



## Bekämpfung des Menschenhandels, Opferschutz und Optimierung von Finanzermittlungen

Trier, 13.-14. Dezember 2018

**UP  
GRADE**  
YOUR LEGAL  
EXPERTISE

**Criminal  
Law**



### Referenten

**Karin Janssen**, Staatsanwältin, IPA/2017 „Bekämpfung schwerer Kriminalität auf dem Westbalkan“, Abgeordnete EU-Staatsanwältin am SCPO, Tirana

**Ivanka Kotorova**, Staatsanwältin, Nationales Eurojust-Mitglied für Bulgarien, Den Haag

**João Lázaro**, Präsident der portugiesischen Vereinigung für Opferhilfe (APAV) und Präsident des Opferschutzverbandes Europa (VSE), Brüssel

**Ulrich Nachtberger**, Richter, Landesgericht für Strafsachen, Wien

**Ryszard Piotrowicz**, Professor, Lehrstuhl Recht und Kriminologie, Universität Aberystwyth; Mitglied von GRETA, Europarat

**Evelyn Probst**, Referatsleiterin, Interventionsstelle für Betroffene von Frauenhandel, LEFÖ (Beratung, Bildung und Begleitung für Migrantinnen), Wien

**Mădălina Rogoz**, Forschungsbeauftragte, Internationales Zentrum für Migrationspolitikentwicklung (ICMPD), Wien

**Szonja Szabó**, Spezialistin, Analyseprojekt „Phoenix“, Europol, Den Haag

**Alexandru Viziru**, Polizeilicher Ermittler, Arges-Brigade zur Bekämpfung organisierter Kriminalität, Bukarest

### Schlüsselthemen

- Analyse der rechtlichen Aspekte der Nachfragereduzierung, gesetzgeberische Maßnahmen zur Reduzierung der Nachfrage und ihre Rolle bei der Bekämpfung sexueller Ausbeutung
- Besonders verletzte Gruppen (Frauen und Kinder) und Wege zur besseren Unterstützung
- Gerichtliche und polizeiliche Maßnahmen zugunsten der Opfer und das Erfordernis besserer grenzüberschreitender und interinstitutioneller Zusammenarbeit
- Ermittlung und Konfiszierung von aus Menschenhandel erzielten Vermögenswerten und der Gebrauch des Internets zur Verfolgung der Finanzflüsse aus von Menschenhandel stammenden Profiten

**Sprachen**  
Englisch, Deutsch  
(mit Simultanübersetzung)

**Tagungsnummer**  
318DT69

**Organisator**  
ERA (Cecilia Holmsten)



Kofinanziert durch den Fonds Innere Sicherheit (ISF) 2014-2020 der Europäischen Union

# Bekämpfung von Menschenhandel, Schutz der Opfer und Optimierung der finanziellen Ermittlungen

## Donnerstag, 13. Dezember 2018

08:30 Ankunft und Anmeldung der Teilnehmer

09:00 **Begrüßung und Einführung**  
*Cecilia Holmsten*

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### I. DER GESETZLICHE RAHMEN

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09:15 **Ausgangspunkt:**

- Die EU-Strategie 2012-2016 und die neue Mitteilung der Europäischen Kommission über neue Wege zur Beseitigung des Menschenhandels – aktueller Stand und Zukunftsaussichten?
- Ein breites Bild europäischer Rechtssetzung – von der Richtlinie 2011/36 zur Verordnung über die gegenseitige Anerkennung von Sicherstellungs- und Einziehungsentscheidungen und ihr Effekt auf transnationale Fälle von Menschenhandel

*Ryszard Piotrowicz*

09:45 Diskussion

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### II. HILFE FÜR OPFER VON MENSCHENHANDEL ZUM ZWECK SEXUELLER AUSBEUTUNG UND IHRE KOSTEN

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*Vorsitz: Szonja Szabo*

10:00 Bewährte Methoden für Hilfe und Schutz verwundbarer Opfer von Menschenhandel und die Kostenfeststellung aus dem Blickwinkel einer nichtstaatlichen Organisation der Opferhilfe  
*Evelyn Probst*

10:30 Diskussion

10:45 Kaffeepause

11:15 Besserer Zugang und Durchsetzung von Opferrechten: Analyse des EU-Opferrechtspakets und der Weg zu einer sichereren Erkennung von Opfern und ihrer Behandlung als Rechtsinhaber  
*João Lázaro*

11:45 Diskussion

12:00 Die Prinzipien der Nichtbestrafung und Nichtverfolgung sowie die Notwendigkeit einer effektiven Kooperation zwischen Justiz, Politik und anderen Beteiligten zu Schutz und Hilfe der Opfer  
*Karin Janssen*

12:30 Diskussion

12:45 Mittagessen

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### III. NACHFRAGEREDUZIERUNG BEIM MENSCHENHANDEL ZUR SEXUELLEN AUSBEUTUNG

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*Vorsitz: Evelyn Probst*

14:00 Arbeit für einen Wandel: Regulatorische Maßnahmen, nationale Modelle und (erwarteter) Einfluss auf Nachfrage(-reduzierung) beim Menschenhandel zur sexuellen Ausbeutung – Ergebnisse des paneuropäischen Projekts DemandAT  
*Mădălina Rogoz*

14:30 Diskussion

14:45 Kaffeepause

15:15 Maßnahmen zur Nachfragereduzierung und ihre Wirksamkeit  
*Ryszard Piotrowicz*

15:45 Diskussion

## Ziel

Diese Veranstaltung schließt eine Reihe von vier von der Europäischen Kommission kofinanzierten Seminaren zur Bekämpfung des Menschenhandels ab. Sie bietet eine vertiefte Analyse der Schwerpunkte der vorangegangenen drei Seminare, untersucht die Entwicklung seither und erörtert Schlüsse für mögliche künftige Aktionen auf diesem Gebiet.

Das Seminar betrachtet Maßnahmen zur Reduzierung der Nachfrage nach sexueller Ausbeutung und zur Unterstützung der Opfer sowohl auf EU- als auch auf nationaler Ebene und die dadurch entstehenden Kosten. Es untersucht auch Wege zur Aufdeckung der mit dem Menschenhandel verknüpften Finanzierungsströme und Profite und die Nutzung des Internets zu diesem Zweck.

## Wer sollte teilnehmen?

Richter, Staatsanwälte, Rechtsanwälte, Vollstreckungsbeamte und Mitglieder von Nichtregierungsorganisationen/NGOs.

