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THE USE OF OPEN
DATA AND PUBLIC-
SECTOR INFORMATION
IN INVESTIGATION OF
FINANCIAL FLOWS
LINKED TO
TRAFFICKING IN
HUMAN BEINGS

THE CASES OF BULGARIA, ITALY,
AND ROMANIA

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The Report covers three EU countries: Bulgaria, Italy, and Romania.

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ABBREVIATIONS

ART.	Article
DCOC	Directorate for Countering Organised Crime
DIOCT	Directorate for Investigating Organised Crime and Terrorism
FATF	Financial Action Task Force on Money Laundering
GRETA	Council of Europe's Group of Experts on Action against Trafficking in Human Beings
HCCJ	High Court of Cassation and Justice
ICT	Information and Communications Technologies
ILO	International Labour Organisation
NATP	National Agency against Trafficking in Persons
NGO	Non-Governmental Organisation
Para.	Paragraph(s)
PSI	Public-Sector Information
SCM	Superior Council of Magistracy
THB	Trafficking in Human Beings
TIP	U.S. State Department's Trafficking Report

INTRODUCTION

This Integrated Report is a result of the EU funded project on “*Improving the investigation and prosecution of human trafficking*”. It is implemented by three NGOs: Freedom House Inc. in Romania, RiSSC in Italy, and Risk Monitor in Bulgaria.

The project aims to improve the knowledge and best practices on investigation and prosecution of cases on trafficking in human beings (THB), making use of new information and communications technologies (ICT), open data, and public-sector information (PSI) for a better identification of financial flows and recovery of proceeds of crime.

The Integrated Report provides a broad overview of the main international and regional trends of THB, followed by a presentation of national patterns related to human trafficking, including the legal and institutional framework, as well as the investigation and prosecution practices and challenges in using the open data and PSI. It covers a short comparative analysis of the investigation of financial flows related to THB, and confiscation of proceeds of crime in Bulgaria, Romania, and Italy. This analysis is elaborated by Silvia Tabusca, based on the information from national research studies.

The Report also includes, in full, the national research studies conducted within the EU Project’s framework. The national experts are as follows: Bulgaria – Georgi Petrunov, Italy – Monica Vianello and Lorenzo Segato, and Romania – Camelia Bogdan, Silvia Tabusca, Alexandra Vaduva and Constantin-Tudor Bădilă.

„The main conclusions of the Integrated Report are:

- Training for investigators and magistrates on the framework of national and European legal texts and mutual agreements that regulates cooperation and information exchanges among the various authorities in charge of criminal/financial investigations, including relevant ECHR standards on asset recovery;
- National databases including complete information and cross-data from authorities’ registries, created based on the Italian good-practices of so-called

"SIDDA-SIDNA" system - a wide and efficient network of information and MOLECOLA that highlights the disproportions between declared and effective incomes;

- The development of a tactical/practical approach to improving cooperation between police and prosecutors, with a focus on the exchange of experience, investigative opinions and best practices;
- The creation of a financial investigation compartments integrated in the prosecutor's offices, in order for the judicial police to conduct the financial investigations directly under the supervision of the prosecutors;
- A mobile application that connects all the operators who are in contact with potential victims of trafficking (healthcare professionals, religious associations, social workers, teams that operate on the streets etc)."¹

¹ Judge Camelia Bogdan, Bucharest Court of Appeal

**A COMPARATIVE ANALYSIS:
The use of open data and public-sector information in investigation of trafficking
in human beings in Bulgaria, Romania, and Italy**

Silvia Tabusca

This comparative analysis is done based on the information included in the national reports concluded in Bulgaria, Italy, and Romania that can be consulted in full at the end of this Report.

1. International trends of trafficking in human beings

Trafficking in persons is considered a multifaceted crime and an illegal business that undermines the rule of law and creates instability. As a global phenomenon, a contemporary or a modern form of slavery, it has profound social and economic implications, which affects, on one hand, the security of the state, and, on the other hand, the fundamental human rights and dignity of the victims. For this reason, it is called a form of inhuman trade that is internationally present in any country of the world that may be a territory of destination, transit or a source country².

Over the last decades, trafficking in persons became the second largest illegal activity and source of income for criminal organizations, at the international level. The 2015 Europol Report states that the annual proceeds of THB crime are estimated as follows: €23.5 billion profits of sexual exploitation in the EU and developed countries; €25.8 billion global annual profits from THB-related sexual exploitation and €3.5 billion global annual profits from THB-related labor exploitation³. The 2012 ILO Global Report mentions that 2 persons are sold in traffic every minute, for an estimated profit

² Silvia Tabusca, "Trafficking in Persons and International Trade", single author, pp. 352- 358, WSEAS Recent Researches in Applied Economies & Management in Chania, Crete Island, Greece, ISBN: 978-960-474-323-0, 2013, ISI-Thomson Reuters

³2015 Europol Report - The trafficking in human beings financial business model, available at: <https://www.europol.europa.eu/publications-documents/trafficking-in-human-beings-financial-business-model>

of €500/person in developed regions, with 21 million victims labor exploited⁴. The 2016 ILO facts and figures underline the increase of the THB victims at the international level as follows: an estimated 40.3 million people are in modern slavery, 24.9 million in forced labor and 15.4 million in forced marriage, which means that there are 5.4 victims of modern slavery for every 1.000 people in the world and 1 in 4 victims of modern slavery are children⁵.

While this crime has been recognized and condemned by the international community, national governments still lack an effective response, mainly because many of them misunderstand this complex challenge and they do not have effective policies designed to efficiently combat human trafficking. Moreover, national policies do not provide good regulations to deal with such a global problem or effective tools to dismantle organized crime structures and their transnational alliances. In order to fight against this worldwide phenomenon, national authorities should design legal provisions consistent with international law and responsive to national specific of this illegal business. As the mobile of this crime is profit, the financial investigation and confiscation of proceeds of crime should be among the most important actions developed by national authorities in order to be efficient against transnational organised crime in general, and THB networks in particular.

Europe, as one of the most developed economies in the world, is very much affected by this transnational phenomenon. Trafficking in human beings is a serious challenge throughout the EU. Romania and Bulgaria are both transit and source countries, beside Italy that is mainly a transit and a destination country. Among the EU member states, the 2015 Eurostat Report on Trafficking in Human Beings states that Romania and Bulgaria offer the largest number of victims, as we can see in the table below⁶.

⁴ 2012 ILO Global Report on Trafficking in Persons, available at:

http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf

⁵ 2016 ILO facts and Figures, available at: <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm>

⁶ 2015 Eurostat Report on Trafficking in Human Beings, available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf

Table 2: Countries reporting citizenship of EU victims in (2010-2012)

Country of origin / citizenship of victims reported	Countries reporting victims in 2010 - 2012, sorted in decreasing order of the number of registered victims by citizenship																											Total Registered Victims	
	RO	BG	NL	HU	PL	FR	SK	DE	LV	CZ	RS	LT	UK	ES	EE	HR	IE	EL	SI	BE	IT	CH	FI	DK	CY	LU	MT		IS
Romania	3 230		219	<5	65	427		434		6	<5		493	464		<5	19	126	<5	62	472	13	5	23	24	7	<5		6 101
Bulgaria		1 698	421		44	167	<5	370		35	<5		63	29			5	75	<5	49	50	13		<5	15	<5	<5		3 043
Netherlands			1 076																										1 080
Hungary	<5		394	153	<5	40		156					243				<5	<5	9	<5		41		<5				1 046	
Poland			187		263	12		92		<5	<5		405				5			6	<5	<5	<5	<5	<5			976	
France			<5			476		<5					6													<5	<5		491
Slovakia			49				78	26		10			296							6	6	<5	<5					477	
Germany		<5	19			<5		389					<5																415
Latvia			12					25	277	<5			34				<5	<5						<5	<5				355
Czech Republic			<5	<5	26		<5	41		34			233				<5	<5		5	<5		<5	<5				351	
Serbia	<5		<5			5		20			230		<5				<5	<5	<5	5									269
Lithuania			22			<5		16				50	146				<5	<5						<5	<5				244
United Kingdom			6			<5							197								<5								205
Spain			<5			8		<5					<5	117															132
Estonia			<5			<5		<5					<5	55										8	<5	5			77
Turkey			11					41			<5		<5								<5			<5	<5				61
Croatia			<5								<5						25				<5		<5						32
Ireland													<5				31												32
Portugal			9			<5		<5					<5	7							<5				<5	<5			27
Greece	<5		5					<5															4			<5	<5		14
Slovenia								<5																					13
Belgium			<5			<5		<5					<5																8
Italy			<5			<5		<5					<5																6
Montenegro						<5		<5			5																		6
Austria			<5			<5		<5			<5												1						4
Switzerland						<5		<5																		<5			3
Finland			<5																					1					2
Norway								<5																					2
Denmark																									1				1
Cyprus																										1			1
Total victims	3 233	1 700	2 476	156	375	1 153	79	1 626	277	87	241	51	2 138	610	55	29	66	212	40	142	522	73	20	39	47	22	4	1	15 474

Key: ■ Citizens of reporting country ■ 10 – 99 victims ■ 100 – 399 victims ■ 400+ victims

From a total number of 15.474 reported by the EU countries during 2010-2012, 9.144 are Romanians and Bulgarians, while only 6 are Italian citizens. In fact, among the total victims reported to the European Commission, there are about 40% of Romanian citizenship and 20% of Bulgarian citizenship, while only 0,038% Italians. However, given the complexity of the phenomenon, the well-established criminal networks, and the difficulties in identifying the victims of human trafficking, the real number of victims in the EU is much higher than the one reported.

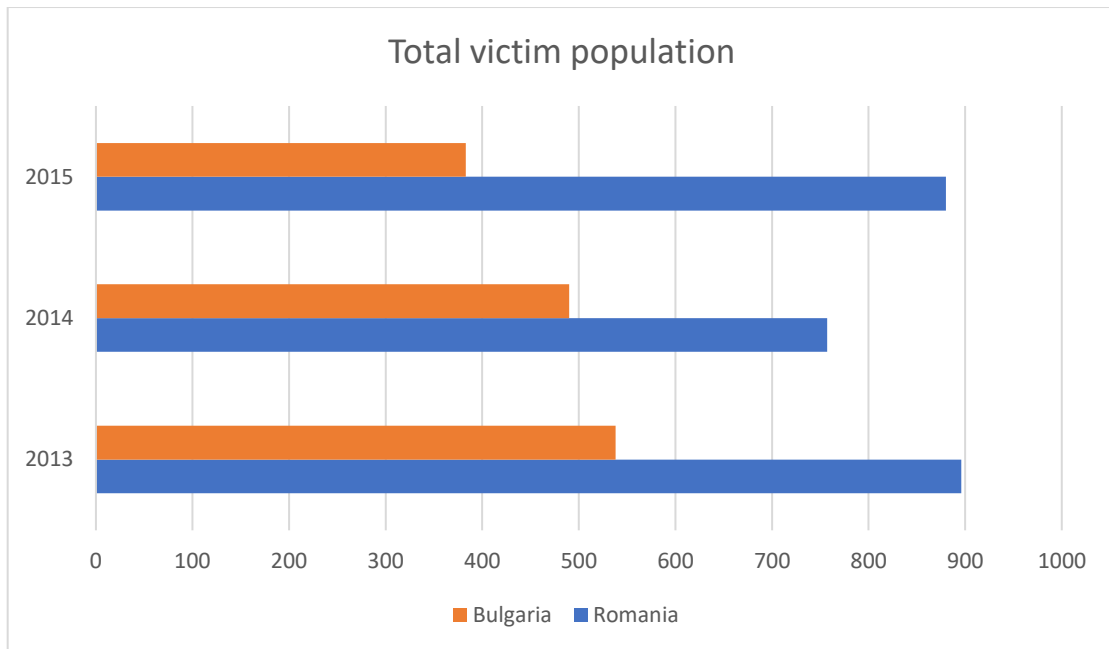
2. National patterns of trafficking in human beings

All three countries analyzed - Romania, Bulgaria, and Italy - are parties to the *2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the United Nations Convention against Transnational Organized Crimes* and they also transposed into the national legislation the provisions of the *Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims*.

Romania and Bulgaria have very similar THB patterns, being the main EU source countries of victims and having almost the same push-pull factors: poverty, social exclusion, discrimination, well established criminal networks, lack of awareness among possible victims, inefficient national policies, lack of education, child sexual abuse, corruption etc. In Italy – a transit and destination country, mainly affected by the migration flow, we may see developed different national patterns based on the needs and vulnerabilities of new-comers.

Victims from Romania and Bulgaria are exploited in the most developed EU economies like: Germany, France, Austria, UK, the Netherlands, Spain, Italy etc., as well as the Middle East. In both countries, the recruiters use mainly fraud to convince victims to follow their patterns. In general, the THB networks have largely eliminated physical coercion and started to use less violent methods. Traffickers target women and men, girls and boys in vulnerable positions. Victims are often recruited, transported or harboured by fraud in exploitative conditions. After 2013, it was found that violence is rarely used by trafficker, they preferring to share the income or to lie the victims. A new pattern was developed as the traffickers transferred the accommodation and daily costs to the victims. In this way, the victims perceive themselves free and they, often, do not consider being exploited even if their entire part of income is spent on the “transferred costs”. For victims recruited through lover-boy procedure or labour exploited, the traffickers use different forms of deception in order to postpone the payment and in the end not to pay them or to pay them very little.

The population of victims and the forms of exploitation are similar in Bulgaria and Romania. The largest number of victims are women and girls, being largely sexual exploited. In both countries there was identified a trend in increasing the number of minor victims, while their age was periodically decreasing.

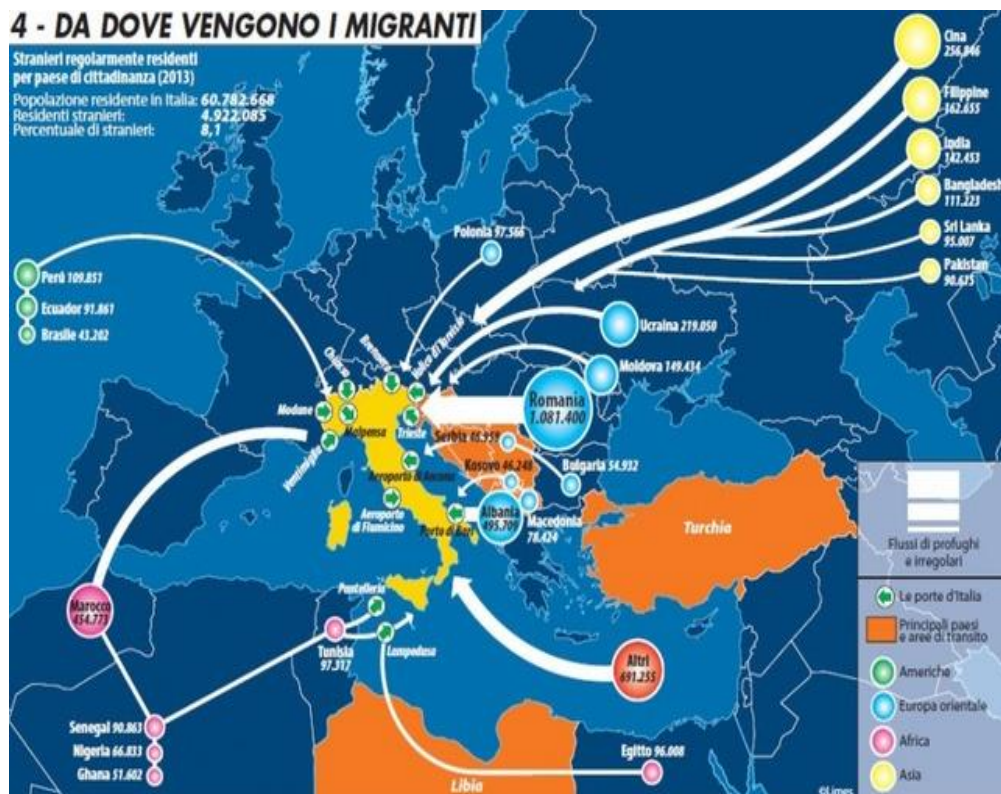


Source: Romanian and Bulgarian National Reports

Bulgarian and Romanian victims are exploited in all forms of THB. In both countries the largest number of victims are sexually and labour exploited, followed by involuntary servitude (begging, petty crimes, forced marriage) and rarely or less reported forms of exploitation for organ removal and trafficking in newborns. In the last 5 years, there was developed a new European trend in recruiting young and educated girls by lover-boy method, which does not imply physical, but psychological coercion. This method was very much used in Middle East countries and transferred to Europe, mainly after 2013. Having better educated girls, the THB networks can address clients with a higher income, earning more money with a lower risk, as victims are psychologically linked to the traffickers and they are not willing to testify against them in front of the law enforcement agents or in courts. Lover-boy recruited girls are in a kind of “seasonal exploitation”. They are encouraged to keep the contact with their family members, coming back to Romania or Bulgaria every few months, and to refuse to talk about their job abroad. This kind of recruitment was very much extended in both countries in the last 5 years.

The THB patterns in Italy are completely different as they are very much linked to the migration flows and their specificities. There are reported 1.081.400 Romanian

immigrants and 54.932 Bulgarians that are living in Italy as it is reported in the figure below.



Source: Limes - Italian National Report

The modus operandi of the criminal networks acting in Italy is similar to the entire Europe. They developed a very-well organised multilevel business model, built on key partners, key activities, and key resources with a cost-efficiency structure. Unlike the Romanian and Bulgarian networks, those acting in Italy use threat of retaliation and direct violence in order to exploit the victims who are, mainly, third-EU countries citizens.

3. Estimated profits related to trafficking in human beings' crime

The Bulgarian National Report states that the profits of the national THB networks are from 900 million to 1.3 billion/year and only 500 million-1 billion are invested in Bulgaria. The Romanian authorities have never assessed the proceeds related to THB

in general, but only on some singular cases. The Italian National Report mentions that in 2009 the estimated profits of THB market were about 870 million euro of revenues.

The Bulgarian National Report focuses on the modus operandi of the criminal networks to transfer the proceeds of crime within the country and to laundry the money. Usually, the network transfers physically the money or buy different expensive goods. Money are physically transferred through different types of financial systems or using couriers. In Bulgaria the investments are done in real estates, agriculture, tourism and hotels, transports, pubs etc. After, money from trafficking are mix with money from legal businesses and the identification of money laundering procedure is more efficient. In Romania, beside this kind of activities, the networks use cryptocurrencies to hide the profits from organised crime.

The Romanian National Report presents few cases in which the Romanian or other EU authorities estimated the profits of Romanian traffickers involved in that specific case prosecuted. So, in a case of forced begging investigated by UK authorities, it was estimated that the network had about 40.000 GBP/quarter/children exploited. The UK authorities identified more than 1000 Romanian victims exploited by the same network. So, the profit of the network from the victims exploited only in UK was about 160.000.000 GBP/year, with at least 2 years of exploitation/victim. Furthermore, there are information that this network exploited children in other EU countries like: Spain, Italy, Belgium etc.⁷

The Romanian THB case-law analysis shows that the largest amount of proceeds identified by the Romanian authorities was 1.070.000 Euro, in a 2015 case worked on by the Athens and Bacău prosecutors' joint investigation team. The case involved only 2 traffickers identified, which had been exploiting 9 victims. In this case, the Romanian state confiscated 810.000 Euro of the total proceeds. However, in most of the national cases, information on the proceeds of THB is not available and financial investigations are not undertaken.

⁷ See the article Cazul Țândărei, prima anchetă româno-britanică privind traficul de copii în UK, nerezolvat după 8 ani. Polițist englez: "Sunt șocat!", available at: <https://www.g4media.ro/cazul-tandarei-prima-ancheta-romano-britanica-privind-traficul-de-copii-in-uk-nerezolvat-dupa-8-ani-politist-englez-sunt-socat.html>

4. Confiscation and recovery of assets linked to trafficking in human beings

Many EU member states are making substantial efforts to freeze, and confiscate proceeds of THB crime and they are using all their available legislation in order to create a hostile environment for the criminals⁸.

The Romanian and Bulgarian National Reports present the legal and institutional framework that allows the confiscation and recovery of assets that are linked to trafficking in human beings' crime. In Bulgaria, the National Report shows that there are three legal procedures that can be used for this purpose:

“1. In article 159a-159d of the Penal Code, which criminalizes trafficking in human beings, confiscation and fines are provided. This allows for the criminal assets to be confiscated upon imposition of the sentence.

2. Article 253 of the Penal Code criminalises money laundering and allows for confiscation of the criminal property in addition to imposing other punishment on the traffickers.

3. In Bulgaria there exists a procedure for so-called non-conviction-based confiscation, which CIAF performs under the rules of the Code of Civil Procedure. The initiation of this procedure does not require a sentence and it is sufficient for the trafficker to be indicted. Civil confiscation is regulated by the Law of forfeiture in favour of the state of illegally acquired property, which in 2012 replaced the 2005 A law of forfeiture in favour of the state of property acquired by criminal activity”.

The National Report shows that Romania is considered a country in which the proceeds of organised crime are easily invested in real estates or other legal businesses because the financial investigation is not a priority for the prosecutors and the anti-money laundering legislation is weak⁹.

⁸Analysis and Knowledge, *Trafficking in Human Beings in the European Union*, Europol Public Information, The Hague, 2011, p. 8.

