



 IPKey

SOUTHEAST ASIA

# Organized Crime and IP Theft: Follow the Money

Paweł Waśnik | Bangkok | 22 August 2018

[www.ipkey.eu](http://www.ipkey.eu)

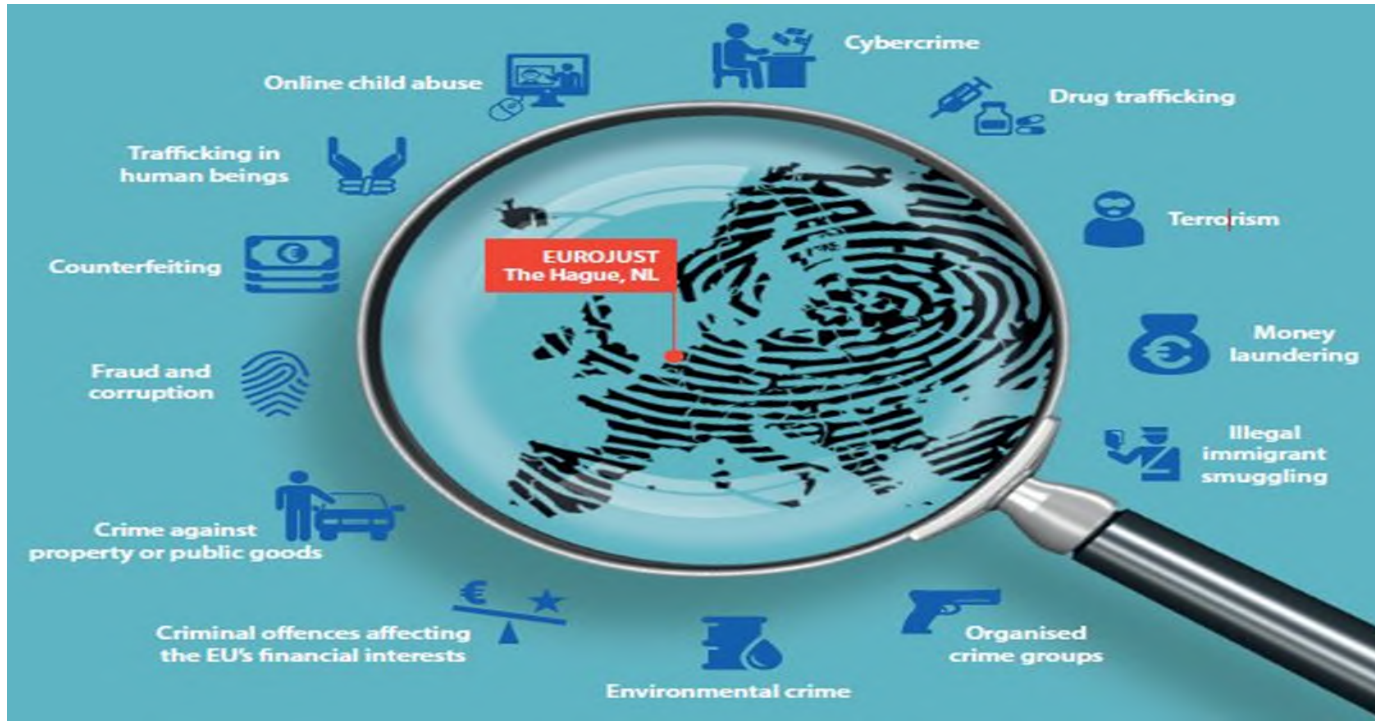


Funded by the European Union



Directed by the European Commission, IP KEY is implemented by the European Union Intellectual Property Office (EUIPO)

## Eurojust's competences – fighting serious and organised cross-border crime



## Asset tracing – Legal and Practical Issues

- actual **identification of the assets** abroad and to the **use of AROs**, including in relation to value-based court orders that raise a **jurisdictional issue**
- poor contacts via the FIUs of the MSs involve
- **existence of a central bank register and public registers for companies and for property**
- **simultaneous transmission through parallel channels** - created internal disruption in relation to its reception
- **required channel for transmission of banking information, associated with the urgency of its receipt due to the risk of expiry of the statute of limitations**
- **deficiencies in the LoRs** (poor description of the facts, poor translation or absence of reference to a legal basis) **need to issue a fresh LoR**
- **notification of the owners of the bank accounts and the need to take into account their related procedural rights**