## Tagungsort

ERA Conference Center  
Metzer Allee 4  
54290 Trier  
Rheinland-Pfalz  
Deutschland

## Sprache

Deutsch, Englisch (mit Simultanübersetzung)

## Kontakt



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Liz Greenwood  
Assistentin  
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- 16:00 Die Bekämpfung der Nachfrage in einem Herkunftsland der Opfer und die zunehmende Zusammenarbeit mit dem Zielland: Ein praktischer Fall mit Schwerpunkt auf Informationsaustausch zwischen Ländern, GEGs und Kapazitätsaufbau  
*Szonja Szabó*
- 16:45 Diskussion
- 17:00 Ende des ersten Tages
- 19:30 Abendessen

## Freitag, 14. Dezember 2018

### IV. FINANZERMITTLUNGEN IM MENSCHENHANDEL UND DER NUTZEN DES INTERNETS BEI DER ERMITTLUNG VON GELDFLÜSSEN

*Vorsitz: Cecilia Holmsten*

- 09:00 Ein multinationaler Ansatz zur Zerschlagung von Finanzaktivitäten der organisierten Kriminalität: Zusammenarbeit von Vermögensabschöpfungsstellen, Finanzermittlungseinheiten, Eurojust und anderen  
*Ivanka Kotorova*
- 09:45 Diskussion
- 10:00 "Folge dem Geld": Der Nutzen virtueller Währungen und wie sie den Markt für Menschenhandel befeuern – eine besondere Herausforderung für die Strafverfolgung  
*Alexandru Viziru*
- 10:30 Diskussion
- 10:45 Kaffeepause
- 11:00 Aktuelle Herausforderungen bei der Sicherstellung von Beweisen und ihrer Nutzung vor Gericht: Die Rolle der Justiz in der Aufarbeitung des Menschenhandels und bewährte Methoden  
*Ulrich Nachtberger*
- 11:30 Diskussion

### V. SIMULTANE WORKSHOPS

- 11:45 **Simultane Arbeitsgruppen:**
- **Der ökonomische, soziale und menschliche Preis von Opferhilfe und Opferschutz**  
*Evelyn Probst*
  - **Finanzermittlungen in Fällen von Menschenhandel**  
*Ulrich Nachtberger*
  - **Nationale Modelle zur Nachfragereduzierung – Austausch bewährter Methoden**  
*Mădălina Rogoz*
- 13:00 Berichte der Arbeitsgruppen und Schlussfolgerungen
- 13:30 Mittagessen und Seminarende

Programmänderungen bleiben vorbehalten.  
Für Programmupdates: [www.era.int](http://www.era.int)

## Kommende Veranstaltungen

### Countering Terrorism in the EU: Annual Conference 2018

Trier, 29.-30. November 2018

### Case Law of the European Court of Human Rights on Detention in 2017-2018

Straßburg, 6.-7. Dezember 2018

### Investigating Web 2.0

Valletta, 18.-19. Februar 2019

### Applying the European Investigation Order

Riga, 21.-22. Februar 2019

### Computer Forensics in Legal Proceedings

Vilnius, 25.-26. März 2019

### New EU Rules on e-Evidence

London, 4.-5. April 2019

### Summer Course on European Criminal Justice

Trier, 24.-28. June 2019

## e-Präsentationen

### 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](http://www.era.int/elearning)

Der Inhalt dieses Programms gibt einzig Standpunkte der ERA wieder, die Europäische Kommission ist nicht verantwortlich für jedwede Nutzungen, die aus den darin enthaltenen Informationen gezogen werden.

COUNTERING TRAFFICKING IN  
HUMAN BEINGS, PROTECTING  
VICTIMS AND ENHANCING FINANCIAL  
INVESTIGATIONS

ERA, TRIER 13 DECEMBER 2018



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

TRAFFICKING IN HUMAN BEINGS –  
THE LEGAL FRAMEWORK

Prof. Ryszard Piotrowicz

Dept. of Law and Criminology, Aberystwyth University

Vice-President of GRETA, Council of Europe Group of Experts on Action against  
Trafficking in Human Beings

## EU FRAMEWORK

- Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims
- Core EU instrument on THB

## MEASURES IN THE DIRECTIVE

Definition of THB

Penalties

Liability of legal persons

Law enforcement (including non-punishment)

Assistance and support for victims of THB

Measures to protect children

Prevention

National rapporteurs or equivalent mechanisms

## DEFINITION OF THB

- Article 2
- “The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”

## POSITION OF VULNERABILITY

- A situation in which the person concerned has no real or acceptable alternative but to submit to the abuse

## EXPLOITATION

- As a minimum:
  - Exploitation of the prostitution of others or other forms of sexual exploitation
  - Forced labour or services, including begging
  - Slavery or practices similar to slavery
  - Servitude
  - Exploitation of criminal activities
  - Removal of organs

## RELEVANCE OF CONSENT

- Any apparent consent is irrelevant where any of the means have been used – consent cannot be a defence

## CHILDREN

- No requirement to prove the means element for THB involving children

## COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS (2005)

- All EU members are parties
- Significant measures on victim protection and assistance
- Effective monitoring mechanism – GRETA
- <https://www.coe.int/en/web/anti-human-trafficking/greta>



## COUNCIL DIRECTIVE 2004/81/EC OF 29 APRIL 2004

- On the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of action to facilitate illegal immigration, who cooperate with the competent authorities

## DIRECTIVE 2012/29/EU OF 25 OCTOBER 2012

- Establishing minimum standards on the rights, support and protection of victims of crime
  - Right to understand and be understood
  - Right to be informed about their rights
  - Right to information about their case
  - Right to interpretation and translation
  - Right of access to support services
  - Rights in criminal proceedings

## EU STRATEGY TOWARDS THE ERADICATION OF TRAFFICKING IN HUMAN BEINGS 2012-2016

- Priorities
  - Identifying, protecting and assisting victims of THB
  - Stepping up the prevention of THB
  - Increased prosecution of traffickers
  - Enhanced coordination and cooperation among key actors and policy coherence
  - Increased knowledge and effective response to emerging concerns related to all forms of THB

## COMMUNICATION FROM THE COMMISSION

- Reporting on the follow-up to the EU Strategy towards the eradication of THB and identifying further concrete actions, December 2017, COM (2017) 728 final

## PRIORITIES IN THE COMMUNICATION

- Disrupt the business model
  - Encourage the criminalisation of the knowing use of services extracted from trafficked persons
  - More effective prosecutions – capacity building
  - Promote sustainable business practices and working conditions in production countries

## PRIORITIES IN THE COMMUNICATION

- Provide better access to and realise the rights of victims of THB
  - Commission to publish guidance on gender-specific measures for helping and supporting victims of THB
  - To develop practical guidance to enhance transnational cooperation to prevent trafficking of children and to support child victims
  - Capacity building to improve cooperation through border and migration management tools to identify trafficked persons

