



## **Strategic meeting on trafficking in human beings**

*Eurojust, The Hague, 16-17 April 2015*

### **OUTCOME REPORT**

THB Project Team

## 1. Introduction

The strategic meeting on trafficking in human beings (THB) was organised by Eurojust in The Hague on 16 and 17 April 2015 as part of Eurojust's strategic project on THB. Over the course of the two days, prosecutors, judges, law enforcement authorities and THB experts analysed the challenges posed by the investigation and prosecution of THB cases. The participants included practitioners from the Member States, Japan, Norway, Switzerland and the United States of America, as well as representatives of the European Commission, Europol, the Fundamental Rights Agency (FRA), the United Nations Office on Drugs and Crime (UNODC), the University of Cambridge, Western Union and Facebook.

The focus of the strategic meeting was how to strengthen and improve cooperation between national judicial authorities in the fight against THB. In particular, the meeting analysed challenges encountered in obtaining evidence from victims of THB and in prosecuting THB cases for the purpose of labour exploitation. It also examined judicial cooperation issues related to the use of JITs, the gathering and admissibility of e-evidence, the use of special investigative techniques, as well as financial investigations in THB cases. Last but not least, it analysed the value of Eurojust's involvement in THB cases and identified other areas where Eurojust could assist Member States.

Prior to the strategic meeting, Eurojust circulated two questionnaires on THB, one addressed to the judicial authorities in the Member States, Norway and Switzerland and a second addressed to the National Members at Eurojust. Based on the responses to the questionnaires, Eurojust carried out an analysis and prepared a report. The report summarised the preliminary findings of the analysis and was distributed to all participants to provide background information for the strategic meeting. The report, finalised after the meeting, is presented in the Annex.

The two-day strategic meeting consisted of plenary presentations and workshops that addressed specific aspects of THB. The following summary reflects participants' input and comments.

## 2. Opening session

*Mr Francisco Jiménez-Villarejo, Vice-President of Eurojust and National Member for Spain* welcomed the participants and highlighted the importance of addressing human trafficking, a crime that remains among the EU's priorities for the fight against organised crime between 2014 and 2017. He introduced the aim of the strategic meeting, inviting the participants to look in depth at the main difficulties encountered by the national authorities in investigating and prosecuting THB and to propose solutions to address them. Mr Jiménez-Villarejo presented the agenda and referred to the main topics addressed in the plenary presentations and in the workshops.

The topics of the meeting included relevant developments at EU level, updates on the implementation of Eurojust's Strategic Project against THB, challenges and best practice in identifying THB cases and THB victims, as well as national experience related to the investigation and prosecution of THB cases, with particular insight into difficulties in securing evidence from victims and in prosecuting cases of THB for the purpose of labour exploitation.

Ms Myria Vassiliadou, the EU Anti-Trafficking Coordinator (EU ATC), addressed the keynote speech of the meeting and highlighted the ever-evolving and transnational nature of THB, the global challenge that it presents, the huge profits it generates, the need for a common response and the importance of all concerned to work together. A comprehensive and coordinated approach is essential to ensuring that work is not carried out in parallel and that the focus is placed on all aspects of the fight against THB, including on the prosecution, the prevention of THB, as well as on the identification, protection and assistance of victims. The EU ATC referred to the large number of victims of THB - two-thirds of those registered being EU citizens - and highlighted the need to always focus on targeting all forms of exploitation.

Considering that conviction can also act as prevention, EU ATC stressed the importance of increasing the awareness of judges and prosecutors of the THB phenomenon. Ms Vassiliadou also highlighted the fact that, although the term 'THB' is sometimes used interchangeably with related crimes, it is essential to maintain a distinction between THB and these other crimes, including the smuggling of migrants and slavery. Addressing THB is important, because it is the only form of organised crime prohibited by the Charter of Fundamental Rights of the European Union in its Article 5, because it is among the areas of particularly serious crime with a cross-border dimension listed in Articles 79 and 83 of the Treaty on the Functioning of the European Union (TFEU), and because it has an important place in the European Agenda on Security and in the European Agenda on Migration.