# Eurojust case cycle

Request received

1



2



Level I meeting  
(all National Members)

3



Level II meeting  
(concerned National Members)

4



Coordination  
issues discussed

5



Level III meeting  
(with national authorities)

6



Coordination centre

7



Joint  
investigation team

8



Case closed  
at Eurojust



## Asset tracing – Eurojust support

- assisting in **identifying the competent national authorities**
- establishment or strengthening of **direct contacts between national authorities**
- **transmission of LoRs seeking financial and banking information and in the transmission of the actual financial and banking information**
- obtaining information on the **state of play of the execution** of LoRs
- **Eurojust Contact Points in third States** as channels of communication
- coordination of the execution of LoRs seeking financial and banking information involving several countries, by organising **coordination meetings**
- prepared **overviews of the links between the suspects under investigation**, including links resulting from the financial investigations, and additional targets
- **setting up of JITs**, including for the purpose of a financial investigation
- **active in raising awareness of the role of the AROs amongst practitioners**





## Asset tracing – Best Practice

- **central bank registers, and public register for companies and property**
- **establishing a JIT solely for the purpose of conducting a financial investigation**
- **thorough investigation by the requested State into the money trail**
- **specialised accountants to work on the financial investigations** in the framework of criminal investigations, and **whose role is to assist the prosecutors**
- **close cooperation between specialized forensic accountants**
- units or departments within the competent authorities **specialised in asset recovery cases;**
- **multidisciplinary approach and interaction amongst different stakeholders** (FIUs, AROs, police and customs with prosecutors) supported by **Eurojust**
- taking into account the national, EU or international legal framework, **already at the stage of cooperation in terms of asset tracing**, and involving **Eurojust** where appropriate
- **the presence of the requesting State/issuing State in the requested/executing State**



# Coordination meetings



College meeting



Involved National  
Members



Coordination  
meeting



## Operations against a Usenet criminal network - Case example

- two related cases to Eurojust involving major alleged violations of German intellectual property law - online piracy OCGs were suspected of managing Internet-based piracy portals offering thousands of licensed or copyrighted materials, such as films, software and TV shows
- advertising for this content was undisguised on the Surface Web (not Deep Web), this content was stored in the so-called Usenet
- leaders of the OCGs are suspected of having earned more than EUR 1 million by selling the matching membership access to Usenet. The damage caused by the copyright infringements is estimated at EUR 7.5 million
- servers were operated by different companies with subsidiaries in France, the Netherlands, San Marino and Canada
- two of the 68 suspects were located in Switzerland, and one of the main suspects was located in Spain





## Operations against a Usenet criminal network - Case example

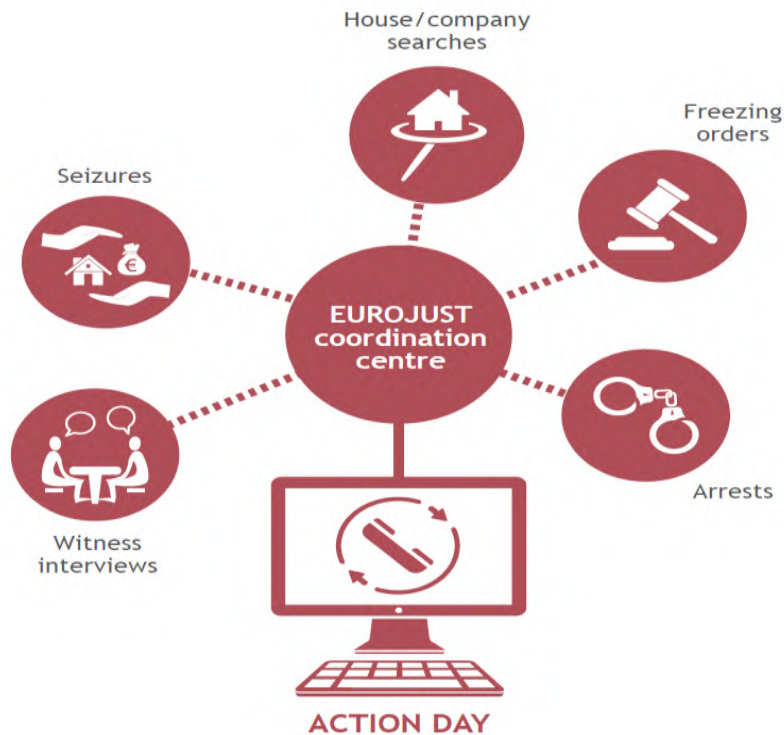
- coordination centre was set up to **support judicial cooperation** with these countries, seize relevant data and execute other requests in an adequate and timely manner
- targets were located within and outside Germany, the coordination centre was mindful of the need to ensure **proper synchronisation** between the various actions requested
- cooperation requests through EIOs and via LoRs, EAW was also issued
- central to this case was the **timing of cooperation related to the seizure of data:**
  - ✓ For the purpose of prosecution, a takeover of the Internet-based piracy portals was essential.
  - ✓ At an early stage, the coordination centre was informed that the German authorities had indeed been able to seize passwords that gave direct access to most of the servers.
  - ✓ Eurojust immediately contacted all relevant Member States and requested that they delay the operations targeting the relevant hosting companies.



