



FINANCIAL INVESTIGATION OF TRAFFICKING IN HUMAN BEINGS

Use of the Internet in Relation to its Financial Flows and Profits

Vienna, 14-15 June 2018

**UP
GRADE**
YOUR LEGAL
EXPERTISE
**Criminal
Law**



Speakers

Michaël Fernandez-Bertier, Lawyer, Allen & Overy; Lecturer, Solvay School of Economics and Management; Member of the Board of Directors of Transparency International Belgium, Brussels

Cecilia Holmsten, Course Director, European Criminal Law, ERA, Trier

Karin Janssen, Prosecutor, IPA/2017 "Countering Serious Crime in the Western Balkans", EU Seconded Prosecutor at the SCPO, Tirana

Rumen Kirov, Head of Department, Economic crimes, National Investigation Service, Sofia

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Evelyn Probst, Head of Intervention Centre for Trafficked Women and Girls, LEFO (Information, Education and Support for Migrant Women), Vienna

Lambert Schmidt, First Counsellor, Delegation of the European Union to the International Organisations, Vienna

Lukáš Stary, National Member for the Czech Republic, Contact Point for Trafficking in Human Beings, Eurojust, The Hague

Key topics

- Cooperation between law enforcement authorities and the judiciary and means to enhance it
- Investigating and confiscating assets related to THB
- The use of the internet in relation to financial flows and profits linked to THB

Language

English, German
(with simultaneous interpretation)

Event number

318DT68

Organiser

ERA (Cecilia Holmsten) in cooperation with the Austrian Federal Ministry for Europe, Integration and Foreign Affairs and LEFO



Co-funded by the Internal Security Fund (ISF) 2014-2020 of the European Union

FINANCIAL INVESTIGATION OF TRAFFICKING IN HUMAN BEINGS

Thursday, 14 June 2018

08:30 Arrival and registration of participants

09:00 **Welcome and introduction**

Cecilia Holmsten

I. THE INTERNATIONAL AND EU FRAMEWORK FOR THE FINANCIAL INVESTIGATION OF TRAFFICKING IN HUMAN BEINGS (THB)

Chair: Cecilia Holmsten

09:15 **Setting the scene:**

- THB definitions, trends and challenges in tracing its proceeds
- UN standards and toolkits in countering THB and investigating its financial transactions
- The EU Strategy 2012-2016 and the new Communication of the EU Commission identifying further actions to eradicate THB – disrupting the business model and untangling the trafficking chain

Lambert Schmidt

10:15 **Understanding the EU legislative framework and how it assists in investigating THB financial transactions and recovering its assets at both a national and cross-border level:**

- Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing
- Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU, related Framework Decisions and the proposal for a Regulation on the mutual recognition of freezing and confiscation orders

Michaël Fernandez-Bertier

11:15 Coffee break

11:45 Discussion

II. LAW ENFORCEMENT CHALLENGES IN INVESTIGATING THE FINANCING OF THB

Chair: Evelyn Probst

12:00 **Europol's work and assistance in countering THB, its financing and tracing its financial flows and profits online:**

- Assessing the current state of knowledge of the THB financial business model and tracking the use of the internet/darknet in relation to its proceeds
- Focal Point Phoenix
- The CARIN Network for asset recovery
- Case studies

Mercedes Perez Quesada

12:45 Lunch

14:00 **The work of an FIU in cross-border investigations in relation to tracing and seizing THB proceeds and working together with cross-platform authorities from a Bulgarian perspective:**

- Suspicious Transaction Reports (STRs)
- Money remittance services and the 'Bulgarian' network (case study)

Rumen Kirov

14:45 Discussion

15:00 Coffee break

15:30 **Cooperation between money service businesses (Western Union) and law enforcement in relation to THB financial flows and their disruption**

Ricardas Pocius

16:15 Discussion

Objective

This third seminar in a series of four co-funded by the European Commission on countering trafficking in human beings (THB) will focus on financial investigation of trafficking and the use of the internet in relation to its financial flows and profits at both EU and national level and what can be done to counteract this growing problem.

Who should attend?

Judges, prosecutors, lawyers in private practice, law enforcement officers and representatives of civil society/NGOs.

Location

Federal Ministry of Justice
(Palais Trautson)
Museumstraße 7
Vienna

CPD

ERA's programmes meet the standard requirements for recognition as Continuing Professional Development (CPD). This event corresponds to 11.5 CPD hours.

Your contact persons



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16:45 Quiz
 17:30 End of day
 20:15 Dinner

Friday, 15 June 2018

III. JUDICIAL CHALLENGES IN INVESTIGATING THE FINANCING OF THB

Chair: Karin Janssen

- 09:00 **Eurojust's work and assistance in relation to THB financial investigations and asset recovery: Joint Investigation Teams (JITs), emerging best practices from Agency casework and case studies**
Lukáš Stary
- 09:45 **A case study from The Netherlands: effective cross-platform cooperation and with the private sector (money service businesses) in tracing THB financial flows, financial investigations and monitoring the internet/darknet in relation to financial flows and profits**
Karin Janssen
- 10:30 Coffee break
- 11:00 **Victims' rights, giving them support and compensatory measures**
Evelyn Probst
- 11:45 Discussion
- 12:00 **Simultaneous workshops:**
- **Cross-border law enforcement and judicial (JITs) cooperation in dealing with financial investigations into THB**
Lukáš Stary
 - **Effective cross-platform judicial and law enforcement cooperation in relation to the financial investigation of THB**
Karin Janssen, Rumen Kirov
 - **Confiscating THB proceeds and assisting victims**
Evelyn Probst
- 13:00 Workshop reports and discussion
- 13:30 Lunch and end of seminar

For programme updates: www.era.int
 Programme may be subject to amendments.

While simultaneous interpretation will be offered during this event, not all of the speakers' presentations are available in all conference languages.

Save the date

Encrypted Data and the Privilege against Self-Incrimination
 Rome, 8-9 May 2018

Freezing, Confiscating and Recovering the Proceeds of Crime
 Trier, 4-5 June 2018

Summer Course on European Criminal Justice
 Trier, 18-22 June 2018

Countering Terrorism and Preventing Radicalisation in Detention
 Trier, 28-29 June 2018

Annual Conference on EU Border Management 2018
 Trier, 17-18 September 2018

Anti-Money Laundering: Update on the EU Policy and Legislative Framework
 Trier, 11-12 October 2018

Annual Forum on Combating Corruption in the EU 2018
 Lisbon, 15-16 October 2018

Annual Conference on EU Criminal Justice 2018
 Madrid, 18-19 October 2018

e-Presentations

The EAW and the CJEU: Experiences to Date and Perspectives post-2017
 Anne Weyembergh

Cyber Risks in Financial Institutions: Lessons learned in responding to them
 Liviu Chirita

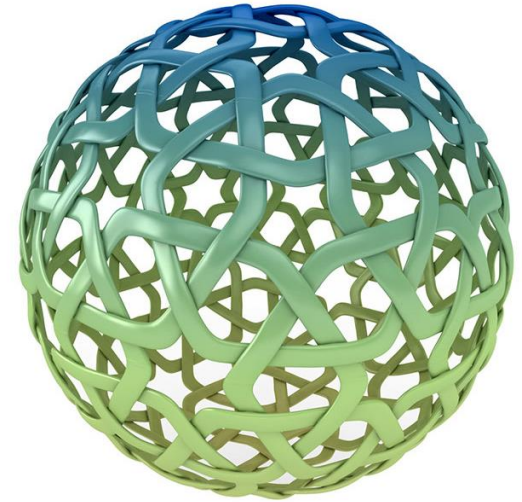
Approaches to Prepare Proactively for Cybercrime Incidents
 Dave O'Reilly

Integrated Responses to Human Smuggling to the EU
 Tuesday Reitano

Prosecution Challenges Relating to Migrant Smuggling
 Alfio Gabriele Fragalà

www.era.int/elearning

The content of this programme reflects only ERA's view and the Commission is not responsible for any use that may be made of the information it contains.



*Understanding the EU legislative framework
and how it assists in investigating THB
financial transactions and recovering its assets
at both a national and cross-border level*

Michaël Fernandez-Bertier

ERA, Vienna, 14-15 June 2018



Co-funded by the Internal Security Fund (ISF) 2014-2020 of the European Union

On the menu today

- Understanding the “follow-the-money” approach
- The AML framework: preventing and prosecuting money laundering
 - The 4th and the 5th AML Directives
 - The proposal for a Directive on countering money laundering by criminal law
- The asset recovery chain: the freezing and confiscation of criminal property
 - The Directive on the freezing and confiscation of criminal property
 - The proposal for a Regulation on the mutual recognition of freezing and confiscation orders

On the menu today

- Why?: “THB businesses are generally characterized by low start-up costs, high profitability and a high degree of cross-borded movement of persons and funds”.
- 2014 estimates: “forced labour in the private economy including for sexual exploitation generates USD 150 billion per year in illegal proceeds”
- “THB is a low-risk, high-reward crime that affects nearly 21 million victims worldwide”

Source: OSCE, “Leveraging anti-money laundering regimes today to combat trafficking in human beings” (2014)

*Understanding the follow-the-money
approach*

A few figures on the criminal economy

- **IMF** (1998) : **2-5%** global GDP
- **UNODC** (2009) : **3,6%** global GDP (USD **2.1** trillions for year 2009)
 - Among which **2,7%** global GDP (USD **1.6** trillions) available for laundering
- **UNODC** (2011): proportion of laundered proceeds actually seized : **0.2%**
 - *Globally, it appears that much less than 1% (probably around 0.2%) of the proceeds of crime laundered via the financial system are seized and frozen*
- **UE** (2013) : EUR **330** billion laundered each year in the EU
 - Underestimate?: Up to EUR **100** billion in Germany alone (Min Fin DE (2016) & GBP **90** billion in the UK alone (NCA (2016))
- **EU** (2015): main illicit markets in the EU generate EUR **110** billion/year in proceeds (**1%** EU GDP)
- **EUROPOL** (2016): **2.2%** of criminal proceeds seized, **1.1%** confiscated

The follow-the-money approach

- **Preventing** illicit financial flows: detecting, tracing and preventing illicit financial flows through anti-money laundering and other regulations (regulatory framework)
- **Criminalising** illicit financial flows: investigating and prosecuting money laundering, terrorism financing and even the possession of unexplained wealth
- **Depriving** illicit financial flows: freezing and confiscating the instrumentalities and proceeds of crime through the asset recovery strategy

The Birth of the Follow-the-Money Approach



American → 1970-80's : 'War on Organized Crime' & 'War on Drugs' impulse



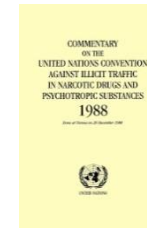
COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Integration in
supranational law
→ 1990 - ...

Influence on
international instr.



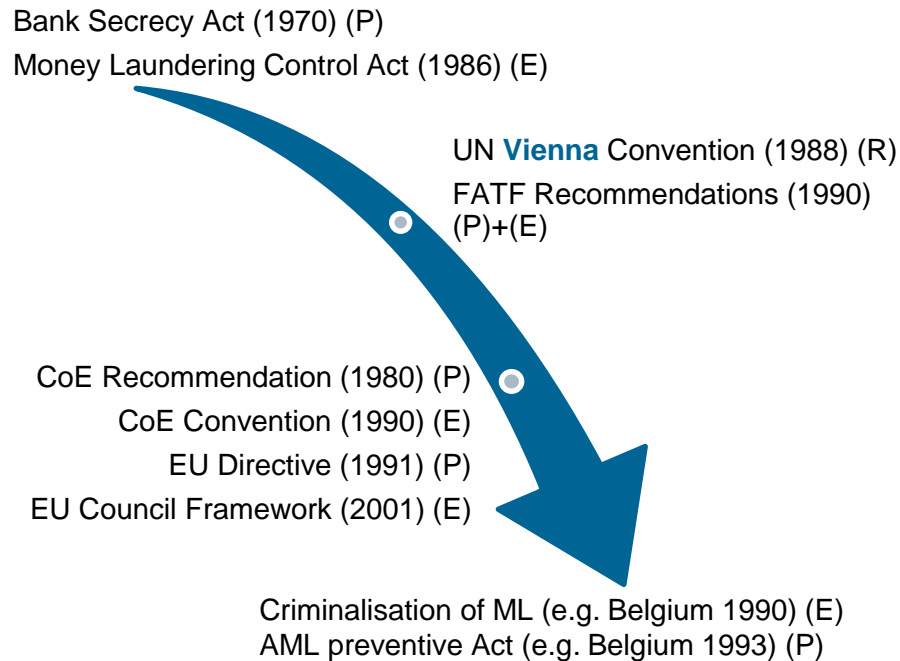
Transposition in
national law

→ 1990 - ...

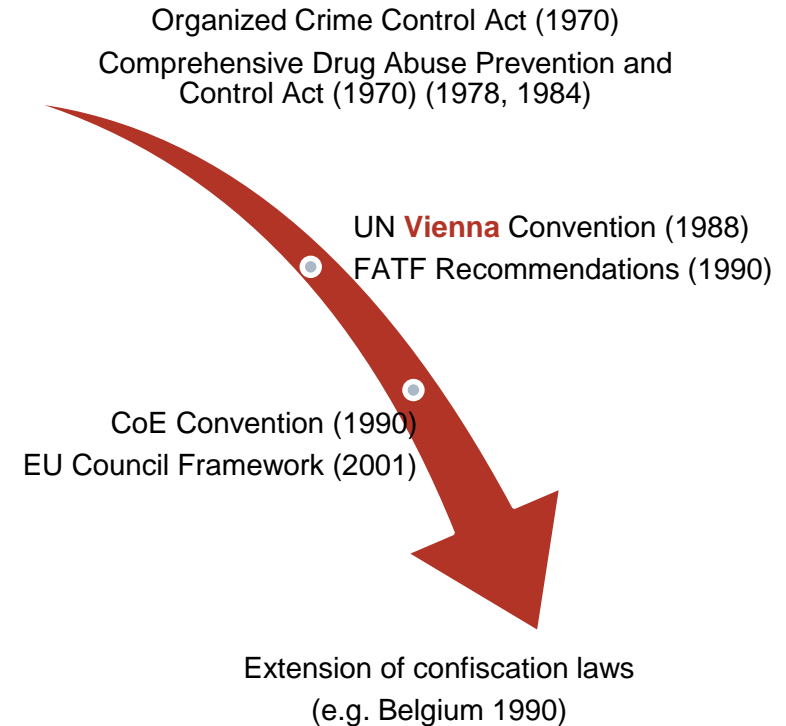


The birth of the follow-the-money approach

Anti Money Laundering



Asset Recovery (esp. proceeds)



Pre 2000s

The expansion of the follow-the-money approach

- **Birth:** ensuring that ‘**crime does not pay**’

As long as the property of organised crime remains, new leaders will step forward to take the place of those we jail (US Congress, 69’)

- **Momentums:**

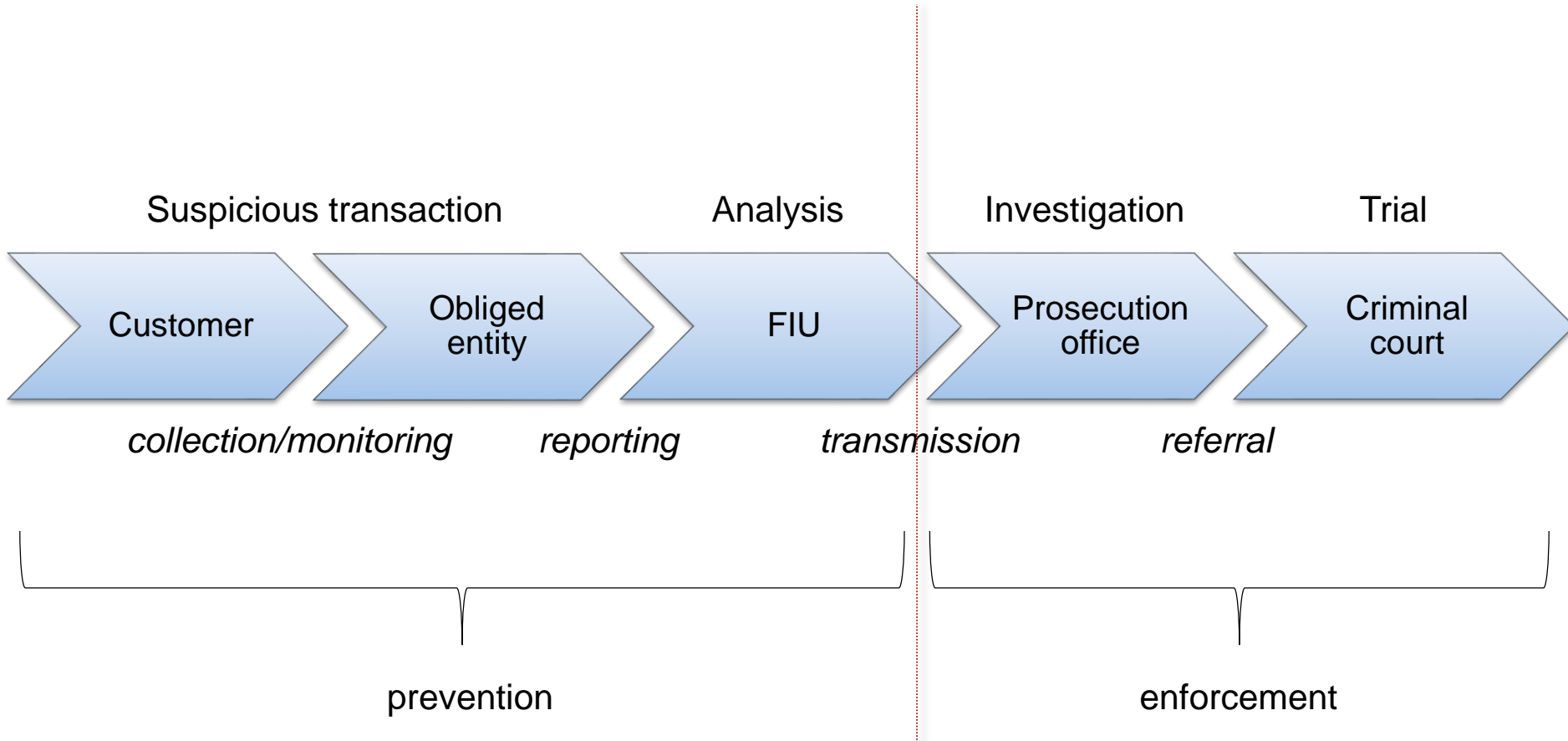
- Birth 1970s-1990s : ‘**war** on drugs’ and ‘**war** on organised crime’ → money laundering (preventive and enforcement) & proceeds of crime
- Expansion 1990s : a new response to all forms of acquisitive crime
- Redefinition 2000s : ‘**war** on terror’ → new paradigm → instrumentalities of crime
- New evolution 2010s : **war** (?) on white-collar crime... ‘witch hunt’/‘cash cow’

The AML framework

Dual approach to fighting ML/TF

- **Prevention** (administrative/regulatory): responsibility on private sector (identified obliged entities)
 - Belgium: AML Act of 18 September 2017
 - Obligation to act
 - Negligence
 - = Administrative sanctions (imposed by supervisory authorities)
- +
- **Enforcement** (criminal): responsibility on public authorities
 - Belgium: Art. 505, al. 1, 2^o-4^o of the Penal Code
 - Prohibition to act
 - Criminal intent
 - = Criminal sanctions (imposed by criminal authorities)

Dual approach to fighting ML/TF



*The preventive AML framework: the 4th
and the 5th AML Directives*

The preventive supranational framework

- 40 AML Recommendations **1990**
 - 1st AML Directive **1991** (91/308/CEE)

- 40 AML Recommendations **1996**
 - 2nd AML Directive **2001** (2001/97/CE)

- 8(+1) Special CTF Recommendations **2001** + 40 AML Recommendations **2003**
 - 3rd AML/CTF Directive **2005** (2005/60/CE)

- 40 AML/CTF Recommendations **2012**
 - **4th AML/CTF Directive 2015** (2015/UE/849 + Regulation)

- △ **2016** Commission Action Plan [*& Panama Papers*] → **5th AML/CTF Directive 2018**

The 4th AML Directive

The 4th AML Directive: legislative process

- **Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC**

(+ Regulation (EU) 2015/847 on information on the payer accompanying transfers of funds)

- Publication: 5/06/2015

- Implementation deadline: 26/06/2017

Main novelties under the 4th AML Directive

– Risk Based Approach:

- Holistic approach
- Use of evidence-based decision-making in order to target ML/TF risks
- Cascade process of identifying and evaluating risks
Enhanced/Simplified customer due diligence

– Definition/Identification of **high-risk third countries**

– Extensions of scope to:

- gambling sector
- persons trading in goods for payments of **10.000** EUR or more

Main novelties under the 4th AML Directive

- Expansion/clarification of **definitions**: PEPs & Beneficial owners
- Inclusion of **tax crimes** (punishable of >1y) as a predicate offence of ML
- **Beneficial ownership** information (UBO register!):
 - legal entities must hold adequate, accurate and current information on their beneficial ownership; inclusion of trusts
 - creation of a national central register (access to authorities, obliged entities and persons with legitimate interest)
- Clarification of role, responsibilities and functions of **FIUs**
- Enhanced **cooperation** between FIUs
- **Data** protection
- **Sanctions**

The applicable EU AML framework

Obligations under the applicable EU AML framework

- Obligated entities have to comply with several core requirements, using a “full” **risk-based approach** (RBA)
 - **Internal organisation**
 - **Overall risk assessment**
 - **Individual risk assessment & Customer due diligence**
 - **Reporting STRs/SARs to the FIU**
 - **Record-keeping**

RBA

- Obligated entities have to apply a full RBA: identification of risks based on a cascade approach, ie taking into consideration:
 - The EU Supranational Risk assessment
 - The National Risk Assessment
 - The obliged entities' global and individual risk assessments
- + any other relevant documentation available (eg FATF, ESAs, FIU guidance, regulators guidance, business information)

Risk assessments

- RBA: every obliged entity must conduct both:
 - an **overall** risk assessment (unless exempted), and
 - **individual** risk assessments
- to determine the level of **customer due diligence** (CDD) it will apply to its business relationships
- Level of applicable CDD:
 - Standard due diligence
 - Enhanced due diligence (EDD) = more scrutiny required
 - Simplified due diligence (SDD) = less scrutiny possible

Risk assessments

- **Overall risk assessment (ORA)**: “business-wide” evaluation of risks the obliged entity faces in consideration of its activities, customers and distribution channels
 - Must be conducted at the outset and kept up-to-date

- **Individual risk assessment (IRA)**: customer-specific evaluation of risks
 - basis for the customer acceptance policy
 - ie whether a customer should be subject to standard CDD, SDD, EDD or not be accepted as a customer

- On the basis of risk factors lists: Annexes I, II, III of the 4AMLD

CDD

- **Every step** of the CDD process (KYC & KYT) must be conducted on the basis of the RBA and the results of both the ORA and IRA

Record-keeping

- Obligated entities must keep a **copy** of the relevant supporting documents for **5 years*** (*+ additional 5 years if necessary and proportionate*);
 - after the business relationship with the customer has ended,
 - then, **delete** personal data at the end of the retention period (unless provided otherwise by national law)

Sanctioning powers of the supervisory authority

- Administrative sanctions for non-compliant entities:
 - Credit or financial institutions:
 - Legal person: at least EUR **5,000,000** or **10%** of the annual net turnover in the previous financial year, and
 - Natural person: at least EUR **5,000,000**
 - Other obliged entities (non financial professions):
 - at least at least twice the amount of the benefit derived or EUR **1,000,000**
- Other sanctions such as: public statement, order to cease conduct, withdrawal or suspension of authorisation, temporary ban against persons discharging managerial responsibilities

The 5th AML Directive

The 5th AML Directive: Background

- **Directive 2018/... of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/E**
- Terrorist attacks in Europe (esp. the Paris and Brussels attacks) → 02/2016 Action plan of the EU
 - Preventing use of financial system for terrorist financing purposes
- The Panama papers scandal
 - Strengthening transparency rules to prevent large-scale concealment of funds

The 5th AML Directive: legislative process

- 05/07/2016: Introduction
- 19/04/2018: vote of Parliament after first/single reading
- 14/05/2018: vote of Council after first/single reading
- 5th "Directive of **30 May 2018**" (publication in the OJ before Summer)
- Implementation deadline: 18 months after publication in the OJ
- *In practice*: a 105 pages long "Amending Directive"

The upcoming 5AMLD: main anticipated changes

- Extension of scope of obliged entities
- Reduction of anonymity in relation to prepaid cards
- Enhanced access to UBO Registers and implementation deadlines
- Central register of bank/payment accounts and safe-deposit boxes
- Harmonised and enhanced EDD in respect of high risk third countries
- Enhanced cooperation and information sharing among EU FIUs

Extension of scope of obliged entities

- All forms of tax consultancy services,
- Estate agents including when acting as intermediaries in the letting of immovable property, but only in relation to transactions for which the monthly rent amounts to EUR 10,000 or more
- Art dealers where the value of the transaction amounts to EUR 10,000 or more
- Custodian electronic wallet providers and providers engaged in exchange services between virtual currencies and fiat currencies

Reduction of anonymity in respect of prepaid cards

- Lowering of threshold for identification of prepaid cardholders from EUR 250 to EUR 150

Implementation and access to UBO Registers

- UBO register of legal entities which operate in the EU: access to "any member of the general public" within 18 months of entry into force of Directive
- UBO register of trusts and similar legal arrangements : access to those who can demonstrate a "legitimate interest" within 20 months
- Interconnection of national UBO registers via the European Central Platform (see Directive 2017/1132/EU): within 32 months

Implementation and access to UBO Registers

- UBO register of legal entities which operate in the EU = "public access":
 - access at least to: name, month and year of birth, country of residence and nationality, nature and extent of the beneficial interest held;
 - Exceptional restriction of access (eg risk of crime);
 - Possibility to establish online registration process and payment of fee for access

- UBO register of trusts/similar legal arrangements less transparent than UBO register of legal entities

Central register of bank/payment accounts and safe-deposit boxes

- Every MS must establish a centralised automated mechanism such as a central register or central electronic data retrieval system,
- Which allows the identification of any natural or legal persons holding or controlling payment accounts and bank accounts identified by IBAN, and safe-deposit boxes held by a credit institution within their territory,
- directly accessible:
 - to national FIUs in an immediate and unfiltered manner;
 - to national competent authorities for fulfilling their obligations under the AML framework

High risk third countries and EDD

- Harmonised list and treatment of high-risk third countries at EU level:
 - List of 5 mandatory EDD measures to be applied by obliged entities
 - Where applicable, additional EDD measures to apply...