Regarding the implementation of the THB Directive in the Member States, the EU ATC informed the participants that, thus far, 25 Member States have given notification of the transposition of this EU instrument at national level. The information provided is currently being analysed by the Commission in light of its 2016 report to the European Parliament and the Council of the EU on the compliance of the Member States with the implementation of the THB Directive. The EU ATC said that the Commission will not hesitate to take the necessary steps for the full implementation of the THB Directive in all Member States, and referred to the recent developments in the Commission's main activities in addressing against THB. She highlighted the release in 2014 of a mid-term review report on the implementation of the EU Strategy towards the Eradication of THB, 2012-2016. The annex of this report describes the instrumental work of the JHA Agencies, including Eurojust, between 2012 and 2014. Other new developments included the setting up of a new civil society platform to deal with aspects related to the assistance and protection of victims, as well as numerous studies and guidelines issued by the Commission, including the upcoming publication of a study on case law on THB for labour exploitation to be published by the Commission in June 2015.

Regarding the future, Ms Vassiliadou informed the participants about the preparation of a new EU Strategy against THB post-2016, when the current strategy is completed. A study is being launched in this respect, alongside a policy review and the mapping of all conclusions of EU funded projects, to better choose the best focus for the future strategy. A report will also be issued by the Commission on the implementation of *Council Directive [2004/81/EC](#) on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*. Unfortunately, this EU instrument is not applied fully in all Member States. Emphasising that external action is the key to addressing THB, the EU ATC also referred to the plans of the Commission to continue working with non-EU States and to the consideration given to re-thinking the list of priority third States when developing and funding new projects. Child trafficking will remain a priority in the new EU Strategy

against THB, as the number of child victims remains very high and, despite numerous activities, including studies, handbooks, guidelines and the work of EMPACT in addressing child trafficking, there remains a lot more to be done.

The EU ATC addressed a key message to the participants: if one looks at THB crimes, one conclusion would be that there is always someone making or saving money from these crimes and that there is always someone making use of the services provided by victims. Therefore, to better tackle THB and disrupt trafficking chains, the EU ATC stressed the need to address both the money and the demand related to all forms of THB. With regard to money, financial investigations and confiscation procedures are crucial. The support of Eurojust in following the money trail is fundamental. With regard to demand, the EU ATC highlighted that traffickers would not exist if there were no more users, consumers, procurers, clients of services provided by victims. Article 18 of the THB Directive obliges Member States to take action to reduce the demand that fosters all forms of exploitation related to THB. It calls on Member States to at least give consideration to establishing as a criminal offence the use of services that are the object of exploitation, with the knowledge that the person is a victim of THB. Holding the private sector accountable for THB for the purpose of labour exploitation is also called for by the THB Directive. The EU ATC concluded her presentation by referring to the publication of a report assessing the impact of existing national law, establishing as a criminal offence the use of services that are the object of exploitation of THB, on the prevention of trafficking in human beings, and to be accompanied, if necessary, by adequate proposals regarding EU legislation.

### 3. Plenary session

#### 3.1. *The mid-term findings of the implementation of the Eurojust action plan against trafficking in human beings (2012-2016)*

Mr Lukáš Starý, Eurojust National Member for the Czech Republic and Eurojust THB Contact Point presented the mid-term findings of the implementation of the Eurojust Action Plan against Trafficking in Human Beings. As background, he explained that the Eurojust THB Strategic Project started in 2012. Upon identification of the main difficulties in the investigation and prosecution of THB cases (evidentiary difficulties in THB cases, problems in the identification of THB cases and victims, problems related to the multilateral dimension of THB, lack of knowledge and experience in THB and challenges in asset recovery), a Eurojust Action Plan against THB covering the years 2012-2016 was drawn up with six areas in which Eurojust could be of assistance: enhancing information exchange, increasing the number of detections and joint investigations and prosecutions, training and expertise in THB, increased cooperation with third States, multidisciplinary approaches and financial investigations.