## PRIORITIES IN THE COMMUNICATION

- Intensify a coordinated and consolidated response, within and outside the EU
  - Identify priority countries and regions for action against THB
  - Work towards achieving Agenda 2030 Sustainable Development Goals, especially targets 5.2, 8.7 and 16.2 on THB

## REGULATION ON THE MUTUAL RECOGNITION OF FREEZING AND CONFISCATION ORDERS

- Adopted June 2018
- Rules apply 24 months after Regulation enters into force

## MAIN POINTS

- A single regulation covering freezing and confiscation orders, directly applicable in the EU.
- The general principle of mutual recognition, meaning that all judicial decisions in criminal matters taken in one EU country will normally be directly recognised and, enforced by another member state.
- A wide scope of types of confiscation in criminal matters such as value based confiscation and non-conviction based confiscation, including certain systems of preventive confiscation, provided that there is a link to a criminal offence.
- Standard certificates and procedures to allow for speedy and efficient freezing and confiscation actions.
- A deadline of 45 days for the recognition of a confiscation order and in urgent cases a deadline of 48 hours for the recognition and 48 hours for the execution of freezing orders.
- Provisions to ensure that victims' rights to compensation and restitution are respected in cross-border cases.



# Best practices in assisting and protecting vulnerable victims of THB within the context of measuring costs – the views of a victim's support NGO

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EVELYN PROBST

HEAD OF LEFÖ – INTERVENTIONSSTELLE FÜR BETROFFENE DES FRAUENHANDELS

13.12 – 14.12.2018, WIEN



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

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

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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



# Psychosoziale Beratung

- Krisenintervention
- Individualisierte Sicherheitskonzepte, objektive und subjektive Sicherheit
- Traumbewältigung
- Perspektivenabklärung

# Sichere Unterkunft

Schutzwohnung 1

Schutzwohnung 2  
(2 Wohnungen)

Übergangswohnung

4 Schutzwohnungen mit unterschiedlichem Betreuungskonzept, angepasst an die Bedürfnisse der Betroffenen.

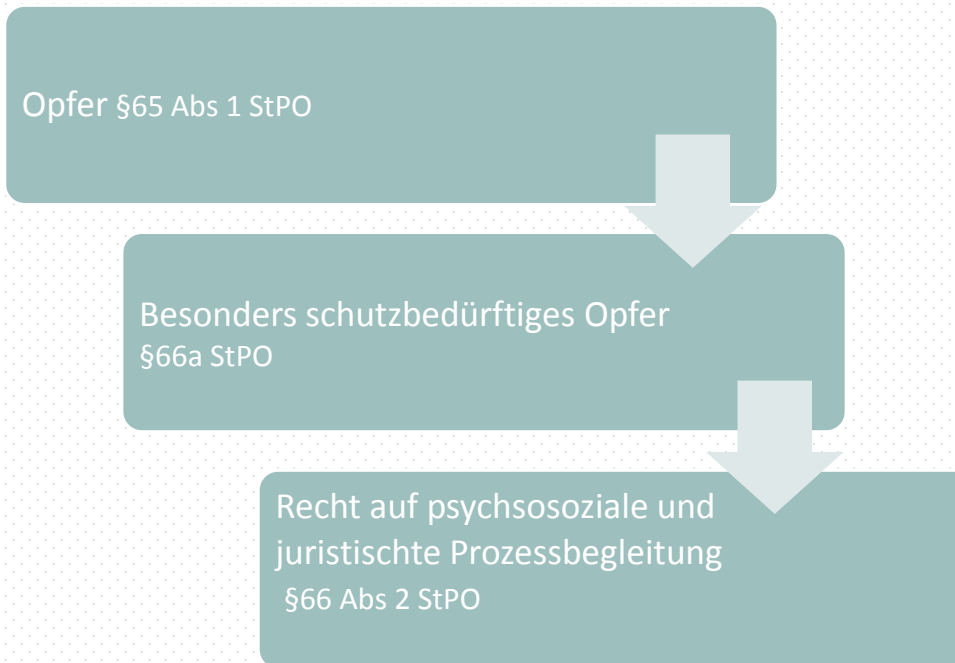
# Sichere Unterkunft

- Sozio-kulturelle Mediation als Betreuungskonzept
- Sicherheit
- Partizipation
- Gemeinsames Lernen und gemeinsamer Aushandlungsprozess

# Rechtliche Beratung

- Verwaltungsrecht: Aufenthalt, Non-Punishment, Asylrecht, Entschädigung (z.B.: Schubhaft)
- Strafrecht: Psychosoziale und juristische Prozessbegleitung inkl. Entschädigung, Non-Punishment
- Zivilrecht: Schmerzensgeld und entgangener Lohn, Arbeits- und Sozialrecht

## Psychosoziale und Juristische Prozessbegleitung im Auftrag des Bundesministerium für Justiz.



# Recht auf Entschädigung

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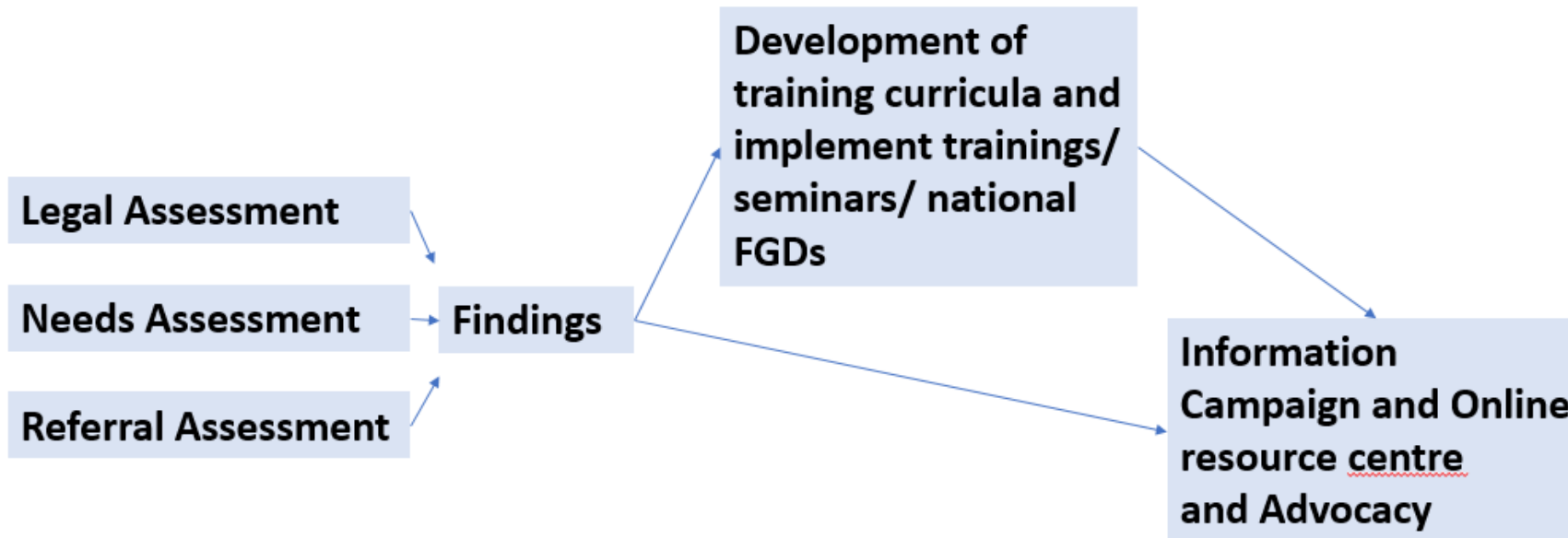
u.a.