The Basel AML Index 2017 Report

(baselgovernance.org.)

EU Countries

Country	Overall Score
Hungary *	5.41
Italy *	5.41
Luxembourg	5.40
Greece	5.11
Austria *	5.06
Netherlands	4.93
Portugal	4.90
Spain *	4.87
Cyprus	4.87
United Kingdom	4.81
Slovakia	4.78
Germany	4.78
Belgium *	4.66

Country	Overall score
Ireland	4.62
Czech Republic	4.57
Norway *	4.56
France	4.52
Romania	4.50
Poland	4.50
Latvia	4.44
Sweden *	4.25
Croatia	4.11
Denmark	4.05
Slovenia	4.02
Bulgaria	3.87
Estonia	3.83
Lithuania	3.67
Finland	3.04

*The Directive on the criminal offence of
money laundering*

The Directive on the criminal offence of money laundering: background

- **Proposal for a Directive on countering money laundering by criminal law (COM(2016) 826)**
- The Commission Action plan of 02/2016
 - Preventing use of financial system for terrorist financing purposes
- The Commission anti-terrorism package of 21/12/2016

The Directive on the criminal offence of money laundering: legislative process

- 21/12/2016: introduction
- 30/05/2018: provisional agreement reached during informal final trialogue
- 07/06/2018: agreement endorsed by Council (COREPER)
- 10/09/2018: EP indicative plenary sitting date, first/single reading
- Adoption in winter 2018-2019?
- Implementation: 24 months deadline
- The Proposal for a Directive: 21 pages

Aims of the Directive

- Harmonise the definitions of money laundering offences and sanctions across the EU
- Remove obstacles to cross-border judicial and police co-operation
 - By setting common provisions to improve the investigation of money laundering
- Bring the EU rules in line with international obligations
 - in particular with the CoE Warsaw Convention and the relevant FATF Recommendations

Definition of money laundering (Art. 3) as of 30/05/18

- “The conversion or transfer of property, knowing that such property is derived from criminal activity (...), for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;
- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity (...);
- the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity (...).”
- + Incitement, aiding and abetting, and attempt (art. 3)

Sanctions for individuals

- Imprisonment for up to 4 years, and
- additional sanctions possible such as exclusion from access to public funding, fines...

- Aggravating circumstances where money laundering is:
 - linked to organised crime, or
 - Conducted in the exercise of certain professional activities
 - *Potentially also* when certain amount of money laundered and/or certain offences are concerned (corruption, drug trafficking, sexual exploitation...)

Sanctions for individuals

- (Non-)criminal fines, and
- additional sanctions such as:
 - exclusion from public aid,
 - temporary or permanent disqualification from practice of commercial activities
 - placement under judicial supervision,
 - judicial winding-up
 - temporary or permanent closure of establishments

Jurisdiction/cooperation

- Definition of clearer rules to determine which member state has jurisdiction and the cooperation between member states concerned for cross border cases, as well as the need to involve Eurojust

*The Asset Recovery chain: the freezing
and confiscation of criminal property*

The asset recovery chain

- Financial investigation
 - Collecting intelligence, tracing, identifying, locating
- **Freezing** or seizing & management
 - Securing property: temporary deprivation of suspected criminal property
- **Confiscation** (/forfeiture)
 - Issuing a final order: permanent deprivation of criminal property
- Recovery & disposal of criminal property
 - Effectively enforcing orders and returning/re-using property adequately

Snapshot on yesterday/today's EU Legal Framework on freezing and confiscation

- Joint Action 98/699/JHA (ML, F&C)
- Council Framework Decision 2001/500/JHA (ML, F&C)
- Council Framework Decision 2003/577/JHA (MLA/MR freezing)
- Council Framework Decision 2005/212/JHA (confiscation)
- Council Framework Decision 2006/783/JHA (MR confiscation)
- Council Framework Decision 2007/845/JHA (AROs)

- Directive 2014/42/EU (transposition due by 04/10/2016)

- Proposal for a regulation on the mutual recognition of freezing and confiscating orders (2016/0412 (COD))

Areas of focus *re* the EU Legal Framework

- Substantive law: harmonisation of confiscation models (FDs + Directive 2014/42/UE)
- Procedural law: mutual recognition of freezing and confiscation decisions (FDs 2003 & 2006 + Regulation proposal 2016)
- Horizontal cross-border cooperation/trust between MS
- ONLY *criminal* confiscation concerned:
 - conviction-based confiscation (standard *and* extended); and
 - confiscation without conviction *within* criminal proceedings
(NOT a 'true' NCBC)
 - third party confiscation

*Substantive Rules for Freezing and
Confiscation of Criminal Property*

The Rationale of Directive 2014/42/UE

- “The **main motive for cross-border organised crime**, including mafia-type criminal organisation, is **financial gain**. As a consequence, competent authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime” (Rec. 1)
- “There is an **increasing need for effective international cooperation** on asset recovery and mutual legal assistance” (Rec. 2)
- “Among the most effective means of combating organised crime is [...] the freezing and confiscation of the instrumentalities and proceeds of crime” (Rec. 3)

Current Framework

- “Although existing statistics are limited, the **amounts recovered** from proceeds of crime in the Union seem **insufficient** compared to the estimated proceeds. Studies have shown that, although regulated by Union and national law, **confiscation procedures remain underused**” (Rec. 4)
 - “in 2009 confiscated assets amounted to € 185 million in France, £ 154 million in the United Kingdom, € 50 million in the Netherlands and € 281 million in Germany” (Proposal for a Directive COM/2012/085 final)
- “The adoption of **minimum rules will approximate** the Member States’ freezing and confiscation regimes, thus **facilitating mutual trust and effective cross-border cooperation**” (Rec. 5)

Directive 2014/42/UE per article

- Classic conviction-based confiscation (art. 4(1))
- **(Non-)conviction-based confiscation** (art. 4(2))
- **Extended confiscation** (art. 5)
- **Third party confiscation** (art. 6)
- Freezing (art. 7)
- Safeguards (art. 8)
- Effective freezing/confiscation (art. 9) (*post conviction investigation*)
- Management of assets (art. 10)
- Statistics (art. 11) / Reporting (art. 13)

Directive 2014/42/UE and ‘NCBC’ within criminal proceedings (art. 4(2))

- “Where confiscation [on the basis of a final conviction] is **not possible, at least** where such impossibility is the result of **illness or absconding** of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where **criminal proceedings have been initiated** [...] and [...] **could have led to a criminal conviction*** if the suspected or accused person had been able to stand trial” (Art. 4(2))
- “However, in such cases of illness and absconding, the existence of proceedings *in absentia* in Member States would be **sufficient** to comply with this obligation” (Rec. 15)

‘NCBC’ within the scope of criminal proceedings

- **NOT** a true NCBC (false label):
 - **Hybrid**: ongoing criminal proceedings needed
[conviction route → conviction impossible → Confiscation]
 - Not *in rem* but *in personam*
 - Not akin to civil forfeiture (UK/Ireland – not possible with 83TFUE?)
 - Not even akin to preventive confiscation (Italy)
 - No impact for MS who already provide for proceedings *in absentia* (!)
 - **Limited value in practice**... What about actual harmonisation?
 - *Presumption of guilt? Does art. 4.2 amounts to bringing a criminal charge? Wb respect of Pol (6.2 ECHR)?

Cf. Rui (ERAF, 2012), Boucht (CLCJ, 2013), Simonato (NJECL, 2015), Fernandez-Bertier (ERAF, 2016)

‘NCBC’ as part of the Future of the EU?

EU already called for further discussions on NCBC:

- Joint Declaration of the Council and Parliament (Approval of the final compromise text of the Directive – 28/11/13): ‘also in absence of conviction’
- Parliament’s Special Committee on organised crime, corruption, and money laundering: recommendations on action and initiatives to be taken (draft report – 10/06/13) : ‘models of civil law asset forfeiture’; ‘preventive models of confiscation’
- European Agenda on Security (28/04/15) & Impact Assessment on mutual recognition (21/12/16): following experts meetings in 09/16 and 11/16, feasibility study on common rules on NCBC due in 2017

Directive 2014/42/UE and ‘Extended’ confiscation

Prior to 2014 Directive

- Framework Decision 2005/212/JHA provided for three different sets of rules of extended confiscation
- MS chose different options → divergent concepts in national orders
- NO harmonisation; challenges in cross-border cooperation; i.e. Inefficient

Directive 2014/42/UE and ‘Extended’ confiscation

- “Criminal groups engage in a wide range of criminal activities. In order to effectively tackle organised criminal activities there may be situations where it is appropriate that a criminal conviction be followed by the confiscation not only of property associated with a specific crime, but also of additional property which the court determines constitutes the proceeds of other crimes. This approach is referred to as extended confiscation [...]. **It is therefore necessary to further harmonise the provisions on extended confiscation by setting a single minimum standard**” (Rec. 19)

‘Extended’ confiscation (art. 5)

- “Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person **convicted** of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, **such as** that the value of the property is **disproportionate** to the lawful income of the convicted person, is **satisfied that the property in question is derived from criminal conduct**” (Art. 5(1))

‘Extended’ confiscation (art. 5)

- “[...] This **does not mean that it must be established** that the property in question is derived from criminal conduct. Member States may provide that it could, for example, be sufficient for the court to consider on the **balance of probabilities**, or to **reasonably presume that it is substantially more probable**, that the property in question has been obtained from criminal conduct than from other activities. [...]. Member States could also determine a requirement for a certain period of time during which the property could be deemed to have originated from criminal conduct” (Rec. 21)
- Applicable to “euro offences ” (specific, minimum rule) (Art. 5(2) + 3) (+ Rec. 23)

Third Party Confiscation (art. 6)

- “1. Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were **transferred** by a suspected or accused person to third parties, **or** which were **acquired** by third parties from a suspected or accused person, **at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation**, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value
- 2. Paragraph 1 shall not prejudice the rights of **bona fide** third parties”.
- “[...] The rules on third party confiscation should extend to both natural and legal persons. [...]” (Rec. 24)

Freezing (art. 7)

- “1. Member States shall take the necessary measures to enable the freezing of property with a view to possible subsequent confiscation. Those measures, which shall be ordered by a competent authority, shall include **urgent** action to be taken when necessary in order to preserve property.
- 2. Property in the possession of a **third party**, as referred to under Article 6, can be subject to freezing measures for the purposes of possible subsequent confiscation” (art. 7)

Freezing (art. 7)

- “[...] preservation of property can be a prerequisite to confiscation and can be of **importance for the enforcement of a confiscation order**. Property is preserved by means of freezing. In order to prevent the dissipation of property before a freezing order can be issued, the competent authorities in the Member States should be empowered to take immediate action in order to secure such property” (Rec. 26)
- “In the context of criminal proceedings, property may also be frozen with a view to its possible subsequent **restitution** or in order to safeguard compensation for the damage caused by a criminal offence” (Rec. 30)
- “Given the limitation of the right to property by freezing orders, such provisional measures should **not** be maintained **longer than necessary** to preserve the availability of the property with a view to possible subsequent confiscation. This may require a **review by the court** in order to ensure that the purpose of preventing the dissipation of property remains valid” (Rec. 31)

Safeguards (art. 8)

- 10 indents (!) aiming at ensuring the existence of sufficient “safeguards” (freezing, confiscation, ...)

HR concerns: right to a fair trial (6(1) ECHR); right to property (P-1(1) ECHR)

- “Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the **right to an effective remedy and a fair trial** in order to uphold their rights” (art. 8(1))
- “Member States shall provide for the effective possibility for a person in respect of whom confiscation is ordered to **challenge** the order **before a court**” (art. 8(6))

Implementation status of Directive 2014/42/UE

3 groups of Member States (Impact Assessment 21/12/16) :


- +-12 MS: classical conviction-based approach + aligned (or are currently aligning) their regimes along the lines of Dir 2014/42/EU (including extended confiscation and criminal NCBC in cases of illness or absconding only).
- +- 8 MS: go beyond the requirements of the Dir 2014/42/EU & include other forms of criminal NCBC (in case of death of a person or where a criminal court can confiscate an asset in the absence of conviction when the court is convinced that such asset is the proceeds of crime).
- +- 7 MS: have an asset recovery regime (or where a reform is ongoing) which includes also civil or administrative NCBC.

Implementation status of Directive 2014/42/UE

- By mid-2018...
- Implementation notifications received by Member states
 - Partial notification by 4 Member states
 - No notification by 1 Member state
 - Several infringement proceedings ongoing
- The Commission is assessing the notifications
- Report to be submitted by 04/10/18

Source: Presentation of Fabien LE BOT (DG Justice, EU) on 4 June 2018 in Trier (ERA's conference on the freezing and confiscation of assets)

Beyond the EU framework: evolution of asset recovery instruments

- 
- Judicial, conviction-based = standard confiscation
 - Judicial, conviction-based & **presumption-based** = extended confiscation
 - Judicial, **non-conviction** based = civil recovery/forfeiture
 - Judicial, **non-conviction**-based & **presumption**-based = preventive confiscation, UWOs
 - **Non-judicial** = administrative forfeiture (and even taxation of illicit proceeds)

Mutual Recognition of Freezing & Confiscation orders

Current Framework

- Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders **freezing** property or evidence.
- Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to **confiscation** orders.

Yet...

- Considered insufficient → Proposal for a Regulation to strengthen the mutual recognition of criminal asset freezing **and** confiscation orders

Issues with current framework

Examples (Impact Assessment 21/12/16):

- "While *France* is able to execute *Italian* NCBC orders under mutual legal assistance, *Spain* would systematically deny the execution of a civil NCBC order taken using in rem proceedings . For example, *Ireland* may issue a civil NCBC for criminal assets located in *Spain* when a criminal conviction is not possible. However, as *Spain* does not recognize such *Irish* order, the property order could not be confiscated and would remain at the offender's disposal.
- Another example is a case where both jurisdictions have NCBC, namely *Ireland* and the *United Kingdom*. In this case, a freezing order was obtained by *Ireland*. The target brought the assets across the border to *Northern Ireland* in an attempt to evade the order. The order could not be enforced in the *United Kingdom* as there exists no such mechanism even between NCBC jurisdictions".

Proposal for a Regulation on the mutual recognition of freezing and confiscation orders: background

- **Proposal for a Regulation to strengthen the mutual recognition of criminal asset freezing and confiscation orders (2016/0412 (COD))**
- The Commission Action plan of 02/2016
 - Preventing use of financial system for terrorist financing purposes
- The Commission anti-terrorism package of 21/12/2016

Proposal for a Regulation on the mutual recognition of freezing and confiscation orders

- 21/12/2016: introduction
- 04/05/2018: latest consolidated text (discussions still ongoing)
- Adoption in Autumn 2018?
- Application: 22-24 months after entry into force
- The proposal for a Regulation: 57 pages

Proposal for a Regulation to strengthen the mutual recognition of criminal asset freezing/confiscation orders:

- "The freezing and the confiscation of instrumentalities and proceeds of crime are among the most effective means of combatting crime. The European Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets [...]" (Rec 3 of the proposal).
- "As **crime is often transnational** in nature, **effective cross-border cooperation is essential** in order to seize and confiscate the proceeds and instrumentalities of crime" (Rec 4).

Proposal for a Regulation to strengthen the mutual recognition of criminal asset freezing/confiscation orders:

- "The Commission's implementation reports on Framework Decisions 2003/577/JHA and 2006/783/JHA show that the **existing regime** for the mutual recognition of freezing and confiscation orders is **not fully effective**. The current instruments have **not been implemented and applied uniformly** in the Member States, leading to **insufficient mutual recognition and sub-optimal cross-border cooperation**" (Rec 6).
- "The Union legal framework on mutual recognition of freezing and confiscation orders **has not kept up with** recent legislative developments at Union and national levels. In particular, Directive **2014/42/EU** of the European Parliament and of the Council sets out common minimum rules on freezing and confiscation of property" (Rec 7).

Proposal for a Regulation to strengthen the mutual recognition of criminal asset freezing/confiscation orders:

- **One single legal instrument** for the recognition of both freezing and confiscation orders in other EU countries:
 - Simplification of the current legal framework;
 - Directly applicable in all Member States (no transposition or delay):
 - Ensure uniformity in the application of this instrument and avoid problems due to late or incorrect transposition by Member States.
 - Will be the **first Regulation** proposed by the Commission **in the field of mutual recognition in criminal matters** since the entry into force of the Lisbon Treaty.

Proposal for a Regulation to strengthen the mutual recognition of criminal asset freezing/confiscation orders:

- **Widened scope** of cross-border recognition:
 - inclusion of classic, extended and third party confiscation as well as non-conviction based confiscation within the framework of criminal proceedings;
- Increased **speed and efficiency** of freezing or confiscation orders:
 - standard document and obligation on the part of competent authorities to communicate with each other;
 - clear deadlines, including shorter deadlines for freezing orders
- Ensured respect of **victims' rights** to compensation and restitution:
 - in case of cross-border execution of confiscation orders, the victim's right has priority over the executing and issuing States' interest.

Subject-matter (Art. 1)

- "1. This Regulation lays down the rules under which a Member State shall recognise and execute in its territory a freezing order or a confiscation order issued by another Member State **within the framework of proceedings in criminal matters**.
- 2. This Regulation shall not have the effect of modifying the obligation to respect the **fundamental rights** and legal principles as enshrined in Article 6 TEU.
- 3. The issuing authority shall ensure that the principles of necessity and proportionality are respected, when issuing a freezing order or a confiscation order.
- 4. This Regulation **does not apply** to freezing orders and confiscation orders issued within the framework of proceedings in **civil or administrative matters**".

Subject-matter (Rec. 13)

- It should "cover all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, **not only orders covered by Directive 2014/42/EU**, but also **other types of orders issued without a final conviction**.
- **While such orders might not exist in the legal system** of a Member State, the Member State concerned **should be able to recognise and execute** the order issued by another Member State. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities [...]"

Subject-matter

- *In concreto*, applies to:
 - standard CB confiscation;
 - extended CB confiscation;
 - third-party CB confiscation;
 - non-conviction-based confiscation issued **within** the framework of criminal proceedings: (not a ‘real’ NCBC)

Offences (Art. 3)

- "A freezing order or a confiscation order shall be executed **without verification of the double criminality** of the acts giving rise to such order, if these acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute one or more of the following offences under the law of the issuing State: [**32 offences**].
- For offences **other** than those referred to in paragraph 1, the executing State may make the recognition and execution of a freezing order or a confiscation order subject to the condition that the acts giving rise to the freezing order or the confiscation order **constitute an offence** under the law of the **executing State**, whatever its constituent elements or however it is described under the law of the issuing State"

Offences (not limited to "Eurocrimes") (Rec. 14)

- "This Regulation should cover freezing orders and confiscation orders related to offences covered by Directive 2014/42/EU, as well as such orders related to other offences.
- The offences should therefore not be limited to particularly serious crimes that have a cross-border dimension, as Article 82 of the Treaty on the Functioning of the European Union (TFEU) does not require such limitation for measures laying down rules and procedures for ensuring the mutual recognition of judgments in criminal matters"

Offences

- Offences NOT limited to terrorism or even serious and organised crime:
- **Systematic** recognition:
 - for list of 32 offences
 - **if** punishable by a maximum of at least 3 years in issuing State
 - E.g. trafficking in human beings, terrorism, money laundering, corruption, but also rape, arson, racism, sabotage...
- For other offences: recognition **may** be recognised subject to double criminality

Transmission of orders

- **Freezing** (art. 5 ff.): "A freezing order shall be transmitted through a freezing certificate".
 - Standard certificate form in Annex I

- **Confiscation** (art. 16 ff.): " A confiscation order shall be transmitted through a confiscation certificate"
 - Standard certificate form in Annex II

- The issuing authority shall translate the freezing/confiscation certificate into an official language of the executing State or into any other official language of the EU that the executing State will accept

Deadlines for freezing and confiscation orders

– Clear deadlines for freezing and confiscation orders!

– **Freezing** (art. 8-15):

- decision on the recognition and execution of the freezing order and execute this decision **without delay** and the same speed and priority as for a similar domestic case **after the executing authority has received the freezing certificate**
- **IF** legitimate grounds to believe that the property in question will imminently be removed or destroyed: **48 hours**
- Limited grounds for postponement
- Limited grounds for non-recognition and non-execution
 - *Centre of discussions: fundamental rights!*

Deadlines for freezing and confiscation orders

- **Confiscation** (art. 21-25):
 - decision on the recognition and execution of the order no later than **45** days after the executing authority has received the confiscation certificate
 - Limited grounds for postponement
 - Limited grounds for non-recognition and non-execution

Questions?



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**INTRODUCTION to EUROPOL and
to the FINANCIAL INTELLIGENCE
GROUP**

Simon Riondet
Pedro Felicio
Eric Schild



- **1992: Maastricht Treaty**
- **1994: Europol starts its activities as EDU**
- **1999: Europol Convention**
- **2007: Three Protocols amending the Convention**
- **2010: Europol Council Decision**
- **2017: Europol Regulation**



MISSION



As the EU law enforcement agency, Europol supports its Member States in preventing and combating all forms of international serious crime and terrorism.

Vision



To contribute to a safer Europe by providing the best possible support to law enforcement authorities in the Member States.

Europol Strategy 2016-2020

Goal 1: Europol will be the EU criminal information hub, providing information sharing capabilities to law enforcement authorities in the MS

Goal 2: Europol will provide the most effective operational support and expertise to MS investigations by developing and employing a comprehensive portfolio of services

Goal 3: Europol will be an efficient organisation with effective governance arrangements and a positive reputation

- Criminal **information hub** (e.g. databases, secure info exchange, Liaison Officers from 28MS + Third parties)
- Support centre for **Law Enforcement operations** (e.g. operational analysis, coordination meetings, on-the-spot support, etc)
- Centre for **Law Enforcement expertise** (e.g. European Platform for Experts, training, etc)





S

- Budget: 115 Mil Euro
- Staff: >1.100
- 200 liaison officers from 40 states and Interpol in the building
- 15 states with operational and
- 4 states with strategic agreement
- More than 40 nationalities
- Siena : More than 700.000 msg./year

- Facilitation of secure information exchange between Europol, MS and 3rd parties
- Unique concept of Liaison Officers Network
- Analysis of information regarding crime and offenders and transmission of these results to the MS
- Operational support
- Centre of Expertise

Europol can be involved in the operational work when...