Mr Starý introduced the mid-term evaluation report which follows the six main priorities laid down in the Action Plan and for which 25 selected THB cases dealt with by Eurojust were analysed. He highlighted, particularly, Chapter 1 on the exchange of information and noted: (i) the small number of Article 13 notifications; (ii) the high number of Eurojust coordination meetings considering the small number of registered THB cases; and (iii) that 68% of coordination meetings were attended by Europol. With regard to Chapter 2 on investigation, prosecution and judicial cooperation in THB cases, the analysis showed that THB cases are often linked to illegal immigration, that the number of

multilateral THB cases is lower than the number of bilateral cases, and that the number of JITs is increasing, also thanks to JITs funding provided by Eurojust. Mr Starý invited the participants to visit the THB section on Eurojust's website where all relevant THB information can be found and, in particular, to read Chapter 2.2 of the mid-term report on best practice and obstacles in judicial cooperation in THB cases. The problems identified by Eurojust's THB Project Team correspond with the problems reported in the responses to the THB questionnaire sent prior to the strategic meeting.

Mr Starý then outlined the main conclusions of the remaining chapters – training and expertise in THB; third States (small number of cases involving third States; Eurojust contact points and cooperation agreements); multidisciplinary approach (2012 Eurojust Strategic Seminar in Copenhagen; 2013 Putting Rantsev into practice); financial investigations (often discussed in coordination meetings) and other activities of Eurojust (EMPACT, Eurojust contact point on THB). The detailed conclusions and recommendations can be found in the mid-term report which is available on Eurojust's website.

### ***3.2. Challenges and best practice in the investigation and prosecution of a THB case***

*Mr Warner ten Kate, National Public Prosecutor for human trafficking and people smuggling for the Netherlands*, presented the challenges and best practice identified in the investigation and prosecution of two THB cases. Based on the Dutch experience, he highlighted the usefulness of having extensive legal provisions covering all forms of THB, combined with a 'programmatic' and 'barrier' approach, which ensures the involvement of all relevant actors (e.g. NGOs and private entities, such as employment agencies, housing companies, real estate agents and the tax administration). One case study touched upon the identification of the labour exploitation purpose, which was carried out by making reference to indicators developed in case law, such as long working hours, low wages, threats and the vulnerable position of the victims. Both case studies presented significant challenges linked to the hearing of victims, who did not see themselves as such, were afraid of reprisals and thus changed or withdrew their statements and were moved around often so that it was difficult to trace them.

These difficulties were addressed by employing qualified detectives and judicial staff, paying attention to the intake of the victim, especially minors, and even going abroad to hear witnesses. The courts acknowledged that victim statements may be inconsistent, but this does not mean that they are unreliable, but have to be considered carefully. In view of these challenges, investigations should not focus only on victim statements, but also on other aspects involved in criminal activity, including criminal profits and misuse of the internet. Thanks to good cooperation by Western Union and MoneyGram, Dutch investigators were successful in following the money trail, although huge sums were channelled via underground banking ('hawala') and criminals were resorting to the technique of 'smurfing' (i.e. breaking down the transaction values so that they are below the threshold of anti-money laundering reporting).

Parallel financial investigations were instrumental in taking away profits from criminals and in providing more solid evidence to the case and a possibility of compensation for the victim. Another challenge was the monitoring of social media (including Facebook) and the difficulties associated with the use of the dark net by criminals. The line between legal and illegal parts of a website is often blurred and searching the internet can be time consuming. However, in the case studies presented, the

police proactively searched the web for suspicious advertisements and closed down websites suspected of assisting THB. Mr ten Kate concluded his presentation by remarking that international cooperation in these cases is essential, although it requires time and effort from each side to set up a good working relationship. In certain cases it might be advisable to jointly address a non-EU State, instead of sending many MLA requests from different countries. Joint investigation teams were highlighted as a very effective platform for international cooperation.

### **3.3. FRA's SELEX project on severe labour exploitation of migrant workers**

*Mr Albin Dearing, Programme Manager Research - Criminal Law and Criminal Justice, Freedoms and Justice Department of the FRA*, presented the SELEX project, which analyses severe labour exploitation of migrant workers and covers both intra-EU migratory movements and migration of third State nationals to the EU. Mr Dearing explained that the project aims to identify the factors that place migrants at risk of severe labour exploitation as well as the institutional responses in terms of the prevention and monitoring of labour exploitation and mechanisms to facilitate victims' access to justice.