⁹ European Commission started the infringement procedure against Romania on the 4th Anti-Money Laundering Directive, http://europa.eu/rapid/press-release_IP-18-4491_en.htm

The actual Romanian legal framework has mandatory seizing and freezing assets only in the case of a number of crimes, such as money laundering, tax evasion, corruption and crimes against the financial interests of the EU, as well as for financing terrorist activity¹⁰. No such explicit provision is currently in place for trafficking in human beings.

The freezing of assets relating to THB is implicit as per the new Romanian Criminal Code, which states clearly that the extended confiscation procedure is applicable to a list of criminal activities, including „trafficking and exploitation of vulnerable persons”¹¹. As extended confiscation involves the identification, seizing and freezing of assets, it can be stated that this procedure is implicitly mandatory for THB cases¹². The legal text states that the following shall be subject to special confiscation:

- a) *“assets produced by perpetrating any offense stipulated by criminal law;*
- b) *assets that were used in any way, or intended to be used to commit an offense set forth by criminal law, if they belong to the offender or to another person who knew the purpose of their use;*
- c) *assets used immediately after the commission of the offense to ensure the perpetrator’s escape or the retention of use or proceeds obtained, if they belong to the offender or to another person who knew the purpose of their use;*
- d) *assets given to bring about the commission of an offense set forth by criminal law or to reward the perpetrator;*
- e) *assets acquired by perpetrating any offense stipulated by criminal law, unless returned to the victim and to the extent they are not used to indemnify the victim;*
- f) *assets the possession of which is prohibited by criminal law”*.

Additionally, the New Criminal Code has also introduced extended confiscation for human trafficking (art. 112(1)). The legal text stipulates that *“assets other than those*

¹⁰ According to Freedom House Romania *Recovery and confiscation of the proceeds of crime – Diagnostic Report 2016*, p. 6.

¹¹ According to the New Criminal Code (Law 289/2009)

¹² Interview with NGO’s representatives

referred to in art. 112 NPC are also subject to confiscation in case a person is convicted of any of the following offenses, if such offense is likely to procure a material benefit and the penalty provided by law is a term of imprisonment of 4 years or more: [...] b) trafficking in and exploitation of vulnerable people [...]. Extended confiscation is ordered if the following conditions are cumulatively met:

- a) the value of assets acquired by a convicted person within a time period of five years before and, if necessary, after the time of perpetrating the offense, until the issuance of the indictment, clearly exceeds the revenues obtained lawfully by the convict;*
- b) the court is convinced that the relevant assets originate from criminal activities such as those provided in par. (1)”.*

However, in both countries the main challenge is not to freeze the assets linked to human trafficking activities, but to guarantee that those assets can be used to recover the proceeds of crime and for this procedure there is a need for very well-trained prosecutors and public servants that are involved in the management of the confiscated assets. Both countries have established assets recovery offices that manage the seized assets during the criminal investigation and trial, as well as selling them in order to preserve their value.

The Bulgarian National Report mentions that “*value of the assets seized is 3460 BGN, an extremely low value that reveals how poorly used the capabilities for confiscating criminal assets and draining the economic power of crime are in Bulgaria*”. The Romanian National Report states that the situation is very much similar in this country, too: “*of 141 recorded cases of human trafficking that reached a final verdict over the past five years, only 32 mentioned any kind of confiscation (22%). In these cases, a total of only 726.175 RON, 1 626.060 EUR, 80.317 USD, 29.831 CHF and some physical assets (i.e. electronics) were recovered*”. Both reports mention national statistics related to values seized, money laundering, and frozen assets in general, but not clear and specific data related to THB case as they are not collected at the national level.

5. Open data and public-sector information in the fight against trafficking in human beings

The national reports state that even if all three countries are part of the open government partnership (OGP) and there are many databases available, very little are used in the investigation of trafficking in human beings' cases. In most of the procedures related to freezing and confiscation of proceeds of crime, the investigators use public authorities' internal databases, like property or commercial registry, financial and bank systems, and very few open data. All the reports presented specific cases and situation in which the law enforcement officers used OD or PSI in order to support their investigation.

The national reports show that while the use of public-sector information as evidence in court does not present a significant challenge, there may be problems with using open data in this capacity. There is a culture that judges do not work with raw data or information, but with evidences, and open data are therefore not the best source of information on particular challenges like THB. Still, open data remains a useful source of information during the investigation procedure. Use of this information in THB investigation could significantly increase the efficiency to trace, identify, freeze and ultimately confiscate the assets and instrumentalities used by human traffickers.

The Italian report presents the model of its national databases – SIDDA/SIDNA and MOLECOLA - that are used by law enforcement authorities in order to have access to needed information for an efficient investigation. Also, all parties involved are well-trained on using in a proficient way these databases.

6. Main conclusions of the comparative analysis

Confiscation of the proceeds of crime should gradually become the central objective of the criminal justice system, as this will have a direct impact on all income-generating crime, including trafficking in human beings. The parallel financial investigations, the traceability of money, and the identification of processed of crime should be the main

priorities of the national authorities in each country that implements an efficient strategy against organised crime. As the mobile of the crime is money, in order to combat the phenomenon and discourage these activities, the confiscation must be the driving force for the law enforcement authorities.

„Financial investigation should focus on identifying the connections between the source of the financial flows, the beneficiaries, the time when the money is received, and the place where it is deposited or invested. Those financial investigations should respect the Financial Action Task Force on Money Laundering (FATF) standards in order not only to detect and enable the efficient freezing and confiscation of THB crime-related proceeds, but also to gather evidence against perpetrators and their accomplices for the purpose of dismantling cross-border organized networks. One key point that needs to be improved among investigators is the awareness of the international standards establishing the objectives and the scope of financial investigations¹³, as the cases analyzed in the drafting of this report show that there is no current systemic approach towards maximizing the impact of investigations from an asset recovery perspective. Without a pro-active approach through financial investigations, it is possible that the assets resulting from or used in crimes such as human trafficking may be injected into the legal economy or be re-invested in other criminal activity.

The findings of this report are that there is currently a strong need for training and capacity-building in order to adequately run the complex criminal and financial investigations necessary in the fight against human trafficking. Another point that was identified as being insufficiently developed is the relationship between law enforcement authorities and the prosecution. More so, investigative bodies should be encouraged to

¹³ The definition of financial investigation is comprised in the Interpretative note of FATF Recommendation no. 30, that can be found at: http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf, p.97 According to paragraphs 2 and 3 of Interpretative Note, “A ‘financial investigation’ means an enquiry into the financial affairs related to a criminal activity, with a view to: identifying the extent of criminal networks and/or the scale of criminality; identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and developing evidence which can be used in criminal proceedings. A ‘parallel financial investigation’ refers to conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation into money laundering, terrorist financing and/or predicate offence(s). Law enforcement investigators of predicate offences should either be authorised to pursue the investigation of any related money laundering and terrorist financing offences during a parallel investigation, or be able to refer the case to another agency to follow up with such investigations”

be proactive in their financial investigations. In order to improve these two aspects, the common recommendations are:

- Training for investigators and magistrates on the framework of national and European legal texts and mutual agreements that regulates cooperation and information exchanges among the various authorities in charge of criminal/financial investigations, including relevant ECHR standards on asset recovery;
- National databases including complete information and cross-data from authorities' registries, created based on the Italian good-practices of so-called "SIDDA-SIDNA" system - a wide and efficient network of information and MOLECOLA that highlights the disproportions between declared and effective incomes;
- The development of a tactical/practical approach to improving cooperation between police and prosecutors, with a focus on the exchange of experience, investigative opinions and best practices;
- The creation of a financial investigation compartments integrated in the prosecutor's offices, in order for the judicial police to conduct the financial investigations directly under the supervision of the prosecutors;
- A mobile application that connects all the operators who are in contact with potential victims of trafficking (healthcare professionals, religious associations, social workers, teams that operate on the streets etc)."¹⁴

¹⁴ Judge Camelia Bogdan, Bucharest Court of Appeal

BETTER INVESTIGATION AND RECOVERY OF ASSETS RELATED TO TRAFFICKING IN HUMAN BEINGS IN BULGARIA

Georgi Petrunov

1. INTRODUCTION

Trafficking in human beings is a complex problem associated with cruelty and violence, exerted by humans on humans, and a bitter violation of fundamental human rights, such as the right to life; the right to dignity and security; the right to fair and favourable working conditions; the right of access to healthcare and equality.

The crime “trafficking in human beings” is a serious problem for EU countries – 15 846 people within the union are “identified victims,” 65% of whom are European citizens.¹⁵ Bulgaria as well as Romania are severely affected by human trafficking, as sources of victims and in much rarer cases as a destination for trafficking. According to the European Commission report, the two countries are in the top 5 EU countries of citizenship for registered victims in 2013-2014, together with Hungary, Poland and the Netherlands. These countries have led this negative ranking since 2010.¹⁶

Human trafficking is defined (Directive 2011/36/EU) as a gender specific phenomenon; over three quarters of identified victims are women.¹⁷ Usually men and women are trafficked for different purposes, and the forms of exploitation vary in different periods, most often depending on demand and the profit expected from traffickers. The Palermo Protocol identifies several main forms of human trafficking: for sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs. This list is supplemented in Directive 2011/36/EU, but it is not limited to exploitation for the purpose of forced criminality, such as “pickpocketing, shoplifting, drug trafficking and other similar activities that are subject to penalties and imply financial gain.” This list is not exhaustive and allows other country-specific forms to be included.

¹⁵ European Commission. 2016. *Report on the progress made in the fight against trafficking in human beings*. Brussels

¹⁶ Europol. 2011. *Trafficking in Human Beings in the European Union*. Hague; Europol. 2016. *Situation Report: Trafficking in Human Beings in EU*. Hague; European Commission. 2016. *Report on the progress made in the fight against trafficking in human beings*. Brussels.

¹⁷ European Commission. 2016, *ibid*.

The most wide-spread form of human trafficking in Europe, according to the EC report on combating this crime is for sexual exploitation – 67% of all victims identified in the period 2013-2014 are of this kind, and 95% of them are women which clearly demonstrates the gender dimension of the crime. According to other studies citing 2012 Eurostat data, women represented 26% of those trafficked for labour exploitation and 52% of those trafficked for other forms of exploitation.¹⁸ According to Eurostat data, 69% of all trafficking victims recorded in Europe are European citizens.¹⁹ Regarding traffickers (those who have been arrested and convicted as such), 70% are men, and the number of convictions for human trafficking for the period 2010–2012 in all EU countries is 3 855.

Typically, victims and traffickers share a nationality, ethnicity, and sometimes family relationships. The push factors that make them vulnerable according to Europol are social and economic conditions in the country, poverty and unemployment, a lack of education, discrimination or inequality in the labour market. In some cases, victims suffer from domestic violence, have family problems or live in an environment where their human rights are violated. All this makes people vulnerable to promises of a much better life abroad. In addition, the demand for cheap labour in the richer Western European countries further contributes to the problem of human trafficking.

The development of human trafficking would be difficult if not impossible to organize without established channels run by organised crime groups. The majority of these criminal groups, according to Europol experts, are able to control the entire trafficking process, from recruiting victims, through their transportation, accommodation, and exploitation, to the receipt and reinvestment of the profits from the operation.

Trafficking in human beings requires much less initial investment than drug trade, for example, yet it is a steady source of large profits for traffickers. The high yield that trafficking provides for criminals becomes a strong incentive to engage in this criminal activity. It is therefore essential to achieve better investigation and recovery of assets related to human trafficking. This is precisely the topic of the project; this report presents the situation in Bulgaria.

¹⁸ Walby, S., Apitzsch, B., Armstrong, J., Balderston, S., Follis, K., Francis, B., Kelly, L., May-Chahal, C., Rashid, A., Shire, K., Towers, J., and Tünte, M. 2016. *Study of Gender dimension of trafficking in human beings*. Luxembourg: Publications Office of the European Union.

¹⁹ Eurostat. 2015. *Trafficking in human beings*. Luxembourg: Publications Office of the European Union.

The national report for Bulgaria adheres to the research methodology and structure of the text adopted in the project. The report primarily presents analysis of empirical information gathered through conducting 15 in depth interviews with judges, employees of the Ministry of Interior, the Prosecutor's office of the Republic of Bulgaria, and the Asset Recovery Office. We also conducted a review of 7 court cases (civil and criminal) related to human trafficking and asset confiscation. The report, especially when presenting the picture of human trafficking and its profits, also relies on secondary analysis of information from previous publications, NGO reports, European institutions and others.

2. TRAFFICKING IN HUMAN BEINGS IN BULGARIA

In this part of the report we will briefly present the state of human trafficking in Bulgaria and the profits acquired through this criminal activity.

2.1. TRAFFICKING IN HUMAN BEINGS

In Bulgaria, trafficking in human beings was criminalized in 2002 in article 159 a-d of the Criminal Code, where it is designated as the recruitment, transport, harbouring or receipt of individuals or groups of persons to be used for debauchery, forced labour or begging, the removal of bodily organs, tissue, cells or bodily fluid, or involuntary servitude, irrespective of their consent.

For Bulgaria, the social problem of trafficking and exploitation of people began its rapid development after 1989, a year marking significant changes throughout Bulgarian society: the communist regime collapses and the transitions to a democracy and a free market begins, which launches a number of reforms in every sphere of society. The opening of the borders along with the initial few years of political and economic chaos became a favorable environment for the emergence and activity of criminal groups. The poor economic conditions in the country and the low wages received by most of the population also create a favorable environment for the development of human trafficking in Bulgaria. This is also valid in most recent years. According to Eurostat data,²⁰ Bulgaria is the country with the highest risk of poverty or social exclusion in the EU – 40.4%. Bulgaria has the lowest GDP per capita in the European Union (6 600 Euro in 2016 compared with an EU 28 average of 29 000

²⁰ Eurostat, People at risk of poverty or social exclusion, code: [tsdsc100]

Euro).²¹ Many people are looking for better living conditions abroad, making them an easy target for traffickers. Most often the final destination countries of victims from Bulgaria, according to Europol, are Austria, Belgium, France, Germany, Greece, Italy, the Netherlands, Spain and the United Kingdom.

The main form of control of the victims in recent years is through promises of a large amount of money. Violence rarely occurs, giving way to the so-called “soft methods,” which suggest the use of addictions and limiting violence against the victims, and is a prerequisite for reducing the number of trafficking victims identified.²²

The number of identified victims of trafficking in human beings from Bulgaria in the period 2013-2015 is presented in the following table.

Table 1: Number of victims of human trafficking from Bulgaria

Year	Total victims	Women		Men	
		adults	minors	adults	minors
2013	538	427	48	46	17
2014	490	433	29	17	12
2015	383	353	28	23	5

Source: 2016 Annual report of the National Commission for Combating Trafficking in Human Beings in Bulgaria

The table clearly shows a significantly larger number of women and girls who are victims of trafficking compared to men and boys. The large number of women who have become victims of human trafficking is also due to the considerably widespread trafficking for sexual exploitation in Bulgaria. On the basis of data provided by the Supreme Cassation Prosecutor’s Office, the report of the Group of experts on action against trafficking in human beings (GRETA) under the European Convention on Action against Trafficking in Human Beings states that sex trafficking accounts for 77% of trafficking in Bulgarian citizens, followed by trafficking for labor exploitation (mainly in sectors such as construction, agriculture and manufacturing) – 12%. The remaining 11% of trafficking cases are for selling victims’ newborn babies, trafficking

²¹ Eurostat, Main GDP aggregates per capita, code: [nama_10_pc]

²² National commission for combating traffic in human beings. 2016. *Nationalna strategija za borba s trafika na hora 2017-2020* [National strategy for combating traffic in human beings 2017-2020].

involving involuntary servitude, and extraction of organs and bodily fluids. We will go through each of these types of human trafficking below.²³

Sex trafficking

Bulgarian victims of trafficking for the purpose of sexual exploitation are exploited most often in the considerably richer countries of the European Union. A characteristic of this traffic over the years is a sustained tendency of victims from particular regions in Bulgaria being trafficked to particular destination countries. For example, victims from from the city of Sliven are sent to the Netherlands and Belgium; from Plovdiv and Pazardzhik – to France, Italy, Spain; the cities of Varna, Dobrich, Shumen, Razgrad – to Germany, the Czech Republic and the Nordic countries.

One possible periodization of the development of sex trafficking in Bulgaria is the following:²⁴

1. Beginning – in the first half of the 1990s; establishment of initial contacts with persons from other countries, in rare cases Bulgarians are involved in the exploitation of victims;

2. Episodic – from the second half of the 90s to the beginning of the new millennium; mainly involving Central European countries; violence is the primary method of recruiting and control of victims; in many cases they are sold to foreign exploiters;

3. Boom – between 2001 and 2007, coinciding with the waiving of visa restrictions for Bulgarians when travelling within the European Union; the Bulgarian traffickers have gained experience and contacts, develop systems and occupy significant territories; violence decreases and in most cases is replaced by partnerships between the victim and the trafficker;

4. Establishment – from 2007 to 2009, coinciding with the accession of Bulgaria as a member of the European Union; traffickers capture large segments of the most

²³ The analysis of the different types of human trafficking is based mainly our previous studies on the issue such as: Petrunov, G. 2014. Human Trafficking in Eastern Europe: The Case of Bulgaria. *The ANNALS of the American Academy of Political and Social Science*, 653: 162-183 и Petrunov, G. 2010. *Spravedliv proces za jertvite na trafik*. [Fair trial for victims of trafficking]. Sofia: The Bulgarian Judges Association, and National commission for combating traffic in human beings. 2016. *Nacionalna strategija za borba s trafika na hora 2017-2020* [National strategy for combating traffic in human beings 2017-2020].

²⁴ Petrunov, G. 2017. Trafikat na hora – savremenna forma na robstvo [Human trafficking – modern-day slavery]. *Nauka*, 5: 5-10.

lucrative markets in Europe; physical violence in the recruitment of victims almost completely disappears; inclusion and participation in the majority of cases is voluntary.

5. Crisis – from 2009 to 2011, linked to the economic crisis; some traffickers reorient to other crimes, while others start to exploit victims more intensively and force them to offer more services to customers to compensate for the reduced turnover; but in the mass cases the methods remain soft and the negotiated profits are respected; after the arrests of major participants in the domestic market, many of them move abroad.

6. A second rise – from 2012, covering the period of recovery from the economic crisis and linked to an increase in profits in the western European countries; a model of short-term travel to foreign destinations begins; violence is almost not used except for trafficking in certain ethnic groups of the Bulgarian population.

Victims of trafficking for sexual exploitation usually first enter the networks of traffickers between 18-20 years old, but there are also cases of minors who are typically exploited within Bulgaria until the age of majority, after which their exploitation continues abroad. Usually prior to being recruited, victims are unemployed, they have studied or worked low skilled and low income jobs (mainly in the sphere of services such as waitresses, barmaids and sellers).

There is a wide variety of methods used to recruit victims of trafficking for the purpose of sexual exploitation. Our previous studies²⁵ present some of the most common methods: Loverboy – by falling in love/her boyfriend offers her work; a prostituting friend recruits her; an acquaintance recruits her; someone independently offering sex services is recruited by a trafficker; a relative sells her/offers her; job/vacation abroad scams; falling into debt; kidnapping.

Typically, victims of trafficking for sexual exploitation travel with their real personal documents, passing border-control check points, often accompanied by the trafficker. After being transported to the destination country victims are accommodated, acquainted with the working conditions and forced into sexual exploitation. This type of trafficking is linked to the activity of large organised crime groups, often involved in other crimes as well.

Trafficking for labour exploitation

²⁵ Petrunov, G. 2009. *Osnovni shemi za prane na pari ot trafik na hora s cel seksualna eksploatacia. [Main schemes for money laundering from sex trafficking]*. Sofia: RiskMonitor.

In contrast to trafficking for the purpose of sexual exploitation, trafficking for labour exploitation is less often included as an activity of large organised crime groups. It is also less visible to society. At risk are primarily young and middle-aged men and women, especially with low education, immigrants, unemployed, homeless, children from dysfunctional families and children without parental control.²⁶ When recruiting for work abroad, in many cases, there is informed consent for the type of work, but not for working conditions.

Bulgarian citizens are most commonly exploited in Greece, the Czech Republic, Italy, Spain and Cyprus, but there are cases of labor exploitation of Bulgarians in Sweden, Norway, Britain, the Netherlands and Portugal. Usually, the recruitment of victims is done through advertisement of a lucrative job offer abroad, and in some cases a fee for finding a job is taken. The sectors most commonly exploiting Bulgarian men and women are farming, construction, logging, manufacturing, the agriculture (berry picking) and food industry, and women in sewing companies, hotels and domestic work. The working conditions are extremely difficult – 10-12 hours a day without a day off for minimum or no wage. In most cases, in order to keep the victims under control, their traffickers retain their documents, keep them under constant surveillance and use violence or threats.

Trafficking of pregnant women for the sale of their newborn

The trafficking of pregnant women for the purpose of selling their newborn is typical for Bulgaria. The main destination in recent years, where the newborns are sold, is Greece, but there are cases of traffic to France, Italy, Spain and Portugal. Victims of this type of trafficking are of Roma origin, living in extreme material deprivation and poverty. Very often the mothers already have several children. The victims are promised around 5000-6000 euros – a huge amount for them with which they can cover the expenses of their family for a certain period of time.