- 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



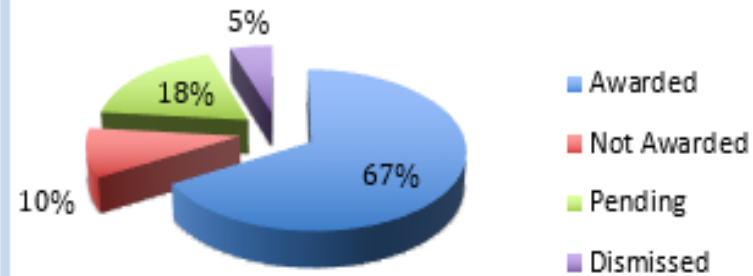
Gefördert durch EU-Justizprogramm (2014-2020)

# Ergebnisse

## Actual awards

The Justice at Last consortium studied 60 cases of victims of trafficking. These 60 cases related to mostly single victims and a few cases concerned more than one trafficked or exploited person. All 60+ victims in these cases pursued compensation for the harm suffered, via various avenues such as criminal and civil proceedings, labour redress mechanisms, state compensation schemes and alternative mechanisms. In 40 of these cases, the court decided to award compensation. However, only 11 of these cases actually resulted in compensation being paid to trafficked and/or exploited persons. In the remaining three-quarters of cases, victims did not receive any monetary compensation in spite of the court decision.

Judicial proceedings for compensation





# Promising practices I

*Promising practice - Prosecutor's obligation to request victim compensation*

In Spain, the law on the standing of victims of crime in practice<sup>1</sup> provides that public prosecutors are obliged to request compensation for the victim from the defendant regardless of the victim's role in proceedings, unless the victim waives this right

# Promising practices II

## *Promising practice: Pilot on plausibility of victimhood of human trafficking victims*

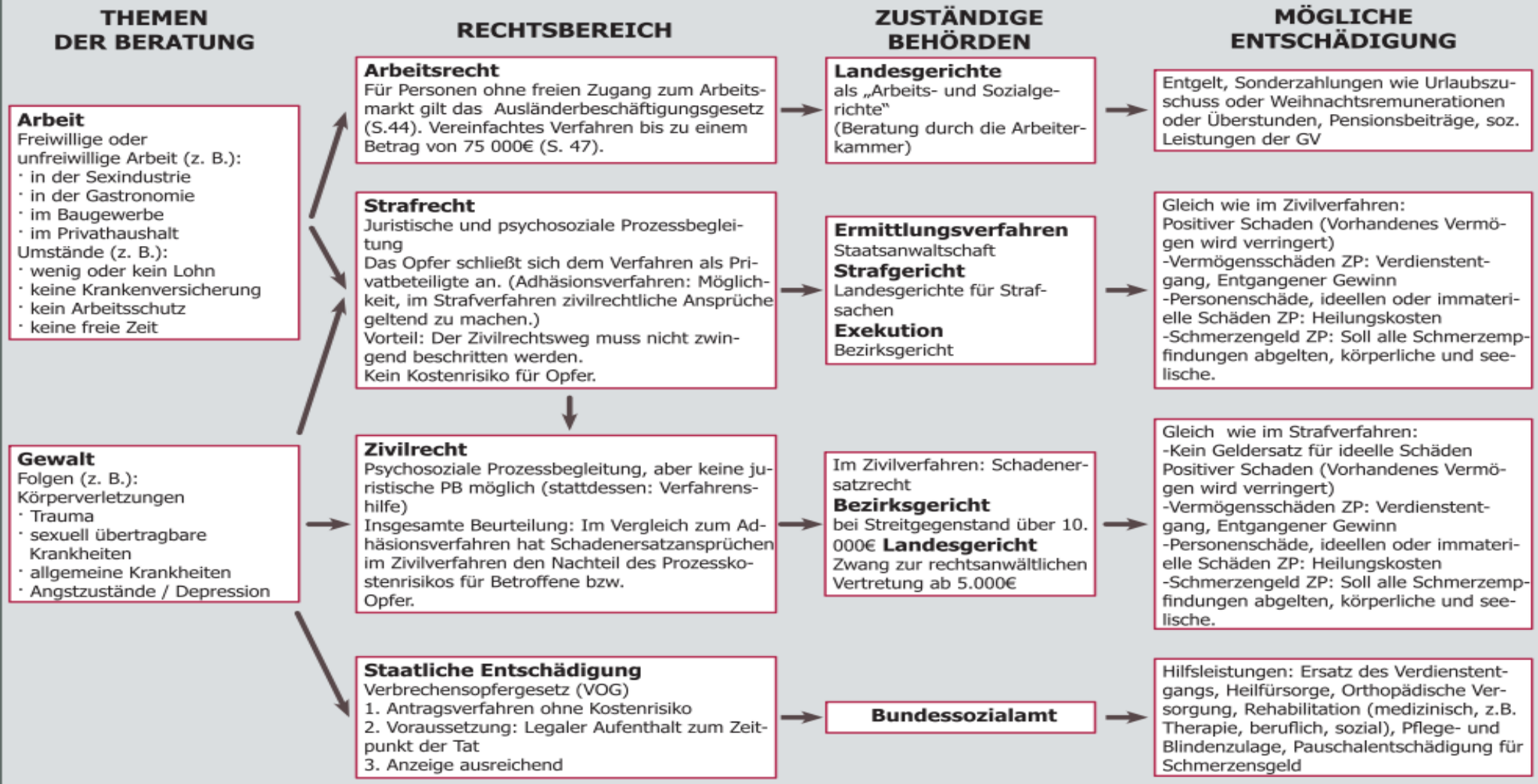
As part of the Violent Offences Compensation Fund, a subcommittee of experts implements the pilot, that started 1 January 2018. A victim, social worker, or lawyer can file a request to the committee. The task of the committee is to issue a multi-disciplinary expert report on whether it is plausible that an applicant is a victim of human trafficking within the definition of the Penal Code. The expert report is not a binding decision but should be seen as an influential opinion. It is the applicant's decision whether or not to make use of the expert report. For example, the expert report can help the applicant in obtaining support as an identified victim of human trafficking, e.g. for the application for a residence permit on humanitarian grounds, for access to municipal facilities, or to specialist (medical) care or to obtain financial compensation from the regular Violent Offences Compensation Fund.