The project assessed four different categories of risk factors, notably: (i) related to migrants personally; (ii) derived from workplaces; (iii) connected to the legal and institutional framework; and (iv) created by employers. The project developed fieldwork research with representatives of professions including labour inspectors, police officers, staff of victim support services, judges and prosecutors. On the basis of the work carried out, Mr Dearing noted that work conditions cannot be left to globalised labour markets since poverty and declining prosperity – which will continue to be a reality – create a space for further criminal exploitation. Thus, a commitment to specialisation and cross-border cooperation in all areas of severe labour exploitation is crucial. By the same token, the legal framework on the rights of migrant workers should be strengthened and victims ought to be encouraged to report abuses. Monitoring systems, workplace inspections and investigations should be incentivised. Altogether, one should strive to instil a climate of zero tolerance concerning severe labour exploitation in contemporary societies.

### **3.4. The identification of THB cases based on suspicious money transfers**

*Mr Ričardas Pocius, Director, Global Investigations, Western Union (WU)*, presented the current problems and challenges WU faces with THB. WU recognises that their system is abused by traffickers. There are concerns about this topic and anti-human trafficking initiatives are one of the main priorities of WU.

Transactions related to THB are extremely difficult to identify. WU's Financial Intelligence Unit (FIU) relies primarily on law enforcement intelligence to conduct analysis and investigations, and based on that information they can start to search the system. Mr Pocius said that prosecutors usually approach WU at a very late stage of criminal proceedings. Although information provided by WU is used as evidence, it is also a very good base for investigations; their findings can help identify criminal networks and save time.

In 2013, WU made a strategic decision to launch a major initiative to combat human trafficking by partnering with the U.S. Department of Homeland Security (DHS) and non-governmental organisations (NGOs) such as the Polaris Project. The initiative takes a proactive and comprehensive approach, using both public and private partnerships. It looks to train WU employees, agents and frontline associates to watch for and recognize THB 'red flags' and report suspicious activity to the WU compliance hotline; it intends to develop proactive and targeted business rules to intercept suspicious transactions and eventually drive human traffickers out of the WU network. One of the results of WU's anti-human trafficking initiative is a Memorandum of Understanding that was signed with DHS in 2013, making WU the first financial services company to join the DHS Blue Campaign.<sup>1</sup> WU also prepared a report to instruct financial institutions on how to recognise human trafficking-related transactions – this year they started the same initiative in Europe and created the Bank Association against human trafficking – to provide the same standards throughout Europe.

Mr Pocius concluded his presentation by stressing the importance of looking to the future. To target possible victims and traffickers, the WU FIU is building a Human Trafficking Consumer Risk Index (HTCRI) that will seek to risk-score transactions that may have a higher correlation of being related to THB.

### ***3.5. The Facebook initiative to contribute to the detection and assistance of victims of human trafficking***

Mr Christian Perrella, Facebook, presented Facebook's approach as a private industry initiative to keep their social media platform a secure and safe place for people and to prevent criminal incidents on their site. Facebook's support for law enforcement agencies in the fight against THB is part of the company's mission to connect to the authorities for safety reasons and to bring perpetrators to justice. Every user is able to report potential fraudulent or abusive posts. More information on the Law Enforcement Online Request System can be found at [www.facebook.com/records](http://www.facebook.com/records) and [www.fb.me/leguides](http://www.fb.me/leguides). Requests and questions can be addressed to [records@fb.com](mailto:records@fb.com). There is a Facebook page called 'Stop trafficking now' and a transparency report was published by Facebook.

### ***3.6. The preliminary findings of the 2015 Eurojust questionnaires on THB***

Ioana van Nieuwkerk, Legal Officer, Eurojust, presented a summary of the preliminary findings of two questionnaires launched by Eurojust in March 2015 to prepare for the strategic meeting. The 'external questionnaire' was sent to national authorities to gather national experience in the investigation and prosecution of THB for the purpose of labour exploitation, in the hearing and protection of victims, in financial investigations in THB cases and in securing e-evidence in THB cases. The 'internal questionnaire' was addressed to Eurojust National Members and focused on the legal provisions of the Member States related to the hearing and protection of victims. The report on *The preliminary findings of the 2015 Eurojust questionnaires on THB* is contained in the annex.

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<sup>1</sup> The Blue Campaign is the DHS' unified effort to combat human trafficking in collaboration with law enforcement, government, non-governmental and private organisations.