...any form of **organised crime, terrorism & other forms of serious crime** are concerned

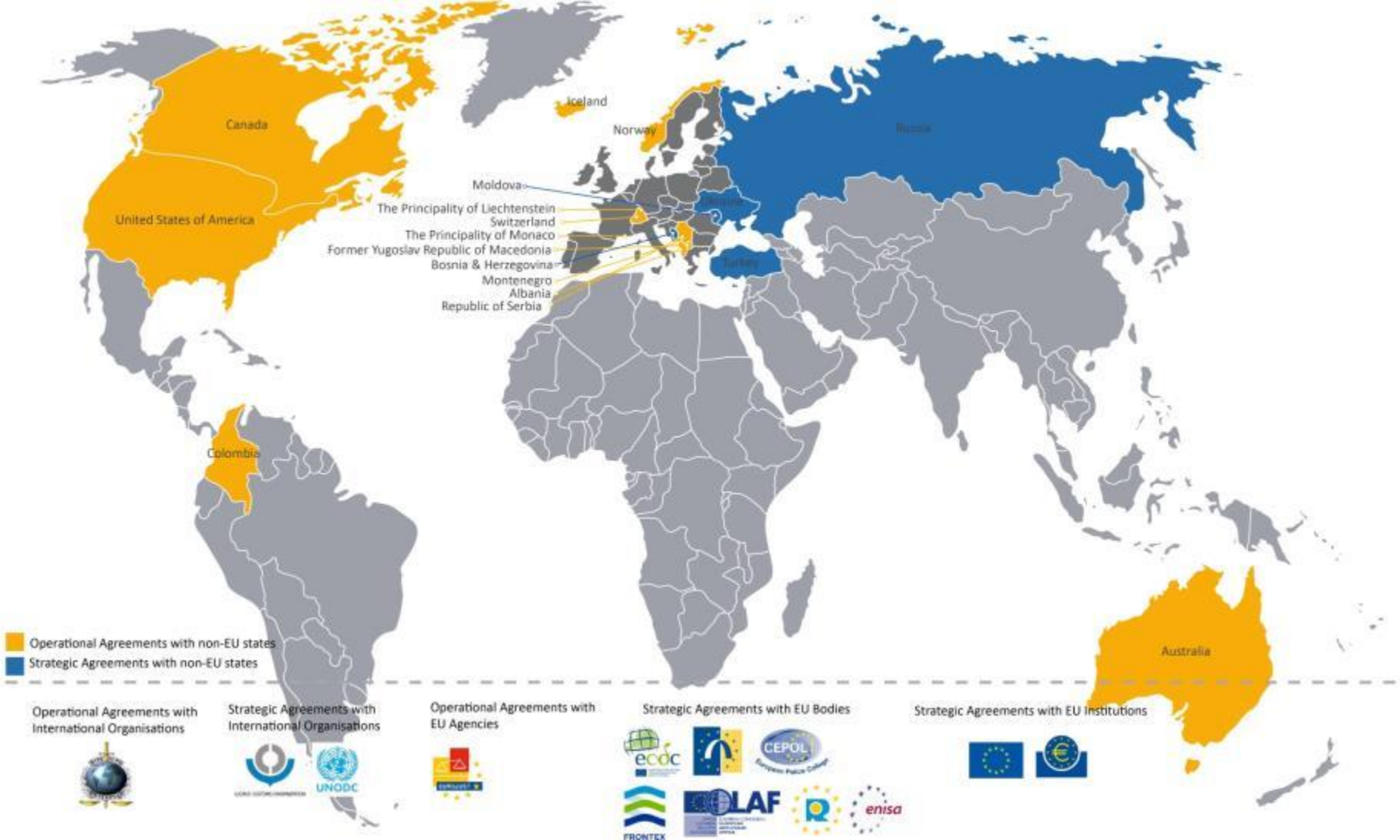
...there are at least **two member states** involved

Examples of the areas of competence





Europol's Partners





IMPACT



28 EU Member States

Operational agreements: Albania, Australia, Canada, Colombia, Eurojust, former Yugoslav Republic of Macedonia, Frontex, Moldova, Montenegro, Iceland, Interpol, Liechtenstein, Monaco, Norway, Serbia, Switzerland, USA

Strategic agreements: Bosnia and Herzegovina, CEPOI, ECB, ECDC, EMCDDA, ENISA, EU-LISA, European Commission, OHIM, OLAF, Russia, SitCen, Turkey, UNODC, Ukraine, World Customs Organisation

Operational Centre

- 40000 cases a year
- 24/7 service centre



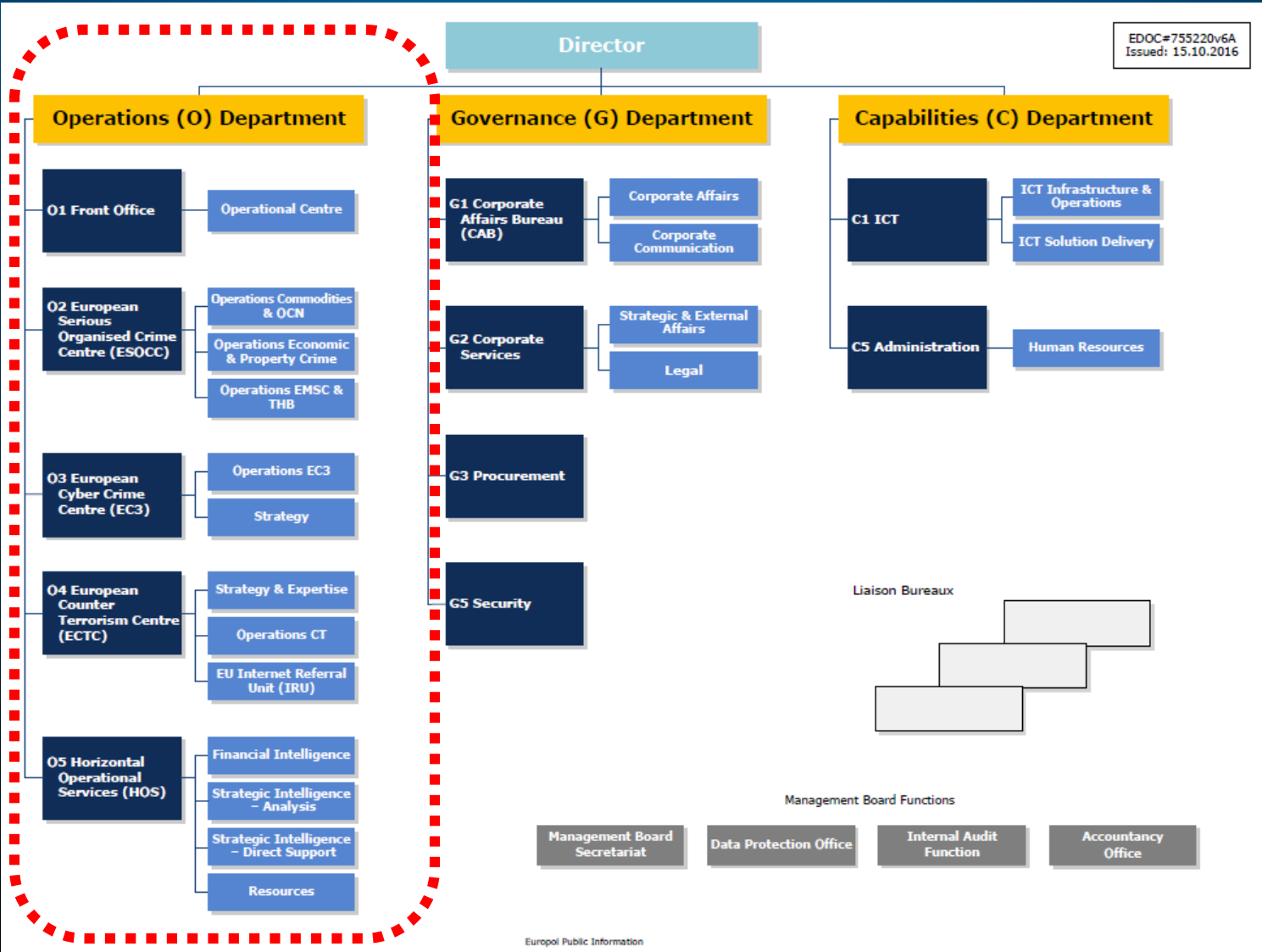
Cooperation Instruments

- Annual European Police Chiefs Convention (EPCC)
- Cooperation agreements with partners



Where and how is all of this
done exactly?

EDOC#755220v6A
Issued: 15.10.2016



INFORMATION EXCHANGE



Secure Information Exchange Network Application (SIENA): Communication tool

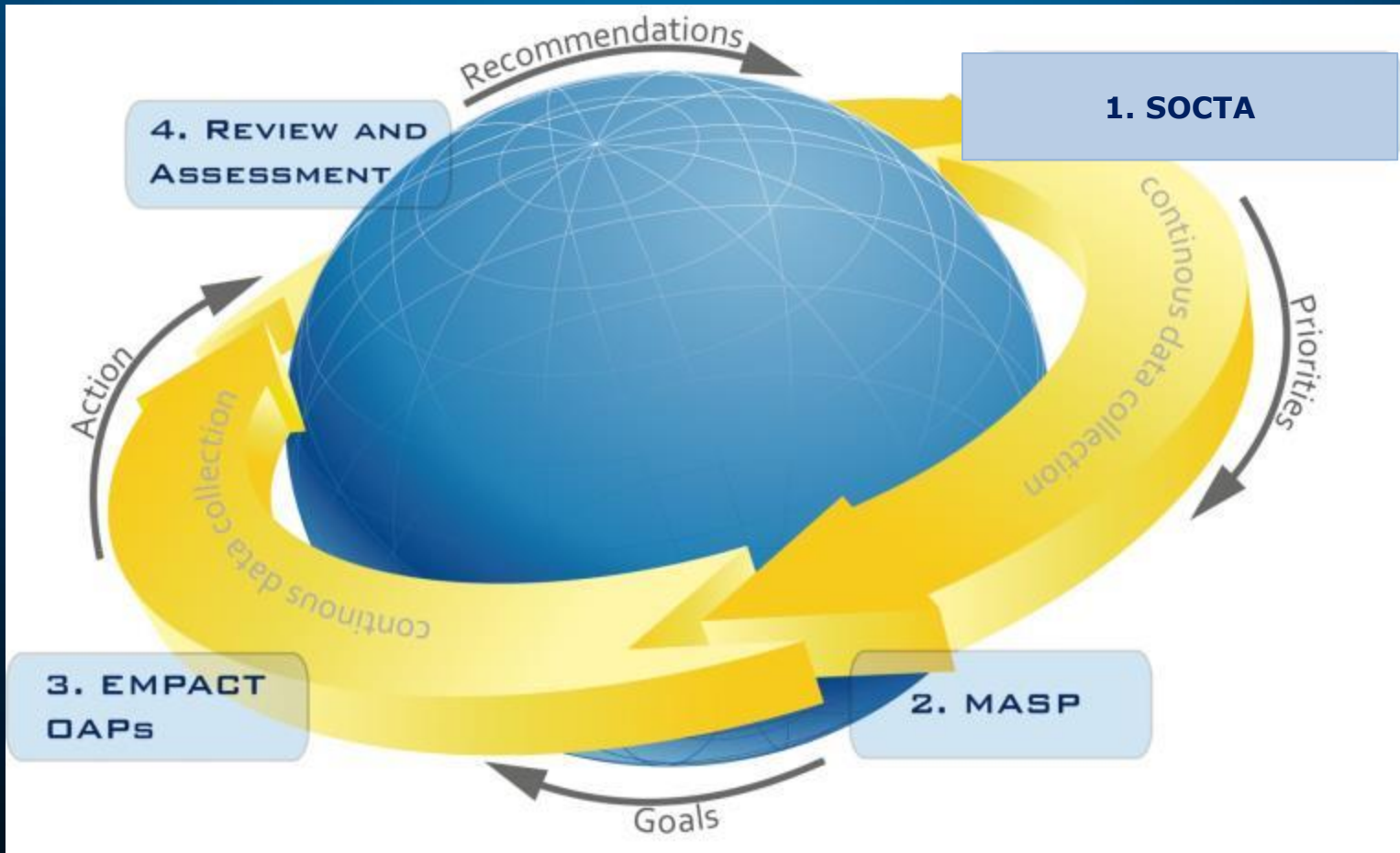
- Europol National Units (ENU) in Member States & non-EU states
- MS/TP Liaison Bureaux at Europol
- Only means to exchange personal data

EIS (Europol Information System) :

- Automatic "Hits" and "linking"
- Direct access and data entry by member states

Analytical Projects Data protection and data security

Priority setting on EU Level



SOCTA = Serious and Organised Crime Threat Assessment

OUR



PRIORITIES

The Council conclusions on setting the EU priorities for the fight against organised and serious crime 2018-2021

were published on 18 May 2017. (EMPACT - European Multidisciplinary Platform against Criminal Threats)

Ten priorities were identified and will be implemented through 13 operational action plans (OAPs):

- 1.Attacks against Information Systems;**
- 2.Child sexual exploitation (CSE);**
- 3.Non-cash payment fraud;**
- 4.Cannabis, cocaine and heroin;**
- 5.New Psychoactive Substances (NPS) and synthetic drugs;**
- 6.Facilitated Illegal Immigration (FII);**
- 7.Organised property crime (OPC);**
- 8.Criminal finance and money laundering;**
- 9.Trafficking in Human Beings (THB);**
- 10.Missing Trader Intra Community (MTIC);**
- 11.Excise Fraud;**
- 12.Firearms;**



INFORMATION EXCHANGE and ANALYSIS

Secure Information Exchange Network Application (SIENA): Communication tool

- Europol National Units (ENU) in Member States & non-EU states
- MS/TP Liaison Bureaux at Europol
- Only means to exchange personal data

EIS (Europol Information System) :

- Automatic “Hits” and “linking”
- Direct access and data entry by member states



Analytical Work Files / Focal Points

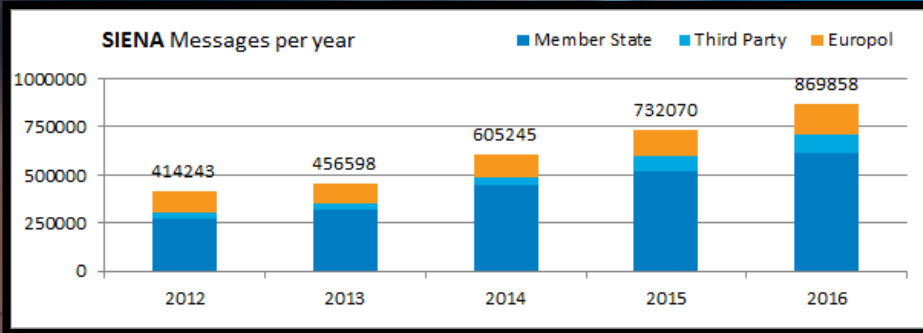
Data protection and data security





Operational Centre

- 900.000 messages a year
- 40.000 cases a year
- 24/7 service centre



Cooperation Instruments

- Annual European Police Chiefs Convention (EPCC)
- Cooperation agreements with partners



28 EU Member States

20 Operational agreements: Albania, Australia, Bosnia and Herzegovina, Canada, Colombia, Eurojust, former Yugoslav Republic of Macedonia, Frontex, Georgia, Iceland, Interpol, Liechtenstein, Moldova, Monaco, Montenegro, Norway, Serbia, Switzerland,

17 Strategic agreements: Brazil, CEPOL, China, ECB, ECDC, EMCDDA, ENISA, EUIPO, EU-LISA, European Commission, OHIM, OLAF, Russia, SitCen, Turkey, UNODC, World Customs Organisation





Cannabis



Cola



Heroin



Synergy
021



Weapons & Explosives
022



Cooper



EEOC



ITOC



Monitor
023



Apate



MTIC



Smoke



Sports Corruption



EnviCrime
024



Copy



Soya
025



Furtum

026



Migrant Smuggling

027



Phoenix

028

EMSC & THB

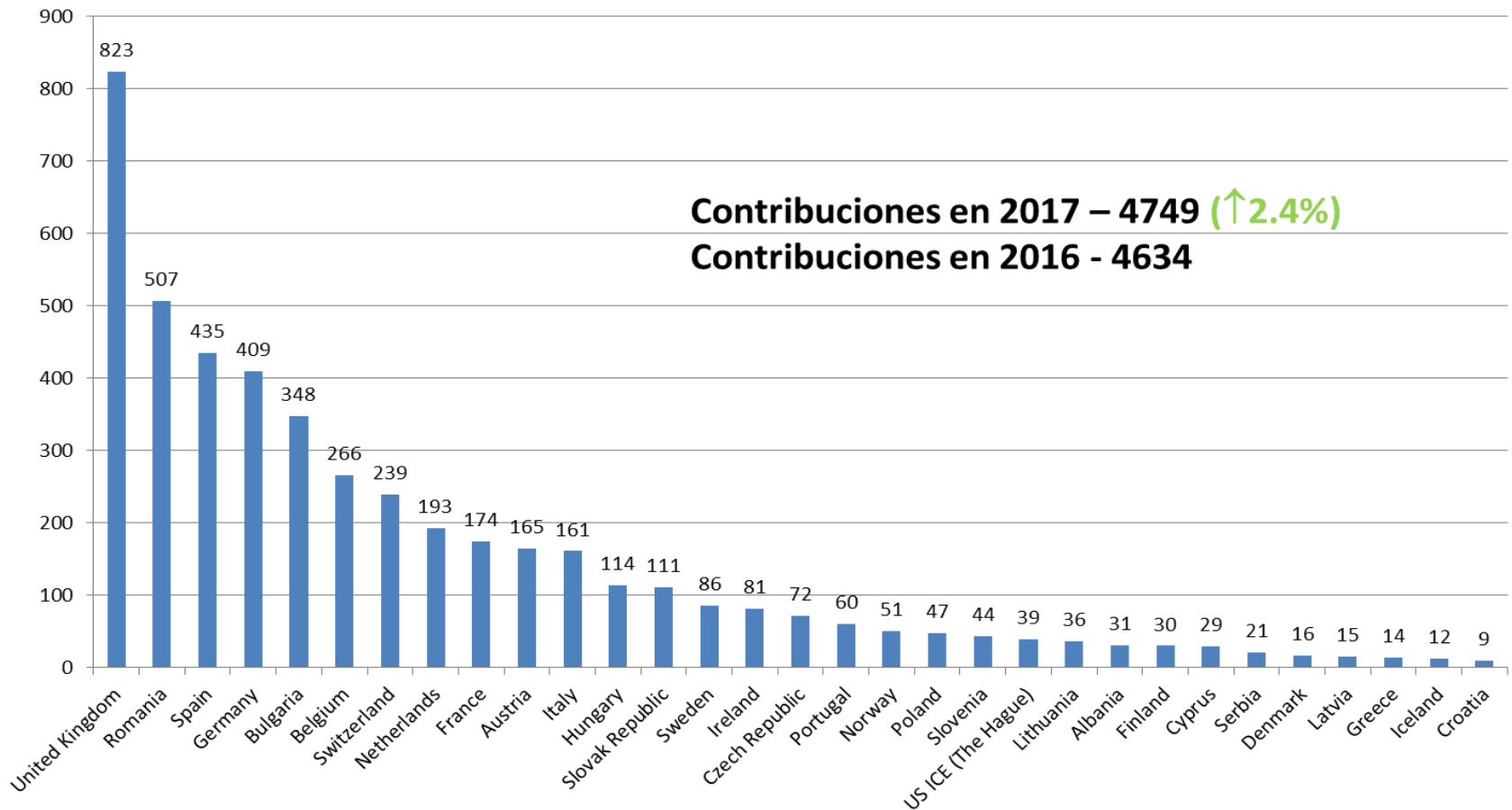
- ✓ **Especially specialised work team related to human trafficking. It was created in 2007.**
- ✓ **Support cases with at least 2 MMSS involved in this crime area.**
- ✓ **EMPACT priority 2017.**
- ✓ **Provide intelligence to the MMSS, according to the needs of every case.**
- ✓ **Special feature: the possibility of stare and analysis personal data of people identified as a victim of human trafficking (adults and minors).**
- ✓ **Storage of data: 3 years+3 years.**

Structure



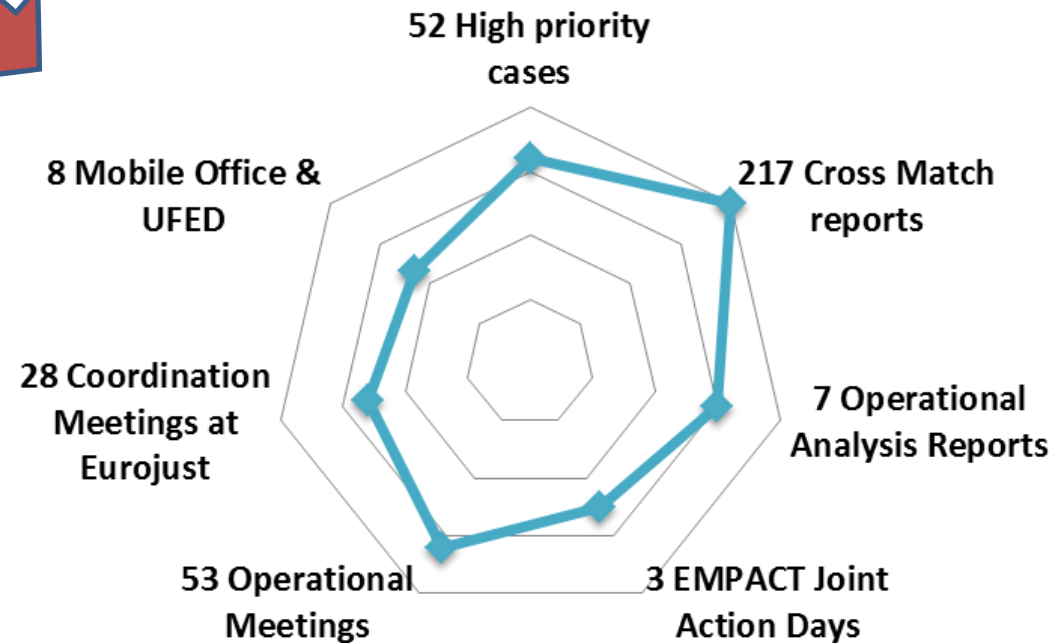
United Kingdom, Romania, Spain, Germany, Bulgaria, Belgium

Número total de contribuciones



2017

- **4749** operational cases(↑2.4%)
- **1063** new cases(↑ 14%)
- **5.629** victims
- **8.445** suspects

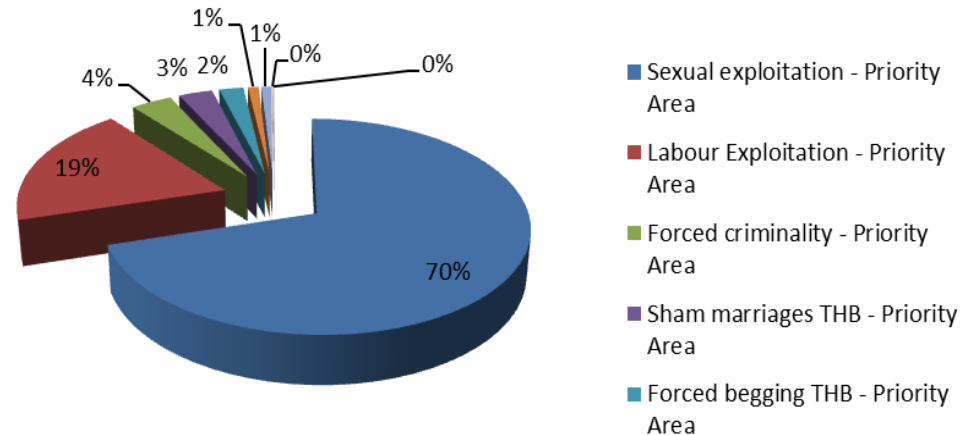


PRIORITY AREAS

Different types of exploitation:

- ✓ **Sexual exploitation**
- ✓ **Labour exploitation**
- ✓ **Forcedwork**
- ✓ **Fake marriages**
- ✓ **Forced begging**
- ✓ **Fraud in the benefits**
- ✓ **Trafficking with minors**
- ✓ **Illegal adoptions**
- ✓ **Organs trafficking**