## *Promising practice: Presumption of 6 months' employment in cases of illegal employment*

In the Netherlands, if a migrant has worked in an irregular situation (e.g. no work permit), his /her employer is liable to pay back any outstanding remuneration and a presumption of six months' employment is made. This provision lightens the burden of proof on the migrant claiming compensation for unpaid wages. Moreover, the irregular status of the worker does not constitute an obstacle for the worker to start a civil action. (Cases NL01/02).

# 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!

# Fazit

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- nachhaltige Beratung und Betreuung
- verbindliche Kooperationen
- Team-Teaching



Vielen Dank für Ihre  
Aufmerksamkeit!  
Fragen?

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EVELYN PROBST

CONTACT US: [IBF@LEFOE.AT](mailto:IBF@LEFOE.AT)

# Additional Sources

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“COOPERATION ON ACCESS TO COMPENSATION IN CROSS-BORDER CONTEXT:

<https://bit.ly/2S09BGE>

“LEGAL ASSESSMENT: COMPENSATION PRACTICES”:

<https://bit.ly/2A4BSEp>



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

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*Providing better access to and realise the rights for victims of THB: an analysis of the EU Victims' Rights Package and the way forward to ensure that victims are identified and treated as "rights holders"*

Trier | December 2018





Convention on the Elimination of all Forms of Discrimination Against Women

Convention on the Rights of the Child

ILO Forced Labour Convention and ILO Worst Forms of Child Labour Convention

Convention Against Transnational Organised Crime

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children



Council of Europe Convention on Action against Trafficking in human Beings



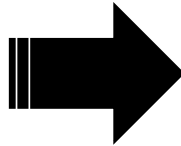
Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims



Council Directive 2011/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime

# trafficking in human beings

most victims  
are never  
identified



most victims don't access the assistance  
and protection they are entitled to



Trafficking in human beings is the largest and fastest  
growing criminal industry in the world.

# trafficking in human beings

complex characteristics of the crime

probative demand

lack of sensitivity of legal practitioners

restrictive interpretation of the law

lack of consideration for the characteristics and particularities of THB cases – e.g. effectiveness of coercion methods; victims' psychological condition

low number of identified cases and low number of convictions

# trafficking in human beings



Correct identification of victims of Human Trafficking at an early stage is the first step towards making sure they are treated as rights holders and effectively exercise their rights

it is thus essential to

- invest in training of professionals who have responsibilities in this area
- involve other actors that are not usually called upon