## 4. Outcome of workshops

Three workshops were organised during on both days of the strategic meeting. The participants were divided into small groups and rotated, allowing each participant to attend all workshops. A hypothetical scenario involving a case of THB for the purpose of labour exploitation was considered by the participants of all three workshops. Various issues were addressed during the discussions, allowing the participants to compare their national approaches and laws and to identify challenges and possible solutions for the investigation and prosecution of THB cases. The main findings of the three workshops were reported to the plenary by the Chairs and co-Chairs.

### 4.1. *Workshop 1: Hearing and protection of victims/witnesses*

*Chair: Ms Pam Bowen, Senior Policy Advisor, Operations Directorate, Crown Prosecution Service, the UK*

*Co-Chair: Mr Lukáš Starý, Eurojust National Member for Czech Republic and Eurojust THB Contact Point*

Workshop 1 aimed to address challenges encountered by national authorities in judicial cooperation related to the hearing and protection of victims/witnesses in THB cases. Specifically, the workshop discussed: (i) differences in the legal requirements of Member States for the hearing of victims/witnesses; (ii) avenues for securing testimonial evidence at the pre-trial stage; (iii) the availability and use of protective measures during hearings, and (iv) victims who may have been threatened or are otherwise reluctant to cooperate with the authorities.

The workshop concluded that almost all participants were able to comply with different requirements for the hearing of victims/witnesses set out in a MLA request, if not contrary to the fundamental principles of the national legal system and if the requirements are clearly specified and understood. Conversely, it was pointed out that a request executed following the requirements of the executing authority should be *prima facie* admissible in the court of the requesting State as a logical derivation of the principle of mutual recognition.

Direct contact between requesting and executing authorities were deemed to be crucial to clarifying legal requirements for obtaining evidence and for the hearing of victims/witnesses in different States and to expedite the execution of related MLA requests. This approach will be completed with the transposition of the Directive on the European Investigation Order (EIO), whereby the executing authority must be notified to the requesting State and direct contact between it and the issuing authority are foreseen.<sup>2</sup> In addition, direct contact between national police forces should identify the competent authorities and Eurojust's coordination meetings will assist in clarifying national legal requirements. An alternative option to ensure that legal requirements for the hearing of victims/witnesses are complied with, is – where feasible – for foreign police and/or judicial authorities to interview victims and witnesses in their country of residence or to arrange for them to travel to the requesting State for the same purpose.

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<sup>2</sup> See Article 7 (2), (5) and (6) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

Most participants noted that pre-trial statements could be admissible as evidence in court, as an exception to providing oral evidence (with the possibility of cross-examination). However, the terms of such an exception vary considerably among Member States. In some countries, statements are (video)recorded as early as possible to be later played at trial. However, the value of a pre-recorded testimony may vary depending on the circumstances in which this is taken (e.g. presence of judge and/or defence lawyers, possibility of cross examination) and whether this is considered to be respectful of Article 6 ECHR. Some countries allow for a 'mini-trial' (confined to hearing evidence from witnesses who might not be available later), which reproduces all the guarantees reserved to the defendant in court sessions during the interviewing of the witness. A participant from a Member State referred to 'fast-tracks' to trial, allowing for the trial of a THB case within approximately two weeks, thus reducing the risk of victims/witnesses' disappearance or intimidation. Several participants highlighted that, when a witness provides conflicting statements or decides to remain silent in court or there is reason to believe that the witness has been threatened, pre-trial statements may be read and freely assessed by the judge in accordance with the principle of free evaluation of evidence.

Most countries allow for the use of protective measures for the hearing of victims/witnesses: testimony behind a screen; voice distortion; and testimony from separate rooms. Anonymity is possible only in certain countries and only in specific situations (e.g. vulnerable witnesses, life-threatening situations), with the final decision being for the prosecutor or judge. It was emphasised that anonymity might not be possible in certain cases, as the victim and perpetrator often know each other very well. Some countries developed elaborate platforms of support for victims/witnesses that involve several stakeholders, notably NGOs, police and social workers. It was noted that accompanying lawyers might be close to the organised crime groups and, to minimise this risk, state aid might be useful. Participants highlighted the importance of international cooperation and close ties between NGOs and police of the countries concerned to facilitate the protection and reintegration of victims/witnesses when they relocate abroad.