VICTIMS PER PRIORITY AREA



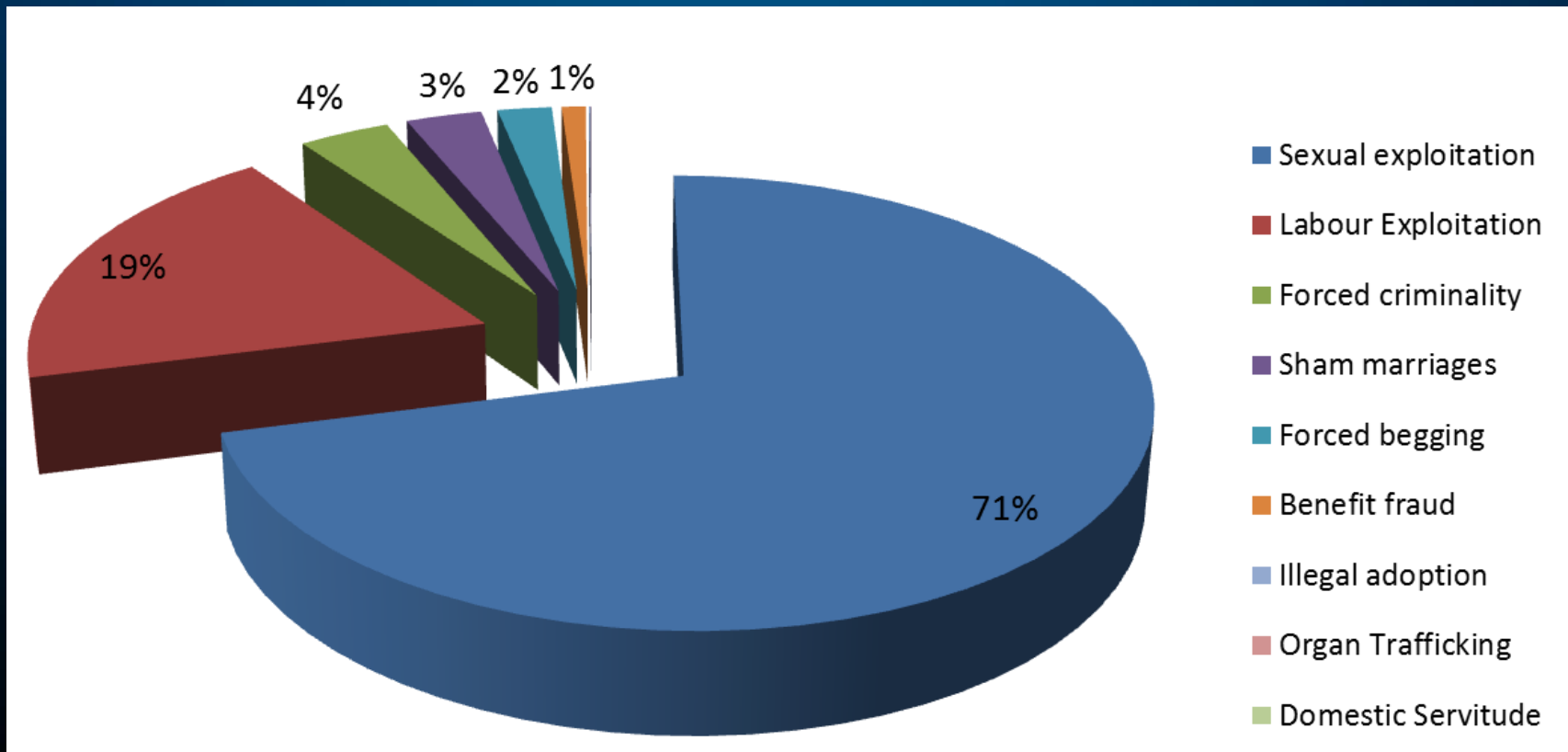
2 Subprojects

- Chinese people being trafficked
- Nigerian people being trafficked



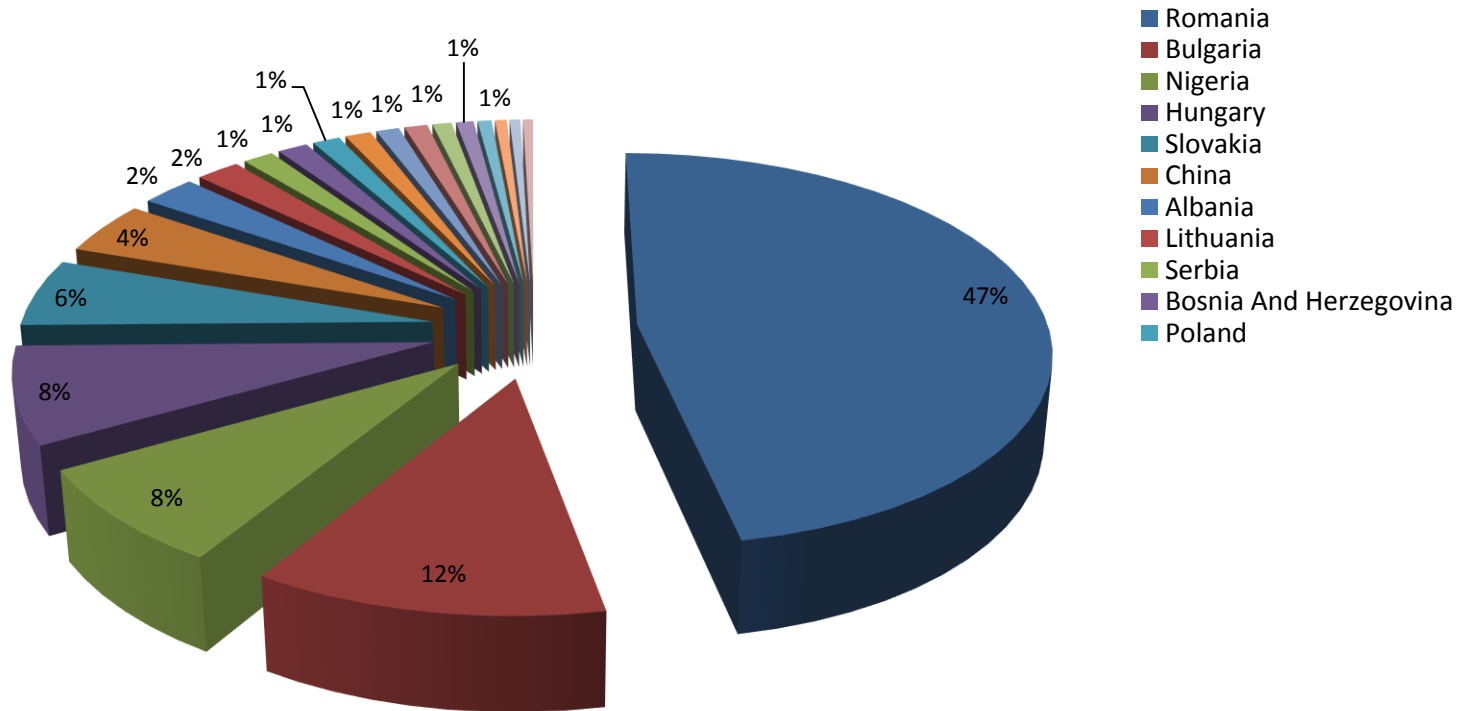
PRIORITY AREAS

The sexual exploitation is the most usual crime reported related to the human trafficking.



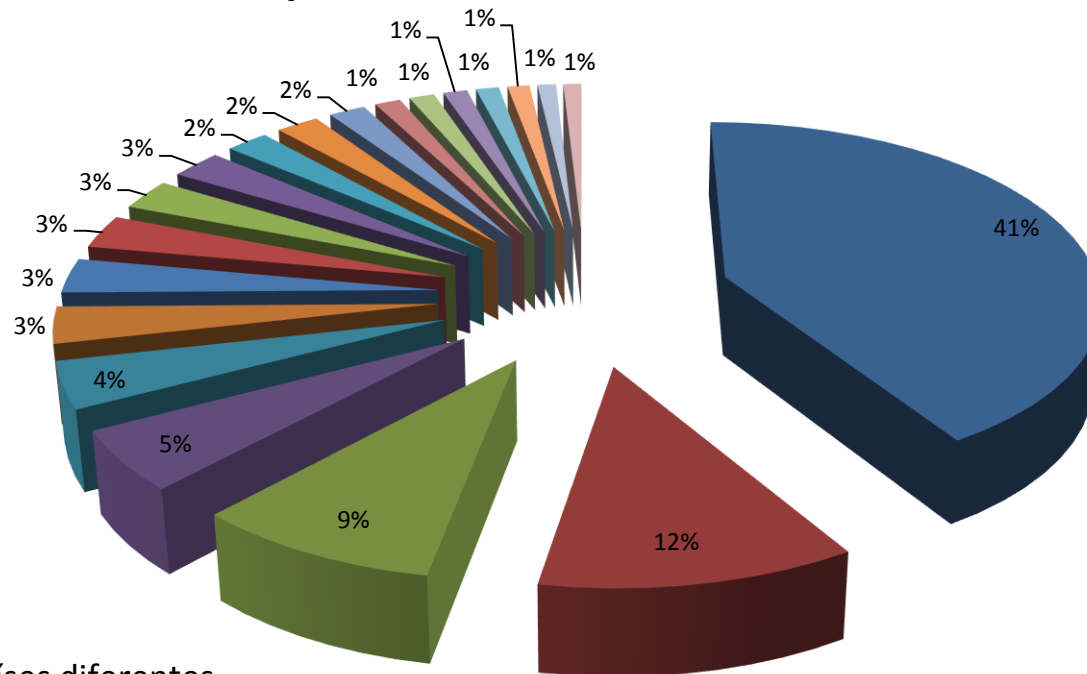
The main nationality of the victims are from European countries, with the exceptions of Nigeria and China.

Nationality of the victims



Las principales nacionalidades de los sospechosos de trata de seres humanos, corresponden a países europeos.

Sospechosos según nacionalidad – top 10



Originarios de más de 104 países diferentes.

- Romania
- Nigeria
- Bulgaria
- Hungary
- Bosnia And Herzegovina
- Slovakia
- Poland
- China
- Albania
- Estonia

VICTIMS

- ✓ **TRAFFICKING IN HUMAN BEINGS:** Recruitment, transport, reception of people, controlling them by force or threats, coercion, fraud, or abuse of power or abuse of any vulnerable situation.
- ✓ **VICTIMS:** Their consent is irrelevant when it has been used one of the means mentioned before.
- ✓ **MINORS:** When the crime concerns a minor (a person under 18), the act is punishable even without using the means mentioned before.

AGENDA

Why focus on crime proceeds?

Composition of ECAB

EU legislative framework

CARIN, ARO, AP Asset Recovery

Why focus on crime proceeds?

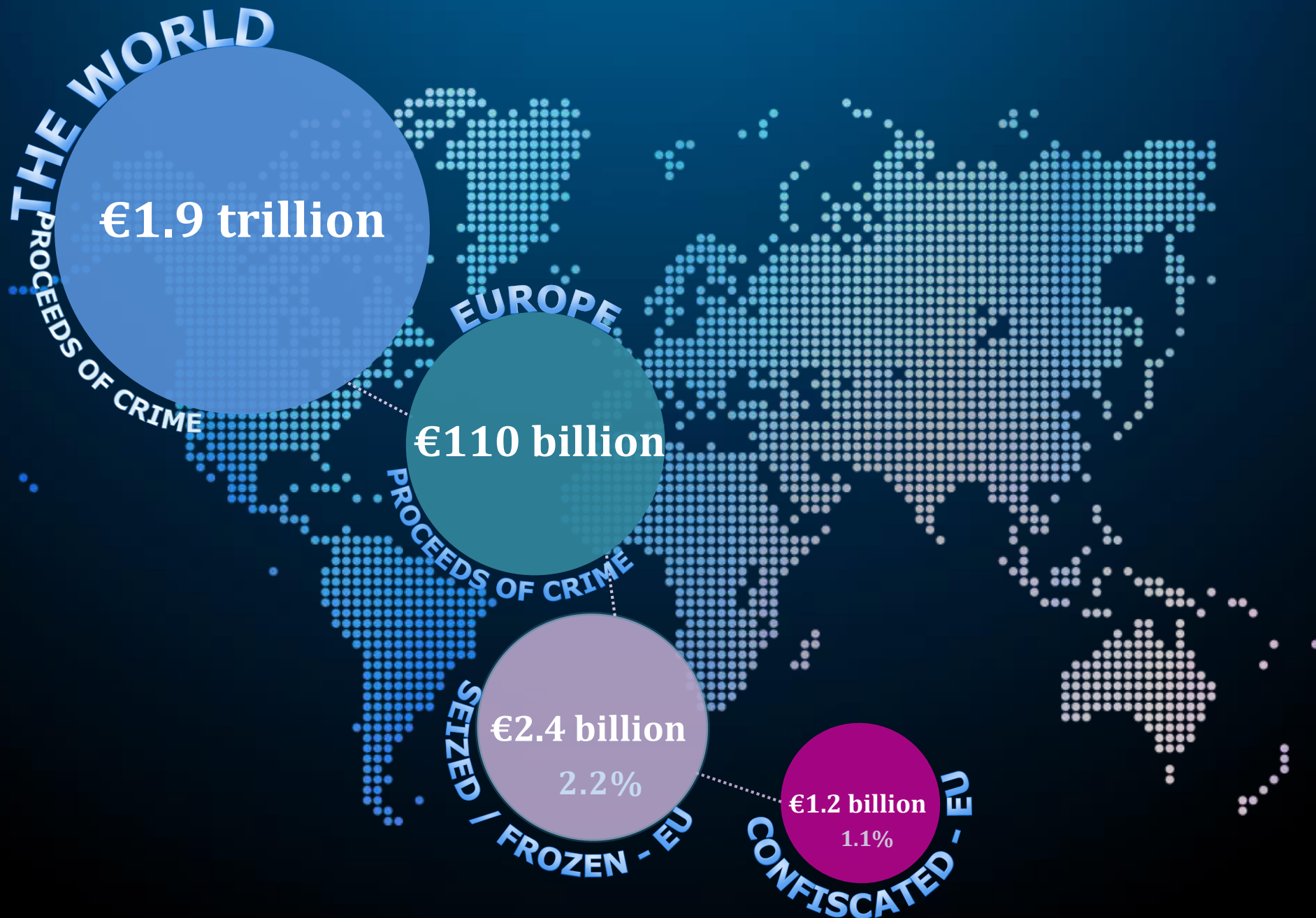
Effective way to:

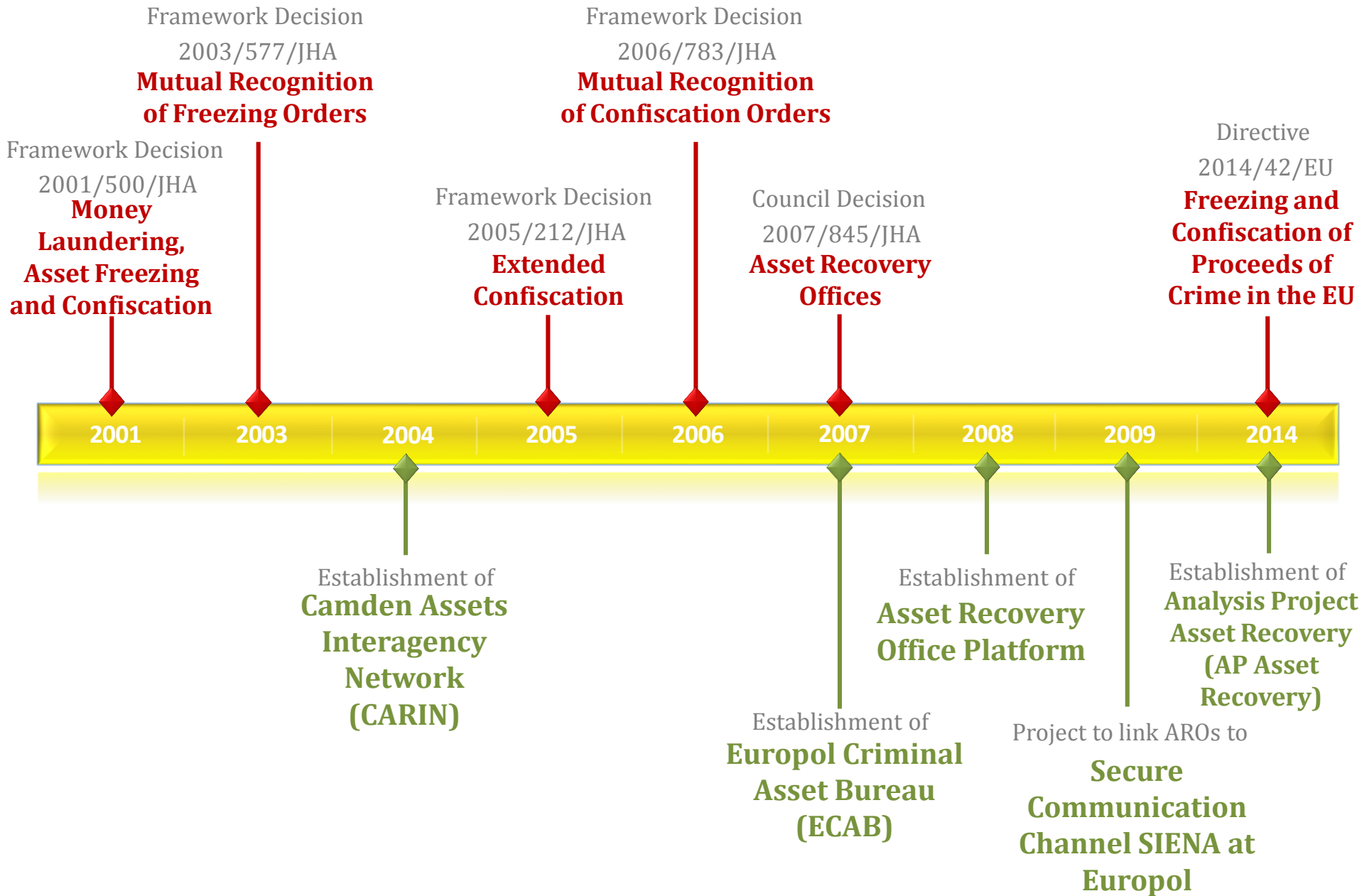
- identify the decision-makers within criminal organisations, which are rarely investigated and prosecuted;
- remove negative role models from local communities.



Financial Intelligence – Why?

- For International Organized Crime
 - The ultimate purpose is profit
 - Profit then invested into more crime
 - Incarceration contributes to [more crime](#)
 - The [only deterrent](#) is confiscation
 - The only way to obtain seizure/confiscation opportunities is to initiated a financial investigation [at the earliest opportunity possible](#)





CARIN:

Camden Assets Recovery Interagency Network

The purpose is to:

- increase the effectiveness of its members' efforts, on a multi-agency basis, to deprive criminals of their illicit profits;
- support the complete asset recovery process, from the starting point of the investigation involving the tracing of assets, to freezing and seizure, management and finally the forfeiture/confiscation, including any necessary asset sharing between jurisdictions.

CARIN:

Camden Assets Recovery Interagency Network

Key objectives are to:

- establish a network of contact points;
- promote the exchange of information and good practice;
- act as an advisory group to other appropriate authorities;
- undertake to make recommendations to bodies such as the European Commission and the Council of the European Union, relating to all aspects of tackling the proceeds of crime;

CARIN

Informal network of judicial and law enforcement practitioners dealing with asset identification, tracing, freezing, seizure and confiscation.

The EU Asset Recovery Offices (ARO) have an informal platform which meets twice a year to discuss asset recovery and assets management related issues and exchange best practices.

ARO**AP Asset
Recovery**

Supports investigations of Europol Member States (MS) related to tracing and identification of criminal proceeds linked to the mandated crime areas of Europol.



(5) The Camden Assets Recovery Inter-Agency Network (CARIN) established at The Hague on 22-23 September 2004 by Austria, Belgium, Germany, Ireland, Netherlands and the United Kingdom already constitutes a global network of practitioners and experts with the intention of enhancing mutual knowledge on methods and techniques in the area of cross-border identification, freezing, seizure and confiscation of the proceeds from, and other property related to, crime. This Decision should complete the CARIN by providing a legal basis for the exchange of information between Asset Recovery Offices of all the Member States.

18.12.2007 EN Official Journal of the European Union L 332/103

III
(Act adopted under the EU Treaty)

ACTS ADOPTED UNDER TITLE V OF THE EU TREATY

COUNCIL DECISION 2007/845/JHA
of 6 December 2007
concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 30(1)(a) and (b) and 34(2)(c) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Austria and the Republic of Finland,

Having regard to the opinion of the European Parliament (1),

Whereas:

(1) The main motive for cross-border organised crime is financial gain. This financial gain is a stimulus for committing further crime to achieve even more profit. Accordingly, law enforcement services should have the necessary skills to investigate and analyse financial trails of criminal activity. To combat organised crime effectively, information that can lead to the tracing and seizure of proceeds from crime and other property belonging to criminals has to be exchanged rapidly between the Member States of the European Union.

(2) The Council adopted Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (2) and Framework Decision 2005/212/JHA of 24 February 2005 on the freezing of assets (3).

(3) Close cooperation is necessary between the relevant authorities of the Member States involved in the tracing of illicit proceeds and other property that may become liable to confiscation and provision should be made allowing for direct communication between those authorities.

(4) To that end, Member States should have national Asset Recovery Offices in place which are competent in these fields, and should ensure that these offices can exchange information rapidly.

(5) The Camden Assets Recovery Inter-Agency Network (CARIN) established at The Hague on 22-23 September 2004 by Austria, Belgium, Germany, Ireland, Netherlands and the United Kingdom already constitutes a global network of practitioners and experts with the intention of enhancing mutual knowledge on methods and techniques in the area of cross-border identification, freezing, seizure and confiscation of the proceeds from, and other property related to, crime. This Decision should complete the CARIN by providing a legal basis for the exchange of information between Asset Recovery Offices of all the Member States.

(6) In its Communication to the Council and the European Parliament 'The Hague Programme: Ten Priorities for the next five years', the Commission advocated strengthening tools to address the financial aspects of organised crime, *inter alia*, by promoting the establishment of criminal asset intelligence units in Member States.

(1) Opinion of 12 December 2006 (not yet published in the Official Journal).

(2) OJ L 196, 2.8.2003, p. 45.

(3) OJ L 68, 15.3.2005, p. 49.

CARIN 57 jurisdictions

RRAG 21 jurisdictions

ARINSA 14 jurisdictions

ARIN-AP 19 jurisdictions

ARIN-EA 8 jurisdictions

ARIN-WA 16 jurisdictions





ARO platform: Asset Recovery Offices

The purpose is to ensure:

- effective exchange of information and coordination on EU level regarding recent developments and initiatives on the reuse of confiscated assets and facilitation of freezing illicitly acquired assets;
- cooperation to improve availability of information, including by the creation of a list, on outstanding freezing and confiscation orders in the EU.