local/municipal government officials

healthcare staff

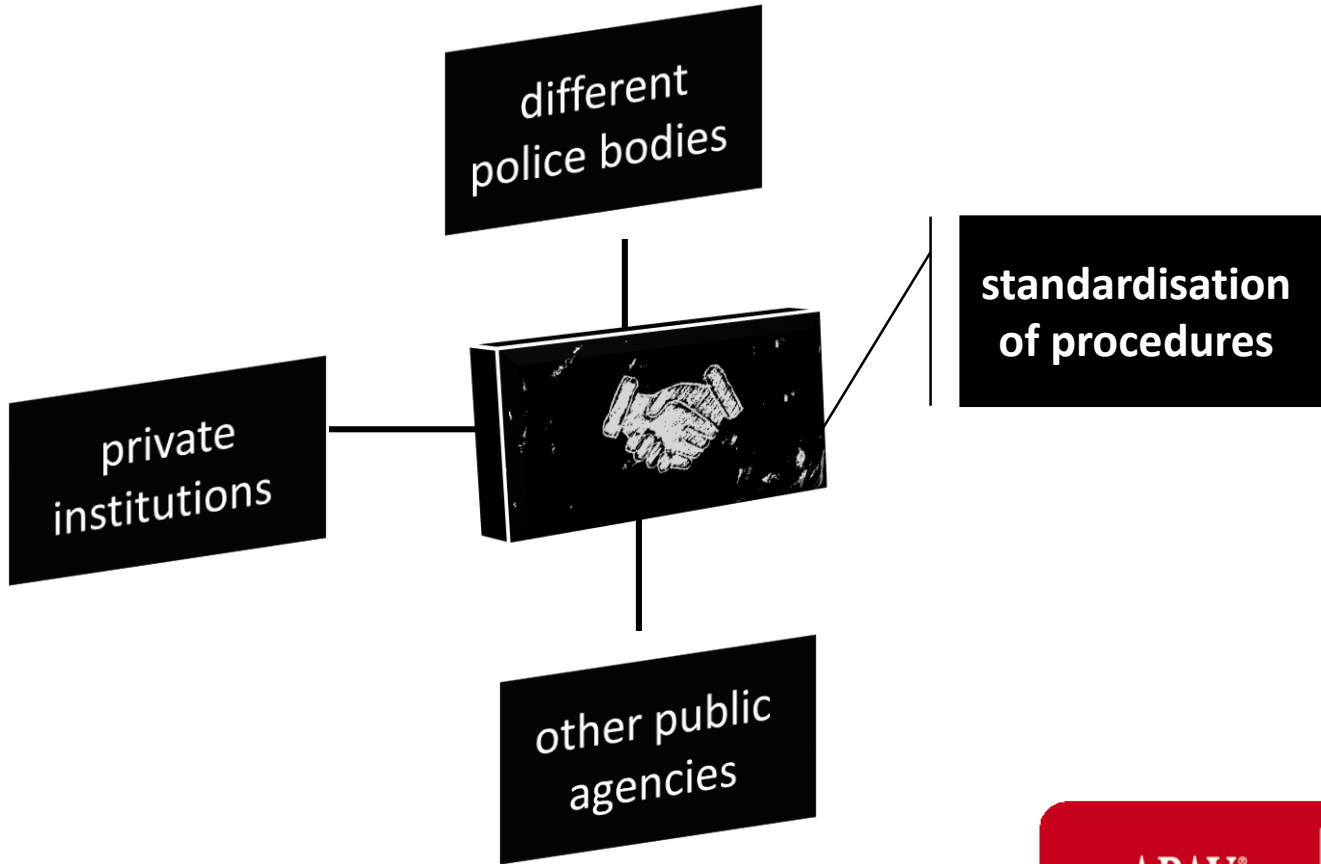
social workers

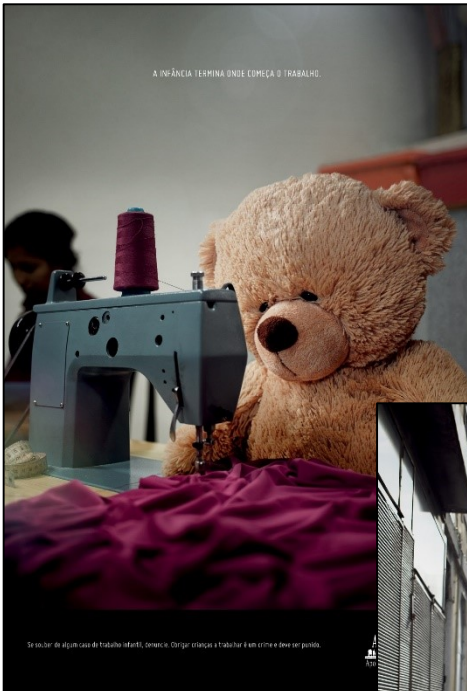
public offices and services

private employment agencies/companies

trade unions

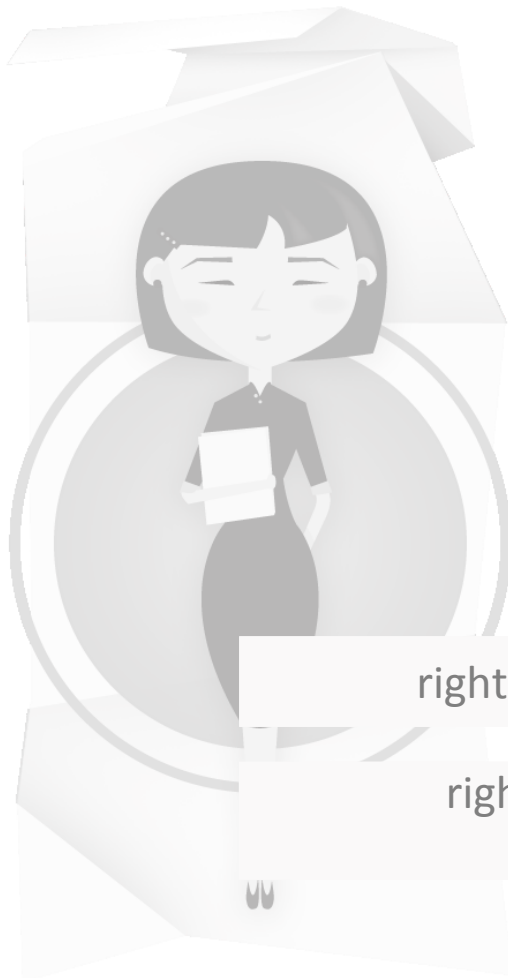
# THB multidisciplinary teams





# THB victims' informed exercise of rights

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right to understand and be understood

right to translation and interpretation

right to access victim support services

right to protection during proceedings

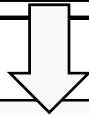
right to legal counselling and representation

right to compensation for victims of violent  
intention crimes

# THB victims' informed exercise of rights

10

Right to a resident permit for third-country national, assistance and access to victim support services CANNOT be dependent on utilitarian requirements



- . the need for the victim to stay in national territory in the interest of the investigation and judicial proceedings;
- . clear willingness to cooperate with the authorities in the investigation and prosecution of human trafficking

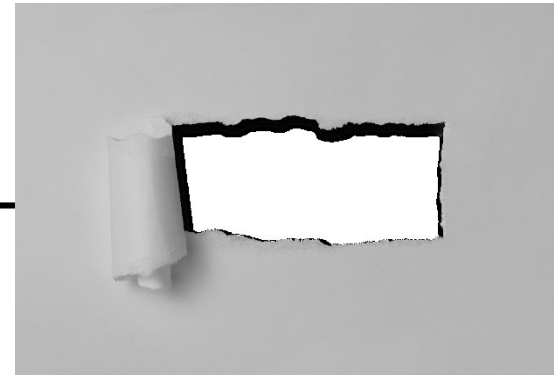
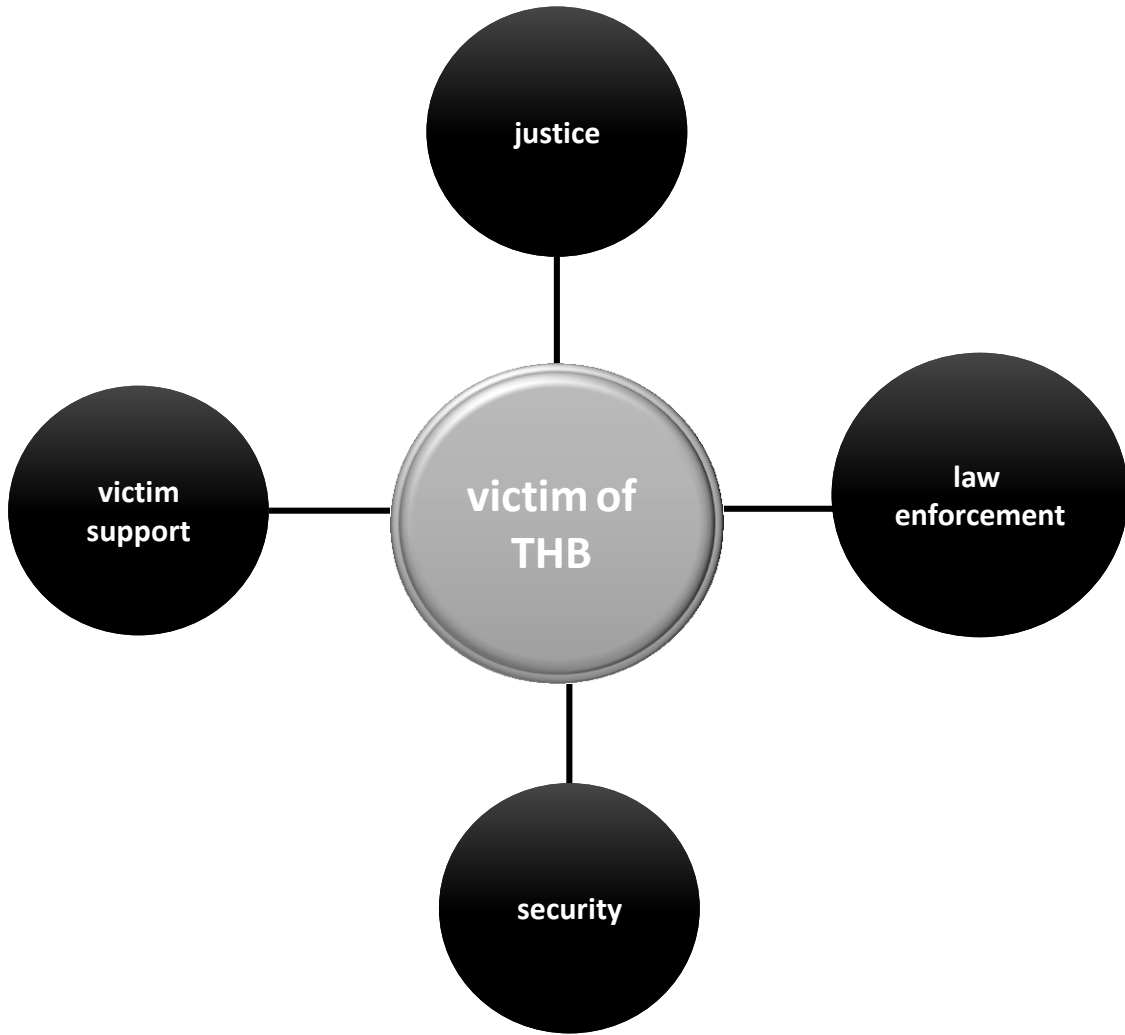