Participants also noted that reluctant victims/witnesses are more common in THB for labour exploitation cases, within certain minorities and/or if the victim has been involved in criminal activities. In these cases, it might be useful to gather information, including reports on the working conditions in the countries of origin of victims as an additional tool in assessing a THB case for labour exploitation (especially the 'vulnerability' element). Several countries highlighted a number of support and assistance measures to address this challenge, e.g. reflection periods, residence permits and psychological assistance. At the same time, it was highlighted that measures should be taken to avoid the issue of 'inducement of witnesses' (e.g. testimony in exchange for residency permits, NGOs' possible conflicts of interest). It was noted that the right to refuse to testify against a relative remains a major challenge in the prosecution of certain THB cases, for example in cases where child victims are 'married' – according to traditional rituals – to the perpetrator.

Participants drew the following main recommendations:

- (i) Direct contact between national authorities and clear communication about specific MLA requirements are key elements in addressing the challenges in judicial cooperation requests related to the hearing of THB victims/witnesses.

- (ii) The risk of re-victimisation should be reduced as far as possible in line with the THB Directive.<sup>3</sup> For this reason, a case should not be built only on the testimony of victims, but other corroborative evidence should be sought (e.g. electronic interception, financial transactions).
- (iii) Investigating authorities need to engage with NGOs as soon as possible to ensure effective support and to assist in facilitating victim testimony.
- (iv) There is a need to 'think outside the box' and, therefore, if it is not feasible to prosecute for THB for labour exploitation, consider other disruptive measures, e.g. indict for breaches of health legislation, minimum wage regulations, tax evasion, fraud, money laundering and labour laws.

#### **4.2. Workshop 2: Challenges in prosecuting THB for the purpose of labour exploitation**

*Chair: Mr Peter McCormick, Prosecutor, Directing Division, Office of the Director of Public Prosecutions, Dublin, Ireland*

*Co-Chair: Mr Thomas Ahlstrand, Deputy Chief Prosecutor, International Public Prosecution Office Göthenburg, Sweden*

The goal of workshop 2 was to identify best practice in prosecuting THB cases for the purpose of labour exploitation. Firstly, participants discussed the different national approaches, as well as difficulties and good practice in establishing the labour exploitation element in a THB case, with particular reference to the existence or need for indicators related to this type of THB. Secondly, participants discussed best practice in investigating and prosecuting other offences in parallel with the THB offence. Thirdly, participants were invited to share best practice when it comes to multidisciplinary cooperation against THB for the purpose of labour exploitation and to indicate whether their judicial authorities involve other organisations when dealing with such cases. Last but not least, participants went further and addressed particular situations where victims of THB are forced to commit criminal activities, such as pickpocketing, assessing the conditions under which the victims will not be prosecuted.

The discussions revealed that the prosecution of THB for labour exploitation is very difficult. As a result, the number of convictions for this type of THB is very low. While some countries do not have any experience of investigating and prosecuting THB for labour exploitation, being countries of origin of victims, the vast majority of countries have dealt with this type of THB and have experienced, in many cases, difficulties in proving the labour exploitation purpose. These difficulties have sometimes occurred due to a lack of clear legislation, guidelines and/or insufficient case law providing for indicators for labour exploitation. On other occasions the difficulties were caused by a lack of clear definitions, particularly in relation to the interpretation and clarification of forced labour and labour (economic) exploitation. In some jurisdictions, this resulted in the prosecution and/or conviction for offences other than the THB offence, such as violation of labour laws or exploitation of foreigners or fraud by abuse of authority. Consequently, in the absence of a conviction for a THB offence, lower sanctions had been imposed and the rights of victims for assistance, protection and compensation

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<sup>3</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

could not be considered. The consent of the victims to poor work conditions, very long working hours, very poor payment, improper housing, etc., led in some jurisdictions to the conclusion that there was no exploitation involved. For example, in one Member State, such consent associated with victims' freedom of movement determined an acquittal for the THB offence, as victims were considered as having the choice of not working for the defendants.