AP Asset Recovery: Asset Recovery Offices

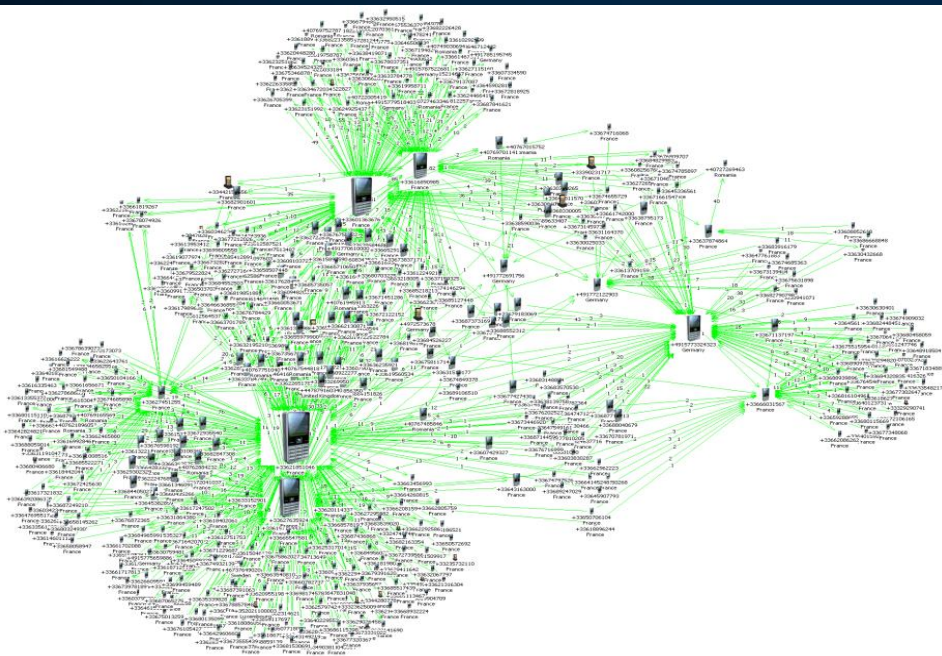
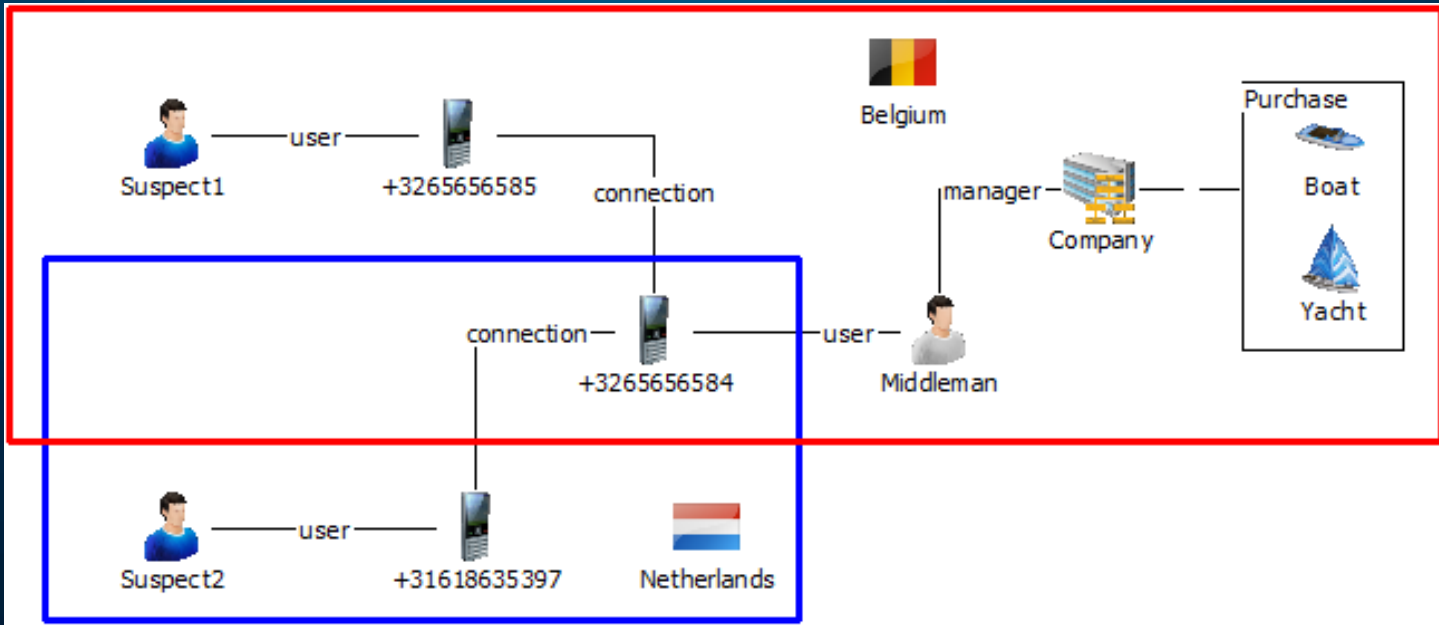
The purpose is to :

- support the tracing and identification of criminal proceeds linked to Europol's mandated crime areas;
- build operational and strategic partnerships;
- facilitate the freezing and confiscation of the proceeds of crime

AP Asset Recovery:

Handling Codes

- H0:** May only be used for the purpose of preventing and combating crimes in line with the ECD and any other applicable laws
- H1:** Not to be disclosed in judicial proceedings without the permission of the provider.
- H2:** This information must not be disseminated without the permission of the provider.
- H3:** Other restrictions apply.





Extraction Report

Samsung G600

Summary

Connection Type	Cable No. 207
Extraction start date/time	7/27/2011 2:54:23 PM
Extraction end date/time	7/27/2011 4:00:22 PM
Selected Manufacturer	Samsung GSM
Selected Device Name	SGH-G600
Unit Identifier	UFED SN 5606639
Unit Version	1.1.7.5
UFED Physical Analyzer version	2.1.0.8788
Case/File number	Samsung SGH-G600
Examiner name	Necula

Device Information

#	Name	Value	Def?
1	IMSI	9202109964034705	
2	IMSI	9202109964034705	

Image Hash Details (2)

All project images are verified.

#	Name	Info
1	CTS Verified	CTS(48000000-50400000).bin 138412032 9C6C8CF74C3855683727C787EFD3781 MD5 C074B32F8D9124BB1D6EE3A5670D9A416E04A3D6751ED7375F0B83E158 SHA256

About i2 PatternTracer 2



i2 PatternTracer 2

i2 PatternTracer 2

Version 2.0.1

Language: English (United States)

Build 44 on Oct 02 2007

Network Sentinel Key File (Server: eu-hq-srv033.europol.int)

Key reference: T10683

Permit: i2 PatternTracer 2

Users: 2 from 21

Sentinel © 1989-1996 Rainbow Technologies, Inc. All rights reserved.

Microsoft Windows XP Service Pack 3 (Build 2600)

System Language: English (United Kingdom) (ID: 0x0809)

User Language: English (United Kingdom) (ID: 0x0809)

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OK

Copy

System Info...





Co-funded by the Internal Security Fund (ISF) 2014-2020 of the European Union

**“ Countering Trafficking in Human Beings,
Protecting Victims and Enhancing Financial
Investigations”**

Academy of European Law
2018

Presented by Roumen Kirov, Head of Economic Crimes Department, within the
National Investigation Service

Human Trafficking (HT) – legal basis

1. Bulgaria has criminalized HT (Art. 159a,b,c,d Criminal Code).
 - the list of offences includes different forms of activities in trafficking in human beings and migrant smuggling. * as per the Palermo protocol – 2002.

Main factors determining HT vulnerability

- The two factors below can be considered as major ones for the HT vulnerability in Bulgaria. They are triggering it especially in the last few years but are also historically defined:
 - **Geopolitical factors** – Bulgaria is situated near the main zones of conflicts (Syria, Iran, Ukraine, etc., including previous ones – in Former Yugoslavia and Kosovo). It is also major path for goods and people between Middle East and Europe, which has determine the position of Bulgaria as vulnerable to risks related to human trafficking and migrant smuggling.
 - **Macro-economical factors** –Bulgaria is part of the European Union and is its external border. The macro-economical situation in the county is determined by increased level of GDP growth for the last 2-3 years. These are prerequisites for increased migration pressure from conflict zones.

Bulgarian Financial Intelligence Unit (FIU)

- 1998 – AML legislation enacted
 - Bulgarian FIU established under the Ministry of Finance
- 2008 – Bulgarian FIU transformed into Financial Intelligence Directorate of SANS (FID-SANS)
- 35 categories of reporting entities
- FID-SANS has operational independence and autonomy within the structure of SANS as an administrative type of FIU
- Supervisory functions and sanctioning powers in regard to AML/CFT compliance of the Bulgarian reporting entities
- Supervision assisted by prudential supervisors – BNB, FSC, NRA, SCG

Applicable Laws

- Law on the State Agency for National Security (LSANS);
- Rules on Implementation of LSANS
- Law on Measures against ML (LMML, new, effective March 2018)
- Rules on Implementation of the LMML (currently elaborated)
- Law on Measures against the Financing of Terrorism (LMFT)
- Transpose EU acquis

New AML/CFT legislation

- A newly adopted Law on Measures against Money Laundering (LMML, effective March 2018) transposing the EU Directive 2015/849.
- The new LMML provides for completely new regulation of the measures against ML/FT, incl. new obligations for the reporting entities with regard to ML/FT risk assessment, reflecting its conclusions in their internal rules for control and prevention of ML/FT, application of enhanced and simplified customer due diligence procedures in accordance with the conclusion of the risk assessment, etc.

FID-SANS Overview

- Administrative type of FIU situated in Sofia with no regional branches
- Unit within SANS
- FID-SANS – operational independence within SANS
- FID-SANS – separate databases, archive, registry
- FID-SANS – share information with other agencies and structures within SANS

Mandate of FID-SANS - I

- FID SANS - central administrative unit which
 - Receives
 - Stores
 - Analyses
 - Discloses information, that refers to suspected ML/TF (AML/CFT disseminations)
- Exercises control over the reporting entities in regard to their AML/CFT obligations
- Provides methodological guidelines and training – directly or through www.dans.bg (section on ML/TF)

Mandate of FID-SANS - II

- FID – SANS received STRs related to ML/TF/funds of criminal origin suspicions from:
 - reporting entities under the LMML;
 - state authorities;
 - through international exchange.

Mandate of FID-SANS - III

- Wide powers of international information exchange
 - other FIUs
 - international organizations
 - EU institutions
- Assisting compliance with international standards

FID-SANS participation in international fora

- Membership
 - Egmont Group - 1999
 - Moneyval – Council of Europe – Bureau Member
 - EU
 - FIU.NET
 - EU FIU Platform
 - Expert Group on the Prevention of ML and TF

AML/CTF Information Exchange with LEAs and PO - I

- **Spontaneous disseminations**– in cases when after analysis of received STRs the initial suspicion of ML/TF/associated predicate offences still exists;
- **Disseminations upon request** – when LEAs request information ML/TF/associated predicate offences.
- Relevant competent LEAs/Prosecutor's Office are obliged send **feedback** to FID-SANS on the further use of the disseminated information, incl. any preliminary proceedings/investigations. (Art. 75, para 4 LMML)

AML/CTF Information Exchange with LEAs and PO - II

- Information provided
 - Own databases – in all cases
 - Possibility to gather additional information – conditions (LMML)
- Safeguards
 - Link to ML/TF/associated predicate offences
 - Anonymity of reporting persons
 - Most effective deployment of resources
 - Instruction of cooperation

International Information Exchange - I

- Egmont Principles
- Party to Warsaw Convention
 - Including postponement of transactions upon request from a foreign FIU
- Not subject to MoU
- Exchange also with non-counterparts

International Information Exchange - II

- **Spontaneous disseminations** - when close link to a foreign country is established;
- **Cross-border disseminations** (EU Directive 2015/849) – when a STR received is relevant to a foreign country;
- **Upon request:**
 - Requesting information from foreign FIUs
 - Execution of foreign FIUs requests.

International Information Exchange - III

- Same information gathering powers of FID – SANS for own STRs and foreign requests
 - Including bank secrecy, other professional secrecy
 - Direct access to financial information (no 3rd party authorization)
 - Exchange regardless of presence of STR
 - Regardless of tax predicate
 - Regardless of the predicate known

AML/CTF Information Exchange with Supervisory Authorities

- Supervisory authorities
 - Results of AML/CTF compliance checks
 - Joint Inspections
 - Licensing and supervision
 - Risk-based supervision
 - Suspicion
- Based on Instructions

Restrictions on the use of the information gathered and disseminated by FID – SANS - I

- FID-SANS may use the data received under LMML **only for the purposes stipulated in this law** (Art. 81, para 1 LMML).
- The information disseminated by FID-SANS (including information gathered through the international exchange) to the relevant competent LEAs/Prosecutor's Office is provided **only for the purposes of prevention/counteraction to ML/FT**, i.e. for investigation on ML/FT or any related predicate offence.

Restrictions on the use of the information gathered and disseminated by FID – SANS - II

- Information acquired from foreign FIUs is disseminated only **upon prior consent of the disclosing foreign FIU** and any further disclosure of this information should be approved by that FIU.
- The information disseminated by FID-SANS (including information gathered through the international exchange) shall be **used strictly on intelligence basis and not as evidence** in any proceedings. Information for evidential purposes should be gathered pursuant to the Criminal Procedure Code, including through a letter rogatory.

HT cases reported to the Bulgarian FIU

/data sources/ - Overview

- Suspicious transactions reports (STRs) related to transactions via money remitters (i.e. MoneyGram, Western Union) – most of the cases involve suspicions of ML/FT or other offences; rarely initial suspicions of human trafficking; in some cases though the reporting entity found data from public sources on potential HT (incl. data from LEAs).
- Data from partner FIUs;
- Combination with data from domestic LEAs (following the dissemination of data from the STRs/international data to the LEAs and/or request for information from LEAs).

HT Cases /key findings, FIU point of view/ - I

- The initial suspicions in almost all cases do not include HT.
- The main concerns of the reporting entities are related to the incoming/outgoing transfers from/to high-risk areas or locations known to be human trafficking transit points (e.g. Western Balkan routes). Usually there are multiple receivers from one and the same sender or vice versa. However, there is no concrete data linking the transfers with HT.

HT Cases /key findings, FIU point of view/ - II

- The lack of this explicit link to HT leads to incomplete analysis of the FIU on some cases receiving then low attention from the LEAs (except for cases when initial data on concrete offences is available).
- The mostly used money remittance services offer higher-level of anonymity desired by human traffickers.
- HT schemes often involve subjects with nationality/origin from high-risk countries .
- Funds are allegedly generated from other offences and could be used for TF.

HT Cases /key findings, FIU point of view/ - III

- Issues related to money remitters:
 - They do not execute full control over all of their agents and not all rules of the money remitter are enforced on the agent;
 - Obstacles in the communication with some money remitters acting on the territory of EU;

HT Cases /key findings, FIU point of view/ - IV

- Certain money remittance agents in specific (transit) geographic areas are increasingly involved and/or intentionally set up in order to evade AML/CFT controls, i.e. in certain high-risk regions which could be used for HT;
- In some cases there are discrepancies between the registrations of the agents in the records of supervisory bodies (the Bulgarian National Bank) and the ones of the money remitters themselves.

Thank you for your attention!





Co-funded by the Internal Security Fund (ISF) 2014-2020 of the European Union

EUROJUST'S WORK AND ASSISTANCE IN RELATION TO THB FINANCIAL INVESTIGATIONS AND ASSET RECOVERY

ERA seminar - Financial Investigation of THB
Vienna, 14-15 June 2018

Outline

Eurojust

Best practices/JITs

Case examples

Strategic Project on
THB



**EUROJUST
BEST PRACTICES/JITS**



Eurojust



Eurojust

- Bringing together judicial & law enforcement authorities
- Resolving legal & practical challenges of 34 legal systems
- Direct exchange of information in ongoing investigations
- Outstanding experience
- Informal and immediate intervention
- 340 persons
- 48,3 mil EUR (2017) annual budget

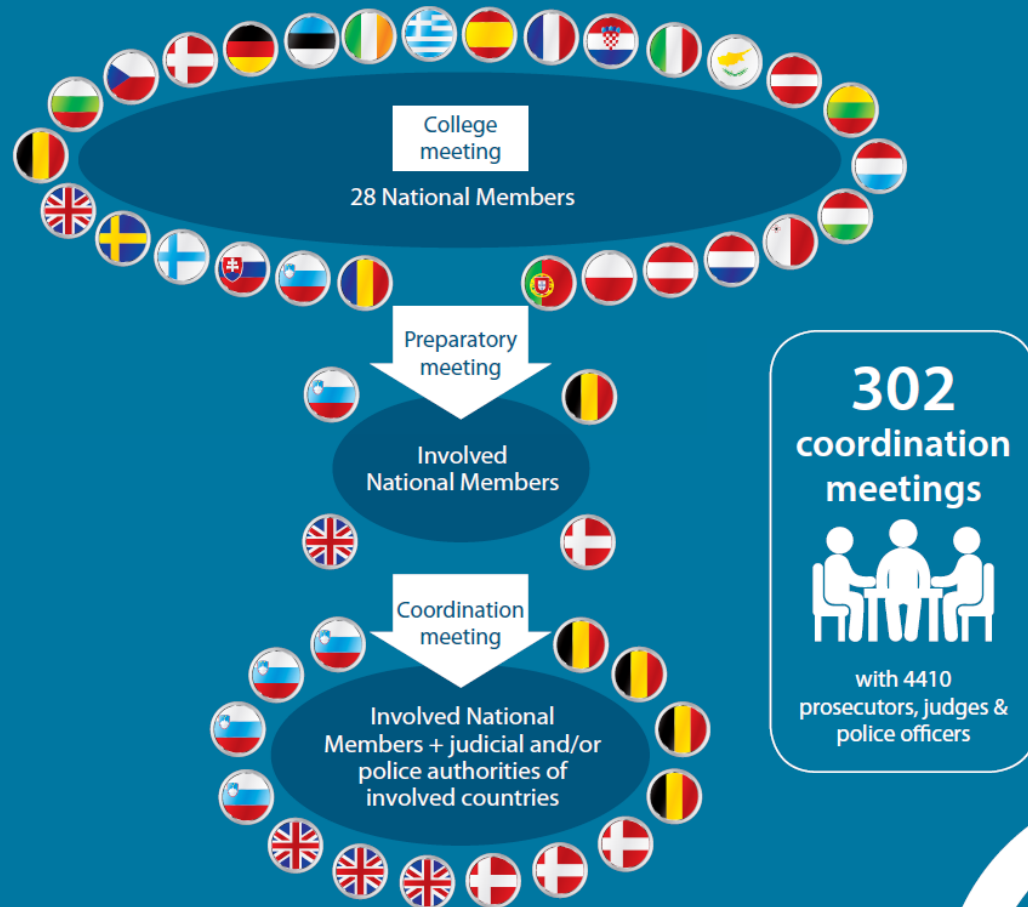


- MLA, seizures, searches
- Admissibility of evidence
- Execution of EAWs
- Conflict of jurisdictions
- Settle where to prosecute
- JIT agreements

Coordination meeting

1 Judicial coordination meetings

Bringing together judicial authorities and law enforcement from Member States and third States.



Coordination centre

24/7
availability

3 Coordination centres

Coordination centres enable coordination and real-time transmission of information in serious cross-border crimes among national authorities during action days.

17
Eurojust
coordination
centres were
held in 2017



Gathering evidence correctly is important for successful future court proceedings

Joint Investigation Team

2 Joint investigation teams (JITs)

Carrying out criminal investigations in one or more of the involved countries.



200 JITs supported



Fixed time period



Agreement between countries



Joint criminal investigations



JITs enable more efficient, affordable and speedier justice

JITs/Definition

... A JIT is an investigation team set up on the basis of a mutual agreement between competent authorities of two or more States and/or other parties, for a specific purpose and limited duration.

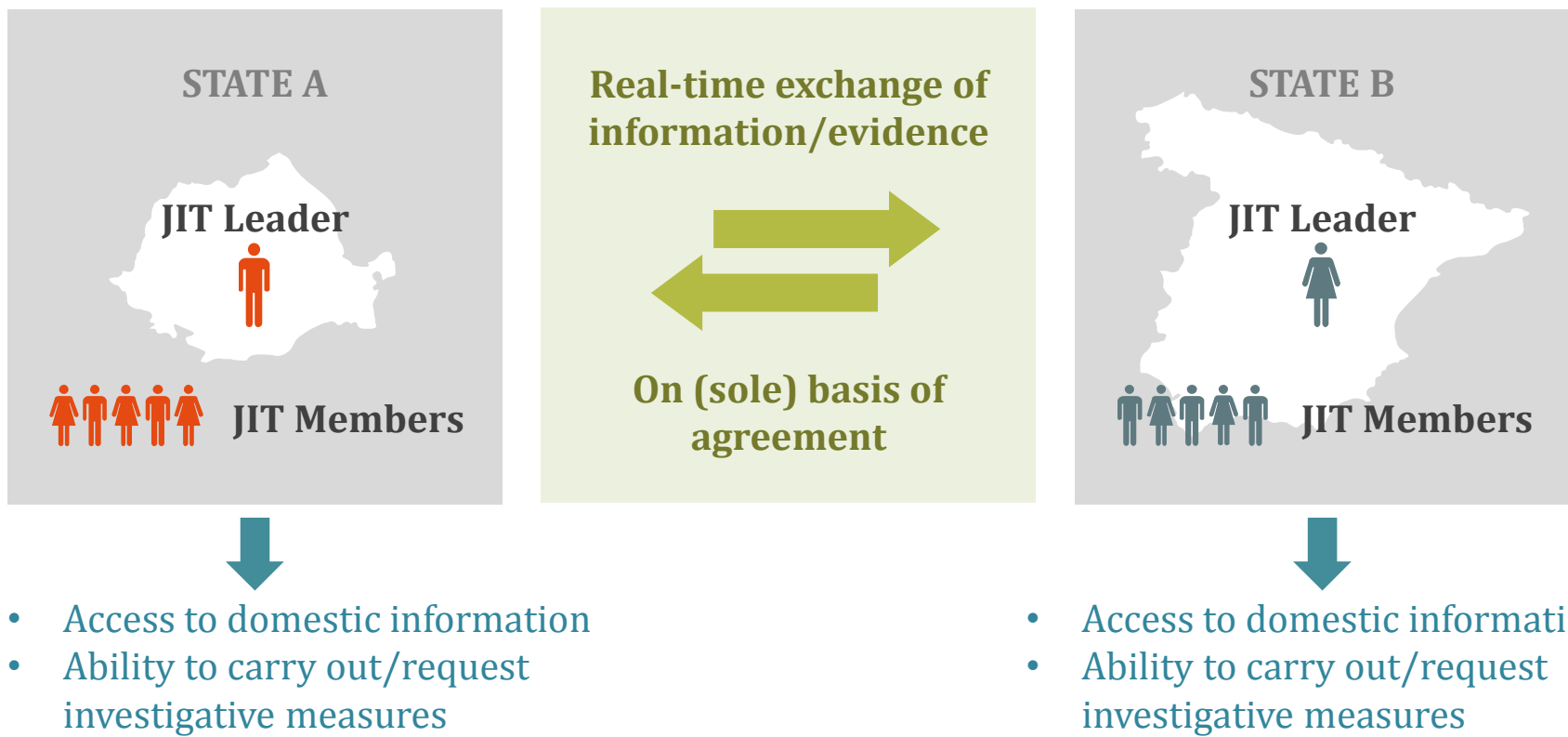
- A team of law enforcement officers, investigators & prosecutors;
- From 2 or more States and/or other parties;
- Based on a written agreement between the JIT partners;
- With the aim to investigate offences with cross border dimension;
- Established for a specific purpose;
- For a limited duration;
- There is no such thing as “standard JIT” - each JIT varies in size, expenses and also according to the underlying national legislation (different evidential and/or procedural rules);

JITs/Main Legal Framework

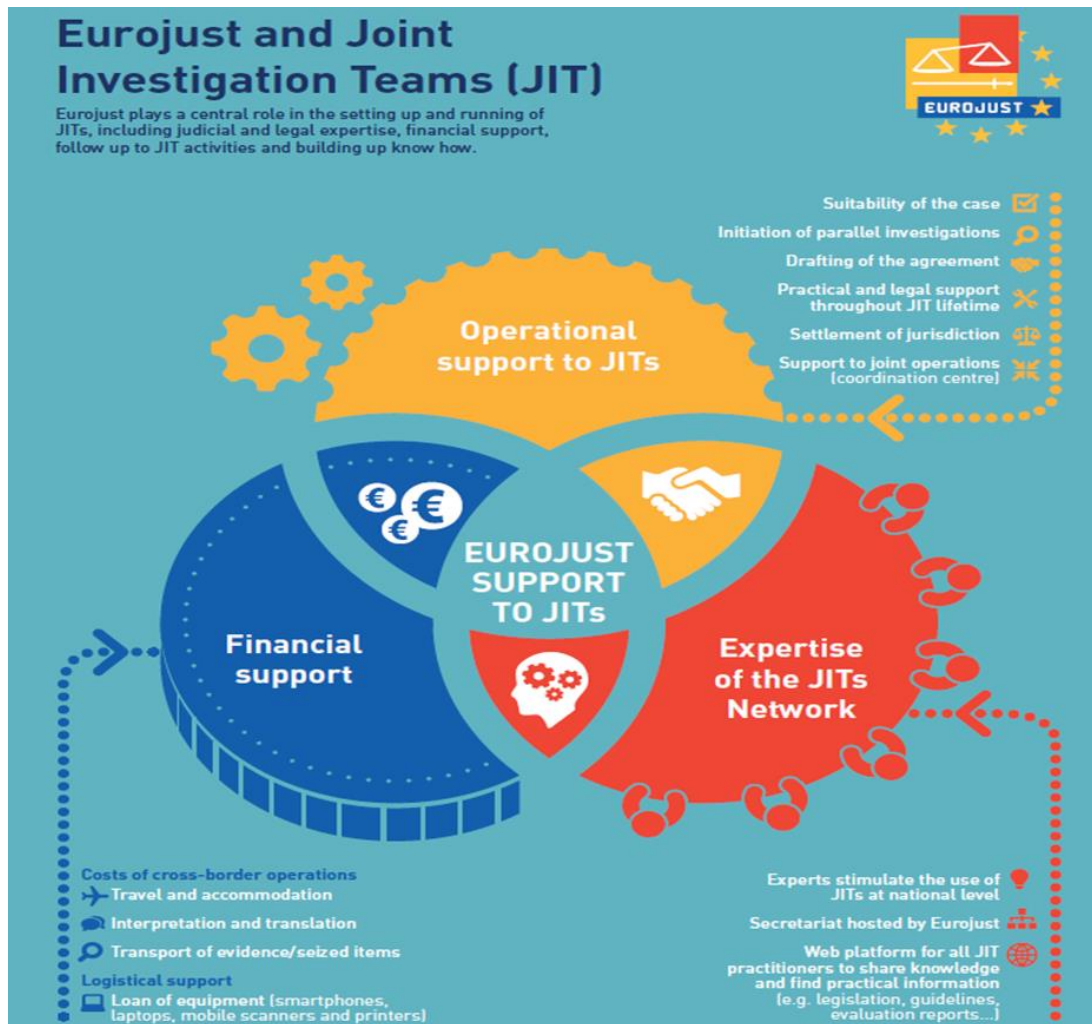
- **Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000**
- Council Framework Decision of 13 June 2002 on joint investigation teams
- Article 1 of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto of 29 December 2003
- Article 5 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America
- **Article 20 of the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959**
- Article 9(1)(c) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)
- Article 19 of the United Nations Convention against Transnational Organized Crime (2000)
- Article 49 of the United Nations Convention against Corruption (2003)
- Article 27 of the Police Cooperation Convention for South East Europe (2006)