The traffickers accompany the woman, most often in the seventh month of pregnancy, to the destination country where they are accommodated. The woman does not register her pregnancy in Bulgaria. The birth is done in legal hospitals, like every other birth, and does not arouse suspicion in the staff. In most cases the man who will

²⁶ Tiurukanova, E. 2006. *Human Trafficking in the Russian Federation: Inventory and analysis of the current situation and responses*. Moscow.

buy the baby is recorded as the father as soon as the woman enters the hospital, and after a certain period of time the mother renounces her parental rights. The child is then adopted by the husband's lawful wife. In other cases, the mother is registered with the identity of the woman who will buy the child. The price paid by buyers is about 25 000 euros for a boy and 18 000 for a girl. The mother retains only about 2-3000 euros, despite promises for double that. Characteristic of this trafficking is that the traffickers, like the victims, are of Roma origin, and in the typical case, almost all representatives of the respective clan are included in the criminal activity.

Trafficking for forced servitude

This form of trafficking includes exploitation for pickpocketing and begging, forced involvement in criminal activities and forced marriages.

Pickpocketing involves girls of Roma origin between 7 and 14 years old, who have been trained in advance in their family to perform similar activities. They are accompanied by older women of the clan who surveil them and collect the money. Some publications show that for only four days during the Christmas holidays in Brussels, a pickpocket can make between 12000-13000 euros.²⁷ The most common destination countries for Bulgarian victims of this type of traffic are Austria, Great Britain, Belgium, France, Italy, Spain, Germany, Greece, Cyprus, Denmark, Norway, the Netherlands and Switzerland. It is mainly carried out by Roma groups through family relationships and is characterised by high mobility – a frequent change of destination countries.

There exist cases of human trafficking for the purpose of exploitation as beggars, mainly in different countries of Western and Northern Europe. Traffickers recruit victims with physical handicaps, disabled or elderly people who are forced to beg for hours, and the money received is transmitted to criminals. In most cases, traffickers have total control over the victims.

Cases of forced marriage with non-EU nationals are also found in Bulgaria; for example, Bulgarian citizens scammed into traveling to Cyprus for work as maids are forced to marry Pakistani citizens. There are also people forcibly engaged in criminal activities: victims are promised a well-paid, legal job and trafficked to a foreign

²⁷ Gigova, M. 2007. *Zvancheto na djebchiikata [The pickpocket's bell]*. Sofia: Aros.

country, then taken into debt, and instead of doing the expected work, they are forced to smuggle drugs in exchange for their debt.

Trafficking for the purpose of removal of organs

The few identified cases of this kind of trafficking in Bulgaria are linked to organ and cell trafficking.

Three cases of organ trafficking have been identified, all of which are for selling kidneys. Characteristically, in all cases the country of origin of the victims, the country of origin of the recipients, and country where the transplants are carried out are all different. For example, Bulgarian traffickers have been convicted for recruiting victims who sold their kidneys, and the transplants were carried out in Turkish clinics to clients from third countries.

There are also cases of sales of ova from Bulgarians in Cyprus and Israel. The traffic of ova is a newer form of exploitation that becomes possible with the advance of medicine. Women are promised between 500 and 2000 euros. The ova are sold to women with reproductive problems, who pay about 25 000 euros. The scheme usually includes the medical practitioner.

All types of human trafficking generate huge profits, discussed in the next part of the text.

2.2.PROCEEDS RELATED TO TRAFFICKING IN HUMAN BEINGS

It is difficult to precisely calculate the profits from human trafficking in Bulgaria, but there are estimates of its approximate scale. In our previous studies²⁸ we offer one such assessment, according to which the profits generated by Bulgarian traffickers is between 900 million and 1.3 billion euro annually, of which between 500 million and 1 billion stay in Bulgaria. Subsequently, other publications confirm these estimates, for example in Bulgaria's only Threat Assessment of Serious and Organized Crime,²⁹ annual profits related to human trafficking are estimated at 1.26 billion leva (€ 630 million) during the crisis period.

Some of these funds are used to maintain the criminal business and the living expenses of victims and traffickers, and another part is used for investment. It should

²⁸ Petrunov, G. 2009. *Osnovni shemi za prane na pari ot trafik na hora s cel seksualna eksploatacia*. [Main schemes for money laundering from sex trafficking]. Sofia: RiskMonitor.

²⁹ CSD.2012. *Serious and Organised Crime Threat Assessment 2010-2011*. Sofia: CSD.

be taken into account that different participants in the trafficking receive different portions of the profit.³⁰ Victims can receive up to 50% of the proceeds, and there are cases where they receive none and are held in slavery by the traffickers. In recent years, sex trafficking victims most commonly split 50% of the profits. However, victims cover their own expenses associated with their work and residence in the foreign country, such as the fee at the place they work, transport, clothes, etc. In this way the victims in most cases fail to amass large sums. In the case of human trafficking for the purpose of labour exploitation and trafficking of pregnant women for the sale of their newborn, the portion for victims rarely exceeds 20%. In the typical case of begging and pickpocketing, victims receive no money, as they are either completely subordinated to the traffickers or are part of their clan. The largest part of the money in all types of traffic goes to those in the highest positions in organised crime groups.

One characteristic of managing the profits from international trafficking in human beings is that profits are generated on the territory of a foreign country. Traffickers use some of the money to acquire assets in the destination countries, such as hotels, bars, and apartments which they can use for the exploitation of victims. But the lion's share of the profit is returned home by the traffickers. This implies their periodic return to Bulgaria, where most of the traffickers occupying managerial positions in the criminal groups reside.

To transfer money to Bulgaria, traffickers use different techniques, which in many cases circumvent the financial system using physical transfer of money or purchase of goods. The oldest and most popular method until a decade ago is through fast money transfer systems, and in less frequent cases by bank transfer as well. Money couriers are another of the most widely used methods. Couriers can be divided into two groups. One transfers sums up to the maximum legal value not subject to declaration. The second group of couriers carries large sums of money without declaring them. Another very common method for transferring profits from human trafficking in Bulgaria is the purchase and subsequent import and sale of various goods – most often used cars, caravans, clothes, jewellery, leather products and others. The main objective of launderers in these schemes is to sell the imported goods as quickly as possible, which they often do from stores that are their own property.

³⁰ Petrunov, G. 2011. Managing Money Acquired from Human Trafficking: Case Study of Sex Trafficking from Bulgaria to Western Europe. *Trends in Organized Crime*, 2-3: 165-183.

Very often, once the money is transferred, it is stored by the traffickers not in financial institutions but in safe deposit boxes. A characteristic feature of some of the Roma groups involved in trafficking in human beings is that they use the funds to buy gold. Only a small proportion of the cases identified explicit planning of investments.³¹ Part of the cases involve exchange of the currency in which profits are acquired to Bulgarian levs. Another part involves traffickers' efforts to simulate a legitimate origin of the funds they will invest. Most often, they use real estate mortgages, loans, etc. A noticeable trend over the years is that human traffickers make increasingly less effort to disguise the origin of their funds.

Traffickers use a significant part of the money to invest in diverse sectors of the legal economy. In the most characteristic areas are real estates, agriculture, tourism and hotels, transport businesses, pubs and others.

Once the money from trafficking is successfully invested in a legal business, it becomes possible to mix illegal with legal money by declaring greater than actual turnover, purchases at low prices and sales at high margins, etc. Using similar methods, traffickers are able to more easily make future proceeds of human trafficking appear acquired through legal activity.

Apart from entering the legal economy in Bulgaria, some of the money is used to finance other criminal activities. For example, many leaders of the criminal groups also act as lenders.

No matter where human traffickers will look to invest their funds, one of the most important measures to combat this crime is the successful confiscation of criminal assets.

3. CONFISCATION AND RECOVERY OF ASSETS FROM TRAFFICKING

The legislation in Bulgaria allows for assets acquired from human trafficking to be confiscated in three ways:

1. In article 159a-159d of the Penal Code, which criminalizes trafficking in human beings, confiscation and fines are provided. This allows for the criminal assets to be confiscated upon imposition of the sentence.

³¹ Petrunov, G. 2009. *Osnovni shemi za prane na pari ot trafik na hora s cel seksualna eksploatacia*. [Main schemes for money laundering from sex trafficking]. Sofia: RiskMonitor.

2. Article 253 of the Penal Code criminalises money laundering and allows for confiscation of the criminal property in addition to imposing other punishment on the traffickers.

3. In Bulgaria there exists a procedure for so-called non-conviction based confiscation, which CIAF performs under the rules of the Code of Civil Procedure. The initiation of this procedure does not require a sentence and it is sufficient for the trafficker to be indicted. Civil confiscation is regulated by the Law of forfeiture in favour of the state of illegally acquired property, which in 2012 replaced the 2005 A law of forfeiture in favour of the state of property acquired by criminal activity.

The available statistical data on the results of each of the three options for confiscation of property from trafficking in human beings are presented in the following tables. Table 2 includes information on the number of the indictments and the number of persons convicted for trafficking in human beings.

Table 2: Number of prosecutions and convictions of human trafficking per year

159a-159d	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Indictments in court	1	6	35	32	72	67	62	67	70	80	84	84	60	720
Persons convicted and sentenced	0	0	0	2	61	73	54	96	95	116	105	104	56	762

Source: Supreme Prosecutor's Office of Cassation and author's calculations

The data from the prosecutor's office includes information about the value of assets confiscated upon conviction for human trafficking for just one year – 2010. The value of the assets seized is 3460 BGN, an extremely low value that reveals how poorly used the capabilities for confiscating criminal assets and draining the economic power of crime are in Bulgaria.

The following table 3 presents the data on the number of indictments and the number of persons convicted for money laundering.

Table 3: Number of prosecutions vs. individuals convicted of money laundering

Art. 253	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Indictments	22	4	5	5	4	10	19	20	22	31	29	20	30	221
Persons convicted and sentenced	0	0	3	3	3	7	22	35	20	29	27	16	14	179

Source: Supreme Prosecutor's Office of Cassation and author's calculations

The statistical program of the Prosecutor's Office of the Republic of Bulgaria does not support information on the number of cases of money laundering on predicate offences. It is therefore not possible to specify the number of cases of laundering money acquired from human trafficking. However, the data available for both articles (159 a-d and 253) of the Penal Code clearly shows that the number of cases and convictions for human trafficking is more than three times greater than the number of money laundering cases. Trafficking in human beings is just one of the possible predicate crimes, along with drug trade, arms trade and many others. Details about the value of the confiscated property according to the respective legal measures used are also missing. Data is available only for some years. For example, according to data from the presentation of the National strategy for anti-money laundering,³² in 2010, pursuant to art. 253 of the Penal Code, the total amount either confiscated by the state or paid by the convicted persons in equivalence to the laundered assets is 15,013,935.35 BGN. It is important to note that this amount is calculated across both effective sentences and sentences not yet in force for money laundering. Additionally, the total value of fines imposed for money laundering in 2010 was 81 500 leva.

Both the number of cases and the number of convictions and the amount of confiscated assets show that criminal law confiscation in Bulgaria has affected a very small proportion of human traffickers and their assets. This acutely contradicts the interviewed police officers' and prosecutors' expressed understanding of the key role of investigating the profits of criminal activity in the fight against human trafficking. It aims, first at confiscating illegal assets from criminals and limiting their financial power, and second, in following the money trail to get to key participants in organised crime groups. This situation shows that further steps are needed for better investigation and recovery of assets related to trafficking in human beings.

The results of the civil confiscation of property acquired from trafficking in human beings also indicate room for improvement. The following table provides information on the number of cases of confiscation and the amount confiscated favour of the state.

Table 4: Number of cases and value of assets confiscated (in millions of BGN)

³² Petrunov, G., Nestorova, V., and Malamov, D. 2010. *Presentacia na proekt na nacionalna strategija za protivodeistvie na izpiraneto na pari [Presentation of project for National strategy for anti-money laundering]*. Council of Ministers of the Republic of Bulgaria.

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017*	Total
Total assets conf.	0	0	0	0.95	0.75	9.36	12.37	13.06	13.01	6.45	18.77	23.05	104.48
Total cases	0	0	0	4	11	27	38	43	28	35	36	29	251
Total assets from THB conf.	-	-	-	-	0.65	1.03	0.47	2.06	0.3	0.6	0.56	2.74	8.42
Total cases on THB					2	3	3	4	1	2	3	2	20

Source: ARO

The data show that under civil law, just over 100 million leva in criminal assets have been confiscated for a period of over 10 years. The amount confiscated from human traffickers remains far below the estimates of the annual profits from their criminal activity.

A serious challenge in civil and criminal proceedings is the investigation and confiscation of property abroad. The interviews have made it clear that Bulgarian policemen, magistrates and representatives of ARO perceive international cooperation in the case of human trafficking as extremely important for the successful investigation and completion of the case. In the context of international legal cooperation, all means for detecting human trafficking and the assets acquired by it are utilized intensively. Legal assistance requests and the capabilities of Eurojust are actively used. The creation of joint investigative teams (JITs) has proven to be the most successful and rapid means of transnational cooperation. The interviews reveal that in just one of the prosecutor's offices in the country, there five JITs currently working on human trafficking, while one of the interviewed respondent reports that a few years ago in Eurojust, he personally participated in the establishment of four JITs in one week for human trafficking involving Bulgarians. Despite the intensive participation of the Bulgarian investigators in JITs and the success in terms of human trafficking, the interviewees confirm the difficulty of identifying, freezing, and subsequently confiscating criminal assets abroad.

Work on any of the three the means of confiscation of criminal assets presented above requires information from multiple databases, institutions, organizations, etc. However, information about the traffickers' assets is collected during the preliminary investigation phase and used to freeze the assets suspected of being acquired from criminal activity. This ensures that the assets will not be transferred or disappear before the trial is in progress. Information about the sources of criminal assets is collected for

* Data for 2017 are until Oct. 2017.

the purpose of setting bail if such is to be imposed. This all shows how many different phases and procedures in the investigation and work on the case of human trafficking require the collection of accurate, complete, and timely information about criminals' assets. It is because of this that the interviewees highly value all successful attempts to develop new ways to optimise and facilitate reliable access to the information they need.

4. OPEN DATA AND PUBLIC SECTOR INFORMATION IN THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS

At the European level, the use of open sources of information is governed by Directive 2013/37/EU of the European Parliament and of the Council of Europe of 26 June 2013, amending Directive 2003/98/EC on the re-use of public sector information. In the Bulgarian legislation it is transposed by the Law for Access to Public Information. The body that develops the policy and coordinates the implementation of the open data initiative in the public sector is the Council for Administrative Reform. This law obliges all public sector organisations to publish on a special platform public information in an open format. The platform is open source CKAN, developed by Open Knowledge Foundation, UK, and used in countries like Italy, Romania, Great Britain, Slovakia, Holland, Austria, Sweden, South Korea, as well as the European Commission.³³ The front end of the Bulgarian platform is developed by a group of volunteers united in "Society.bg" and is also open source.

Decision № 103 of the Council of Ministers of 2015 adopted for the first time a list of 119 datasets in priority areas to be published in an open format platform at www.opendata.government.bg. In recent years, the number of databases has been increasing until the end of 2017 the Council of Ministers of the Republic of Bulgaria has set a target of 800 databases on the platform. As of October 2017, the platform has 486 databases providing public access to information and 6 657 data sets. The large amount of open data and information from the public sector also pose the question of their use in the fight against human trafficking and criminal profits.

4.1. Open Data, PSI and Criminal Proceeds

³³ Information about the countries is published at www.opendata.government.bg.

In the process of uncovering cases of human trafficking and the assets acquired from it, the Bulgarian institutions collect various types of evidence. This section will present the most important forms of evidence in the work on human trafficking and on seizure and confiscation of property acquired thereby, highlighting and considering in more detail examples of the use of OD and PSI.

All interviewed police workers and magistrates consider testimonial evidence as one of the most important in cases of human trafficking; this includes interrogating the victims of trafficking, interrogating the cooperating defendants, witnesses, and often interrogation before the judge of police officers working on the specific case. The cases studied confirm the ubiquity and virtual necessity of verbal evidence as a means of proof. What becomes additionally clear is the extensive use of special surveillance methods to collect evidence of human trafficking.

Regarding the forfeiture and confiscation of property acquired from THB, the most common form of evidence indicated is that of documentary evidence, e.g., property status reports, reports of owned vehicles, business inquiries, reports on existing bank accounts and assets, collection of tax and insurance information, records of overseas travel, and information from a number of other registers and databases in order to compile a financial profile of the person under investigation. In some cases, apart from inquiries, the collection of evidence relies on other means, such as searches and seizures. Respondents say that searches often uncover large sums of cash and much information about the traffickers' property – notary deeds, bank account statements, safe deposit agreements, etc., but also potential documents leading to intermediaries the traffickers use. One of the interviews notes an instance when a search of the trafficker revealed documents for foreign exchange transfers from France to Bulgaria addressed to third parties. When investigators interrogated the recipients of the transfers and explained to them the potential charges of money laundering, the individuals confessed that they have been hired by the trafficker for 50 euros to receive the money on his behalf and subsequently pass it on.

In cases of confiscation and seizure of property, both in criminal and civil procedures, most often used are the Property Registry, the Commercial Registry, the BULSTAT Registry, the Registry of bank accounts and safes, the DMV register, etc. An inquiry is carried out for all registers that could potentially contain information about the suspect's assets. For example, in many of the criminal proceedings for human trafficking, investigators look to collect information from companies providing fast

money transfer services such as Moneygram and Western Union. Investigators send letters requesting information about the transfers of persons involved in a particular case. As was noted above, a characteristic feature of Bulgarian criminals managing profits from human trafficking is that the money is generated in the territory of a foreign country and some of it is sent to Bulgaria through fast money transfer systems.

Some evidence in cases of seizure and confiscation of property is collected from databases that are not in the public domain, such as the DMV registry, used to establish the ownership of motor vehicles, the GRAO register (personal identification registry) with population data used regularly to identify individuals' addresses, etc. Other evidence, though, is collected from open sources. This is confirmed by both the interviews conducted and the court cases studied. We find that in every case involving the confiscation of property, for each of the persons investigated, a separate query is made into the property registry, which is open for use by anyone seeking to consult it. Similar is the case with the Commercial registry, which contains information about companies, current status, changes in headquarters, management, etc. These registries are also included in the open data platform in Bulgaria, presented above. Information from the open data platform used in individual investigations includes: public procurement contractors, public register of foreign experts, public register of persons with access to trade and export of dual-use items, traders registered for VAT, etc. In the court cases, information is obtained directly from the databases rather than through the Open data platform where they are also available.

The empirical information collected clearly shows that other publicly available information is used in some cases of confiscation, such as information from websites and business cards advertising victims of sexual exploitation, which contain addresses, phones, photos, etc. This information is used to supplant other evidence collected in the case. The media is also mentioned in interviews as a possible source of information, and indeed newspaper publications were used in some of the reviewed lawsuits. Of course, they were considered only insofar as they contained information that informed subsequent interrogations and actions, without the articles themselves being regarded as evidence. This is done by confirming the information in the publication via legitimate means under Criminal Procedure Code.

Other examples of the use of public information are also found in the interviews. For example, one of the interviewed prosecutors recalls: *"I have used the internet to establish a company abroad. I used its website, where the name of the owner was*

displayed. I saw the people's names, and that was what I needed. Then I filed a judicial cooperation order and appended it formally to the case. The site was only the initial grounds, because anything can be written there, but the international order is viable proof." In this case, public information on the Internet provided preliminary information to the investigation of where to look for evidence in the case. Other interviews reveal similar examples: *"For one of the serious human traffickers we had found from pictures online that he used a mountain cottage, which until then we were not aware of."* One of the interviewees shares that in a money laundering case, where a trafficker had bought a Bulgarian city's city garden in a concession and done landscaping in it, the prosecutor used public information about the prices of different types of plants and appointed an expert report showing the real expenses for the plantings, buildings, etc. Another interviewee describes a case of confiscation of property from human trafficker, which used public information on the number of vaccinations for pigs in the given region to disprove false claims by the trafficker. The information showed that there were far fewer animals in the designated area than allegedly raised and sold by the trafficker. Such examples show the breadth of possibilities of using OD and PSI within court cases.

The most active users of public information in their work are members of the police, whose operations involve a maximum range of information sources. *"It is customary to use public information, but you have to keep in mind that our work is operational and we do not necessarily have to present the result as evidence in court."* Public information is used intensively, searched with various widely available programs and applications, such as yandex.ru, google.com, truecaller.com (an application that can search the contacts of those who have installed it), sync.me (offering the same search capabilities, but in Viber). Google is used for its various functionalities developed, e.g. searching by photo and virtual fingerprint. The interviews reveal that there is even a world championship for searching with Google, which shows that searching the Internet for the specific pieces of information needed for a given inquiry or investigation requires special skills.

OD and PSI is also used in the work of prosecutors, employees of ARO and judges, as seen in the examples presented so far. However, the interviews identify a number of difficulties and barriers to more intensive use of OD and PSI in court.

4.2. Main barriers and best practices to more active use of this information

The interviews and the reviewed court cases make it clear that to date, information from the Bulgarian Open Data platform is not used directly. On the one hand, it should be taken into account that the platform exists in Bulgaria since 2015 and is not yet well known, and it is currently expanding the circle of databases it covers. On the other hand, there exist serious obstacles in the Open data platform itself to its use in court cases, as it contains mainly statistical summary data, it lacks functionalities for automatically updating the databases in real time and there is no guarantee that the accessed information is up to date, and last but not least that the information on the platform is anonymized, i.e. people's personal information is removed.