Participants discussed the problems encountered in obtaining victim statements, as such evidence is often relied upon to secure convictions. These problems occur as victims are often fearful of testifying or returning to their country of origin before the trial begins. The difficulty in obtaining statements from traumatised THB victims resembles what happens in cases of domestic violence; victims are reluctant to tell about their experience due to fear, shame or dependence on the perpetrator. The hearing of THB victims therefore calls for tactics and attitudes that are similar to those used in cases of domestic violence. The participants also discussed practice in the Member States and identified that other offences are investigated in parallel with the THB offence, such as tax fraud, fraud, usury, conspiracy, benefit offences or money laundering. However, in some countries, such parallel offences would be investigated by authorities other than those investigating the THB offence, meaning problems in communication and cooperation could arise. Last but not least, participants referred to situations where victims of THB are forced to commit offences as a result of trafficking. The discussions revealed that all countries provide for the principle of non-prosecution of victims, but the conditions differ between Member States. For instance, participants acknowledged that in some countries the victims shall still be prosecuted if they are forced to commit serious offences, such as drug trafficking, while in other countries the principle of non-prosecution is applied to both minor and serious offences. The principle of legality or opportunity of prosecution is also relevant and leads to different approaches in the Member States.

In response to these challenges, participants drew the following recommendations and best practice:

- (i) The need for clearer definitions, legislation and guidelines, as well as awareness, training and exchanges to assist law enforcement and judicial authorities in assessing and proving the labour exploitation purpose;
- (ii) The use of pre-trial statements of victims as evidence in court;
- (iii) It is important to focus on support and assistance for victims with a view to securing their testimonies. Good practice consists of avoiding interviewing victims immediately - when they are traumatised - but firstly offering them professional support and advice, including information on their rights;
- (iv) Victims are more likely to testify when interviewed by investigators and prosecutors that are specially trained in working with victims of serious crimes;
- (v) It is advisable to avoid relying only on victim statements for securing convictions and to use all possible circumstances and evidence available;
- (vi) Good practice consists in investigating and prosecuting other offences in parallel with the THB offence. Consideration could then be given to working in joint teams consisting of different authorities involved in the investigation of the parallel offences, being aware of the need to ensure that sufficient communication and cooperation exists;

- (vii) Identify additional measures to fight trafficking chains, such as sanctions for those who profit from the use of cheap labour (e.g. construction companies); financial investigations; administrative measures for violating health and safety regulations; labour, tax or immigration laws; and non-conviction based confiscation;
- (viii) Encourage multidisciplinary approaches to fight THB for labour exploitation by involving other authorities, such as labour inspectorates and immigration services;
- (ix) Non-prosecution of victims for offences committed by THB victims when they have acted through necessity (coercion or threat);
- (x) Assistance from Eurojust in organising coordination meetings and coordination centres and in setting up JITs.

#### **4.3. Workshop 3: Challenges in judicial cooperation in THB cases**

*Chair: Mr Ulrich Nachtlberger, Judge, Regional Criminal Court of Vienna, Austria*

*Co-Chair: Ms Anki Maderud, Seconded National Expert for Sweden at Eurojust (Day 1) and Ms Petra Bakker, Police Commissioner EU for the Netherlands (Day 2)*

The goal of workshop 3 was to address challenges encountered in judicial cooperation in THB cases, particularly in the conduct of investigations involving several States, to gather knowledge on how to resort to the Internet and other means of telecommunication, to identify challenges and best practice in financial investigations and to discuss special investigative techniques in relation to the recruitment of victims, their transport and exploitation.

The discussions showed that the main challenge would be to prove the entire chain of trafficking (recruitment, transportation and exploitation). Not only are there substantial differences in the respective legal systems, but traditional mutual legal assistance would be cumbersome and time-consuming. The need to establish a dialogue with the other involved States and to improve cooperation with third States was underlined.

Several solutions to enhance cooperation with third States were identified, including the investment of personal efforts (such as visiting the country of origin, offering training); proactive sharing of information to trigger a more open-minded approach of third States towards cooperation; and the involvement of third States from an early stage to have a common mind-set and to build trust. Multiple channels of cooperation were highlighted: Liaison Officers and Magistrates, IBERRED, embassies, Eurojust, Europol, Interpol and NAPTIP (Nigerian National Agency for the Prohibition of Trafficking in Persons). The EMPACT THB sub-projects ETUTU and Chinese THB were mentioned as projects aimed at creating channels of cooperation with Nigeria and China.