The JIT concept

Exchange of information and evidence within a JIT

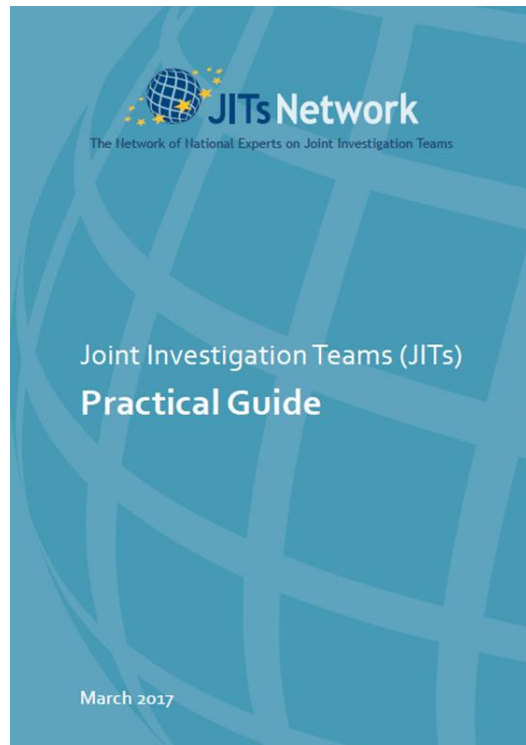


Support by Eurojust



Supporting tools accessible on Eurojust's website

JITs Practical guide



Model agreement

19.3.2010 EN Official Journal of the European Union C 70/1

ANNEX

MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

In accordance with Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000⁽¹⁾ (hereinafter referred to as the Convention) and the Council Framework Decision of 13 June 2002 on joint investigation teams⁽²⁾ (hereinafter referred to as the Framework Decision)

1. Parties to the Agreement

The following parties have concluded an agreement on the setting up of a joint investigation team, hereinafter referred to as 'JIT':

1. (Name of the first competent agency/administration of a Member State as a Party to the agreement)

and

2. (Name of the second competent agency/administration of a Member State as a party to the agreement)

3. (Name of the last competent agency/administration of a Member State party to the agreement)

The parties to the agreement may decide by common agreement to invite other Member States' agencies/administrations to become parties to this agreement. For possible arrangements with third countries, bodies competent by virtue of provisions adopted within the framework of the Treaty and international bodies involved in the activities of the JIT, see Appendix I.

2. Purpose of the JIT

The agreement shall cover the setting up of a JIT for the following purpose:

Description of the specific purpose of the JIT. This should include the circumstances of the crime(s) being investigated (date, place and nature):

The parties may redefine the specific purpose of the JIT by common agreement.

3. Approach

The parties to the agreement may agree on an operational action plan (OAP) setting out the orientations according to which the purpose of the JIT is to be achieved⁽³⁾.

4. Period covered by the agreement

In accordance with Article 1(1) of the Convention and Article 1(1) of the Framework Decision, JITs shall be set up for a limited period of time. With respect to this agreement, this JIT may operate during the following period:

⁽¹⁾ OJ C 197, 12.7.2000, p. 1.
⁽²⁾ OJ L 142, 20.4.2002, p. 1.
⁽³⁾ In the light of the relevant national legislation and its disclosure requirements, the OAP could be included in the JIT agreement, or as an appendix to the agreement or treated as a separate confidential document. In all cases the competent authorities which sign the agreement shall be aware of the content of the OAP. The OAP must be a flexible document: consequently practical agreements on a justified change and on how to achieve the purpose of the JIT set out in Article 2, including the practical arrangements not otherwise covered by the agreement.
A check for regularity of the points related to the possible content of the OAP is set out in Appendix II to this model agreement.

JITs 2017

Total JITs supported: 200



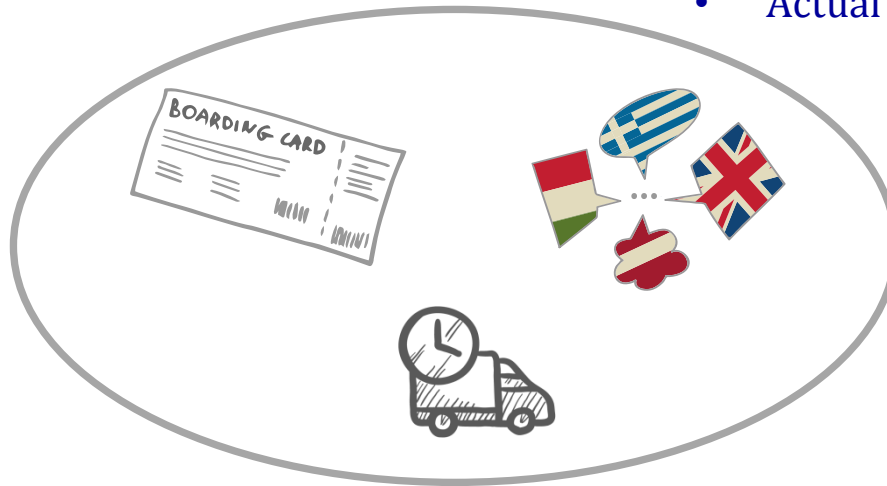
Costs of cross-border operations

Travel & Accommodation

- JIT members/non-members
- JITs & non-JIT States
- Operational meetings/support to operations
- Fixed rates

Translation & interpretation

- Carried out after JIT setting-up (even if evidence collected before)
- Target & sources languages not limited to languages of JIT States
- Actual costs



**€ 50.000 max
per each 3 month period**

Transport of seized items

- Documents, evidence, assets
- Actual costs

Welcome to Eurojust

Liaison Prosecutors and third States



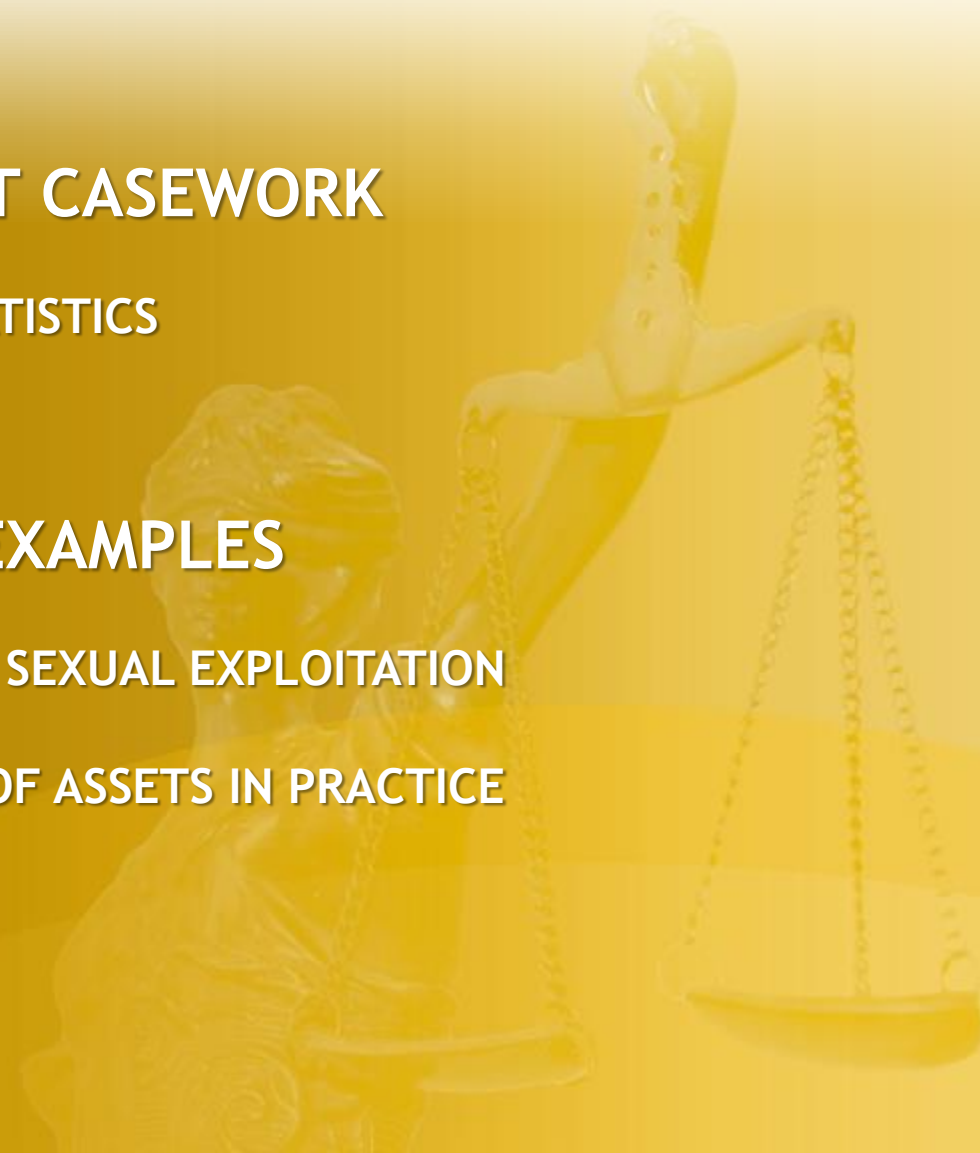
EUROJUST CASEWORK

STATISTICS

CASE EXAMPLES

CASE „A“ THB FOR SEXUAL EXPLOITATION

CASE „B“ SEIZING OF ASSETS IN PRACTICE



Casework 2002 - 2017



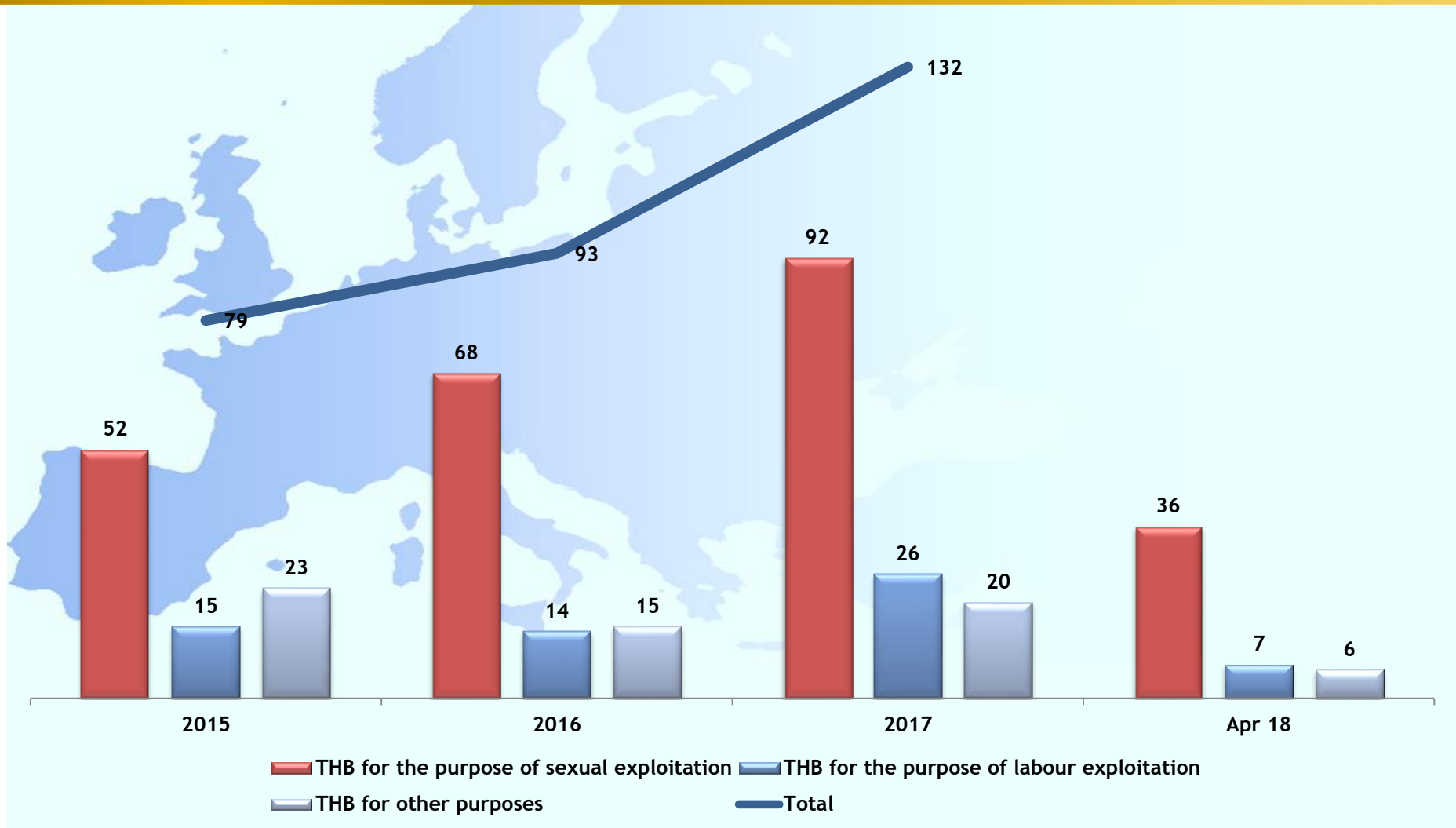
Statistics produced with data retrieved from CMS on 20 December 2017.
 Due to the ongoing nature of cases the figures may change after the reporting date.

Statistical overview of THB cases

Year	THB
Registered cases	
2016	93
2017	132
2018 (until 30 April)	49
Coordination Meetings/Coordination Centres	
2016	33 CMs, 0 CC
2017	57 CMs, 0 CC
2018 (until 30 April)	12 CMs, 0 CC
Joint Investigation Teams	
2016	19 JITs signed (6 still active, 13 closed)*
2017	27 JITs signed (22 still active, 5 closed)*
2018 (until 30 April)	7 JITs signed (7 still active)*

* JIT status on 01 May 2018

Total number of THB cases



The facts (case A)



OCG (THB) active in two Member States (A and B)

Victims from “A” trafficked to “B” for sexual exploitation

Parallel investigations “A” (recruitment, transport) and “B”(exploitation)

Suspects and victims - “A” nationals, lover boy method

Eurojust’s assistance

Judicial cooperation/JIT

Financial investigation

The facts (case B)



OCG (fiscal crime)

Damage exceeding 25.000.000 EUR

Need for urgent intervention/seizure of assets

Eurojust's involvement

Legal issues

Financial Investigations/Challenges

- Legal e.g.
 - Bank secrecy
 - Lengthy MLA procedures
 - Lacking legal basis in cross border cooperation
- Practical e.g.
 - Cash transfers
 - Lacking resources
 - Swift transfers of money, hence problematic seizures

**EUROJUST
STRATEGIC PROJECT ON THB**



The project aims and findings

- Improved judicial cooperation
- Increased prosecutions THB
- Enhance Eurojust's involvement

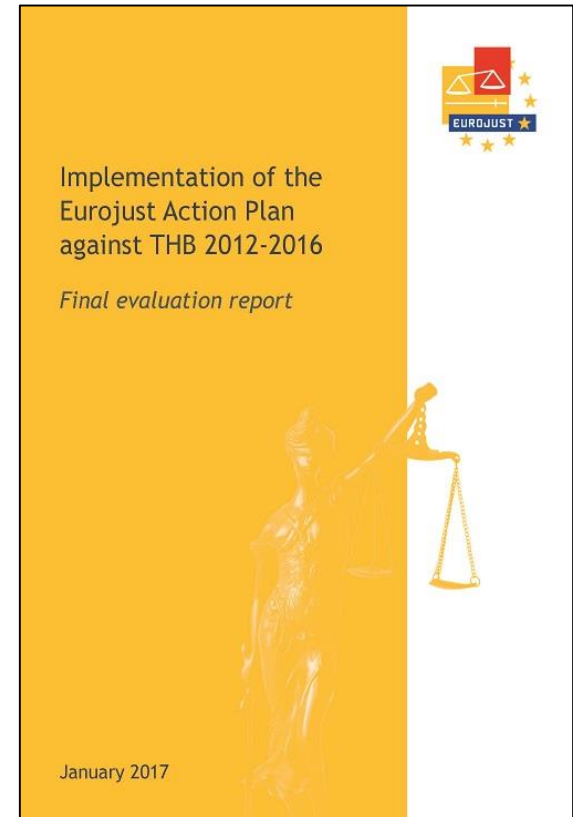
Evidentiary difficulties

Identification of cases and victims

Multilateral dimension of THB

Lack of knowledge and experience

Asset recovery is problematic



Background

- 2012: [Strategic Project on Eurojust's Action against Trafficking in Human Beings](#) – identified and proposed solutions to the main challenges stemming from the investigation and prosecution of THB cases from a judicial cooperation perspective
- 2014: [Mid-term Report](#) – covering the period 2012-2013
- 2015: [EJ Strategic Meeting on THB](#)
- 2015: [Report on prosecuting THB for labour exploitation](#)
- 2017: [Implementation of the Eurojust Action Plan against THB 2012-2016 Final evaluation report](#) - completion of the project

Priority Areas

1. Exchange of information
2. Increase number of detections and joint investigations and prosecutions
3. Training and expertise in THB
4. Cooperation with third states
5. Alternative approaches (multidisciplinary)
6. **Financial investigations (asset recovery)**

Main tools to address the problems

Eurojust:

- Improves judicial cooperation
- Coordination meetings
- Coordination centers
- Role in conflicts of jurisdiction
- Cooperation with third States

Europol:

- Exchange of information
- Operational support
- Strategic analytical support
- Emerging trends in THB
- Better understand and investigate THB

JITs:

- Suitable and useful tools for effective investigations and prosecutions;
- Offer solutions for addressing the lack of financial resources needed to proceed with the investigations

Main findings

- Complexity of THB cases is the main obstacle to the successful repression of THB;
- Judicial cooperation is of added value in dismantling THB networks;
- Eurojust plays a crucial role in facilitating cross-border judicial cooperation;
- Practitioners have now a better understanding of THB specifics;
- Number of coordination meetings and JITs (including 3rd countries) reflect a higher level of coordination;
- National authorities are willing and available to cooperate on a higher level with the assistance of Eurojust;
- Cooperation between Europol and Eurojust on THB has expanded by improving the flow of information and increasing shared casework;
- **Importance of financial investigations and assets recovery**

Thank you for your attention!

Lukáš Starý

National Member for the Czech Republic

lstary@eurojust.europa.eu

Tel:+31(0)704125270



mr. Karin Janssen

EU Seconded Prosecutor in Albania

IPA 2017/Countering Serious Crime in the Western Balkans.

Center for International Legal Cooperation.

Prosecutors office unit serious organized Crime in Tirana.

15 June 2018

OPENBAAR MINISTERIE

Effective cross-platform cooperation and with the private sector (money service businesses) in tracing THB financial flows, financial investigations and monitoring the internet/darknet in relation to financial flows and profits





Human trafficking ↔ Human smuggling

Not necessarily cross-border

Violation of human rights and personal integrity

Voluntary or forced beginning, to a forced situation

Objective: financial profit



Cross-border

Primary violation of State interest

Smuggled person as initiator or agrees, but: inhumane circumstances

Objective: financial profit



Characteristics exploitation

- Coercive measures with adult victims (can also be abuse of vulnerable position)
- Minors: no need of coercive measures. Minor prostitution = pretty much always THB
- Financial profit obtained by suspect

"MODERN SLAVERY"

Barrier Model

Legal facilitators



**Barrier
Entry**

**Barrier
Housing**

**Barrier
Identity**

**Barrier
Labour**

**Barrier
Money
laundering**



Illegal facilitators

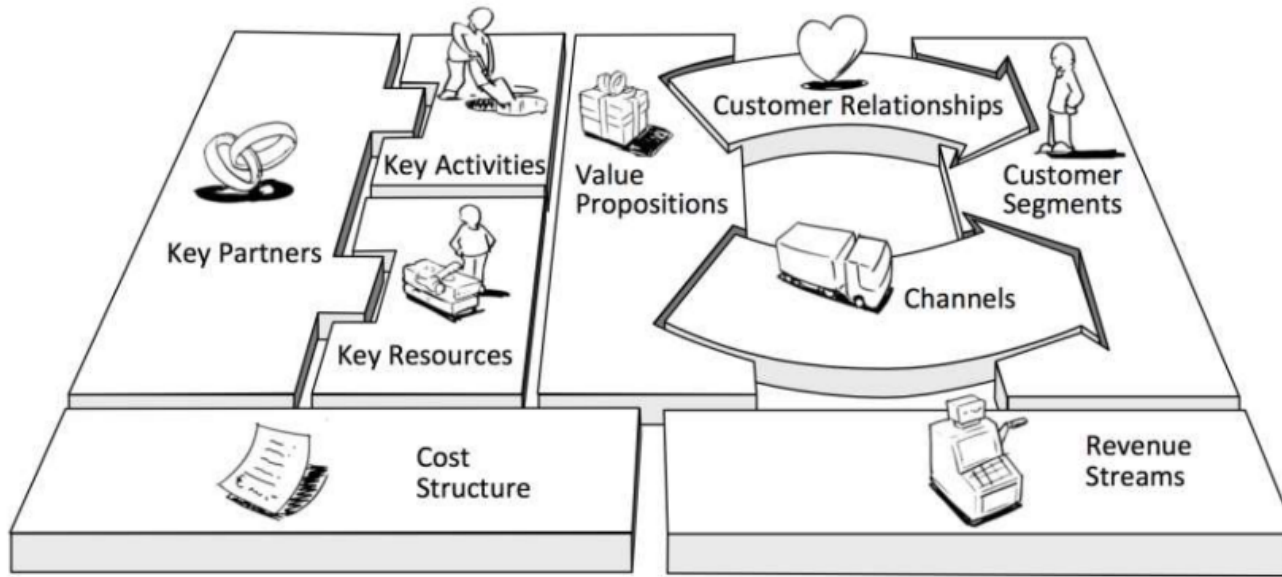
Business Model Canvas Explained

<https://www.youtube.com/watch?v=QoAOzMTLP5s>

You Tube

Business model Illegal Migration

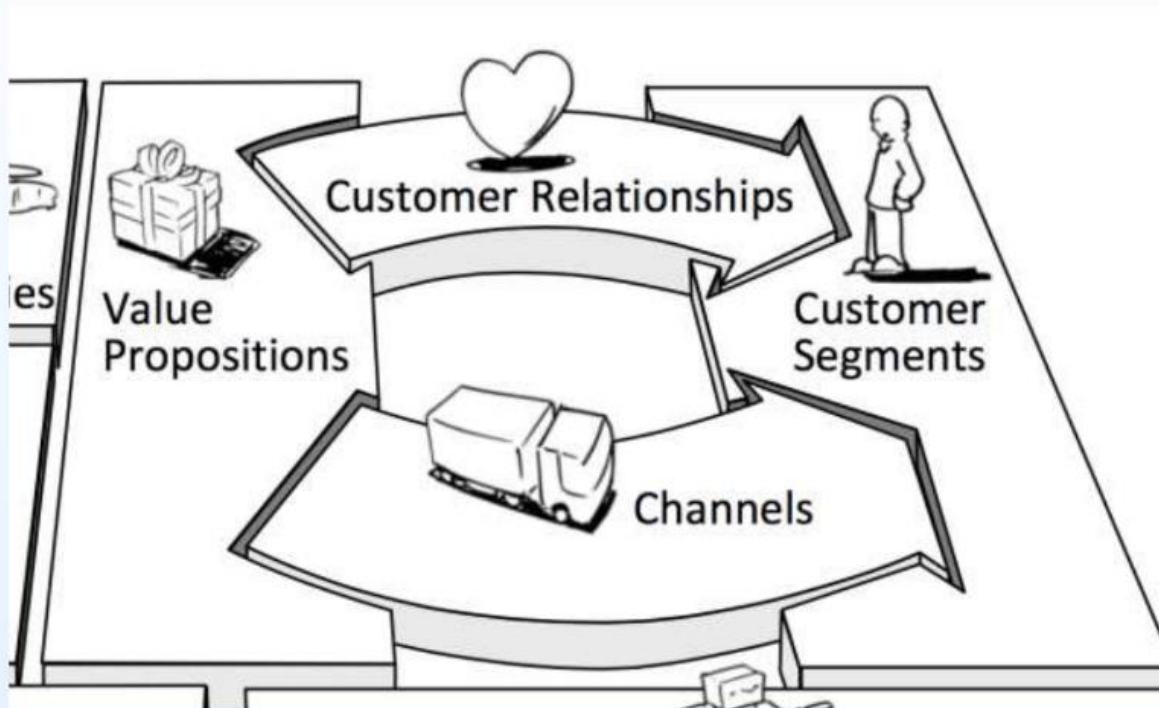
In general



1. Organised Trafficking of Humane Beings is a multinational business of geographically separated but connected networks.
2. Using the business model approach offers new insights in the working of criminal organisations involved in THB
3. Finding and following profits, partners and payments will provide more information into the working of criminal organisations and who is controlling it, will provide a tool to eliminate the motive behind the crime.
4. Connecting information on profits, partners and payments from different member states will contribute to a more complete insight into the network(s) involved.