Overcoming these problems is an important condition for enabling the use of the Open Data platform in court cases. This also implies solving the very sensitive question of protecting personal information in open databases, because there is an existing legal framework in place that would be compromised. Investigators obviously have no use of anonymised databases because they only probe specific individuals.

Even if all the problems put forth were solved, the issue remains of accessing a specific database through the platform versus directly through the very institution that maintains that database. Why not search, for example, directly in the Property registry or in the Commercial registry, but go into the Open data platform. To be of any use, the Platform and other Open data applications need to offer improved functionalities and/or simultaneous search in a wider range of databases.

Law enforcement officers have direct remote access to some of the databases and registries, while others require written requests for information. In fact, as stated in one of the interviews: "We have access some places, but we still prefer to write letters..." One of the difficulties facing more intensive use of open data and public information brought up in the interviews are diverging views on the possibility of using information downloaded directly from the database. In one of the interviews, the respondent says, "*in my view, there are no formal obstacles to using open sources. The Criminal Procedure Code ought to allow it. But every lawyer has their own interpretation of things... The judiciary is very conservative and once a practice is adopted it is quite difficult to change.*" According to other respondents, in order for information from open databases, for example from the Property register, to be formally received in the context of a court case, it must be prepared by an official from the relevant organisation and must be signed and stamped. Judges also hold mixed views on the admissibility and subsequent evaluation of evidence in the case with regard to

the use of open data. Some of the judges say they would accept a printout from an open database as part of the preliminary measures, but when examining the substantive case in a court proceeding they would want to have a document with the number of the specific pre-trial proceedings, containing the stamp and signature of the employee.

Regarding civil confiscation within the framework of the Civil Procedure Code, which ARO follows in the case of seizure of unlawfully acquired property, the interviews with their employees make it clear that they use references from the databases available to them only for preliminary information, while for the case files they provide official written documents with all the necessary requisites from the respective institutions. *“We pull up a printout from the Property register, but we send a request for official reference and submission of documents on the lot –notary deeds, foreclosures, collaterals.”* A large number of databases were created or have granted access to ARO in the last few years and this is seen as an extremely good practice. Previously, letters were written to a very wide range of institutions, where just the agencies in the country were over 100, whereas now the information is centralised in the Property register. Even if the databases do not provide valid evidence for judicial proceedings, they are a valuable starting point for the employees of ARO for identifying which institutions to send letters of request to provide the necessary information in the manner prescribed in the Civil Procedure Code in order to be used as evidence in the case.

The interviews reveal several reasons that explain the extensive use of written information with a signature and stamp. First is the demand for certainty from the respective magistrates that, because of the very formal procedural rules of the judicial process in Bulgaria, lapses in documentation will not cause a procedural violation and dismissal of the case. A second reason is noted by one of the respondents who does not see formal obstacles to the use of information from open databases, but would like to ensure that the results of any specific search are complete and not affected by a technical issue, hacking manipulation, etc. The involvement of an expert from the respective institution to draw up and sign an official reference is seen as added security because this allows the employee to be subsequently called as a witness. Another reason to bear in mind is that the receipt of a written report usually takes several days, which, given the whole period of work on the case, does not lead to delays.

The magistrates’ divergent views on the admissibility of printouts from the databases is not an isolated case. A similar example is mentioned by several

respondents, who say that until a few years ago in Bulgaria there was a dispute as to whether materials received by the European Anti-Fraud Office OLAF could be used as evidence in criminal proceedings. *“Some judges accepted the materials they sent, while others did not and wanted to write international legal orders, which slowed down many things. This has been overcome with a legislative change in Criminal Procedure Code [...] they included documents sent by OLAF as a form of written evidence.”* Therefore, specific changes in CPC would categorically decide the possibility for direct use of information off of databases.

In fact, the excessive formality of the Bulgarian CPC is noted as an exceptional obstacle by those working on criminal cases. They are unanimous that urgent measures are needed to reduce the formalism and aligning the procedures with the current social realities at the end of the second decade of the 21st century. *“The whole process is so formal that it is best to write a new one. That’s how many things will have to change.”*

This delay is particularly evident in the fact that the Bulgarian CPC does not allow a review of the Internet space. As circumstantial evidence, allowed are a protocol for search of the scene and a computer-technical expert reference. The crime scene protocol on the internet is done in exactly the same way as a view of the crime scene in trafficking incident on the street with an injured person, prepared by investigative officers in the presence of two certifying persons. In the seizure of computer equipment, all the data on the computer must be printed on paper in front of two certifying persons who sign each sheet with their signature in order to be admissible as evidence in the case.

The Internet contains a huge amount of public information, which is often uploaded to foreign websites, requiring the use of international legal cooperation to collect legitimate evidence. This poses serious challenges to the rapid use of information as evidence in the case; for example, to prove the identity of a user of a Facebook account, an order is sent to the United States. These orders are very slow (about 18 months each) and to avoid this delay, the view of the scene and the expert report are used. A prospect with enormous potential is to establish regulations and develop technical capabilities for searching a specific person in the open data platforms of different countries.

A serious barrier to the use of public information is its credibility. There are no guarantees of truthfulness or authenticity of media or Internet publications. One of the interviewed judges shares, *“I am not aware of information from newspapers and*

websites being legitimate evidence anywhere in the world. It can give reason and guidance for future investigation, but as a main tool I don't think it is possible. Besides hackers, things are very complicated. How do you trust the Internet when deciding human lives?" Media and Internet publications can only be used to suggest further inquiries and to gather other evidence according to the CPC. There are cases of human trafficking where, as is apparent from the previous point, printouts of Internet sites indicating that sexual services are offered at a particular address are appended as indirectly supporting other evidence of the crime.

Considering both the formal, and the subjective nature of difficulties facing more intensive use of open data and public information, some of the interviewees see the prospect of promoting the use of open data, online sources of information and information from the public sector in the process of investigating by organizing trainings and discussions, where all relevant institutions can be represented and engage in mutual discussion of their positions. All respondents said that at the time of conducting the interviews, they were not trained on the subject of Open data. Our impression during the study was that they had limited knowledge of this matter, and some were introduced to Open data platforms for the first time.

5. Conclusions: Opportunities for increased use of online and PSI sources

More intensive use of open data, information from the Internet and public sources in cases of seizure and confiscation of property can be achieved by developing an application or programs to optimise the work of investigators. The main requirements for the success of such an application stated in the interviews can be summarized as follows:

- Have extremely powerful and precise search functionalities;
- Allow very fast and timely supply of reliable and complete information for specific persons;
- Have access to personal data bases and complete identification data of individuals so that no overlaps are possible;
- Compile a wide number of secure, reliable, up-to-date and complete databases;
- Allow combined search of all databases that are in the Open data platform;
- Allow combined search of other reliable databases with real-time information, e.g. the Registry of owners of aircraft and vessels and the Registry of beneficial owners;

- Allow searches in several different languages;
- Allow searches of open databases of other countries, which is currently the most difficult and the slowest information to reach;
- Possess AI algorithms which at the least can systematize the information in an appropriate manner and make a reconciliation of revenue and expenditure;
- Select by features the huge volume of information in the public database;
- Ensure the highest security standard from external interference and manipulation of information;
- Check existing databases for natural persons and related legal entities;
- Have better functionalities and more capabilities than primary sources to make sense of its use;
- Establish a protocol of entry and inquiry to allow for inclusion in the evidentiary body of the case;
- Have the Criminal Procedure Code regulate the use of the information from the app, so as to be recognised as evidence by the court.

Despite the many potential benefits and the willingness of all those interviewed to develop applications and programs for working with Open data and public information, many of them do not hide their skepticism about the successful development of a suitable tool. A serious challenge identified is engaging quality computer professionals who *“...will not work in the Council of Ministers and will not rely on interviews to determine the functionality of the applications. The specialized IT companies have whole departments that are involved in analyzing future software and its subsequent development.”* Another interviewee voices a similar thought: *“Many high-paid professionals work in computer companies to develop new applications. If you are going to actually make something workable you will have to go through this expensive and difficult process. Another option is to outsource to amateur developer applications, of which there are many, but they cannot be used by the courts.”* There is no doubt that the power of information and access to it will increase in the future, and it is important that efforts to find better opportunities to utilize it do not cease.

BETTER INVESTIGATIONS AND RECOVERY OF ASSETS IN ROMANIA

Camelia Bogdan, Silvia Tabusca, Alexandra Vaduva

INTRODUCTION

The study focuses on trafficking in human beings in Romania and the identification of proceeds of crime/confiscation of assets. The term “trafficking in human beings” reflects the terminology used in the national criminal legislation, which transpose art. 3 of the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children to the United Nations Convention against Transnational Organized Crimes, and provisions of the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

The overall aim of this report is to underline the main challenges that Romanian authorities face in estimation of the proceeds related to trafficking, as well as in confiscation and recovery of assets linked to this crime. The study, by analyzing practices in Romania, aims to provide an overview of the current situation on preventing and combating trafficking in human beings, and on confiscation and recovery of assets from this crime by using open data and public information for better investigations. Thus, the report acquires a clear picture of the situation in Romania, including trends, practices, police/judicial architecture and legal framework.

The methodology used for this report covers both the qualitative and quantitative research methods, mainly based on desk research, as well as interviews, observations and opinions that are coming from the primary and secondary sources of information.

I. CONTEXT AND GENERAL BACKGROUND

1.1. Scoping the phenomenon at the international level

Trafficking in persons is considered a multifaceted crime and an illegal business that undermines the rule of law and creates instability. As a global phenomenon, a contemporary or a modern form of slavery, it has profound social and economic implications, which affects, on one hand, the security of the state, and, on the other hand, the fundamental human rights and dignity of the victims. For this reason, it is called a form of inhuman trade that is internationally present in any country that may be a territory of destination, transit or a source country³⁴.

Over the last decades, trafficking in persons became the second largest illegal activity and source of income for criminal organizations, at the international level. The 2015 Europol Report states that the annual proceeds of THB crime are estimated as follows: €23.5 billion profits of sexual exploitation in the EU and developed countries; €25.8 billion global annual profits from THB-related sexual exploitation and €3.5 billion global annual profits from THB-related labor exploitation³⁵. The 2012 ILO Global Report mentions that 2 persons are sold in traffic every minute, for an estimated profit of €500/person, with 21 million victims labor exploited³⁶. The 2016 ILO facts and figures underline the increase of the THB victims at the international level as follows: an estimated 40.3 million people are in modern slavery, 24.9 million in forced labor and 15.4 million in forced marriage, which means that there are 5.4 victims of modern slavery for every 1.000 people in the world and 1 in 4 victims of modern slavery are children³⁷.

While this crime has been recognized and condemned by the international community, national governments still lack an effective response, mainly because many of them

³⁴ Silvia Tabusca, "Trafficking in Persons and International Trade", single author, pp. 352- 358, WSEAS Recent Researches in Applied Economics & Management in Chania, Crete Island, Greece, ISBN: 978-960-474-323-0, 2013, ISI-Thomson Reuters

³⁵ 2015 Europol Report - The trafficking in human beings financial business model, available at: <https://www.europol.europa.eu/publications-documents/trafficking-in-human-beings-financial-business-model>

³⁶ 2012 ILO Global Report on Trafficking in Persons, available at: http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf

³⁷ 2016 ILO facts and Figures, available at: <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm>

misunderstand this complex challenge and they do not have effective policies designed to efficiently combat human trafficking. Moreover, national policies do not provide good regulations to deal with such a global problem or effective tools to dismantle organized crime structures and their transnational alliances. In order to fight against this worldwide phenomenon, national authorities should design legal provisions consistent with international law and responsive to national specific of this illegal business. As the mobile of this crime is money, the financial investigation and confiscation should be among the most important actions developed by national authorities in order to be efficient against organised crime in general, and THB networks in particular.

1.2. The specific situation of THB in Romania

Trafficking in human beings takes many different forms and evolves with changing socio-economic circumstances. It is considered to be a multifaceted phenomenon whose transnational nature creates a high level of complexity. Although the most common forms of exploitation are sexual and labor exploitation, victims are trafficked for many other exploitative purposes, such as removal of organs, begging, petty crimes, forced or sham marriages, production of pornography or illegal adoption³⁸.

Table 2: Countries reporting citizenship of EU victims in (2010-2012)

Country of origin / citizenship of victims reported	Countries reporting victims in 2010 - 2012, sorted in decreasing order of the number of registered victims by citizenship																											Total Registered Victims	
	RO	BG	NL	HU	PL	FR	SK	DE	LV	CZ	RS	LT	UK	ES	EE	HR	IE	EL	SI	BE	IT	CH	FI	DK	CY	LU	MT		IS
Romania	3 230	218	<5	65	427	434	6	<5	493	464	<5	19	126	<5	62	472	13	5	23	24	7	<5							6 101
Bulgaria		1 696	421	44	167	<5	370	35	<5	63	29	<5	5	75	<5	49	50	13	<5	15	<5	<5							3 043
Netherlands			1 079																										1 080
Hungary	<5		394	153	<5	40		156					243				<5	<5	9	<5	41		<5						1 046
Poland			167		263	12	92		<5				405				5		6	<5	<5	<5	<5						976
France			<5			476		<5					6																491
Slovakia			49				76	26		10			296						6	6		<5	<5						477
Germany		<5	19			<5		369					<5																415
Latvia				12				25	277	<5			34				<5	<5											355
Czech Republic		<5		26		<5		41		34			233				<5	<5	5	<5			<5	<5					351
Serbia	<5		<5			5		20			230		<5				<5	<5	<5	5									269
Lithuania				22		<5		16				50	146				<5	<5	<5						<5	<5			244
United Kingdom							<5						197																205
Spain													<5	117															132
Estonia								<5					<5		55														77
Turkey													<5																61
Croatia																													32
Ireland																													32
Portugal																													27
Greece																													14
Slovenia																													13
Belgium																													8
Italy																													6
Montenegro																													6
Austria																													4
Switzerland																													3
Finland																													2
Norway																													2
Denmark																													1
Cyprus																													1
Total victims	3 233	1 700	2 476	156	375	1 153	79	1 626	277	87	241	51	2 138	610	55	29	66	212	40	142	522	73	20	39	47	22	4	1	15 474

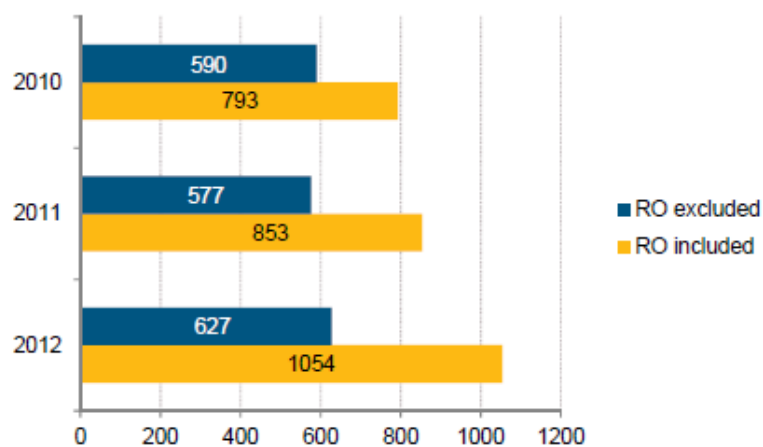
Key: ■ Citizens of reporting country ■ 10 – 99 victims ■ 100 – 399 victims ■ 400+ victims

³⁸ European Commission's Memo to An EU Strategy towards the eradication of trafficking in human beings, available at: [http://europa.eu/rapid/press-release MEMO-12-455_en.htm](http://europa.eu/rapid/press-release_MEMO-12-455_en.htm)

Trafficking in human beings is a serious challenge throughout the Europe. Romania is both a transit and a source country. Among the EU countries, 2015 Eurostat Report on Trafficking in Human Beings states that Romania offers the largest number of victims and the most developed and sophisticated THB networks at the European level, as we can see in the Table 2 above³⁹.

Figure 17 from the same Eurostat Report shows very clear the impact of the Romanian criminal networks at the EU level and their coverage among the 22 EU countries part of this research.

Figure 17: Number of convicted traffickers



Source: Eurostat (Based on data from 22 Member States. See Table A22 in Annex)

Based on internal Romanian statistics, which usually represent less than ½ of number of identified victims reported by Eurostat, the total of THB victims during 2011-2015 was 4 622 (2011: 1 048; 2012: 1 041; 2013: 896; 2014: 757; 2015: 880), the majority of them being female (66%)⁴⁰. In 2016, 757 victims were identified - 47% children, 78% female⁴¹. This high level of trafficking in human beings results from a mixture of economic, social, and criminal factors. Romania is known as a country of origin for THB, but, according to 2016 GRETA Report, internal trafficking is a growing

³⁹ 2015 Eurostat Report on Trafficking in Human Beings, available at: https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf

⁴⁰ 2016 GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a99b1>

⁴¹ TIP Report, US, 2017 available at: <https://www.state.gov/documents/organization/271339.pdf>

phenomenon with over a third of identified victims being trafficked internally during 2011-2014. Also, regarding minor victims, the statistics of the National Agency against Trafficking in Persons (NATP) state that the percentage of these victims trafficked internally rose from 70% in 2011 to 82% in 2012, decreasing to 78% in 2013⁴².

However, the actual trend is an increasing number of minor victims, their age going younger and younger every year. Adult victims trafficked internally represented 10% of all the adult victims identified in 2011, 29% in 2012 and in 2013 - 18%⁴³. Romania is a destination country only for a limited number of foreigners, but it is estimated that in the next 10 years⁴⁴ this phenomenon will expand⁴⁵. Although there are foreigners who are being trafficked to Romania from countries such as Moldova, Armenia, Vietnam, Philippines, and Bangladesh, most of the cases are underreported.

The very recent released US Trafficking in Persons Report mentions, for 2017 in Romania, a decreasing trend of victims identified, and cases prosecuted, as well as convictions⁴⁶. However, this trend does not reflect the reality. Starting with 2013, Romanian THB networks have largely eliminated physical coercion and started to use less violent methods. The most known is lover-boy procedure. This kind of recruitment makes victims more vulnerable, as often they cannot identify themselves as being exploited, and law enforcement is weak in building a case on THB.

The cooperation between authorities and victims, in lover-boy cases, is extremely difficult and the investigation of THB cases based on the testimonial of the victims becomes almost impossible. The Romanian law enforcement agencies should start to build THB cases on other type of evidences, using more forensic and financial investigations then testimonial of the victims. All these challenges contribute to the low rate of traffickers that are convicted by the Romanian or foreign courts.

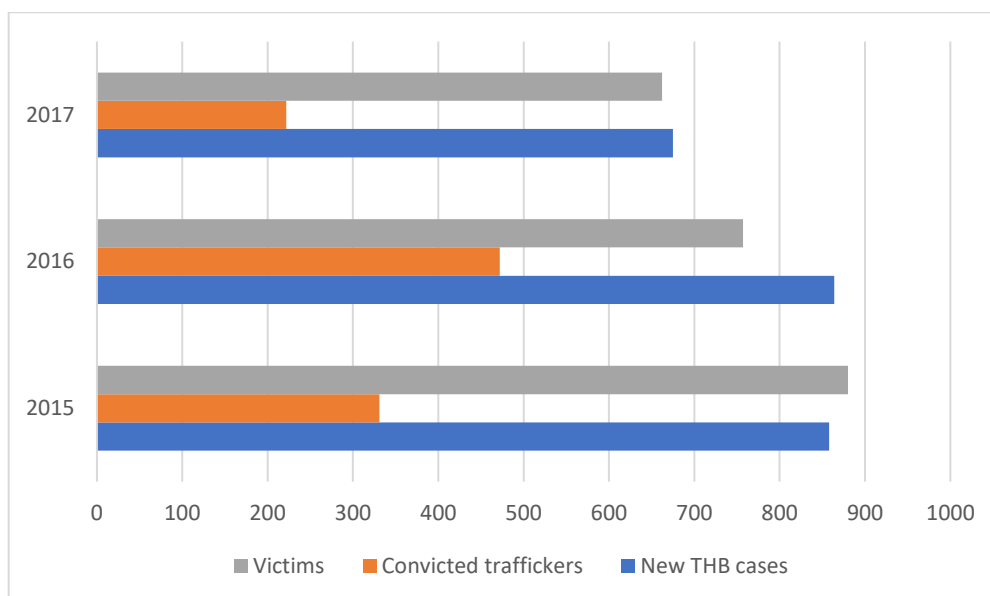
⁴² National Agency against Trafficking in Persons, 'Draft Annual Report 2013', p. 8.

⁴³ Ibid., p. 9.

⁴⁴ Information collected through consultation with national stakeholders (Interview, Bogdan Voicu, Chief Prosecutor of the Directorate for Investigating Organised Crime and Terrorism – Bucharest, 13 August 2014; Interview, Dorin Tepusa, Head of Department for Combating Illegal Stay and Restrictive Measures, 14 August 2014).

⁴⁵ Information collected through consultation with national stakeholders (Interview, Dorin Tepusa, Head of Department for Combating Illegal Stay and Restrictive Measures, 14 August 2014).