In addition, the advisory role of Eurojust in clarifying legal requirements and differences in the legal systems and the organisation of coordination meetings to discuss and agree on future joint actions and to decide where to prosecute (to avoid *ne bis in idem*) were underlined. With regard to Europol, analytical support and operational meetings were emphasised, together with the role of EMPACT THB to discuss cases, trends in *modi operandi* and to develop a common approach.

In the context of the case scenario, several participants suggested the setting up of a joint investigation team (JIT) as a cooperation tool to ensure the flow of information between all partners; to trigger involved States to initiate their own national proceedings; and to operate together and to tackle the

entire THB business model. JITs funding, which is now also available for JITs set up with a third State, was regarded as particularly beneficial. The recommendation was given to include victim protection and shelter aspects in the JIT agreement. Another recommendation was to charge suspects with THB and membership of a criminal organisation.

Regarding the use of the Internet and other means of telecommunication, discussions showed that the main challenges faced are: (i) technical problems in intercepting Whatsapp, BlackBerry devices and Skype; (ii) the use of clouds, the dark net and bitcoins; (iii) time consuming mutual legal assistance, especially when providers are located abroad (for example in the US, which is the case for Facebook); (iv) a lack of legislation; and (v) short data retention periods. The participants suggested that the main focus should be on training, including training on the procedural and legal requirements of obtaining information from the USA, training delivered by private companies (e.g. Western Union, Google) to national authorities and training of police staff on the possibilities of proactively searching the Internet. Reference was also made to EMPACT THB that focuses, among other things, on training and awareness in the use of the Internet in THB.

The participants elaborated on financial investigations in the context of THB. Among the obstacles identified were: (i) difficulties of following the money trail since cash couriers (often victims) return the profits to the country of origin or criminals register assets under the names of other persons; (ii) experts in THB are often not experts in financial investigations; (iii) asset recovery is often done at a (too) late stage, when the money is no longer available; (iv) victims seldom ask for compensation; and (v) criminals use virtual money.

A number of recommendations were formulated:

- (i) THB crimes should be seen as economic crimes;
- (ii) FIU Network/AROs should be involved from the beginning of investigations to detect suspicious transactions and collect information on assets;
- (iii) Specialised Asset Recovery/Forfeiture Units should be set up at Public Prosecution Offices to run parallel investigations from the very beginning with a focus on asset seizure and confiscation;
- (iv) Consideration should be given to including a clause in JIT agreements regarding the conduct of financial investigations in THB cases;
- (v) Training and awareness on profits generated through THB are essential;
- (vi) Multidisciplinary, cross-border cooperation should be strengthened;
- (vii) It is important to inform victims of their right to compensation.

In connection with special investigative techniques, the participants agreed that a victim-centred approach on its own is not sufficient. To gather evidence on the recruitment, transportation and exploitation of victims, electronic interception, covert observation, undercover agents and the searching of premises were highlighted as applied investigative techniques, while a controlled delivery of persons was rejected due to legal and/or ethical reasons. It was also mentioned that, even though victims are often not aware of the final destination and the aim of trafficking, the information provided by them could clarify the *modus operandi* of recruitment.

## 5. Conclusions and closing remarks

*Ms Michèle Coninsx, President of Eurojust and National Member for Belgium, summarised the main ideas and conclusions of the strategic meeting. Trafficking in human beings is one of the most profitable crimes. Several challenges in the investigation and prosecution of THB cases were identified and need to be addressed, particularly the difficulties in obtaining evidence from victims, the challenges of establishing the labour exploitation purpose in a THB offence and of securing electronic evidence. Parallel financial investigations need to be conducted to seize and confiscate criminal assets. It is also essential to adopt a multidisciplinary approach to raise barriers to minimise opportunities in this field in an effort to counter THB. Several other instances of best practice were exchanged, including the unique role and added value of Eurojust in bringing together all relevant authorities in the fight against THB. The importance of assistance and protection of victims in the spirit of the THB Directive was underlined.*

Eurojust is committed to following up on the main conclusions of this strategic meeting. The outcome report of the meeting will be distributed to all participants. Ms Coninsx concluded the meeting by thanking the participants for their active participation.

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