## Operations against a Usenet criminal network - Case example

- schedule of measures was modified repeatedly during the action day - Eurojust swiftly intervened throughout the action day to ensure optimal synchronization
- 2 people were arrested, 76 searches took place, and several websites, servers, computers and electronic evidence were seized
- large amount of data was obtained by:
  - ✓ accessing and downloading the data from the Internet servers using open laptops or passwords found during house searches of the suspects in Germany
  - ✓ seizing additional servers, which were presumed to be located in the hosting companies' premises in France and Canada
  - ✓ confiscation of documents and extensive transaction information from companies in Spain and the Netherlands
- during the action day, other Usenet piracy websites went offline - similar OCGs most likely realised that an international judicial action had been undertaken and decided to shut down their servers pre-emptively to avoid prosecution





- Central hub for the real-time exchange of information and for coordinating the joint execution of judicial and law enforcement measures in different countries (e.g. freezing orders)
- The joint operations are constantly monitored and coordinated at EJ
- All participating authorities are linked to each other at all times via dedicated telephone lines and computers



## Asset freezing – Legal and Practical Issues

- **requirements for issuing a freezing order or a LoR seeking freezing measures and with the consideration of their execution**
- **differences in national legislation regarding possibilities for freezing assets**
- **identification of the competent national authority required consideration**
- **choice of legal instrument**
- **transmission of LoRs (seizure of money) to more than one State at the same time**
- **restitution of assets to victims or compensation of victims**
- **freezing measures in parallel investigations**
- **asset management**
- **grounds for refusing the execution of a freezing order or a LoR seeking the freezing of assets**



## Asset freezing – Eurojust support

- **advice and clarification in relation to the practical, legal and formal requirements** in relation to the freezing of assets, **advice on the choice of legal instrument**, and served as **channel for transmission of freezing orders or LoRs (information and documentation)**
- support in the execution stage of a freezing order or LoR seeking the freezing of assets
- support **cooperation** but also **coordination of the execution of freezing measures** and other measures
- supported the **coordination of the execution of the freezing order in complex cases.**
- **coordination meetings at Eurojust** with a view to preparing a coordinated action day in the involved countries and the setting up of a **coordination centre organised and supported by Eurojust**
- **support in the coordination in cases of parallel investigations** where freezing measures were involved