Business model Illegal Migration

Customer side



5. Social media are a key instrument for criminal groups to build relations with potential customers and convince migrants that the journey is worth it.

6. Facilitators provide their services using local contact persons. Contact persons are often from the same ethnic or linguistic background as the migrants.

7. Criminal organisations try to benefit from economies of scope and use their expertise and network not only to smuggle people but also for THB.

Business model Illegal Migration

Production side



8. The key activity of facilitators is managing and coordinating the resources and their partners

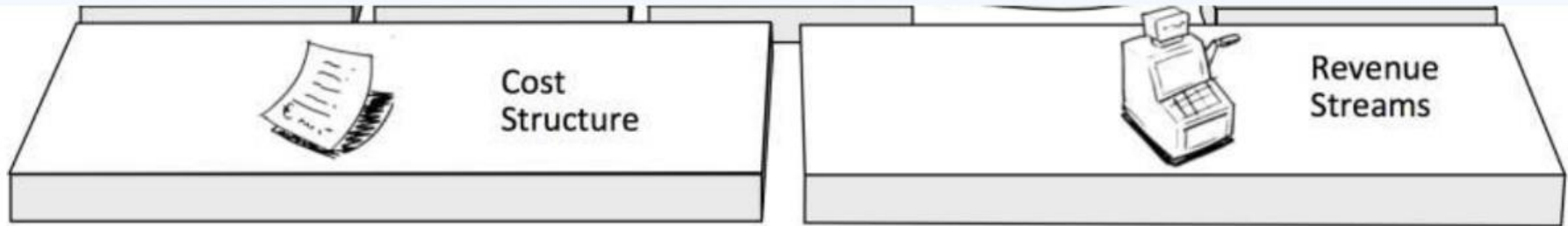
9. The business of THB requires professional services like legal and financial advice. Knowledge of law systems, taking advantage of bottlenecks and vulnerabilities in legal processes in society. Differentiating between countries to obtain the least resistance

10. False or falsified documents are a key resource

11. Apprehending drivers and other partners barely disrupts the business model of facilitated illegal migration. For every driver there are ten others

Business model Illegal Migration

Finances



12. Relatives in home or destination countries generally finance the migrant's journey. Exactly how, is unclear

13. Most payments are still made in cash. Sometimes payments are done using the formal banking system, but more often new payment methods (like cryptocurrencies), money transfers, or an informal banking system like Hawala is used.

Cooperation

International

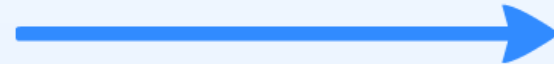
- **Requests for judicial assistance**

- Development: in 2018 publication of a world handbook for requests of judicial assistance in cases of THB

- **Parallel investigations**

- Determine the most efficient and favourable way and place of prosecuting.
 - If necessary, divide the case in a criminal and financial part.

- **Joint Investigation Teams (JITS's)**



- **Liaison officers**

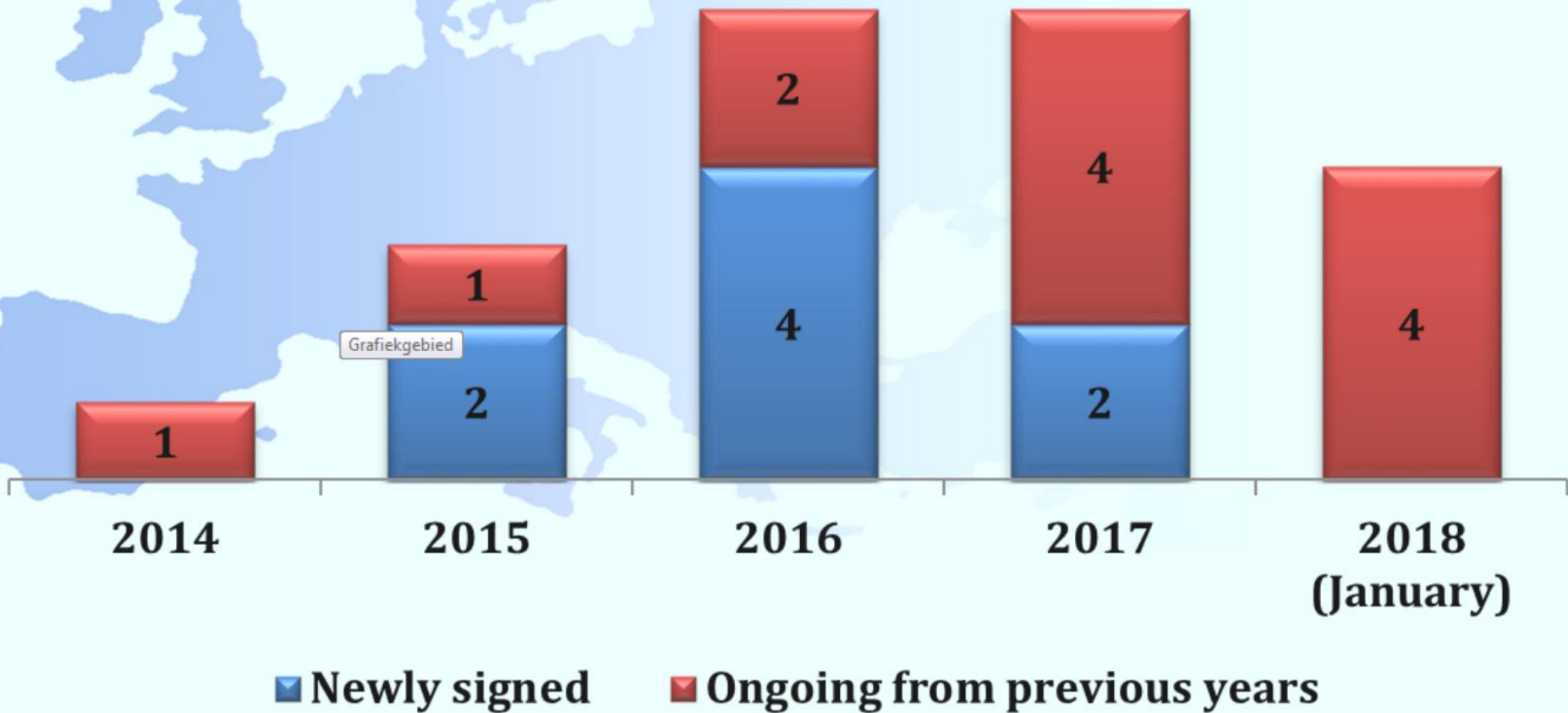
- **Non-operational cooperation**

- Hungary
 - Romania
 - Bulgaria

- **Cooperation through EMPACT projects**

- **Police-police cooperation**

JITs supported on THB with NL involvement



JIT on THB with NL participation						Calendar years JIT was ongoing					
Operation	<u>Eurojust</u> Case	Countries	Crime type	Signing Date	Ending Date	2013	2014	2015	2016	2017	2018
<u>Apus/Galaton</u>	1265/NMNL-2012	NL, BE, HU	4a	17/12/2013	16/12/2015						
<u>Wimber</u>	0064/NMNL-2015	NL, HU	4a	06/03/2015	06/03/2016						
<u>Phlox</u>	1162/NMNL-2015	NL, BG	4a	12/06/2015	12/06/2016						
<u>Palma</u>	1155/NMNL-2015	NL, BG	4a	27/01/2016	29/07/2017						
<u>Bongo</u>	1260/NMRO-2016	RO, NL	4a	08/07/2016	08/04/2017						
<u>13 Oceans</u>	1472/NMNL-2015	NL, AT	4b, 4c	26/01/2016	22/01/2018						
<u>13 Leerdam</u>	2122/NMBG-2015	BG, BE, NL	4a	09/03/2016	11/03/2018						
<u>Antares</u>	1665/NMNL-2017	NL, HU	4a	19/07/2017	18/07/2018						
<u>Poker</u>	1391/NMNL-2017	NL, RO	4a	11/09/2017	10/09/2018						

Examples of cooperating with private partners

Illegal hotel prostitution and THB

- Signals of Human Trafficking in hotels
- Cooperation with the police, Public Prosecutor Service and the Dutch Trade Association for hotel and Catering Industry.
- From 2011 several trainings are provided for employees of hotels to recognize signals of THB and illegal hotel prostitution
- Operation: three actresses are recruited and act as prostitutes in three different hotels. During three days they are giving off signals of THB and illegal hotel prostitution to the employees of the hotels.
- The personnel did not react



Participants of the study
have to give
signals of human trafficking to hotel personnel
Result?
The hotel or human trafficking is not recognized



Banks and THB
Cooperation with Dutch banks

Actively detecting the money flow of Human Trafficking

- Valuable sectors
- Large amount of workers and low amount of paid wages
- Wages paid and immediate withdrawal

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- Distribution of the video
- Public outrage
- Hotels quickly implemented better training for their personnel

Result?

The amount of human trafficking in hotels decreased



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Banks and THB

Cooperation with Dutch banks

Actively detecting the money flow of Human Trafficking

- Wages paid and immediate withdrawal
- Large amount of workers and low amount of paid wages
- Vulnerable sectors



Case Example

Cause of the investigation



Intensive cooperation

JIT (Joint Investigation Team)

- Start 29-01-2016
- Netherlands: THB
- Bulgaria: Money laundering (suspect and his mother)
- Free flow of operational information
- Financial support from Eurojust
- Joint 'action week'
- Arrest of suspect in The Netherlands
- Searching i.a. the villa, the apartment of the mother
- Confiscation of evidence
- 19 interrogations/hearings
- Duration of 1.5 years

Capital of the suspect

- Villa in Bulgaria
- 3x BMW
- Motorcycle
- VW Golf
- Audi A6
- Fiat Punto

- Payments from victim 1,2,3
- Ground is registered to suspect's mother
- Suspect is building the villa and is living in the villa
- Payments from victim 1&3
- Car is registered to suspect's mother
- Mother doesn't have a drivers license

Confiscating the villa and cars

Dutch Law

Extended confiscation

- 2 requirements
 - Awareness of illegal origin
 - Regress frustration
- 1 requirement for the execution phase
 - The object has to have been obtained through a crime, directly or indirectly

In practise

- Extended confiscation was not directly possible
- Solution
 - Prosecuting the mother in Bulgaria for money laundering
 - Prove that the mother knew the criminal origin of the money with which she bought the villa and cars
 - Confiscating the villa from the mother

Modus Operandi

- Start in Holland/Belgium
- Start when the victims are 18
- Had to hand over all their earnings
- Transported in minibuses
- Friends and acquaintances acted as facilitators
- Threats and violence
- Monitoring the earnings of the victims through their phones
- Monitoring the victims activities



Illegally obtained profit

Victim 1	€ 524 129
	2004: € 9 737
	2005: € 232 500
	2006: € 173 392
	2007: € 111 000
Victim 2	€ 130 675
	2005: € 2 625
	2008: € 78 050
	2007: € 52 000
Victim 3	€ 316 585
	2007: € 81 659
	2008: € 103 990
	2009: € 90 650
	2010: € 40 286

Case E

Cause of the investigation

Victim 1

Reported the suspect in Belgium

Period of exploitation:

05-11-2003 - 20-03-2009

Victim 2

Reported the suspect in Holland

Period of exploitation:

2005 - 04-07-2007

Victim 3

Reported the suspect in Holland

Period of exploitation:

12-03-2007 - 13-09-2010

Other Victims

Multiple other victims gave statements in Bulgaria

Capital of the suspect

- Villa in Bulgaria
- 3x BMW
- Motorcycle
- VW Golf
- Audi A6
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- Payments from victim 1,2,3
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Intensive cooperation

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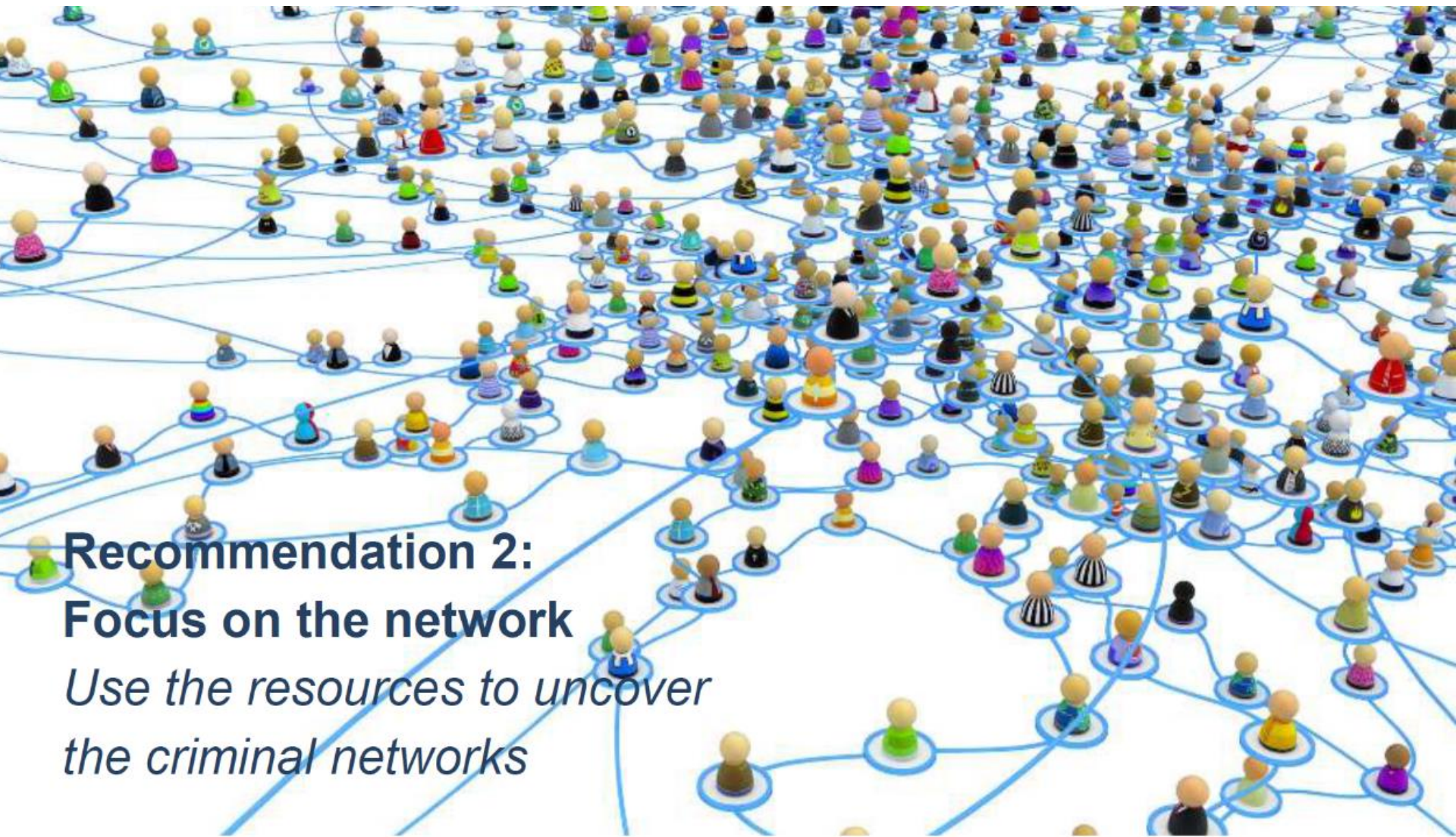
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**Recommendation 1:
Apply the FATF
Operational Framework on
Financial Investigation**

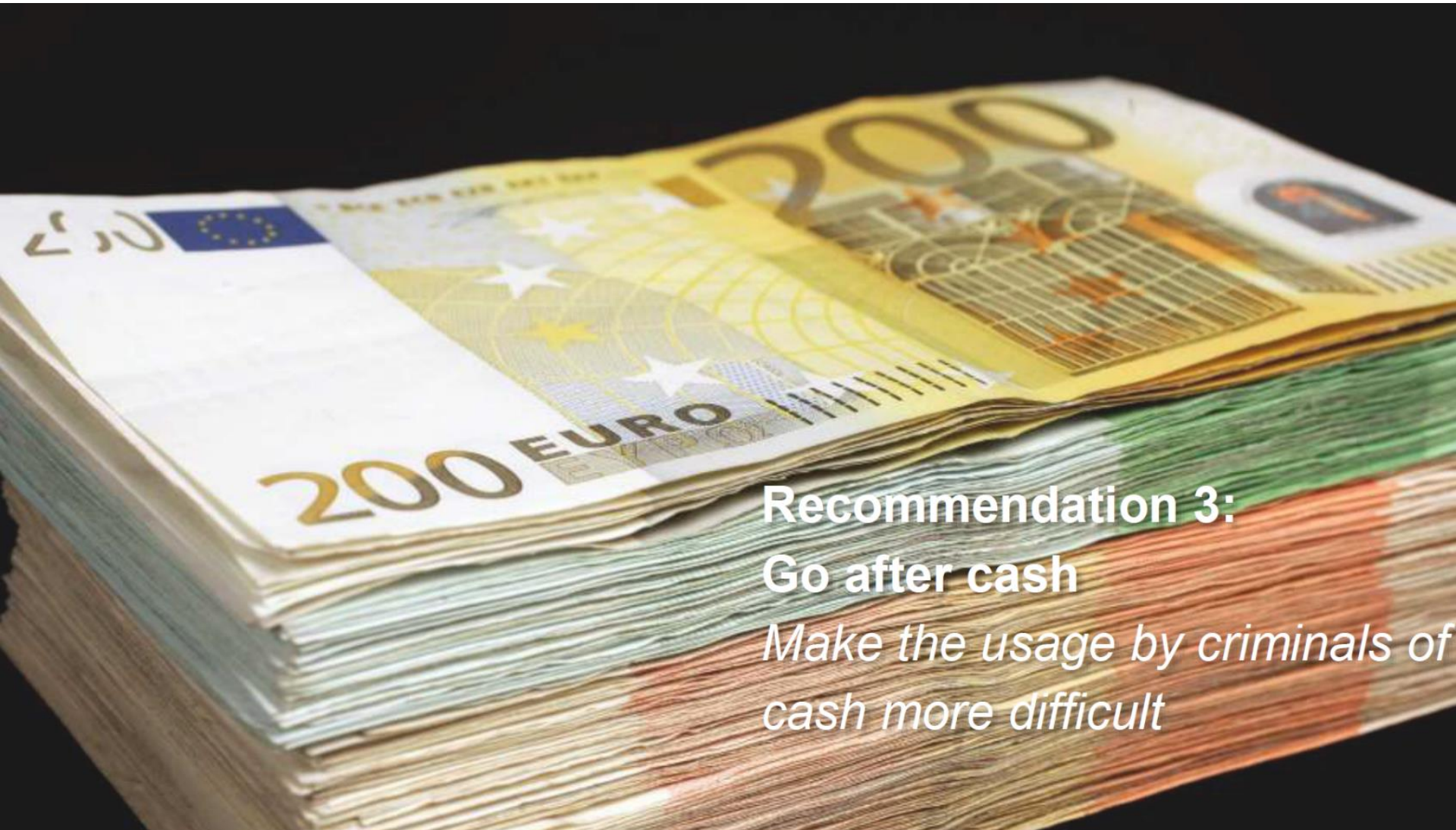
*Implement FATF guidance
on financial investigations in
member states operations
and share information using
Europol.*



Recommendation 2:

Focus on the network

*Use the resources to uncover
the criminal networks*



Recommendation 3:

Go after cash

Make the usage by criminals of cash more difficult

Recommendation 4:

Regulate informal banking services

Regulate informal financial services to increase control and transparency in order to obstruct and follow criminal processes





**Recommendation 5: Link up
with investigations into illegal
substances**

*Authorities involved in fighting
facilitated illegal migration
should work together with
criminal investigations into
illegal substances.*

Recommendation 6: Investigate and disrupt marketing via Social Media

Investigate, analyse and disrupt the marketing of illegal migration services in social media

facebook

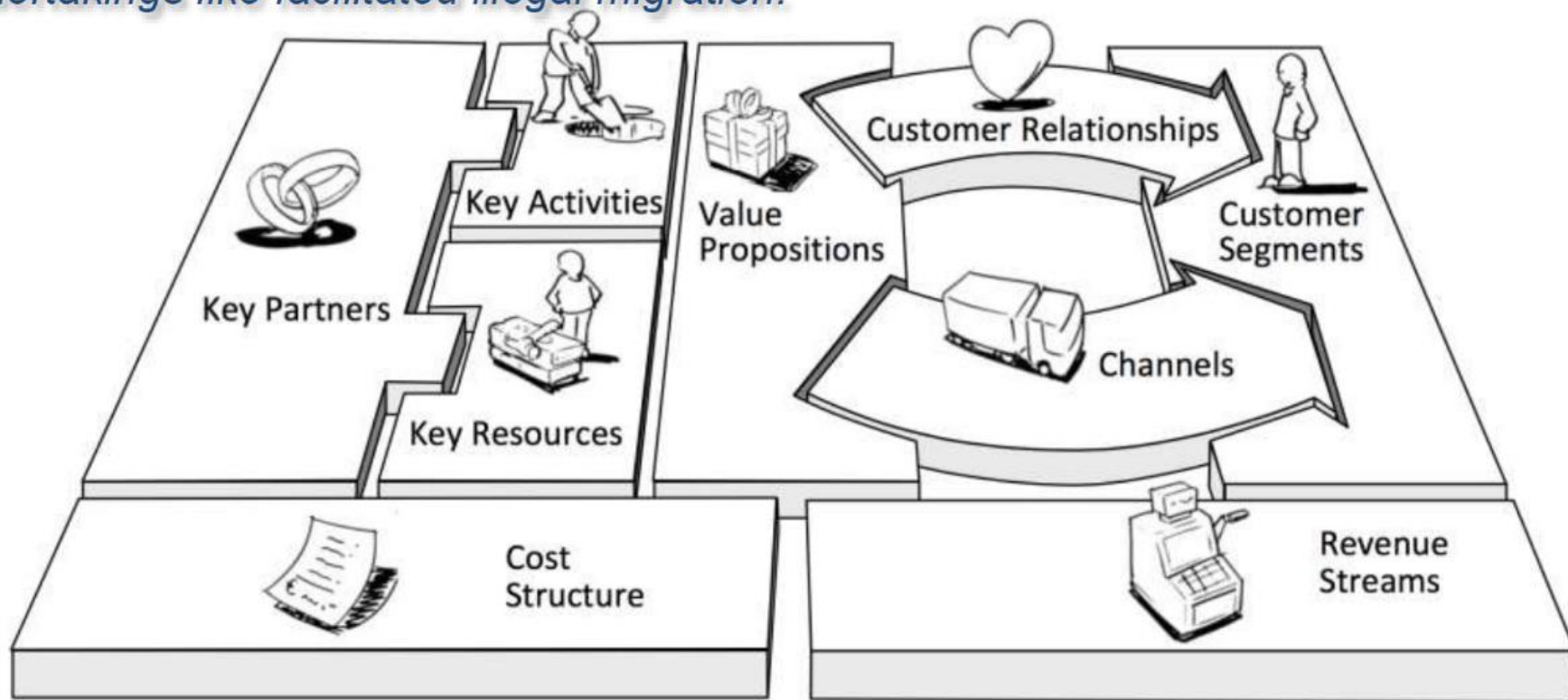


**Recommendation 7:
Re-Marketing strategy**

Disseminate a counter narrative to the marketing efforts of facilitators of illegal migration so potential migrants can make a well-informed decision based on more realistic insights in cost, risks and potential benefits of migrations and possibly decide not to travel.