⁴⁶ 2018 US Trafficking in Persons Report, available at: <https://www.state.gov/j/tip/rls/tiprpt/2018/index.htm>



Most of the Romanian traffickers see women as commodities, describing their victims: *“they are for sale and a means to financial gain, prone to addictions, easily manipulated and psychologically unstable”*⁴⁷. An analyse on the typology of traffickers, realised by National Agency against Trafficking in Persons (NATP), identified 3 main types of Romanian recruiters⁴⁸:

1. there are individuals who claim to have been forced or tricked into the trafficking business;
2. there are older traffickers, who fall in love with a woman providing her housing, who often turns out to be minors, and exploit her further;
3. there is a group that is characterised as players/lover-boys varying between 20 and 40 years old. They do not have a relevant or higher education, nor regular work. They know how to manipulate women or girls and there is always some sort of romantic aspect to their relationship. For them it is only a business relationship, while for victims there are some emotions involved. Within this group there are two sub-groups:
 - those who come from poor families and go into trafficking in order to have a better life;

⁴⁷ National Agency against Trafficking in Persons Report, available at: http://trace-project.eu/wp-content/uploads/2015/06/TRACE_Deliverable-3.1_Final.pdf

⁴⁸ Report on the features and incentives of traffickers and on the social interactions among them, available at: http://trace-project.eu/wp-content/uploads/2015/06/TRACE_Deliverable-3.1_Final.pdf

- traffickers who are born in a criminal environment where trafficking (or crime) is very normal to them.

A new type of lover-boy has been developed in the last years in Romania who are those that started businesses with money from previous THB activities. Often, they are uneducated and surprisingly successful business persons, with small or even very large businesses that help them to further hide the proceeds of crime and mix them with legal money from their businesses. They offer more trust to the recruited victims by promising them a very good life together. Also, they usually respect their victims in the first part of the relationship to build a high level of trust and to win the victim's unconditional love. After that, traffickers start a method by which they destroy the values of victims, soothing them sentimentally. Often, Romanian lover-boys secretly drop hashish oil in the food or drinks of the victims in order to create an addiction, which is perceived by the victim as love (need to meet the lover-boy)⁴⁹.

The 2015 NATP's Report on the features and incentives of traffickers, underlines that the most commonly used method of recruitment is "faking a love affair". Traffickers often adopt a manipulative tactic, treating the victim with care and sensitivity, often auto-victimizing themselves to receive compassion. Once the victim is in a situation of psychological control, the traffickers "reveals his true character". The period of the love affair prior to luring the victim into prostitution has shortened and the methods of forcing the girlfriend into prostitution have become more refined, using photos or videos recorded with mobile phones to blackmail them⁵⁰. Often, the lover-boy uses sentimental blackmail to convince the victim to prostitute for himself.

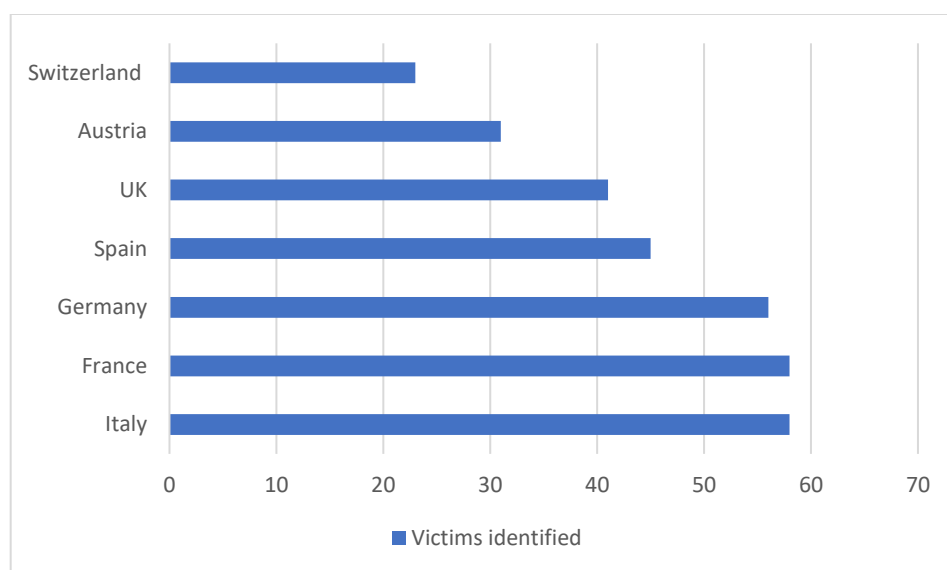
Romanian traffickers target women and men, girls and boys in vulnerable positions. Victims are often recruited, transported or harboured by coercion or fraud in exploitative conditions. However, in the last 5 years there was identified a new European trend in recruiting young and educated girls by lover-boy method, which does not imply physical, but psychological coercion. Having better educated girls, the THB networks can address clients with a higher income, earning more money with a lower

⁴⁹ Silvia Tabusca, "Together against human trafficking", Bucharest, Romania, 2017

⁵⁰ Report on the features and incentives of traffickers and on the social interactions among them, available at: http://trace-project.eu/wp-content/uploads/2015/06/TRACE_Deliverable-3.1_Final.pdf

risk, as victims are psychologically linked to the traffickers and they are not willing to testify against them in front of the law enforcement agents or in courts. Loverboy recruited girls are in a kind of “seasonal exploitation”. They are encouraged to keep the contact with their family members, coming back to Romania every few months, and to refuse to talk about their job abroad. In this way the victims’ families do not know the reality about the work done by their daughters/sisters and they cannot suspect that they are exploited abroad in order to be able to help them. In 2017, a number of 81 victims declared that they were exploited by their partner⁵¹.

The Romanian victims of trafficking are exploited in all EU countries and also in other parts of the world, mainly in the Middle East countries. The 2018 study published by the NATP shows that about 70% of the victims identified in 2017 are sexually exploited abroad, mainly in Italy, France, Germany, Spain, UK, Austria, Switzerland etc⁵².



The NATP study states that the Romanian victim population internally exploited decreased with 12%, from 756 victims identified in 2016 to 662 victims identified in 2017. A significant proportion of victims identified in 2017 (76,4%) are female. However, the number of girls (401) is higher than the number of women exploited,

⁵¹ 2018 study published by the National Agency against Trafficking in Persons, available at: <http://www.anitp.mai.gov.ro/ro/docs/Cercetare/Analize/analiza%20succinta%20victime%20identificate%20in%202017%20mod.pdf>

⁵² 2018 Study published by the National Agency against Trafficking in Persons, available at: <http://www.anitp.mai.gov.ro/ro/docs/Cercetare/Analize/analiza%20succinta%20victime%20identificate%20in%202017%20mod.pdf>

while 68,8% of the identified victims are sexually exploited⁵³. Although the Romanian law recognizes gender equality, the conservative tradition still places the woman on a lower position than the man⁵⁴. Women are less likely to find employment, are more likely to be in low paid jobs, and to be paid less⁵⁵. More, the World Economic Forum's figures on gender equality placed Romania last in the European Union and 72nd worldwide⁵⁶.

Romanian victims are exploited in the most diverse forms of trafficking, from sexual exploitation and online pornography to labour, begging, pickpocketing, and petty crimes. A new form of trafficking was recently known in Denmark and Germany – stilling the identity for welfare schemes and loans. Also, Romanians fall victims of labour exploitation in hospitality, domestic services, construction, agriculture and manufacturing. In order to prevent detection by law enforcement, victims are moved around the Europe and their form of exploitation is often changed. Victims pay a very high price for the profits of trafficking rings and they should live with physical and psychological injuries, diseases, and permanently disorders. Romanian children and women who are trafficked by their own families suffer the most, they are usually bought and sold many times.

The main drivers behind human trafficking are poverty, lack of education, child sexual abuse, corruption and lack of trust in Romanian authorities, alongside with discrimination. Although Romania is the largest economy in the Balkans, it is also the second-poorest EU country with over a third of Romania's population (37.4 %) affected by poverty or social exclusion. In 2018, the national minimum wage remained fixed at €407.9 per month, Romania having the 3rd lowest minimum wage across the EU. This perhaps explains why the average annual growth rate of Romania's diaspora is one of

⁵³ 2018 Study published by the National Agency Against Human Trafficking, available at: <http://www.anitp.mai.gov.ro/ro/docs/Cercetare/Analyze/analiza%20succinta%20victime%20identificate%20in%202017%20mod.pdf>

⁵⁴ World Economic Forum's statistics on equality of chances between men and women available at: <https://www.romania-insider.com/romania-ranks-last-in-the-eu-on-equality-between-men-and-women/>

⁵⁵ Women, Business and the Law 2014: Removing Restrictions to Enhance Gender Equality report available at: <http://www.worldbank.org/en/news/feature/2014/04/02/world-bank-champions-equality-for-women-in-romania>

⁵⁶ Ibid (Women, Business and the Law 2014: Removing Restrictions to Enhance Gender Equality)

the fastest in the world⁵⁷, with over 3.4 million Romanians living or working abroad⁵⁸. To this contribute, also, the incoherent legislation on the recruitment and placement of labor force, which does not adhere to the International Labour Organization's recommendations.

⁵⁷ The rate was 7.3% between 2005 and 2015. UN's 2015 International Migration report, available at: http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf

⁵⁸ Article on UN Report on migration, available at: <http://cursdeguvernare.ro/romania-enters-the-top-20-states-with-the-largest-diaspora-according-to-the-un-report-on-migration.html>

II. ROMANIA'S RESPONSE TO THB PHENOMENON

Romania, having the largest number of victims and traffickers within the EU countries, still should improve its national policies and make the intergovernmental cooperation more effective in order to allow the national authorities with competences in the eradication of THB crime and protection of victims to be more efficient.

Although, consequently to the ratification of the Palermo Protocol in December 2002⁵⁹ Romania committed to establish a legal framework to tackle THB phenomenon and some legislative improvements have taken place since 2012 GRETA's first evaluation report⁶⁰, in 2017 the US TIP Report⁶¹ underlines that "*Romania does not fully meet the minimum standards for the elimination of trafficking however, it is making significant efforts to do so*".

Romania has about 200 police officers specialised in THB and it is the most active source country involved in joint investigation teams (JITs) to tackle trafficking, having participated in 43 JITs⁶² with several European counterparts, mainly UK, Germany, Spain, Czech Republic⁶³ etc. The conviction rate is impressively high compared to most EU countries, with the Romanian courts sentencing 472 traffickers in 2016 and 78% of convicted traffickers given custodial sentences. The courts levied approximately 200,000 lei (approximately \$51,550) against traffickers in 2016, compared with none in 2015 and 2017⁶⁴.

The Directorate for Investigating Organised Crime and Terrorism (DIOCT) is the main body investigating and prosecuting organised crimes, including human trafficking and conducts the entire investigation, working alongside the Directorate for Combatting

⁵⁹ Romania signed the Protocol on the 14th of December 2000 and ratified it 2 years later, available at: https://treaties.un.org/Pages/ViewDetails.aspx?chapter=18&lang=en&mtmsg_no=XVIII-12-a&src=IND

⁶⁰ 2012 GRETA's first report on Romania, available at: <https://www.coe.int/en/web/anti-human-trafficking/romania>

⁶¹ 2017 US Trafficking in Persons Report, available at: <https://www.state.gov/j/tip/rls/tiprpt/2017>

⁶² 2018 US Report on Trafficking in Persons, available at: <https://www.state.gov/documents/organization/282802.pdf>

⁶³ Information provided by DCOC

⁶⁴ 2017 US Trafficking in Persons Report, available at: <https://www.state.gov/j/tip/rls/tiprpt/2017>, 2018 US Report on Trafficking in Persons, available at: <https://www.state.gov/documents/organization/282802.pdf>

Organised Crime (DCOC) within the Police Department. Financial investigation and confiscation is the weakest part of DIOCT, which does not have specialized financial investigators. The new amendments to DIOCT legislation, from May 2018, allows the establishment of these posts.

Romanian networks are among the most developed and powerful regional human trafficking organised groups. However, the Romanian authorities have never assessed the proceeds related to THB in general, but only on some singular cases. In a case of forced begging investigated by UK authorities, it was estimated that the network had about 40.000 GBP/quarter/children exploited. The UK authorities identified more than 1000 Romanian victims exploited by the same network. So, the profit of the network from the victims exploited in UK was about 160.000.000 GBP/year, with at least 2 years of exploitation/victim. Furthermore, there are information that this network exploited children in other EU countries like: Spain, Italy, Belgium etc⁶⁵.

The 2015 Eurostat Report on Trafficking in Human Beings states that from 2010 to 2012 there were identified 6.101 Romanian victims exploited in EU. The same Report shows also that the largest number of traffickers arrested in EU were Romanians (1,209). Therefore, we can conclude that there is an average of more than 5 Romanian identified victims/trafficker with an average of least 500 Euro profit/victim/day. So, the estimated proceeds of THB related to the Romanian identified victims exploited only in EU are more than 3 million/day.

In a case of sexual exploitation, investigated by the Belgium authorities there were identified more than 700 victims exploited in Brussels. They were forced by the traffickers to earn at least 1.000 Euro/day. So, the estimated profit was about 700.000 Euro/day. The network, now under investigation⁶⁶, worked also in Italy and Germany⁶⁷.

⁶⁵ See the article Cazul Țândărei, prima anchetă româno-britanică privind traficul de copii în UK, nerezolvat după 8 ani. Polițist englez: “Sunt șocat!”, available at: <https://www.g4media.ro/cazul-tandarei-prima-ancheta-romano-britanica-privind-traficul-de-copii-in-uk-nerezolvat-dupa-8-ani-politist-englez-sunt-socat.html>

⁶⁶ See the article Clanul Buricea la judecata, available at: <http://obiectivbr.ro/content/clanul-%E2%80%9Cburicea%E2%80%9D-la-judecat%C4%83>

⁶⁷ Silvia Tabusca, Public Speech “Together against human trafficking”, Bucharest, Romania, 2016

The THB case-law analysis shows that the largest amount of proceeds identified by the Romanian authorities was 1.070.000 Euro, in a 2015 case worked on by the Athens and Bacău prosecutors' joint investigation team. The case involved only 2 traffickers identified, which had been exploiting 9 victims. In this case, the Romanian state confiscated 810.000 Euro of the total proceeds. However, in most of the national cases, information on the proceeds of THB is not available and financial investigations are not undertaken.

Confiscation and recovery of assets from trafficking

Many EU member states are making substantial efforts to seize the assets of traffickers and they are using all their available legislation in order to create a hostile environment for the criminals⁶⁸. Romania is considered a country in which the proceeds of organised crime are easily invested in real estates or other legal businesses because the financial investigation is not a priority for the prosecutors and the anti-money laundering legislation is weak.

As stated in one of the interviews made during this research, the criminal proceeds of trafficking in human beings are usually collected in foreign countries and then invested in Romania. Currently in Romania, financial investigations are not compulsory part of the investigative activities performed when dealing with a case of human trafficking. Furthermore, financial investigations should provide powerful evidence to the prosecution of both acts of trafficking in human beings and identifying the members and beneficiaries of this criminal organization. *“In Romania, the financial investigations are focused on, for example, identifying records of travel arrangements and documentation on venue rental. Another area for such investigations is related to the traffickers' expenditure on items such as houses, apartments, investments, cars, jewels and leisure activities - restaurants and casinos, or movements of the profits”*⁶⁹.

⁶⁸Analysis and Knowledge, *Trafficking in Human Beings in the European Union*, Europol Public Information, The Hague, 2011, p. 8.

⁶⁹ Interview with expert in asset confiscation.

However, the Romanian national context has improved over time, as it is clearly visible from the table below, which indicates that after 2011 there was a significantly increased amount of assets being frozen or seized in criminal investigations related to all type of crimes. This was an administrative measure in the General Prosecutor's Office, which stated that „*in all criminal cases that involve damages or ill-gotten gains*” prosecutors should evaluate “*if verification aiming to identify assets that can be frozen or seized is warranted*”. Specifically, the administrative order involved a simple question form that had to be filled in by the prosecutor. It has eight specific questions regarding what kind of actions meant to identify proceeds of crime. This simple measure resulted in more than triple the amount of frozen assets in 2011, as compared to the previous year. However, the financial investigations related to human trafficking cases is left behind in Romania.

While the recovery of the proceeds and instrumentalities of crime in general is still far from being perfect, the framework is there for law enforcement and prosecution to effectively do so, with powerful instruments being placed at their disposal.

Year	Value of seized and frozen assets by the Public Ministry coming from all type of crimes (RON) ⁷⁰
2007	158 530 113
2008	791 717 347
2009	226 711 591
2010	371 646 024
2011	1 024 979 707
2012	1 869 681 989
2013	1 920 392 286
2014	2 473 736 148
2015	12 850 523 417

On the topic of the proceeds of trafficking in human beings, it is worth mentioning that this crime is a business, a source of income for organized criminal groups, and its main driver is generating revenue. Even if these criminal groups make money from selling

⁷⁰According to Freedom House Romania, *Recovery and confiscation of the proceeds of crime – Diagnostic Report 2016*, p.7. available at: http://www.justitiecurata.ro/wpcontent/uploads/2016/06/Raport_final_web.pdf

women and children abroad, from forced prostitution, begging and petty crimes, there are only few confiscations from trafficking every year. The most effective organized criminal groups are the ones capable of controlling all the implications and results of their actions from the recruitment for labour, prostitution, transport of the victims, money laundering and the connection to of high level corruption. The number of related proceeds of crime had increased over the past years⁷¹.

Identifying relevant assets and freezing them as early as possible in the criminal investigation is highly important, as it is first of all a guarantee that they will not be moved or destroyed and that the victims of the crime will be able to recover their damages and receive compensations, and that the criminals will be stripped of their ill-gained assets. Furthermore, seizing all proceeds and instrumentalities of THB is the only effective deterrent to traffickers⁷².

At the beginning of the 2000's, the Romanian context was that prosecutors were not carrying out any kind of financial investigation in order to trace, freeze, seize and confiscate the proceeds of any kind of crime. This can be noticed when looking at the figures regarding the values of seized and frozen assets before 2010, as compared to those from 2011 and later years.

In terms of assets seizures, from 2012 to 2013, assets confiscated for trafficking offences amounted to 177.295 Euros, plus 13.315 Euros in other currencies, as well as 8,76 kg gold, 84 real estate properties and 104 vehicles⁷³. Although victims of certain serious crimes, including THB, can seek financial compensation from the state and although the 2016 GRETA Report noted that any assets confiscated from perpetrators can in theory be used to compensate victims, in practice they went to the public budget and between 2011-2016, only few victims were able to claim state compensation, receiving a maximum of the equivalent of 10 salaries per month in a one-off payment. This is unlikely to ever exceed 3.000 Euro even though a victim may have never been

⁷¹ Interview with expert in asset confiscation.

⁷² Interview with NGO's representatives.

⁷³ 2016 GRETA Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Romania, available at: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806a99b1>

paid and exploited for years. Victims can also join a civil claim to the criminal case and participate as injured parties in criminal proceedings, claiming compensation from the perpetrator for physical and psychological damage and loss of earnings.

However, 2016 GRETA Report states that, “*it is not known how many civil claims from victims ... have been submitted and have succeeded. GRETA was informed that 56 victims of THB were awarded compensation by a court in 2011 and 53 in 2012*”. Regardless of the number of civil claims from victims, even if they are awarded compensation by courts and sums are being demanded from traffickers by judges, obstacles remain. According to Article 19 of the Law no. 211 on Certain Measures to Ensure the Protection of Victims of Crime (2004), a free-of-charge bailiff service can be used for the execution of the judgement. One concerning issue is that whilst traffickers can afford to employ the experienced lawyers, victims are forced to access legal assistance via legal aid, most of the times those relevant professionals lacking motivation and taking minimum effort, as the cases are very complicated whilst available fees are low⁷⁴.

One of the objectives of the National Strategy against Human Trafficking during 2012-2016 implemented by Government’s Act no. 1142/2012⁷⁵ is the improvement of the institutional ability to investigate human trafficking offences, especially trafficking in minors, as well as the tracking of the illicit gain by financial investigations⁷⁶.

Law no. 678/2001⁷⁷ on the prevention and suppression of human trafficking was almost completely repealed, especially as concerns the related offences, once the New Criminal Code came into force. The new law transposes Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combatting trafficking in human beings and protecting its victims⁷⁸.

⁷⁴ Interview with NGO’s representatives

⁷⁵ Published in the Official Journal no. 820 of 6th December of 2012.

⁷⁶ For a comment on the EU Directive see F. Ciopec (2012). New Acquis Communautaire in Protection of Human Trafficking Victims in T. Grünwald, P. Messina (eds.): Innovative Network for Security and Prevention through Interregional Euro-cooperation. Padova: Centro di ricerca e servizi „Giorgio Lago”, pp. 63-74.

⁷⁷ Published in the Official Journal no. 783 of 11th December of 2001.

⁷⁸ Ciopec Flaviu, *Journal of Eastern European Criminal Law no. 1/2016*, Universul Juridic, 2016, pp. 78.

Currently, the Romanian Criminal Code (art. 210-211 NPC) sanctions trafficking in human beings with penalties ranging between 3 and 10 years of imprisonment⁷⁹. Other offences related to human trafficking are sanctioned in art. 216 (use of an exploited person's services) with a penalty ranging from 6 months to 3 years, art. 264 NPC (facilitating the illegal stay in Romania) and art. 374 NPC (child pornography) with penalties ranging from 1 to 5 years.

The Romanian legal framework has mandatory seizing and freezing assets only in the case of a number of crimes, such as money laundering, tax evasion, corruption and crimes against the financial interests of the EU, as well as for financing terrorist activity⁸⁰. No such explicit provision is currently in place for trafficking in human beings. However, the freezing of assets relating to THB is implicit as per the new Romanian Criminal Code, which states clearly that the extended confiscation procedure is applicable to a list of criminal activities, including „*trafficking and exploitation of vulnerable persons*”⁸¹. As extended confiscation involves the identification, seizing and freezing of assets, it can be stated that this procedure is implicitly mandatory for THB cases, but it is not much applicable in practice⁸².