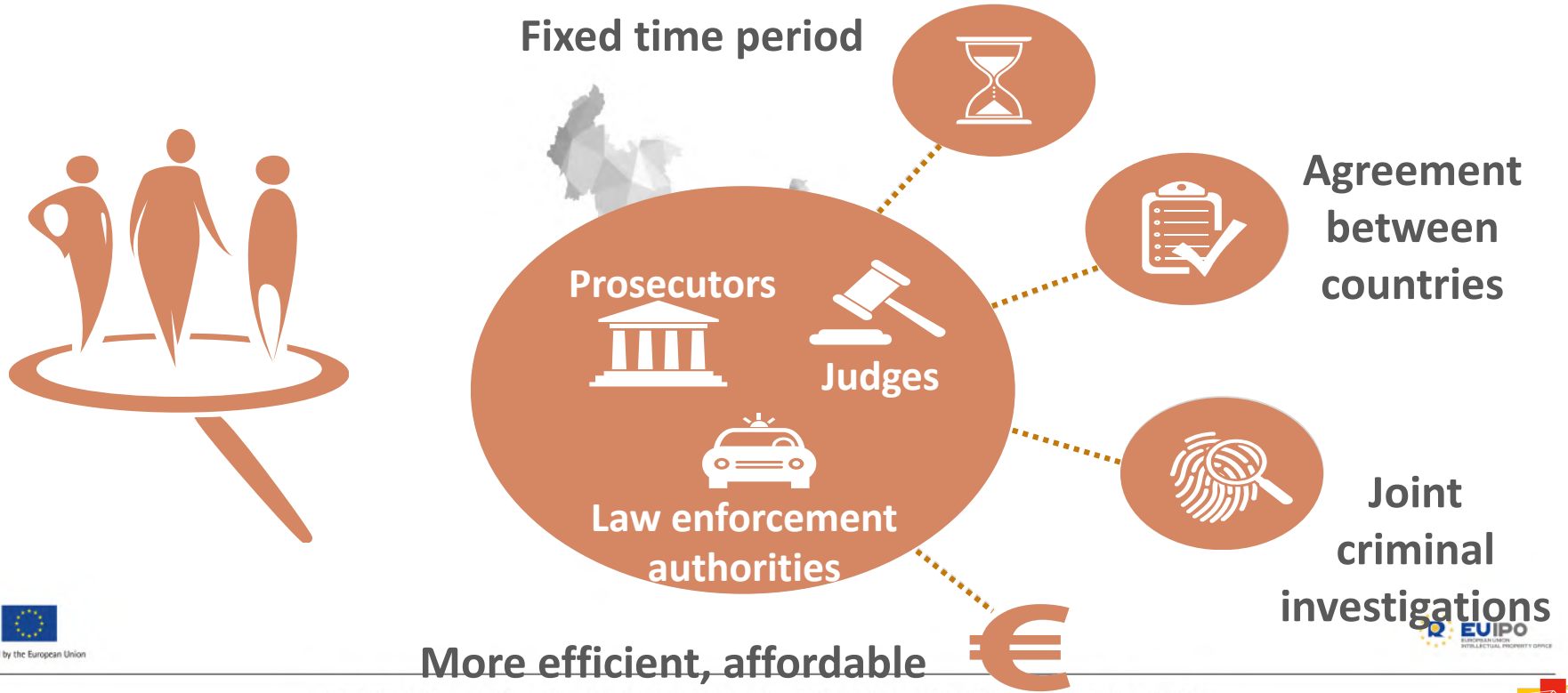
## Asset freezing- Best practice

- discussion of asset recovery precautionary measures in the framework of a **JIT**
- **coordination centre at Eurojust** to coordinate a common action day relating mainly to the **simultaneous freezing of bank accounts in different countries**
- **early sale** of certain types of frozen assets can speed up the confiscation process
- **management of frozen and confiscated assets** - Centralised Asset Management Offices
- **early consideration of administration of funds** pending a final decision
- **executing freezing orders in one MS at the same time as arrests and searches**
- **receiving feedback at regular intervals** from the requesting authority in order **to avoid exposing the requested country to possible proceedings**
- **posting of liaison magistrates/prosecutors specialised in asset recovery** from MSs to other countries and dealing merely or primarily with cases where such issues arise





# Joint investigation teams (JITs)



## Online trade with counterfeit medicines - Case example

- six illegal shipments containing 25 600 tablets of counterfeit medicines originating from India that were about to be transported to a person in Spain - **controlled delivery** was set up, and the recipient was arrested by the Spanish authorities
- 50 websites hosted on servers located in the Czech Republic and the Netherlands were advertising medicines for sale without medical prescription
- orders were placed either via the Internet or by telephone
- payments were made by credit card to bank accounts in several Member States, which channelled those funds through a layer of bridge accounts to bank accounts on Cyprus