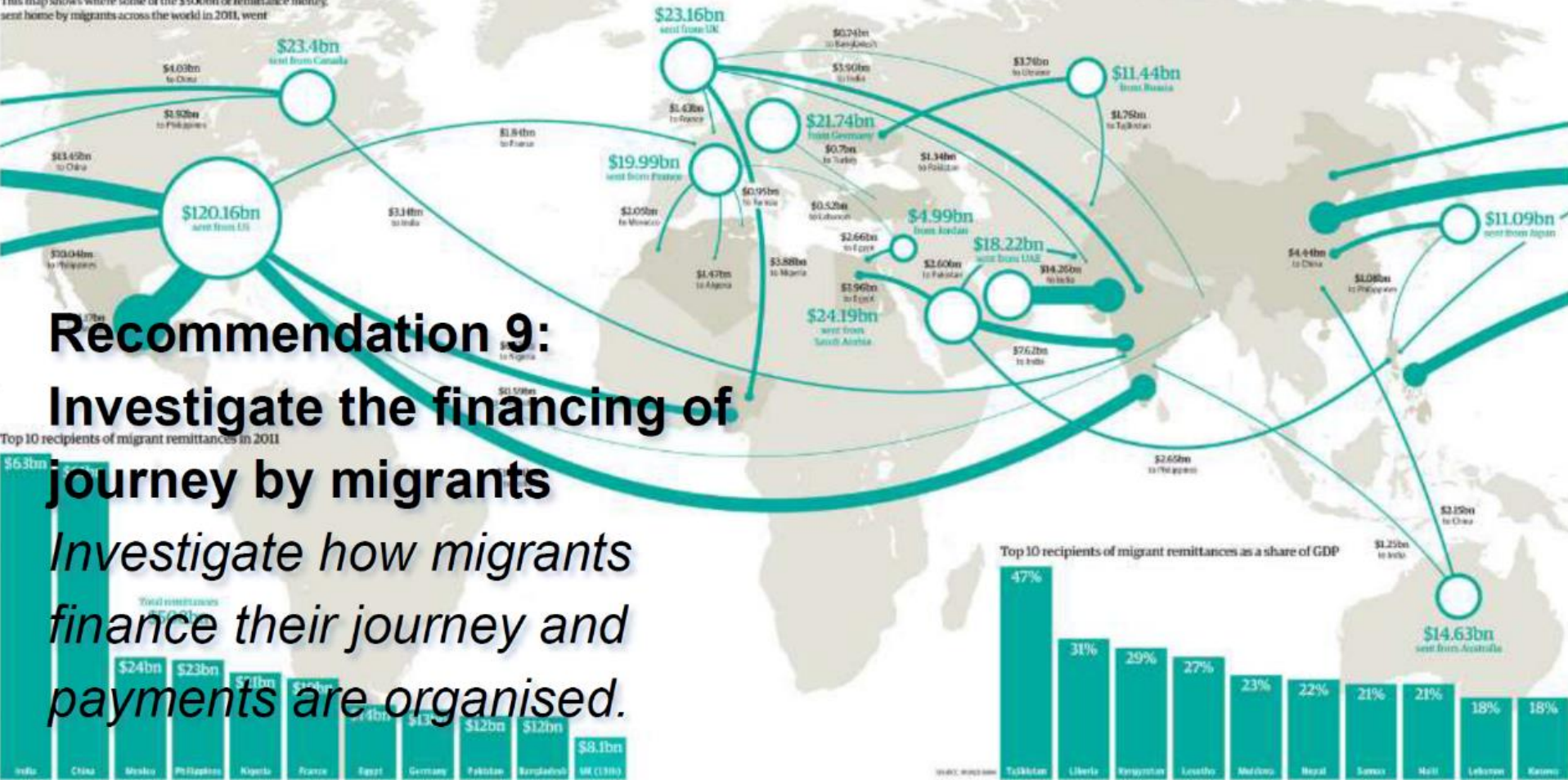
Recommendation 8: Use the Business Model Canvas as a tool for analysis

Use the Business Model Canvas as a standard tool for analysis to dissect criminal undertakings like facilitated illegal migration.



Where the money goes

This map shows where some of the \$500bn of remittance money sent home by migrants across the world in 2011, went



Recommendation 9:
Investigate the financing of
journey by migrants
Investigate how migrants
finance their journey and
payments are organised.



Recommendation 10: Further research into the criminal professional financial service providers

Investigate how organisations involved in illegal migration obtain the necessary financial services, who offers those services and what these services generally entail.

Thank you for your attention and do you have any Questions?





Victims' rights, giving them support and compensatory measures

EVELYN PROBST

LEITERIN LEFÖ – INTERVENTIONSSTELLE FÜR BETROFFENE DES FRAUENHANDELS

14.06–15.06.2018, WIEN



**Co-funded by the
Internal Security Fund
(ISF) 2014-2020 of the
European**

LEFÖ - Interventionsstelle für Betroffene des Frauenhandels (LEFÖ-IBF)

Seit 01.01.1998 anerkannte Opferschutzeinrichtung

Arbeitet österreichweit, Sitz in Wien

Im Auftrag tätig vom: Bundesministerium für Inneres
und Bundeskanzleramt-Sektion für
Frauenangelegenheiten und Gleichstellung

Angebote u.a.

- muttersprachliche Beratung und Betreuung
- Unterbringung in Schutzwohnungen
- 24 h Erreichbarkeit
- Vorbereitung und Durchführung freiwillige und sichere Rückkehr
- psycho-soziale und juristische Prozessbegleitung

Recht auf Entschädigung

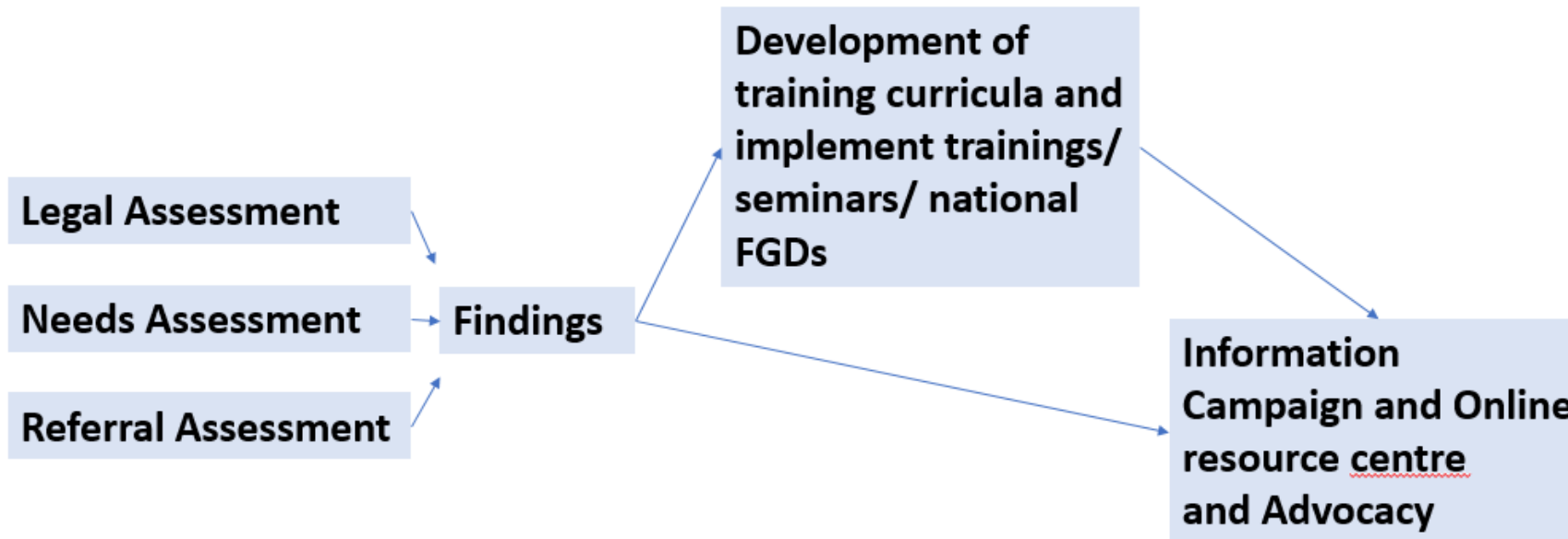
u.a.

- EU-Richtlinie zur Verhütung und Bekämpfung des Menschenhandels und zum Schutz seiner Opfer 2011/36/EU
- EU-Richtlinie zur Entschädigung der Opfer von Straftaten in anderen EU-Ländern 2004/80/EC
- Europaratskonvention gegen Menschenhandel

Projekt JUSTICE AT LAST

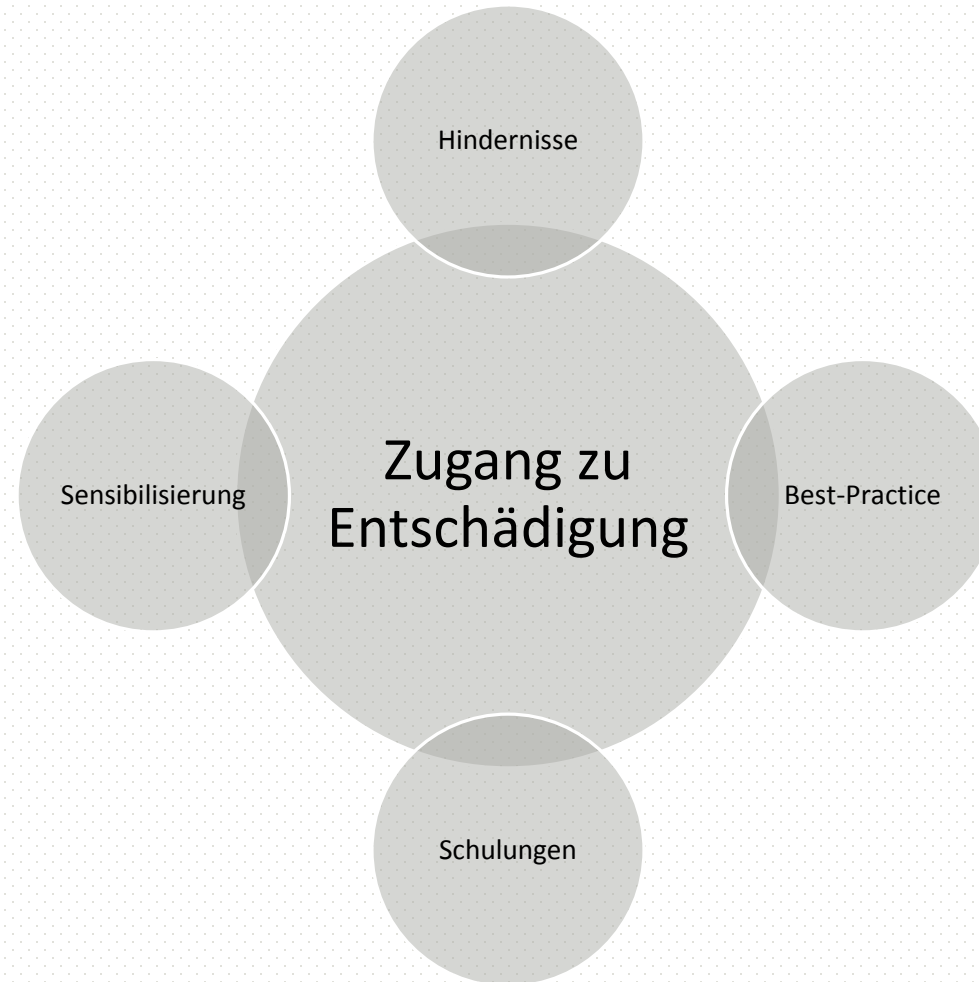
Start: Oktober 2017

Vorgänger Projekt COMP.ACT



Gefördert durch EU-Justizprogramm (2014-2020)

Projektziele Justice at Last



Identifizierte Hindernisse

- Wenig Sicherstellung und Beschlagnahme von Vermögenswerten bei den Beschuldigten
- Pauschale Schmerzensgeldbeträge
- Zugang zu staatlicher Entschädigung
- Kooperation von stakeholder
- Zugang zur Entschädigung bei abgeschobenen oder freiwillig zurückgekehrten Opfern

Zugang zu Entschädigung: Österreich

Schadensersatz
im
Strafverfahren

Schadensersatz
im
Zivilverfahren

Arbeitsrecht

Staatliche
Entschädigung:
VOG

Finanzielle Ansprüche der Betroffenen von Menschenhandel, Gewalt, Arbeitsausbeutung

THEMEN DER BERATUNG

ARBEIT

Freiwillige oder unfreiwillige Arbeit (z.B.):

- in der Sexindustrie
- in der Gastronomie
- im Baugewerbe
- im Privathaushalt

Umstände (z.B.):

- wenig oder kein Lohn
- keine Krankenversicherung
- kein Arbeitsschutz
- keine freie Zeit

GEWALT

Folgen (z.B.):

- Körperverletzungen
- Trauma
- sexuell übertragbare Krankheiten
- allgemeine Krankheiten
- Angestzustände / Depression

BEACHTE:

- Alle KlientInnen können Ansprüche haben: Zeuginnen, Nicht-Zeuginnen, Ausgerettete, Undokumentierte.

1

RECHTSBERATUNG | ZUSTÄNDIGKEITEN

ARBEITSRECHT

ARBEITSGERICHT

STRAFRECHT
(NACHKLAGE)

STRAFGERICHT

ZIVILRECHT

ZIVILGERICHT

SOZIALRECHT:
OPFER-
ENTSCHÄDIGUNGSGESETZ

VERSORGUNGSAMT
Bei Ablehnung des Antrags
→ SOZIALGERICHT

GESETZLICHE
UNFALL-
VERSICHERUNG

BERUFSGENOSSENS-
SCHAFT
voraussetzungslos je nach Branche,
z.B. Bauarbeit oder Gastronomie

BEACHTE:

- die unterschiedlichen rechtlichen Wege können kombiniert werden
- ggf. Kontakt zu mehreren AnwältInnen herstellen
- AnwältInnen voneinander unterrichten!

2

MÖGLICHE ENTSCHÄDIGUNG

LOHN

wie u.B. Vergütung, Entlohnung im Erwerbsfall, Urlaubsgeld

SCHADENSERSATZ

z.B. Heilbehandlungskosten, Kosten für Anwalt, Gutachten, Mietkosten, Reisekosten etc.

SCHMERZENGELD

für u.B. willkürliche Entlassungen / Verletzungen, geistige Beeinträchtigungen und Folgen, dauerhafte Körperverletzungen

SCHADENSERSATZ

SCHMERZENGELD

SCHADENSERSATZ

LEISTUNGEN

LEISTUNGEN

BEACHTE:

- Leistungen aus der gesetzlichen Unfallversicherung können unabhängig vom Aufenthaltsstatus gewährt werden. Auch illegale Beschäftigung ist kein Hindernis.

3

MÖGLICHE BEWEISE

- psychologisches Gutachten
- Zeuginnen / KollegInnen
- Zahlungsbefehle
- SMS, E-Mails, Telefonkontakte (Einzelverbindungenachweis)
- ärztliches Attest

ARBEITSBEDINGUNGEN

- An welchem Arbeitsort wurde gearbeitet?
- Wie waren die Arbeitszeiten / war die Arbeitsdauer?
- Welche Arbeiten wurden verrichtet?
- Wie viel Lohn wurde gezahlt?
- Wie viele KundInnen wurden täglich bedient (z.B. bei Prostitution)?
- etc.

FOLGEERSCHEINUNGEN

- Welche Beschwerden / Krankheiten liegen bzw. lagen vor?
- Gab es Krankenhausaufenthalte?
- Liegt Therapiebedarf vor?

BEACHTE:

- Frühestmöglich Entschädigung / Lohn ansprechen (z.T. sehr kurze rechtliche Fristen)

BEACHTE:

- Beratungshilfescheln oder Beratungshilfe vom Weiblen Ring (für die erste Beratung bei einer / einem RechtsanwältIn)
- Prozesskostenhilfe für ein gerichtliches Verfahren (Arbeits-, Zivilverfahren etc.)
- Prozesskosten über den Rechtshilfefonds des DIMR bis 06/2012

BEI AUSREISE DER BETROFFENEN VOR ODER NACH RICHTSVERFAHREN:

Auch bei Ausreise bleiben Ansprüche bestehen. Diese können auch aus dem Herkunftsland geltend gemacht werden.

Vor Ausreise:

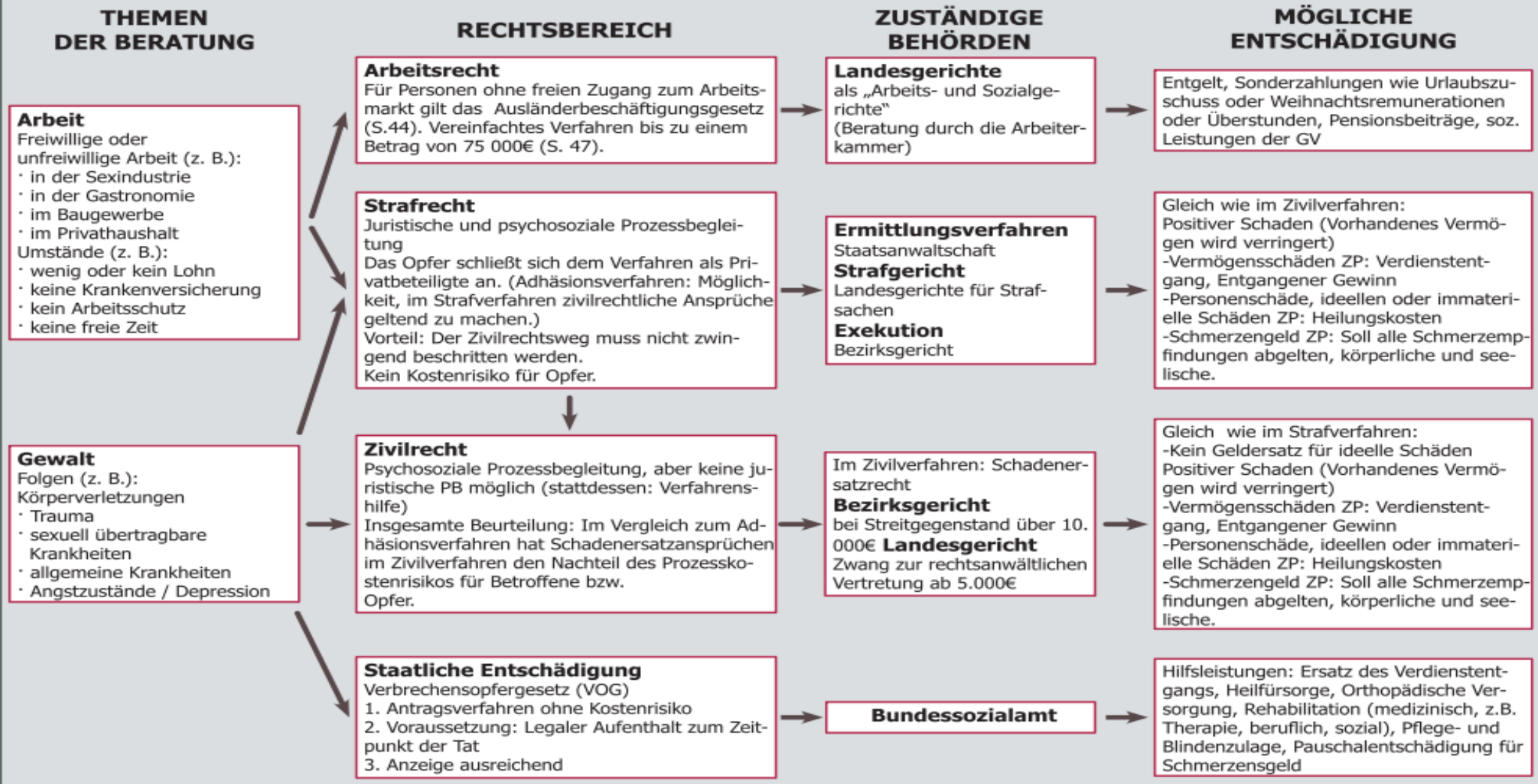
- Anwaltliche Beratung aufsuchen
- Vollmachten für RechtsanwältInnen einholen
- Kontakt zu Betroffenen im Herkunftsland gewährleisten
- Kontakt zu einer Fachberatungsstelle im Herkunftsland herstellen

BEACHTE!

- Auch Undokumentierte können Ansprüche geltend machen! (Vorzicht: Datenangabe kann zu Meldung bei der Ausländerbehörde führen)
- Für zivil- und arbeitsrechtliche Verfahren oder für einen Antrag nach dem OBG ist nicht zwingend ein Strafverfahren notwendig.
- Die Betroffenen müssen bei zivil- und arbeitsrechtlichen Verfahren nicht immer persönlich erscheinen.

Finanzielle Ansprüche der Betroffenen von Menschenhandel

- Mögliche Beweise**
- psychologisches Gutachten
 - ZeugInnen / KollegInnen
 - Zahlungsbelege
 - SMS, E-Mails, Telefonkontakte (Einzelverbindungs nachweis)
 - ärztliches Attest
- Arbeitsbedingungen**
- An welchem Arbeitsort wurde gearbeitet?
 - Wie waren die Arbeitszeiten/ war die Arbeitsdauer?
 - Welche Arbeiten wurden verrichtet?
 - Wie viel Lohn wurde gezahlt?
 - Gab es einen Arbeitsvertrag?
 - Wie viele KundInnen wurden täglich bedient (z. B. bei Prostitution)?
 - etc.
- Folgeerscheinungen**
- Welche Beschwerden/ Krankheiten liegen bzw. lagen vor?
 - Gab es Krankenhausaufenthalte?
 - Ist Psychotherapie notwendig?



Bei Ausreise der Betroffenen vor oder nach Gerichtsverfahren:
 Auch bei Ausreise bleiben Ansprüche bestehen. Diese können auch aus dem Herkunftsland geltend gemacht werden.

Vor Ausreise:

- Vollmachten für RechtsanwältInnen bzw Beratungsstelle einholen
- Kontakt zu Betroffenen im Herkunftsland gewährleisten
- Kontakt zu einer Beratungsstelle im Herkunftsland herstellen

BEACHTE:

- Frühestmöglich Entschädigung / Lohn ansprechen (z. T. sehr kurze rechtliche Fristen)

BEACHTE:

- Alle KlientInnen können Ansprüche haben: ZeugInnen, Nicht-ZeugInnen, Ausgereiste, Undokumentierte.

BEACHTE:

- die unterschiedlichen rechtlichen Wege können kombiniert werden
- ggf. Kontakt zu mehreren AnwältInnen herstellen
- AnwältInnen voneinander unterrichten!

Empfehlungen

- Sicherstellung ab Beginn des Ermittlungsverfahrens
- Bessere und umfangreichere Belehrung über ihre Rechte zu Entschädigung
- Fragestellungen in Vernehmungen aufnehmen
- Staatsanwaltschaft: Zuständigkeit wahrnehmen
- Entschädigung als Themenkomplex in existierenden Schulungen für Polizei und Justiz
- Kooperation mit allen involvierten AkteurInnen (Polizei, STA, NGOs, AnwältInnen)



Vielen Dank für Ihre
Aufmerksamkeit!
Fragen?

EVELYN PROBST

CONTACT US: IBF@LEFOE.AT