Art. 19 of Act no. 678/2001 on confiscation of assets and proceeds of crime following human trafficking was repealed by the New Criminal Code. Presently, the provisions

⁷⁹ Art. 210 incriminates Trafficking in human beings offense as follows: (1) Recruitment, transportation, transfer, harbouring or receipt of persons for exploitation purposes: a) by means of coercion, abduction, deception, or abuse of authority; b) by taking advantage of the inability of a person to defend themselves or to express their will or of their blatant state of vulnerability; c) by offering, giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person, shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights. (2) Trafficking in human beings committed by a public servant in the exercise of their professional duties and prerogatives shall be punishable by no less than 5 and no more than 12 years of imprisonment. (3) The consent expressed by an individual who is a victim of trafficking does not represent an acceptable defense. ART. 211, entitled Trafficking in underage persons incriminates (1) Recruitment, transportation, transfer, harbouring or receipt of a juvenile for the purpose of their exploitation shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights. (2) If such act was committed under the terms of Art. 210 par. (1) or by a public servant while in the exercise of their professional duties and prerogatives, it shall be punishable by no less than 5 and no more than 12 years of imprisonment and a ban on the exercise of certain rights. (3) The consent expressed by an individual who is a victim of trafficking does not represent an acceptable defense.

⁸⁰ According to Freedom House Romania *Recovery and confiscation of the proceeds of crime – Diagnostic Report 2016*, p. 6.

⁸¹ According to the New Criminal Code (Law 289/2009)

⁸² Interview with NGO's representatives

of art. 112, which regulates that special confiscation shall apply. The legal text states that the following shall be subject to special confiscation:

- g) *“assets produced by perpetrating any offense stipulated by criminal law;*
- h) *assets that were used in any way, or intended to be used to commit an offense set forth by criminal law, if they belong to the offender or to another person who knew the purpose of their use;*
- i) *assets used immediately after the commission of the offense to ensure the perpetrator’s escape or the retention of use or proceeds obtained, if they belong to the offender or to another person who knew the purpose of their use;*
- j) *assets given to bring about the commission of an offense set forth by criminal law or to reward the perpetrator;*
- k) *assets acquired by perpetrating any offense stipulated by criminal law, unless returned to the victim and to the extent they are not used to indemnify the victim;*
- l) *assets the possession of which is prohibited by criminal law”.*

Additionally, the New Criminal Code has also introduced extended confiscation for human trafficking (art. 112(1)). The legal text stipulates that *“assets other than those referred to in art. 112 NPC are also subject to confiscation in case a person is convicted of any of the following offenses, if such offense is likely to procure a material benefit and the penalty provided by law is a term of imprisonment of 4 years or more: [...] b) trafficking in and exploitation of vulnerable people [...]. Extended confiscation is ordered if the following conditions are cumulatively met:*

- c) *the value of assets acquired by a convicted person within a time period of five years before and, if necessary, after the time of perpetrating the offense, until the issuance of the indictment, clearly exceeds the revenues obtained lawfully by the convict;*
- d) *the court is convinced that the relevant assets originate from criminal activities such as those provided in par. (1)”.*

Currently, the administration and indexing of frozen assets is the most sensitive part of the entire process relating to the recovery of proceeds of crimes, in general, in Romania. The 2016 Freedom House Romania study on the recovery of the proceeds of crime

states that, when asked who manages the frozen assets, there was difficult to answer for all prosecutors interviewed:

“Who manages them? We do... well, it’s a big challenge for everyone. It’s a totally different kind of work than the criminal investigation. Especially for those prosecutors working in local Prosecutor’s Offices, who have to set up entire logistical infrastructures: to take bottles with you when you’re going to make a search, so that you can pick up the alcohol, to pick it up in trucks in order to store it. They’re basically not managed by anyone. These assets are just picked up and dropped off in Material Evidence. Nothing happens with them until we get a final ruling, when we hand them over to the Fiscal Administration in order to destroy them. We have mountains of items and we have a real storage problem. It’s getting so bad that all the Offices’ garages are filled with cigarettes and vans”⁸³.

While the New Criminal Codes regulate the possibility of anticipated sale of seized mobile assets (perishables or assets that can lose their value), this procedure is still underutilized, mostly due to the lack of a unified procedure and because qualified personnel to take charge of this does not currently exist.

As stated by one of the prosecutors interviewed in the drafting of the aforementioned 2016 Freedom House Romania Report on the Recovery of the Proceeds of Crime in Romania, *“the main issue with freezing assets is not just doing that, but to guarantee that those assets can be used to recover the proceeds of crime. It’s actually the state’s obligation to do so. That way, you’re also respecting the rights of the accused, who, should they have to pay damages, they will pay them off from those frozen assets; they won’t have to bring money from other sources because you were unable to manage their assets. Conversely, should they be found not guilty, they need to get their assets back, you can’t destroy them. It’s a major responsibility, and it’s the state’s responsibility. You need to have a well-trained staff working to manage these assets”⁸⁴.*

⁸³ See Freedom House Romania, *Recovery and confiscation of the proceeds of crime – Diagnostic Report 2016*, pp. 29-30.

⁸⁴ *Ibid.*

The solution to this issue, which equally affects the proceeds of human trafficking, is the operationalization of the National Agency for the Management of Seized Assets (ANABI), which was established in 2015, as per Act 318/2015. The main objective for the founding of this Agency was specifically to fill this gap in the recovery process. ANABI aims to improve the management of the proceeds of crime and synthesizing the data related to this type of claims⁸⁵. ANABI, which was established around the pre-existing Romanian Asset Recovery Office - ARO (a body within the Ministry of Justice), has a centralized index of all the seized assets in Romania, and also continue to play the role of ARO, managing the seized assets during the criminal investigation and trial, as well as selling them in order to preserve their value. ANABI is a support structure for police, prosecutors and judges when seizing, evaluating and storing assets⁸⁶. One of the most important functions of ANABI is the management of a “single account” where all the frozen or seized money will be stored, as well as the funds resulting from the anticipatory sale of frozen assets. This will help provide us with a much better picture of the effective value of the seized and frozen assets in Romania, as the current picture is quite unclear⁸⁷.

The Ministry of internal affairs receives 15% and NGOs 20% from the National Agency for the Management of Seized Assets budget for assistance, training and prevention⁸⁸. Of 141 recorded cases of human trafficking that reached a final verdict over the past five years, only 32 mentioned any kind of confiscation (22%). In these cases, a total of only 726.175 RON, 1 626.060 EUR, 80.317 USD, 29.831 CHF and some physical assets (i.e. electronics) were recovered.

Counties with the largest number of confiscation actions in cases of human trafficking (2011-2016)			
County	Confiscation actions	County	Confiscation actions
Dolj	9	Timiș	1
Iași	4	Ilfov	1
Mureș	3	Sibiu	1
Bacău	3	Buzău	1

⁸⁵ For a comment on this institution see F. Ciopec (2015). *Despre noua Agenție Națională de Administrare a Bunurilor Indisponibilizate [On the New National Agency for the Recovery and Management of Seized and Confiscated Assets]*, Curierul Judiciar, 10, pp. 523-525.

⁸⁶ Freedom House Romania *Recovery and confiscation of the proceeds of crime – Diagnostic Report 2016*, p. 31.

⁸⁷ *Ibid.*

⁸⁸ Information provided by NATP

Galați	3	Arad	1
Cluj	2	Argeș	1
Prahova	2		
TOTAL NO. OF CONFISCATION ACTIONS		32	

According to the available open data, Dolj county is in the lead regarding the number of confiscation actions in cases involving trafficking in human beings, more than double the number of the next most active county (Iași, with four cases). A total of 9.000 RON and 335.550 EUR were confiscated in the aforementioned nine cases. No such actions have been recorded in Bucharest.

One recommendation coming from the interviewed stakeholders is that Romania examines the ways in which countries such as Italy succeed in seizing assets of criminals, or Netherlands where the state pays the victim immediately whatever they are awarded from the trafficker and then the onus is on the state to pursue the criminal's funds.

III. OPEN DATA AND PUBLIC-SECTOR INFORMATION IN THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS

3.1. OD and PSI and criminal proceeds (use/frequency of use of open data, PSI, what type of info is used, which institution is most active in using such data, is this info accepted as evidence in court)

The analysis of the Romanian case-law indicates little to no use of open data and public-sector information in the investigation of trafficking in human beings' cases. The interviews conducted indicate the same low interest. While a number of interviewed judges highlighted that open data and public-sector investigation can be extremely useful to specific investigations, one such example being that this kind of data can determine criminal investigation bodies to start the prosecution of THB suspects and to check their sources of income, a former police officer stated that the Romanian investigative bodies have only recently begun to access public sector information and that its use is not yet commonplace among investigators.

The overall sentiment among the practitioners (both current and former) interviewed was that open data and PSI should be used in THB investigations, and that they are currently underutilized, if they are not used at all. While the judges interviewed underlined the usefulness of having access to this kind of data when making their rulings, criminal investigators (both police and prosecutors) went on to underline that use of open data in Romania is currently negligible at best, and that criminal investigation bodies are not currently trained to analyse this kind of data, to notice discrepancies and check for possible fraud indicators. The consensus amongst the practitioners interviewed was that prosecutors working on cases of trafficking in human beings should be the driving force behind the use of open data and PSI in these investigations.

While the use of public sector information as evidence in court does not present a significant challenge, all parties interviewed agreed that there may be problems with using open data in this capacity. Still, open data remains a useful source of information during the investigation procedure.

3.2. Main barriers to and best practices for a better use of Open Data and Public-Sector Information

From the interviews taken during the research, it appears that criminal investigators are not encouraged to use open data and public-sector information in their investigations of THB, and that they have little to no knowledge of how to do this. A possible solution to this challenge is the organization of training, seminars, and courses for investigators on the identification and use of information relevant to THB cases. However, there is a difficulty with this approach, namely that the Romanian Police Force (IGPR) is not very open to accepting trainers and/or speakers from outside of its system⁸⁹.

The judges interviewed stated that there are no legal barriers to the use of this kind of information in criminal investigations in general, or on investigations pertaining to trafficking in human beings in particular, but that it could be difficult for the investigators to know what kind of information to look for, once again pointing to the need for better training among investigators. One best practice that can be transferred to the field of trafficking in human beings, specifically addressing this institutional road block is encouraging them specifically to request these kinds of data, especially in order to identify and seize criminal assets at the investigation phase, is replicating the aforementioned 2011 Public Ministry measure in cases regarding THB.

Specifically, attaching a simple question form listing a number of sources of information (PSI and open data) and having the prosecutor state if they have used them in their investigation could significantly increase the use of this information in order to trace, identify, freeze and ultimately confiscate the assets and instrumentalities used by human traffickers. On the topic of possible legal barriers on use of open data and PSI as evidence in court, it is worth noting that, as one of the interviewed judges stated, judges do not work with raw data or information, but with evidence and they are therefore not the best source of information on the particular challenges investigators are faced with when trying to use these kinds of information.

⁸⁹ Interview with NGO's representatives

Possible barriers also include difficulties in accessing institutional databases where there are no collaboration protocols between the investigative body and the institution in question. This finding is further compounded by the fact that this is an issue affecting the recovery of criminal assets and instrumentalities in general, as collaboration with local administrations is an issue in general for criminal investigators. Usually, information relating to taxable assets (that can be seized by prosecutors) exists at the level of city/town halls, and no centralized database of all this information exists. As such, prosecutors are forced to ask the town halls for the relevant data, which creates a security risk for the investigation, as often those investigated „*know people in the local administration and can find out that they are under scrutiny*” in this way.⁹⁰

Another apparent challenge that must be overcome in order to improve the rate of asset recovery in cases regarding trafficking in human beings is the institutional capacity of DIOCT, the Romanian Specialized Prosecutor’s Office on Fighting Organized Crime and Terrorism. While the Romanian National Anticorruption Directorate DNA (one of the best-functioning prosecutor’s offices in Romania, with a very high rate of success, as well as with large popular support) has managed to circumvent many of the hurdles coming from the key vulnerability of institutional cooperation, through the signing of cooperation protocols and through creating a specialized department for financial investigations internally, where five judicial police officers are working, DIOCT seems to be trailing behind.

Founding a similar department in DIOCT would have a number of advantages. First and foremost, it circumvents the issue of the double subordination of the police officer working on this type of investigation. When such a department is absent, the prosecutor has to collaborate with the General Inspectorate of Romanian Police (IGPR). This leads to a situation where the police officer working the case is subordinate to both his direct superior inside IGPR and the prosecutor. This double subordination has hampered many investigations over time and can sometimes be the cause of breaches in the confidentiality of the investigation. Spot-checks on criminal investigation bodies can raise their effectiveness.

⁹⁰ According to Freedom House Romania, *Recovery and confiscation of the proceeds of crime – Diagnostic Report 2016*, p.15, available at http://www.justitiecurata.ro/wpcontent/uploads/2016/06/Raport_final_web.pdf .

IV. CONCLUSIONS: OPPORTUNITIES FOR INCREASED USE OF ONLINE AND PSI SOURCES

„One primary conclusion that can be drawn from the research made is that one of the key areas where intervention is necessary is the creation of a law enforcement culture adequate for the recovery of proceeds of crime in general as well as of human trafficking in particular, with a focus on the relevant operational tools for criminal investigation authorities. These tools should be geared toward the improvement of financial investigation in transnational cases, as this is a prerequisite for asset recovery purposes.⁹¹

Furthermore, a paradigm shift should be made in the Romanian social control policy, moving the focus away from restricting individual freedoms and toward asset recovery. Confiscation of the proceeds of crime should gradually become the central objective of the criminal justice system, as this will have a direct impact on all income-generating crime, including trafficking in human beings. One key recommendation is that investigative bodies should systematically conduct financial investigations in parallel to the criminal investigation. Financial investigation should focus on identifying the connections between the source of the financial flows, the beneficiaries, the time when the money is received, and the place where it is deposited or invested.

According to the FATF standards on financial investigations adopted in 2012, financial investigations:

- constitute an important tool for detecting money-laundering, terrorist financing, and other serious forms of crime, as well as for enabling the freezing, and confiscation of crime-related proceeds;
- are necessary for gathering evidence against perpetrators and their accomplices for the purpose of dismantling cross-border, organized networks;

⁹¹For the purpose of this report, we choose to define the "recovery of criminal assets" as the process to which the ill-gotten gains of the offenses are recovered by the State budget. In recent doctrine, Asset Recovery is referred to be both a purpose of the UNCAC Convention, and also the process to which a State uses its coercive measures to regain ownership of proceeds or objects of corruption and their substitute assets: see, for instance, Radha Ivory, *Corruption, Asset Recovery, and the Protection of Property in Public International Law: The Human Rights of Bad Guys*, Cambridge University Press, 2014, p. 25-27

- contribute to the national evaluation of risks in a legal system, to the extent they provide information on criminal justice practices, highlight gaps in compliance with the struggle.

When conducted proactively and simultaneously with the classic investigation, financial investigations should make it possible to limit the reach of criminal networks, understand the criminal activity, and bring to light offenses that would not have been discovered without it. In addition, financial investigations should be centered on tracing crime-related proceeds and all assets likely to be confiscated.⁹²

The successful investigation of transnational crime has the following prerequisites:

1. A profound understanding of the steps and timing of investigations geared toward transnational crime and of asset recovery;
2. The integration of proactive parallel financial investigations in cases involving THB or any other kind of revenue-generating crime;
3. Training investigators in financial investigations, including the understanding of the often very complex financial mechanisms criminals use, as well as in forensic tactics encouraging the creativity of the investigator (“Think outside the box”). This second training point is important as investigations of complex organized crime often require discarding some of the traditional strategies for the preparation of the investigation.

⁹² The state should conduct financial investigations before, during, or after the classic criminal investigation of the offense. Financial investigations should follow a standard format that is a function of the criminal justice policy implemented by the government and the legal texts applicable in the area of combating financial crime and organized crime.

Financial investigation should therefore be incorporated into the criminal investigation on the offense and the legal status of the financial investigation in relation to that of the criminal investigation is not always clearly defined in national legislation. Special attention should be paid to the most recent European standards encompassed in the Directive no 42/2014 (Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union) that harmonizes at the EU level the standards in the asset recovery field and requires that member States shall take the necessary measures to enable the detection and tracing of property to be frozen and confiscated even after a final conviction for a criminal offence or following proceedings in application of Article 4(2) and to ensure the effective execution of a confiscation order, if such an order has already been issued.

The primary goal of a financial investigation should be to identify and document the movement of funds during the criminal activity. During investigations, documents should be collected, in particular through judicial requisitions, from the various institutions and organizations in possession of such documents, for example from the tax authorities, employee benefit agencies, and credit establishments. Delivery of such documents constitutes a useful document base for beginning a financial analysis. Raise awareness about the risks of compromising your investigation if proper attention is not given to secure the evidences collected

4. Training investigators on the relevant European Court of Human Rights standards on gathering evidence in asset recovery investigations.
5. Raising awareness of recent best practices in matters of asset recovery.
6. Improving the understanding of the available transnational judicial cooperation instruments in criminal matters. At this point, it is important to underline the fact that the Romanian law enforcement should focus their efforts more on increasing the effectiveness of legal instruments to detect, seize, freeze and confiscate illicit assets.

This last point is key as it is the best way to reduce the motivation of offenders, who are usually involved in trafficking rings in order to generate revenue. More so, actively seizing any proceeds and instrumentalities of THB and of crime in general makes it more difficult for the criminals to continue such activities.

The relevant authorities should ensure that all the key factors contributing to successful financial investigations are in place, namely:

- guarantees of the independence of the authorities in charge of criminal investigations and prosecutions from the government;
- the existence of a corps of specialized agents and the allocation of adequate means to the teams in charge of financial investigations;
- quick access to general and financial databases and use of suitable, special investigation techniques;
- multidisciplinary collaboration between the operational teams and the financial institutions, as well as enhanced cooperation between police, prosecutors, FIUs, and AROs/BRA at the national and supranational levels, while bearing in mind that in accordance with EU standards, the financial investigation should be carried out during all stages of trial, inclusive after a final confiscation order was issued, in order to enhance the efficacy of the asset recovery process.

In order to improve these instruments, Romanian law enforcement authorities should develop a specific strategy geared towards asset recovery, toward improving capacity to gather information, intelligence and transform them to evidence in order to present a robust case that is also geared for asset recovery.

One key point that needs to be improved among investigators is the awareness of the international standards establishing the objectives and the scope of financial investigations⁹³, as the cases analyzed in the drafting of this report show that there is no current systemic approach towards maximizing the impact of investigations from an asset recovery perspective. Without a pro-active approach through financial investigations, it is possible that the assets resulting from or used in crimes such as human trafficking may be injected into the legal economy or be re-invested in other criminal activities.

Currently, it looks like law enforcement authorities do not have the capacity to carry out parallel investigations focusing simultaneously on the offense as well as on the analysis of financial flows aiming to identify proceeds and instrumentalities of the crime. A possible remedy to this vulnerability of the investigative part of the fight against trafficking in human beings could be encouraging judges to take a pro-active role in the identification of the assets in question at the start of the court case, as art. 112 of the Romanian Criminal Code provides the framework necessary for them to take appropriate precautionary measures in order to guarantee the efficacy of the subsequent confiscation orders.

The cases analysed in the drafting of the report point to the need to improve upon Courts' case management systems, especially regarding the assessment of whether there is enough evidence in order to adjudicate the case on the merits. A recommendation to improve the quality and quantity of rulings on organized crime cases in general, as well as of THB cases in particular is that judges take a proactive

⁹³ The definition of financial investigation is comprised in the Interpretative note of FATF Recommendation no. 30, that can be found at: http://www.fatfgafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf, p.97 According to paragraphs 2 and 3 of Interpretative Note, "A 'financial investigation' means an enquiry into the financial affairs related to a criminal activity, with a view to: identifying the extent of criminal networks and/or the scale of criminality; identifying and tracing the proceeds of crime, terrorist funds or any other assets that are, or may become, subject to confiscation; and developing evidence which can be used in criminal proceedings. A 'parallel financial investigation' refers to conducting a financial investigation alongside, or in the context of, a (traditional) criminal investigation into money laundering, terrorist financing and/or predicate offence(s). Law enforcement investigators of predicate offences should either be authorised to pursue the investigation of any related money laundering and terrorist financing offences during a parallel investigation, or be able to refer the case to another agency to follow up with such investigations"

role and avoid any unnecessary delays. It is also worth noting that judges hearing these cases should keep in mind that strong dissuasive proportionate penalties are an essential component in the fight against organized crime. On this topic, a point worth highlighting is that the leniency mechanisms provided by the Romanian legal framework for judges to apply with a particular view of mitigating circumstances are not aligned with the international standards in the field.

When tackling THB, Romanian authorities have to keep in mind that victims are rarely entitled to initiate civil proceedings and apply for damages. No cases were reported by NGO representatives. The findings of this report are that there is currently a strong need for training and capacity-building in order to adequately run the complex criminal and financial investigations necessary in the fight against human trafficking.