## Online trade with counterfeit medicines - Case example

- another investigation in Austria targeting a criminal group of Ukrainian origin with connections to Israel and the Russian Federation were identified by Europol
- links with a French investigation concerning a group of websites, managed from Israel, that also offered medicines without medical prescription
- Spanish authorities submitted MLA requests to Austria, Belgium, Cyprus, Germany, India and the USA to identify the beneficiaries of the illegal activity and to try to locate and seize the criminal proceeds, the value of which was estimated at approximately EUR 1 800 000
- Eurojust coordinated the judicial aspects of the cases - **coordination meeting** was held in March 2014, attended by Spain, Austria, Belgium, Cyprus, Germany, France, the UK, the USA and Europol



## Online trade with counterfeit medicines - Case example

- JIT, in which Eurojust and Europol participated, was set up between Austria, Spain and France
- JIT was **funded through Eurojust** and was later extended to the UK
- coordination meeting also allowed discussion about the offences under investigation in each State to **avoid a conflict of jurisdiction or *ne bis in idem*** - supported by Eurojust's analysis of the MLA requests helped to identify overlapping requests, coordinate their execution, agree on the terms and conditions for sharing the obtained evidence and identify a bank account that appeared in proceedings in Austria, Spain and France
- Austria, Spain and France focused on **fraud and public health-related offences**, while the UK applied an innovative approach by investigating only **money laundering** activities, with an emphasis on asset tracing for further freezing