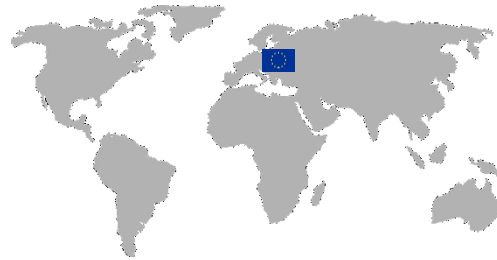
**GRETA's country evaluation reports clearly identify the need for a clear institutional and procedural framework for the return and repatriation of victims of human trafficking, having regard to their safety, protection and dignity.**



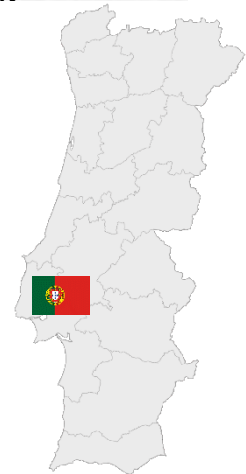
# THB victim focused approach



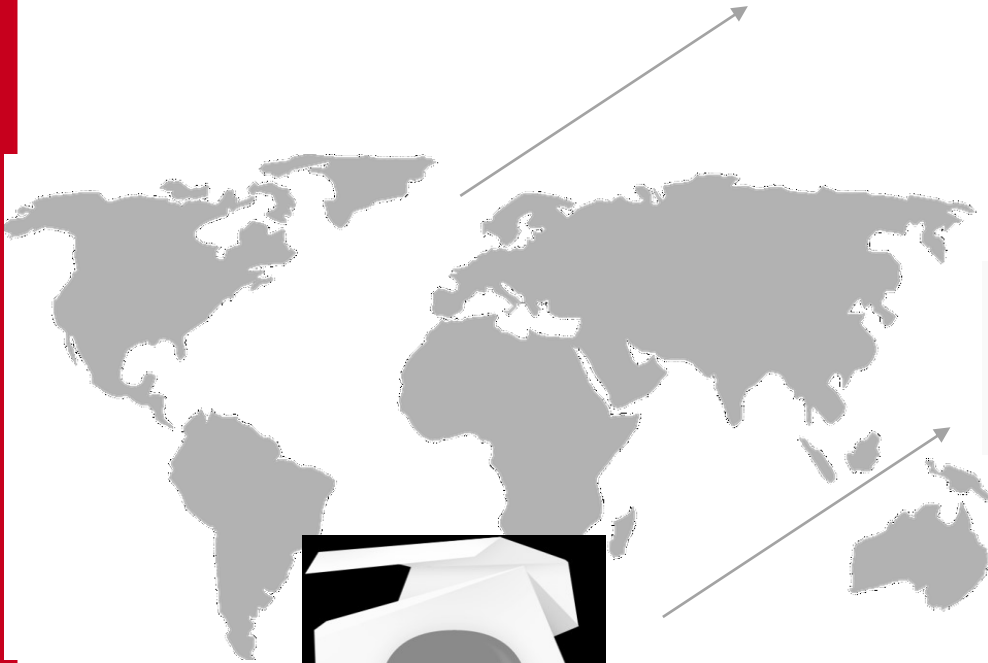
- human rights based
- gender-specific
- child-sensitive



- Gratuity of all medical care from the National Health System and gratuity of all fees resultant from the administrative proceedings related to the residency status;
- Financial support aiming the victim's autonomisation, in a manner similar to domestic violence victims;
- Creation of a pilot-project shelter center specifically for children victim of trafficking in human beings.



Global political, social and structural changes that can keep up with the multifaceted complexities and its transnational and ever-changing nature



Ensure true change and improvement on the support given to victims



# obrigado

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portuguese association for  
Victim Support

**Karin Janssen**

**Public prosecutor THB from the Netherlands,**

**At the moment: seconded prosecutor IPA 2017 in Albania.**

**OPENBAAR MINISTERIE**

Trier, 13 december  
2018

**UPHOLDING THE PRINCIPLES OF NON-PUNISHMENT AND NON-PROSECUTION AND UNDERLINING THE NEED FOR EFFECTIVE COOPERATION BETWEEN THE JUDICIARY, THE POLICE AND OTHER ACTORS WHEN PROTECTING AND ASSISTING VICTIMS.**



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



# SUBJECTS:

## 1) NON-PUNISHMENT AND NON-PROSECUTION;

- PRINCIPLES AND LEGAL BASIS;
- EXAMPLES AND CASE LAW;
- IN THE NETHERLANDS AND INTERNATIONAL;
- SOME OBSTACLES;

## 2) EFFECTIVE COOPERATION BETWEEN AUTHORITIES IN ASSISTING AND PROTECTING VICTIMS;

## Non-prosecution/ non-punishment

Starting point is prosecution. In cases where it is evident that the victims were forced to commit criminal offenses the options are, for instance, deciding not to prosecute or requesting the court to convict without imposition of any punishment.

The decision not to punish the perpetrator (a victim of human trafficking him- or herself) can be made in case of self defense/ excess/psychological force majeure.

Although the formal requirements of an offense are met and a justification or exculpation ground in the strict sense is lacking, is the occurred such an edge case that prosecution or punishment would be disproportionately.