Another point to be improved upon is the management of those assets that were seized. Currently, the physical assets seized are not sold as soon as possible, which leads to both a storage and management problem, on the one hand, and also leads to the depreciation of the items in question. We expect this aspect to improve once ANABI becomes operational. Also, the relationship between law enforcement authorities and the prosecution should be consolidated. More so, investigative bodies should be encouraged, as stated above, to be proactive in their financial investigations.

In order to improve the situation of investigation and assets recovery in Romania, we recommend:

- The development of a tactical/practical approach to improving cooperation between police and prosecutors, with a focus on the exchange of experience, investigative opinions and best practices;
- The creation of a financial investigation compartments integrated in the prosecutor's offices, in order for the judicial police to conduct the financial investigations directly under the supervision of the prosecutors;
- Improving upon the cooperation with EUROJUST and EUROPOL, giving attention to what support these can give in specific cases and take into account the comparative advantages of the European Judicial Network;

- Creating a relevant training curriculum on investigations, including drafting a Guidebook designed to enhance the institutional capacity to tackle THB and organized crime through exploring the current available PSI and open data sources;
- Increasing awareness and knowledge on the relevant Union legal framework and agencies, as well as of the framework for legal cooperation in criminal matters. These topics should be presented in the curricula of the relevant training institutions;
- Encouraging prosecutors to privilege police officers qualified as financial investigators and make sure that they know to explore available open sources; the available human resources should be aware of the Artificial Intelligence algorithms that might systematize the huge volume of information in the public database, while paying the necessary attention to the ethical standards in order to avoid any external interference that might manipulate the intelligence gathered;
- Organizing special trainings for judges and prosecutors on the framework of national and European legal texts and mutual agreements that regulates cooperation and information exchanges among the various authorities (national & supranational) in charge of investigations;
- Organizing trainings on the relevant ECHR standards on asset recovery;
- Taking action to enhance the capacity to turn relevant intelligence gathered through FIU and ARO powers into proper evidence, that is admissible in Court;
- Organizing trainings on the proper handling of cryptocurrency in these investigations, as well as drafting a strategy for seizing and managing bitcoins;
- More intensive training on seizure and confiscation, but also on the concept of financial investigation and money laundering for judges is suggested. Especially case related training and assistance with very concrete cases, is suggested. In order to ensure a fair compensation of the THB victims, an application with a form of basic information already translated into all victim's languages, should be available to the investigators.”⁹⁴

⁹⁴ Judge Camelia Bogdan, Bucharest Court of Appeal



TRAFFICKING IN HUMAN BEINGS

THE USE OF INTERNET AND OPEN DATA FOR INVESTIGATION AND ASSET CONFISCATION

Monica Vianello, Lorenzo Segato

September 2017



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Foreword

The Project “Improving the investigation and prosecution of human trafficking”, coordinated by Freedom House Inc, Romania, with the support of RiSSC, Italy, and Risk Monitor, Bulgaria, aims at supporting the recovery of the proceeds of trafficking in human beings (hereinafter THB) in the EU and increase the efficiency of the detection of online trails of human trafficking by training prosecutors and the police working in this field in Romania, Italy and Bulgaria.

Objectives of the project are:

- Encouraging the use of open data and Public-Sector Information (PSI) in the financial investigation of THB cases;
- Making open data and PSI more accessible to Law Enforcement Agencies (hereinafter LEAs) and magistrates in the prosecution and investigation of THB cases;
- Fostering the transfer of best practices in combating human trafficking through the international training sessions, to be held primarily by EU Member States experts.
- Building capacity to successfully investigate financial trails of THB using the Internet.
- Raising awareness of the issues the investigation and prosecution of THB faces to the public;
- Placing the issue of the direction of the funds recovered from human trafficking rings towards the reintegration, support and protection of victims on the public agenda.
- Encouraging the direct cooperation between prosecutors in Member States and fostering better knowledge of the European Judicial Training Network.

One of the project activities is the research on the evidentiary standard and the legal burden of proof on THB cases accepted in courts in Italy, Romania and Bulgaria, and to look at the use of open data and PSI in the investigation and prosecution of THB. The research aims to develop new knowledge, identify best practices, and promote the use of new technologies and new sources of information (open data, PSI) for the investigation of financial flows and profits linked to THB.

The study focuses on (1) the accepted evidentiary standard in court rulings on THB cases in their respective countries and (2) the use of Open Data and PSI, and the internet in general, in the investigation of financial flows and prosecution of THB, resulting in 3 country reports.

This document presents the result of the research activity in Italy, and has been conducted by Monica Vianello, under the supervision of Lorenzo Segato.

The document is structured as follows: after an introduction (§1) on the evolution of THB (the recent trends, the modus operandi, the routes, the nationality of victims and authors, and the role of criminal organisations) and the related financial flows, § 2 presents the Italian strategy against this crime, while the use of Open Data, PSI, and the internet is presented in §3. The last chapter introduces some proposals and recommendations to enhance the use of new technologies in the investigation and prosecution of THB cases.

Introduction

The evolution of the trafficking in human beings

For more than 20 years, Italy has been the destination of thousands of migrants coming from mostly African and Southeast Asian countries⁹⁵.

In 2013 in Italy there were 450 landings for a total of 39.798 arrivals of migrants (of which 90% across the coast of Sicily), but the number increased almost fivefold over the period from December 2013 to October 2014, when about 170,000 migrants were rescued during the 'Mare Nostrum operation' with the simultaneous arrest of 752 traffickers⁹⁶. The dramatic increase in arrivals and deaths in 2015, when more than 900 migrants drowned in a single accident in the Sicily channel, and an additional 2.510 deaths in 2016 - have given impetus to a debate in Europe, to create a common immigration policy aimed at preventing trafficking and human trafficking, as well as demanding the involvement of all EU states. In 2016, about 503.700 migrants crossed the European Borders, entering illegally into the European Union, of which 364.000 coming across the Mediterranean.

⁹⁵ Referring to the first landings at the Port of Brindisi on 7 March 1991, when 27,000 Albanians arrived in a single day on board two large merchant ships and boats of all kinds. As well as the arrival on 1 August of the same year at the port of Bari of a ship with 20,000 passengers aboard, called "Biblical Exodus".

⁹⁶ Source: <http://frontex.europa.eu> and www.interni.it The European Agency for the Management of International Co-operation at the External Borders of the Member States of the European Union, known as Frontex, is an EU institution which has - among its objectives - to coordinate the patrols of External, aerial, maritime and land borders of EU Member States and to support Member States in common repatriation operations for non-standard migrants. Its task is also to help member states who find themselves in situations requiring assistance, operational or technical, to reinforce the control of external borders. Established in 2004 with the decree of the European Council no. 2007 of 26 October 2004 to strengthen and optimize cooperation between national border authorities, Frontex has several operational areas that are defined in the Regulations.

Last year, the Italian police recorded 181.000 arrivals, the highest number ever reached.

Analyses and court cases show that this critical movement of people is exploited by criminal organizations, whose activities are driven by factors that fuel the trafficking of persons, primarily the demand for sexual services, the black-market labour exploitation, the search for the most available, least expensive manpower and the trafficking of organs⁹⁷.

Nowadays, trafficking in human beings is considered a new and contemporary form of slavery, recognised as a crime against humanity⁹⁸.

Forms of exploitation

The crime of human trafficking is developed mainly along three lines of exploitation: sex, work and panhandling. According to UN data, more than 60% of trafficking victims in Europe are exploited for sexual purposes, also using new technologies such as social networks and websites, and roughly 30% for other services.

A gender breakdown analysis shows approximately 75% of victims are female (about 60% are adult women and about 15% minors), while 10% of male victims are adult and about 15% minors⁹⁹.

The exploitation of labour pursues the same criminal logic as sexual exploitation, estimating about one million people exploited in the European Union. According to a hearing¹⁰⁰ of the Special Representative of the United Nations High Commissioner for Human Rights, Maria Grazia Giammarinaro: "This phenomenon has had an exponential increase for decades. Today it is a widespread phenomenon, and the estimates of the International Labour Organization speak of 21 million people trapped in forced labour or work in the world, more than 60 percent were trafficked for labour exploitation. The definition of forced labour [...] also includes forced sexual exploitation [...] ».

Very often, illegal migrants become victims of labour exploitation once they reach European countries as they have no documents or residence permits to enter the legal economy and they rely on organizations or intermediaries, which force them onto the illegal market, especially in the agricultural sector.

⁹⁷ See Mancini D. "Migrant Traffic and Human Trafficking ", page 30.

⁹⁸See G. Palmisano, From Slavery to Illegal Migrants: Fighting Human Trafficking in an International Perspective, in "Practice Reason" n. December 35, 2010.

⁹⁹ See Global Report on Human Trafficking 2012, United Nations Office on Drugs and Crime.

¹⁰⁰ Held in the sitting of 2 November 2015 (Italian Parliamentary Antimafia Commission).

This phenomenon has certainly been fuelled in recent years - not only in the southern regions - by the growing migratory flow. According to ISTAT, undeclared work in agriculture, which illegal hiring is commonly associated with organised crime, has been growing steadily over the past 10 years, standing at about 23%, almost twice as much as the total national economic sectors (at about 12.8%). Inspections revealed irregularities of almost half of the businesses concerned of 2.360 undeclared labour contracts, 1.801 paid cash in hand (around 76%), while cases of illegal hiring¹⁰¹ amounted to 290.

Recently the Italian Parliament approved a criminal law (law 199/2016) against black labour, introducing severe sanctions against employers who use, hire or employ manpower also through brokering, i.e. by exploiting workers and taking advantage of their state of need. The use of violence, threat or intimidation is an aggravating circumstance. The law introduces the liability of the employer and not only the intermediary, provides the application of an attenuating factor in the case of collaboration with the authorities, and, in some cases, the confiscation of property¹⁰².

Nationality and Routes of the Victims

Judicial investigations show that the phenomenon of trafficking of people reaching Italy by sea, passing Egypt, Libya and the Maghreb is exponentially increasing. According to a report by the IOM¹⁰³, (based on 9,000 interviews conducted over 10 months) 71% of trafficked persons would suffer "practices similar to those of slave trading", i.e. arbitrary detentions, abductions for extortion, forced or unpaid work, and money in exchange for blood or organs. New pre-slavery situations have been reported by citizens from West Africa, Nigeria, Senegal, Gambia, Guinea Conakry, Ivory Coast and Mali. Often victims are very young between 18 and 25, intercepted by criminal groups in the transit countries to Europe. More and more Nigerian women, within the flows of people arriving from Libya, are ear-marked for successive exploitation for sexual purposes. The reported figures speak of up to 3600 women arriving in the first seven months of 2016, of whom 80 percent are in the hands of finely tuned organized criminal networks, capable of intercepting them even in the reception centres. According to

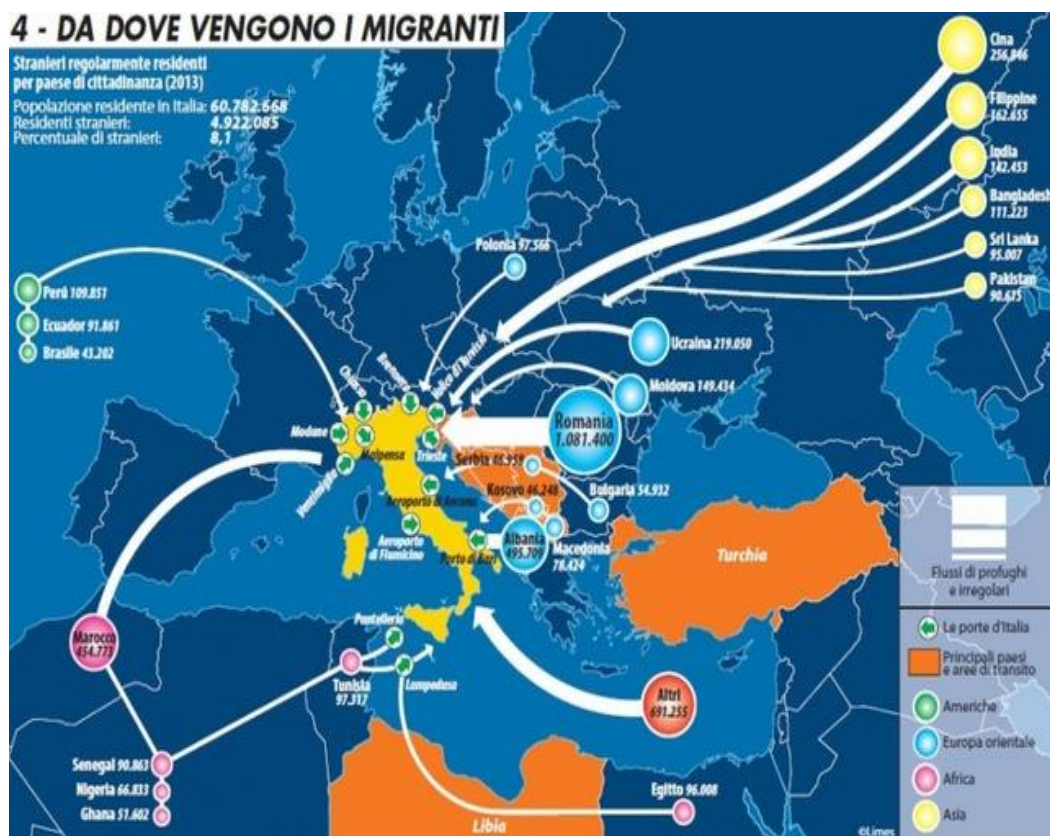
¹⁰¹ The term "illegal hiring" refers to illegal brokering and labour exploitation, predominantly in agriculture.

¹⁰² Report to law no. 199 of 2016, Fight against labour exploitation in agriculture.

¹⁰³ <https://www.iom.int/world-migration-report-2015>

Europol 2011 data¹⁰⁴, the victims of trafficking are mainly from Albania, Russia, Ukraine, Ghana, Nigeria, China, Vietnam and Brazil.

Victims of Brazilian and Albanian nationality are the most difficult to identify once they are present in intra-Schengen territory due to the fact that organizations are able to conceal them as EU citizens. In the first case, criminal organizations are able to bring them into Italy with tourist visas. Once inside they are given false documents, mostly Portuguese, exploiting the fact that they speak the language. Secondly, because of the future entry of Albania into the European Union, entry visa liberalization has been facilitated, so the entry and circulation in the European territory of citizens. Consequently, it's easier for criminal organizations entering traffic victims to be devoted to prostitution, making it virtually impossible for them to be detected at the time of border crossing¹⁰⁵.



Limes

¹⁰⁴ Europol, OCTA 2011, *Eu Organised Crime Threat Assessment*, European Police Office, 2011, p. 26, https://www.europol.europa.eu/sites/default/files/publications/octa_2011_1.pdf

¹⁰⁵ Hearing of the Director of the Immigration Service of the Ministry of the Interior's Directorate for Immigration and Police at the Ministry of the Interior, Vittorio Pisani, held on September 28, 2015 (Italian parliamentary Antimafia Commission)

The traditional routes to Europe starts from the Horn of Africa, through Sudan, Chad, Libya, reaching the southern coasts of European countries facing the Mediterranean. The Middle East and the Balkans, are mostly exploited by criminal groups trafficking people from Southeast Asia.

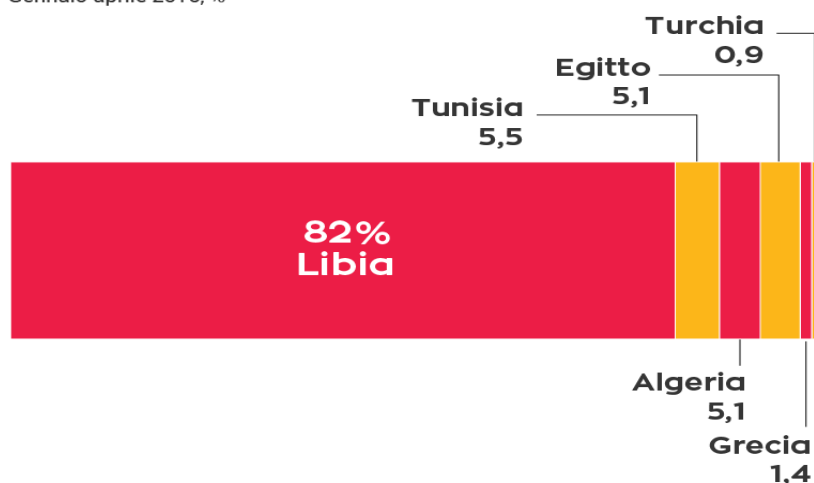
Migration flows to Italy currently follow different paths.

A route crosses Lebanon and Jordan, reaching the Egyptian coast by land or by sea, and entering Italy in Sicily and partly Calabria, crossing southern Adriatic and Ionian. Journeys departing predominantly from the area of Alexandria cross Libya to end up on the Sicilian and Calabrian coasts. Another way by land or by sea is across Turkey, where migrants are put on boats of significant size to Calabria, Puglia and sometimes to the Lucan coasts. Often boats are sunk or drifted off close to coasts.

Criminal organisations have set up comfortable illegal traffics to Italy: the cost of passage to Italy, in these cases, ranges between 1.500 and 6.000 euros. Criminal organizations use powerful dinghies to circumvent the surveillance systems at sea, then reach the Italian coast to disembark the “passengers”. Then the boats turn back immediately. Recently, the Prosecutor office of Catania started investigations on NGOs involved in rescue operations. The Italian prosecutor has evidence of phone calls between Libyan people smugglers and aid groups operating rescue boats.

Origine delle imbarcazioni in arrivo in Italia nel 2016

Paesi di partenza delle imbarcazioni di migranti e rifugiati giunti in Italia
Gennaio-aprile 2016, %



FORNTE: UNHCR

The trafficking of illegal migrants occur also along the Balkan route to the Friuli- Venezia Giulia valleys bordering Austria and Slovenia, that represent a new target from Pakistan, Afghanistan and Syria, reach Serbia and Hungary on foot. Criminal organizations use vehicles crammed with people for the transfers, which are often made by vans who relay the passengers back and forth.

The illegal flow entering through national ports is characterized by hiding illegal immigrants in hidden spaces in the vehicles arriving by ferry lines from Greece, Albania and from Turkey to the ports mainly of Venice, Ancona, Bari and Brindisi.

Most of Ukrainian, Russian, Chinese and Vietnamese victims cross the border by air, with valid documents and temporary residence permits produced by criminal organizations. Chinese victims are allowed to enter Italy through residence permits for work. The work permits are about 100.000, compared to 40-50.000 residence permits for family reunification, including marriages. Brazilian criminal organizations prefer using fake weddings (8.000 residence permits for employment; 26.000 residence permits for family reasons). The technique of family reunion or weddings is increasingly being used by criminal organizations, particularly to encourage the entry of girls from Eritrea¹⁰⁶.

The second and main route of migration to Italy is from the North of Africa by the Central Mediterranean. Migrants from Libya and Tunisia are taken by wooden or inflatable boats to the Sicilian coast, the ships do not seek to outrun the controls of the naval units, but rather call for their intervention. Traffickers plan the journey of the Canal of Sicily on transports in precarious conditions, forcing rescue efforts. Organizations thus exploit the same policies on sea intervention that provide relief. The Catania Public Prosecutor recently stressed the need to investigate the relations between NGOs, financiers and traffickers operating in the central Mediterranean. Even though the Sicily Canal is divided into port capitals authorities (Sar), neither Maltese nor the nearby Tunisian port capitals respond to requests for help, only the Italian one gives the NGOs direction towards a port in Italy. The point, the prosecutor explains, is not the violation of the provisions of the Hamburg Convention on the port to land, as if these NGOs go to the Libyan waters to catch migrants, there is no situation of danger as the law requires. During rescue operations in Libyan waters, some NGO boats have disconnected the transponders¹⁰⁷.

¹⁰⁶ Interview with Hon. Dadone, Anti-Trafficking Committee, Antimafia Commission. This circumstance arises from wiretappings between Sudanese traffickers in the DDA process in Palermo, better known as Glauco 1.

¹⁰⁷ Interview with Hon. Dadone, Anti-Trafficking Committee, Antimafia Commission.

Authors, Criminal Organizations

Criminal organizations have an increasingly complex modus operandi but, at the same time, they are common to all the criminal organizations involved in the various phases of trafficking.

The criminal enterprise is structured in four different levels.

At the very first level, criminal organizations are involved in planning and managing the traffic. Generally, a first organization deals with land travel, providing for transport operations within the territory of one or more states, while other organizations are involved in shipping.

A second level is represented by organizations operating in sensitive territories entrusted with operational tasks (providing false documents, choosing routes and modes of transport and hosting illegal immigrants waiting for the transfer).

The third level consists in ensuring passage through border controls and entrusting trafficked people to final emissaries.

Lastly the fourth level, which benefit from substantial revenues from the exploitation of migrants in Italy¹⁰⁸. The exploitation of the victims takes place resorting to the enslavement, removing of documents, using the threat of retaliation and direct violence¹⁰⁹.

Traffickers impose different conditions on migrants according to their nationality and culture and their economic ability. For example, Syrians and Eritreans, who can pay more because they are supported by relatives living in EU Member States or even in the United States, plan their travel with "agencies" directly from their country of origin, receive "privileged" treatment, are guaranteed better places on boats, and provided rescue equipment. On the contrary, Sub-Saharan Africans and West Africans normally buy the passage once they arrive in Libya¹¹⁰, are normally placed in the ship's hold, left without water and no food during the crossing. They usually do not have rescue equipment and thus have less chance of surviving in case of shipwreck.