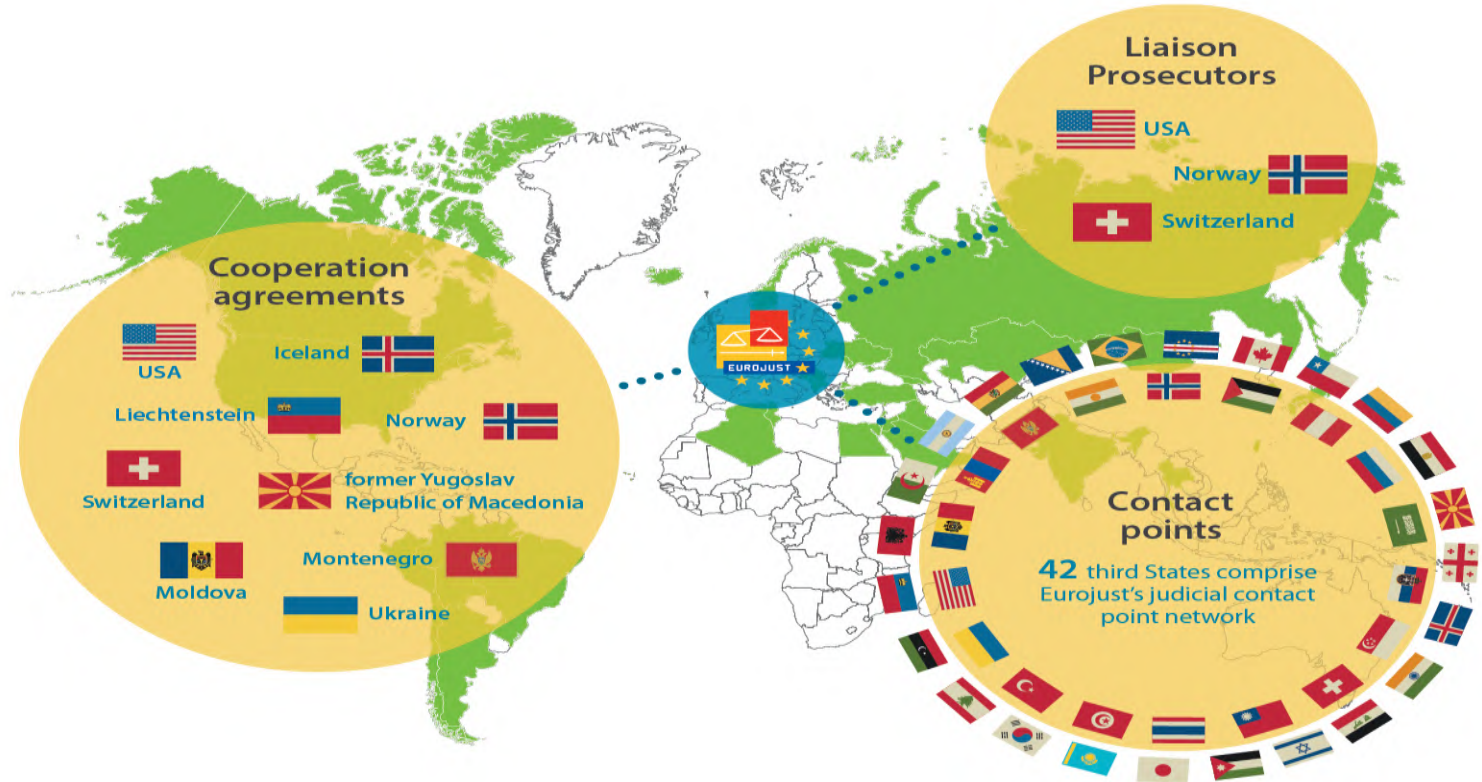


## Online trade with counterfeit medicines - Case example

- UK investigation benefited from the investigations in the other States to prove that **predicate offences** were committed elsewhere in the European Union
- decision was made to conduct coordinated actions during a **common action day** to gather additional evidence
- **coordination centre** was held at Eurojust in September 2014 with the participation of all JIT members.
- during the action day, 12 suspects were arrested and 16 people were interviewed as either suspects or witnesses. Austria, Hungary and the UK carried out 23 searches, and 91 bank accounts were frozen or seized in the participating States, along with 1 million tablets
- assets with an estimated value of approximately **EUR 7.8 million were seized**
- final coordination meeting was held at Eurojust in March 2015 to exchange information on the proceedings in the participating States and evaluate the JIT cooperation



# Cooperation with Third States





## Asset confiscation – Legal and Practical Issues

- **requirements for issuing a confiscation order or a LoR seeking confiscation measures, or to the consideration of their execution**
- matter of ownership of the property by a third party - **interested parties and legal remedies**, with the obligation to inform an interested party and to the legal remedies available
- **cost-related issues** - requested State required the translation of both the first instance and the high court decisions
- **delays on the part of the executing authorities in officially confirming that the confiscation measures had been executed**
- **continued misunderstandings between requesting and requested authorities in relation to the requested measure and their related impact on the competent authority to execute**
- **whether the place of prosecution would have an impact on the asset-related enforcement measures, such as confiscation**



## Asset confiscation – Eurojust’s support

- **advice and clarification in relation to the practical, legal and formal requirements** in relation to the confiscation of assets
- assisted in **filling in or drafting documents** seeking confiscation
- identification of the **competent authority**
- Eurojust facilitated the **translation** of the executing State’s relevant provisions of the law - **channel of communication** between the involved countries - via Liaison Prosecutor at Eurojust
- **mediator** in relation to the issue of translation costs, and assisted in clarifying the legal and practical possibilities in the countries involved
- Eurojust **facilitated the transmission of information** on the time limits, under the law of the executing State, for appealing the court decision recognising and ordering the execution of the confiscation order



## Asset confiscation – Best practice

- **management of frozen and confiscated assets** is a crucial stage of the asset recovery process. In this regard, Centralised Asset Management Offices, specialised offices or equivalent mechanisms are very important
- consent of suspect (in jurisdictions where the possibility of plea bargaining is foreseen) can speed up the confiscation process
- **receiving feedback at regular intervals** from the requesting authority in order to **avoid exposing the requested country to possible proceedings**
- **posting of liaison magistrates/prosecutors specialised in asset recovery** from MSs to other countries and dealing merely or primarily with cases where such issues arise
- **training for prosecutors** in the field of asset recovery



<b>Presentation</b>	
<b>Status</b>	DRAFT / APPROVED
<b>Approved by owner</b>	-
<b>Authors</b>	-
<b>Contributors</b>	-

**Revision history**

Version	Date	Author	Description
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		
0.1	DD/MM/YYYY		



# THANK YOU

 @IPKey\_EU

