that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
  - (...)



## NEW EUROJUST DECISION (2009/426/JHA, 16 DECEMBER 2008):

### ARTICLE 6:

- When Eurojust acts through its national members concerned, it:
- (a) **may ask** the competent authorities of the Member States concerned, giving its reasons, **to**:
  - (i) **undertake** an investigation or prosecution of specific acts;
  - (ii) **accept** that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
  - (...)

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  - (ii) **to accept** that one of them may be in a better position to undertake an investigation or to prosecute specific acts;
  - (...)



## LISBON TREATY:

### ARTICLE 85, N1:

- «(...) European Parliament and the Council, by means of regulations adopted in accordance with the ordinary legislative procedure, shall determine Eurojust's structure, operation, field of action and tasks. These tasks may include:
  - (a) the initiation of criminal investigations, as well as proposing the initiation of prosecutions conducted by competent national authorities, particularly those relating to offences against the financial interests of the Union;
  - (b) the coordination of investigations and prosecutions referred to in point (a);
  - (...)

### DECLARATION ON ARTICLE 85(1), SECOND SUBPARAGRAPH:

- The Conference considers that the regulations referred to in the second subparagraph of Article 85(1) of the Treaty on the Functioning of the European Union should take into account national rules and practices relating to the initiation of criminal investigations.

**Questions?**

**Thank You**