¹⁰⁸ Hearing of Giuseppe Pisanu, President of the Antimafia Commission from 2008 to 2013. These are Ethiopian and Eritrean groups engaged in the collection of people to be transferred from Nigeria rather than from southern Sudan or Ghana. Passages either handled by the Horn of Africa or Nigerian criminals, which is also heavily structured with a large network here in Italy and the rest of Northern Europe. Rooted in the prostitution world and is also strongly developing regarding drug trafficking. Libyan crime would instead be responsible for the "maritime" management or the embarkation of migrants by coordinating with the Ethiopians, the Eritreans and the Nigerians involved in the land route.

¹⁰⁹ Ibidem.

¹¹⁰ Hearing on 30 November 2015 Giulia Falzoi, Head of IMO Management Unit (Italian parliamentary Anti Trafficking Commission).

Financial Flows

Estimate of the THB related profit

Estimates on THB are scarce, and data on revenues for Organised Criminal Groups (OCGs) are available only for few countries. A recent report¹¹¹ presents reliable information and data:

“Although the profits and financial gains from this market are “the area of trafficking about which the least is known” (OSCE, 2010, p. 53)¹¹², according to experts and investigative evidence the proceeds from THB are “huge”, especially when the crime is undertaken by transnational groups (OSCE, 2010, p. 53).¹¹³ Therefore, THB undoubtedly plays a crucial role in the organised crime economy, and criminal networks structure themselves “like any other business, and every form, size, cooperation between networks, etc. is conceivable as long as it seeks to maximize profits” (UNODC, 2010, p. 40)¹¹⁴.

The phenomenon of THB is difficult to capture because of its wide diffusion and the low reporting rate. However, there is a large body of literature on THB, and many experts and institutions have sought to determine the magnitude of this market since the late 1990s. For the purposes of this project, the focus will be put on human trafficking for sexual exploitation, which is the most frequently reported form of THB in the European Union (UNODC, 2012)¹¹⁵. However, some figures on human trafficking are also provided.

Estimates of the revenues from THB

The most recent study seeking to measure THB at global and regional level was conducted by the ILO (2014). This estimated at 150.2 billion US dollars (114.2 billion euro) the annual

¹¹¹ Savona Ernesto U. & Riccardi Michele (Eds.). 2015. From illegal markets to legitimate businesses: the portfolio of organised crime in Europe. Final Report of Project OCP – Organised Crime Portfolio, pagg. 57-58. The text in italic is taken from the report.

¹¹² OSCE (2010). Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime. Vienna, Austria: Organization for Security and Co-operation in Europe. Retrieved from <http://www.osce.org/cthb/69028?-download=true>

¹¹³ Ibid.

¹¹⁴ UNODC (2010). The Globalization of Crime. A Transnational Organized Crime Threat Assessment. Vienna: United Nations Office on Drugs and Crime. Retrieved from http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf

¹¹⁵ UNODC. (2012b). Global Report on Trafficking in Persons 2012. Vienna: United Nations Office on Drugs and Crime. Retrieved from http://www.unodc.org/documents/data-and-analysis/glotip/Trafficking_in_Persons_2012_web.pdf

global illegal proceeds generated in 2012 from forced labour (which includes forced sexual exploitation, domestic work and nondomestic slavery, with trafficking for the removal of organs excluded). As regards Europe, the same study estimates the annual returns from forced labour at 46.9 billion US dollars (corresponding to 35.6 billion euro), with forced sexual exploitation accounting for nearly 56%,¹¹⁶ and non-domestic labour for around 43%.¹¹⁷ This study does not determine the share that can presumably be attributed to organised crime. As regards the European Union, UNODC (2010) estimates that the value of transnational trafficking to Europe for sexual exploitation purposes is equivalent to 3 billion US dollars per year. As far as country-level estimates are concerned, focusing in particular on OCP countries, few studies in Italy, Netherlands, UK, and a reference in France, have been found. The majority of these studies provide estimates only on sexual exploitation, with a few exceptions.

Italy has been reported to be one of the top destination countries for trafficked people. According to SOS Impresa's report on organised crime in Italy, in 2009 the overall THB market provided OCGs with 870 million euro of revenues (SOS Impresa, 2010, p. 7).¹¹⁸ As far as sexual exploitation is concerned, the most recent result for Italy has been presented in Mancuso (2014),¹¹⁹ who estimated the total revenues generated by the mafia and other criminals from outdoor and indoor exploitation of foreign women as ranging between 1.1 and 5.0 billion euro. Similar results on sexual exploitation were obtained by Transcrime (2013, pp. 43–44),¹²⁰ which reported revenues of between 1.8 and 7.5 billion euro.¹²¹ According to the same study, OCGs presumably control between 20% and 40% of these proceeds (Transcrime, 2013a, p. 355).¹²²

¹¹⁶ The proceeds of sexual exploitation were estimated on the basis of the likely average earnings generated by the victims per act of sexual intercourse. Starting from information collected by LO and Kara (2008), the average earnings per encounter were multiplied by the number of monthly encounters. From the resulting figure, the monthly wages and costs were subtracted. The total over the 12 months was multiplied by the estimated number of victims in the region. The exploiters' final net profits were obtained by assuming that they retain around 70% of the victims' earnings.

¹¹⁷ For each region and each sector of forced labour (agriculture or other nondomestic work), the annual profits were obtained as the difference between the monthly value added generated by each victim and the monthly wage paid to him/her, with this total multiplied by 12 months and by the number of forced labourers.

¹¹⁸ This result was obtained by dividing the number of global revenues (32 billion US dollars) by the 2.7 million people exploited and then the total related to the number of irregular immigrants in four regions of Italy between 2000 and 2007. However, the methodology is not clearly described in the study.

¹¹⁹ Mancuso, M. (2014a). Estimating the revenues of sexual exploitation: applying a new methodology to the Italian context. *Global Crime*, 15(1-2), 10–26. doi:10.1080/17440572.2013.878655

¹²⁰ Transcrime. (2013a). Project PON Security 2007-2013. The mafia investments. (Rapporto Linea 1, Deliverable D1.3). Milan: Università Cattolica del Sacro Cuore. Retrieved from http://www.investmentioc.it/files/PON-Gli_investimenti_delle_mafie.pdf

¹²¹ These figures were obtained as the sum of the indoor sexual exploitation market in 2004/2005 and outdoor sexual exploitation market in 2008/2009.

¹²² Ibid.

Mapping the proceeds of crime in the country

Alike other markets, the migration phenomenon has also assumed characteristics and dynamics that are market oriented. Criminal organizations provide the victims a range of services: financial collection, logistics, transport, temporary accommodation, transit, employment in the country of destination¹²³.

The money streams available to organizations are very high according to the cost of each single trip and the estimates clandestines, in fact migrant traffic surpasses, or at least equals, the revenue from drug trafficking. Bearing in mind the number of migrants and using an estimated average cost, by default, for each single trip in a figure of \$ 1,500 / \$ 2,000 for each migrant. The revenues of organizations would amount for one year to over one billion dollars. All economic transactions between traffickers and migrants, as well as with their family members, occur through the use of cash, or money transfers, in foreign currency, mostly dollars or euro.

The money comes from villages of Asia, the Middle East or Africa from which people move. The main financial channel for the circulation of money between countries is money transfer¹²⁴, it allows the transfer of cash through operators connected and located in the most diverse geographical areas. The service, thanks to its immediate accessibility and extensive distribution network, is particularly suitable for the transfer of immigrant remittances to the countries of origin. Channeling into the financial flow system is favored, otherwise they would use less secure and traced paths. They are, in fact, comparable to real financial offices, and the characteristics of the service make them usable also for the transfer to countries other than those with large financial flows from criminal activities and for the financing of international terrorism¹²⁵.

¹²³ Hearings of the Chief of the General Department of Finance, Stefano Screpanti, and the Head of the Second Department of Investigative Antimafia Directorate, Vito Calvino, held at the sitting of 21 September 2015 (Italian parliamentary Anti Trafficking Commission)

¹²⁴ Money transfer means the transfer service carried out without transferring the funds to accounts addressed to the payer or beneficiaries. In layman's terms money transfer implies also the complex of the operators that offer this service (money transfer operators, MTO). Money remittance is the payment service where "without the opening of payment accounts in the name of the payer or the payee, the payment service provider receives funds from the payer with the sole purpose of transferring the amount corresponding to the beneficiary or other payment service provider acting on behalf of the beneficiary, and / or where such funds are received on behalf of the beneficiary and made available to them "(Article 1 (1) (b) (6) of Legislative Decree 11/2010). Remittance is functional to the need of individuals, generally not included in the financial system, to send in cash, in most cases abroad. Commission VI - Finance, hearing by Dr Claudio Clemente Director of the Financial Information Unit for Italy (UIF) 19 April 2016.

¹²⁵ Ibidem Clemente's Hearing.

According to data from the Bank of Italy, the value of remittances abroad, largely made through this financial circuit, amounts to around 5.3 billion euros.

Judicial investigations¹²⁶ prove full evidence of the use of hawala¹²⁷, a primitive and tribal financial system based on trust relationships for the payment of the journey. This tool is supplanting the money transfers, and is preferred by traffickers because considered safer: it does not permit the traceability of money and it offers the traffickers the assurance that the funds are credited and secured, often in foreign accounts in tax havens, without the recipient ever entering in direct contact with the money¹²⁸.

The Fight Against Human Trafficking:

Who are the subjects involved, the main cases in Italy, confiscation orders for trafficking

In the aftermath of the ship wreckage on October 3, 2013, off the coast of Sicily, (366 dead and 20 missing), Italy launched the "Mare Nostrum" operation.

The Mare Nostrum operation used the intervention of the Italian Navy and other supports up to 120 miles from the national territorial waters and the boundary with Libyan territorial waters. It has been followed by other operations (Triton, Hermes¹²⁹, Aenas¹³⁰, Nautilus, etc) carried out in collaboration with other EU states. At the end of August 2014, Frontex decided to support "Mare Nostrum" and to accompany it with a further operation - "Frontex Plus" - which would also guarantee the fight against the mafia and smugglers on the African coast. On November 1, 2014 "Mare Nostrum" and "Frontex Plus" became the European operation "Triton", which

¹²⁶ Investigations of the DDA of Milan and of the DDA of Palermo

¹²⁷ Traditional and trustee modes, without special formalities and without accounting records, used in the Middle Eastern Arab world for the transfer of money between merchants, also used by non-merchants and based on handshakes and on private writing.

¹²⁸ Hawala allows you to transfer large amounts of money from one territory to another, from one organization to another, without the necessity of moving physical cash between the contracting parties. In many cases cash movements occur through a system of compensation, assumption of commitments and subsequent transfers between the various hawaladars involved in places very different from the one in which the credit was raised.

Through the Hawala system, anyone wishing to transfer a sum of money abroad without using a legal intermediary will agree the commission and the exchange rate with a clandestine "banker" and, for the payment of the sum to be transferred, will receive a "receipt" (for example an alpha-numeric code, or a symbol).

The presentation of this "receipt" to the correspondent "banker" operating in the foreign country will allow the transaction to be completed without the movement of the money being verified. Subsequently, the two informal "bankers" will make specific compensations. With this system there is no way of tracing and intercepting financial flows.

¹²⁹ For the control of the southern Italian coasts, carried out by the Coast Guard and the Guardia di Finanza.

¹³⁰ For the control of migratory flows from Turkey and Egypt passing through Greece.

was activated. The "Triton" operation saw the participation of 29 countries and was funded by the European Union with 2.9 million euros per month: about two-thirds less than those allocated to the Mare Nostrum operation. Unlike the latter, the Triton operation restricts control of international waters to 30 miles from the Italian coast: this is a police operation, and its main purpose is border control. Currently there are also other operations in the Mediterranean, more properly military: Safe Sea, headed by the Defense staff, as well as a Naval Operation, named EUNAVFOR MED, whose mandate has been defined by the Council of the European Union but with its headquarters in Italy.

Operations include costal patrols¹³¹ in the sea around south of Sicily, and Puglia, plus (eventual) Sardinia. Today the maritime patrolling area¹³², has been further expanded to include an area of 138 nautical miles south of Sicily.

Using Online and Database sources in the Fight Against Trafficking

Which ones, how frequently are they used, how and by whom, which institutions are most used

The detection of trafficking requires complex investigative mechanisms. Italian Prosecutors underline that the most useful information for identifying victims in the investigative phase are: eavesdropping, complaints by offended persons, the statements made by the collaborators (intranets to the criminal organization that enable us to ascertain the modus operandi) and transnational cooperation¹³³.

Is very difficult to confiscate assets related to human trafficking, and confiscation cases are very few because the proceeds of the trafficking are almost always from outside the European Union, making identification and recovering by the Italian judicial authorities almost impossible.

The Antimafia District Directorate (DDA) makes extensive use of online databases during the investigation phase. In particular, they use their own internal database, the so-called "SIDDA-

¹³¹ Italy is currently participating in the following initiatives: Poseidon, patrol activities on the Greek coasts, Indalo in Spain and above all Triton, which is the most important maritime and aerial patrol activity in the Mediterranean basin. November 1, 2014 with the first phase, ending January 31, 2015, renewed for subsequent phases.

¹³² The Council of Europe on April 23, 2015 extended the patrol width to 138 miles south of the coasts of Sicily.

¹³³ Interviews with Attorneys David Mancini (DDA Aquila) and Giovanni Conzo (DDA Benevento)

SIDNA" system, where amounts of information and cross-data are found, including all procedural documents.

The database Sidda Sidna is the instrument used to assure the complete and timely mutual informations which is asked to every prosecutor of the Antimafia District Offices (DDA) in accordance to the article 70 bis of the Judicial Code (*Ordinamento Giuridico*). According to a resolution of Supreme Council of Judges (*Consiglio Superiore della Magistratura CSM*) of 13 march 2014, every prosecutor has to add to the database Sidda Sidna every information or act, useful to create a wide and efficient network of informations among Antimafia Offices. In particular the acts of the inquisitorial procedure must be added within 48 hours since the acquisition or the writing.

The database Sidda Sidna is very relevant to support investigations. The National Antimafia Office (DNA) has a direct and immediate access to investigative acts of the District Offices (DDA) related to crimes listed in the art. 51, co.3-bis, of code of criminal procedure.

National Antimafia Office (DNA) can get full knowledge of the local investigations, through the documens added to the Sidda system by each prosecutor.

The CSM, in a deliberation of the 24th of July 2014, reaffirmed that district prosecutors must ensure the timely mutual information among DDA attorneys. In the same document, the CSM stated the necessity of uniform coordination of the DDA and DNA databases to allow an efficient collaboration.

The Ministry of Justice in his website lists future implementations of the Sidda Sidna System:

- integration between Sidda Sidna and the other penal databases in phase of creation (SIPPI; Precautionary Measures; SIES, ecc.);
- to strengthen its function of DNA address and coordination (maps production, alarms, collaborators);
- to increase information extraction technologies in order to improve the automatic analysis of the acts;
- to strengthen information retrieval systems in order to improve the internal research of the acts;
- to harmonize the 26 district databases and create a national with unique access procedure.

MOLECOLA:

Molecola is a database created by Italian FIU/tax police (Guardia di Finanza) to support patrimonial investigations through managing and processing large amounts of data. It highlights the disproportions between declared and effective incomes, identifying individuals

whose assets must be investigated.

Molecola's working process is articulated in two phases:

- 1) data collection, which is realized through a "standard procedure" operating in a systematic, complete and homogeneous way. In this first phase Molecola crosses data: personal data, family ties (until the 6th level), relations with other naturals or legal persons, belonging (both directly and indirectly) to criminal groups, police and criminal records which are prerequisite for the confiscation of assets, income tax return, economic and financial flows.
- 2) The second phase is the data management and analysis: Molecola software is useful to carry out, manage and process large amounts of data, making the consultation easier. All the information managed by Molecola can be shown in a chart by using the software Analyst's Notebook, a particular analysis software which gives a overview of the data collected (individuals, vehicles, buildings, bank account ecc.)

Italian attorneys are trained to use available databases. The use of online sources for investigative activity is very limited, as they always need verification and are likely to change. Nonetheless, there are limited cases where they can be used as evidence in trafficking cases. An example using Google Maps to locate a place¹³⁴.

In Italy, databases and online sources are powerful tools for investigative activity, but encounter formal and procedural barriers in the post-investigation phase. Any type of information can be used for in the investigation but it must comply with the regulations of the Criminal Procedure Code. To be used as evidence in court, for example, a statement made by a collaborator gathered in the SIDDA-SIDNA system must be confirmed during the trial.

Opportunities for Developing Online Sources and Databases in the Fight Against Trafficking Proposals and Recommendations:

The fight against human trafficking must be improved and some proposals have emerged during the interviews, all oriented towards the operational and functional improvement of the strategies of prevention and the fight against and repression of the phenomenon.

PROBLEMS:

¹³⁴ D. Mancini, Attorney at the Antimafia District Office of Aquila

According to Italian Prosecutors, a main problem is the unwillingness to apply international standards and agreements, which, although signed and ratified, are often overturned. For example, the technological and regulatory backwardness of African countries and therefore the lack of functional interfaces between European and foreign authorities. These are all critical elements in international relations that make easy to understand how difficult it is to work together on an investigative and informational basis between Italian law enforcement agencies and third-country law enforcement agencies. By way of example, the National Anti-mafia and Anti-terrorist Prosecutor in 2013, Giusto Sciacchitano, at the parliamentary sitting of 19 October 2015, recalled the case of Nigeria, the first country to ratify the Palermo Convention of 2000, without however adapting any policy to the provisions of the Convention, and refusing any cooperation with Italy. The lack of investigative and informative collaboration of the National Antimafia Prosecutor's Office has also been recorded by transit countries such as Libya and Egypt.

Another key problem deals with regulation issues and its application, as well as issues related to the activities of combatting and repressing trafficking.

The national representative on the issue of the ASGI, Francesca Nicodemi, during the hearing of the Anti Trafficking Commission at the Italian Parliament (the 14 September of 2015) said that on the internal level of the Italian discipline, there are critical issues regarding the first stage of arrival of the victims of trafficking. Francesca Nicodemi said identification today remains the first problem that social workers and law enforcement agencies have to deal with: those who arrive at the borders can often have no identification document with them or, especially in the case of airborne traffic, they could have a false document¹³⁵.

In the absence of identity documents it is also complicated to recognize a minor from an adult. Viviana Valastro, head of the Minor Migrant Protection Unit of Save the Children, in the hearing held on October 12, 2015, said underage victims of trafficking receive instructions from traffickers about what to do once they have arrived at reception centers. They know they have to lie about their age to avoid being placed in ad hoc structures and to be able to escape as soon as possible¹³⁶.

¹³⁵ Hearing of the national representative on the issue of the ASGI, Francesca Nicodemi, held at the sitting of 14 September 2015.

¹³⁶ Referring to the identification procedures recalling criticism raised in particular by Viviana Valastro, head of the Minor Migrant Protection Unit of Save the Children, in the hearing held on October 12, 2015. After the hearing was approved by the Conference of Regions and Autonomous Provinces the text of the new holistic and multidisciplinary protocol for the Identification and Verification of the age of unaccompanied minors. Similar to what was proposed by the hearing, the use of different tools to determine the age of the subject is preferred.

Another critical point is to relate to a trafficked subject once they have reached the border. The vulnerability and experience endured during the trip means that it is very difficult to gain trust, compromising the entire collection of useful information for investigative purposes and more generally in understanding the framework of the criminal network. Victims of trafficking often do not cooperate with the authorities, because they do not trust the authorities of their own country. In this sense, it is easier for socio-cultural operators to create contact and to make people feel comfortable, thus enabling better information gathering¹³⁷.

PROPOSALS:

Human trafficking is a transnational offense. The level of coordination and cooperation between States concerned is of primary importance.

According to attorney David Mancini, as the SIDDA-SIDNA database used by the Antimafia District Departments, is implemented and updated continuously under the coordination of the National Antimafia and Counter-Terrorism Directorate, the same thing should be replicated at European level, where today collaboration is still very low and full of criticism, through the creation of an official European database, managed by a European Public Prosecutor's Office, to whose introduction Italy is favorable¹³⁸, unlike the majority of the states of the European Union.

During interviews with Antimafia District Attorneys, emerged the idea to create a mobile application that connects all the operators who are in contact with potential victims of trafficking (healthcare professionals, religious associations, social workers, teams that operate on the streets etc), creating a real professional network that works in a consistent and coordinated manner before the cases go to the judicial authority.

With regard to the creation of a mobile phone application, another solution proposed by the attorneys is to produce an application that contains all the informations that the operators must communicate to the potential victims to proceed with their identification. This currently takes place through many paper documents, which have to be translated by interpreters that, for some

At present alleged unaccompanied minors are subjected to a left wrist x-ray to be able to determine their age. However, this process is problematic as it has an error margin of 2 years.

¹³⁷ Mancini and Conzo hearings

¹³⁸ See article by Il Sole 24 Ore (http://www.ilsole24ore.com/art/norme-en-ribributi/2017-03-28/procura-europea-coop-rafforzata-ma-senza-1-Italy-200644.shtml?uuid=AEQhG6u&refresh_ce=1)

languages of origin countries, are scarce. An application with a small form of basic information already translated into all victim's languages, would be a big step forward.

It is therefore of paramount importance to intervene at the level of transnational cooperation in order to be able to develop cooperation, especially on the basis of the gathering and sharing of information and data necessary for the investigation.