# Non-punishment principle

## Content of this rule:

- An international principle
- Protection of victims of exploitation
- If the person on the basis of a national act or on the basis of international provisions can be appointed as a victim, the victim can refer to the non-punishment principle.
- The offenses must be sufficiently directly related to the exploitation

## **Non-punishment principle**

### **Rationale:**

- Avoid further victimization: risk of being deported, detained or prosecuted
- Detection of the original offense
- To protect the human rights of victims

# Legal basis

The first legal basis of the non-punishment provision:

- **Convention of Warsaw (Council of Europe Convention on Action against Trafficking in Human Beings), art. 26**  
*“Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of **not imposing penalties** on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so”.*

In 2011, the provision is further expanded. Also, the possibility of non-prosecution is specifically mentioned by this directive:

- **Directive 2011/36/EU, art. 8**  
*“Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled **not to prosecute or impose penalties** on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.”*
- **Protocol of 2014 to the Forced Labour Convention, 1930, art. 4 sub 2**  
*Each Member shall, in accordance with the basic principles of its legal system, take the necessary measures to ensure that competent authorities are entitled not to prosecute or impose penalties on victims of forced or compulsory labour for their involvement in unlawful activities which they have been compelled to commit as a direct consequence of being subjected to forced or compulsory labour.*

## Protection of victims (Rantsev case)

The protection of victims is an essential element in combating trafficking in human beings. The ECHR emphasizes the importance of a victim-centered approach in the “Rantsev” case:

- States must adopt an effective policy against combating trafficking
- Preventive measures
- Protection and assistance of victims



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

# Non-punishment (and non-prosecution) in the Netherlands

**From 1 May 2014, a specific Directive for the decision not to punish a person who is a victim of trafficking in human beings comes into force.**

The decision not to punish a victim, based on this Directive, can be made in case of:

- 06: In case of self defense/excess/psychological force majeure
- 42: Although the formal requirements of an offense are met and a justification or exculpation ground in the strict sense is lacking, is the occurred such an edge case that prosecution would be disproportionately.

## **Other options:**

Art. 9a Dutch Criminal Code (CC): the opportunity for the judge to convict a person without punishment.

Judge can consider it as a circumstance beyond one's control (no convict or punishment)

Judge can reduce the sentence

# Example non-punishment: Amsterdam Court of Appeal ECLI:NL:GHAMS:2017:2889

In this case, a woman was accused of assisting the main suspect (G.K.) with exploitation of others for the period of one year.

- She was victim of THB for 9 years.
- She was forced into prostitution, and had to hand over her earnings.
- She was in love with the main suspect (G.K.).
- She declared she was unable to find 'a way out'.
- Her daughter lived with the mother of the main suspect (G.K.).
- She forced victims (3) into prostitution.
- She forced victims (3) to accept unfavorable conditions, for example they had to hand over a considerable amount of money they earned.
- It seemed money was her only motive
- She played an important (active) role in the enforcement. The victims declared they were most afraid of her.



# Example non-punishment: Amsterdam Court of Appeal ECLI:NL:GHAMS:2017:2889

Several defenses:

- The admissibility of the Prosecutor's Office
- Proof of evidence
- Psychological force
- Art. 9a Dutch Criminal Code (CC)

## Examples non-punishment in other States:

**Argentina Law, 26.364**, Prevention and Criminalization of Trafficking in Persons and Assistance to Victims of Trafficking of 2008, Article 5

*“Victims of trafficking in persons are not punishable for the commission of any crime that is the direct result of having been trafficked.”*

**United States**, Victims of Trafficking and Violence Protection Act of 2000, Sect. 112

*“Penalties for the crime of unlawful conduct with respect to documents in furtherance of trafficking, peonage, slavery, involuntary servitude, or forced labour do “not apply to the conduct of a person who is or has been a victim of a severe form of trafficking in persons, [...] if that conduct is caused by, or incident to, that trafficking.”*

**Philippines**, Anti-Trafficking in Persons Act (RA No. 9208) of 2003, Sect. 17

*“Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking [...] or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.”*



# From non-punishment to non-prosecution

## Non-prosecution - legal basis

- **UN Resolution A/RES/55/67**

*13 - "Also invites Governments to consider preventing, within the legal framework and in accordance with national policies, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entry or residence, taking into account that they are victims of exploitation";*

- **Directive 2011/36/EU**

This EU-directive elaborates on the Convention of Warsaw by introducing non-prosecution.

*Art. 8 - Non-prosecution or non-application of penalties to the victim "Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled **not to prosecute** or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2."*

- **The Netherlands: The principle of opportunity, art. 167 section 2 Dutch CC**

The right of the Public Prosecutor to prosecute or to drop a case.

- **The Netherlands: Directive on trafficking in human beings (2013A012 )**

Starting point is prosecution. In cases where it is evident that the victims were forced to commit criminal offenses the options are, for instance, deciding not to prosecute or conviction without imposition of punishment.

## **Example non-prosecution: Amsterdam district court, ECLI:NL:RBAMS:2017:4871**

- The perpetrator/victim was a female prostitute.
- Together with her husband, she forced the victim into prostitution (7 days a week from March until October 2011).
- She was aware that the main suspect beat the victim.
- She threatened to send the victim back to the Hungarian mafia (victim had told her she was exploited by the Hungarian mafia before she arrived in Netherlands).

## **Example non-prosecution: Amsterdam district court, ECLI:NL:RBAMS:2017:4871**

- It was argued that double victimization should be prevented.
- It was argued, on the basis of Directive 2011/36/EU that victims of THB cannot be prosecuted when their criminal activities are a direct consequence of being subjected to THB.

# Obstacles

- **A new strategy for perpetrators:**  
perpetrators use minors, because minors can not be penalized.
- **Non-prosecution in other nations:**  
Some nations don't have the legal possibility to apply the non-prosecution provision, because the Public Prosecutor must prosecute a suspect of trafficking in human beings, also when he is a victim of trafficking in human beings.

# Effective cooperation between authorities in assisting and protecting victims

- Legal basis
- First contact
- Costs of victims' assistance
- Special victim protection
- Victim support services

# Legal Basis

## **Directive 2012/29/EU**

- Some important changes:
  - Referral of victims to victim support services.
  - Family members have access to victim support services.
  - Victims may receive translation, free of charge, on request.
  - Victims have a right to receive information from the first contact with a competent authority.
  - Victims have a right to receive certain information about the criminal proceedings, for example when the decision is made not to proceed or end an investigation.

## **The Netherlands: Directive on trafficking in human beings (2013A012)**

- Important topics:
  - The Public Prosecutor has to inform victims of all important decisions made in the criminal proceedings.
  - Right of victims to have a solicitor and/or interpreter.
  - Right of victims to examine the content of procedural documents and to receive information about the progress of the case.
  - Support of the Prosecutors Office in receiving tangible and intangible compensation.
  - Right to speak or give a written statement at the trial.
  - Information about the (conditional) release of the suspect/convict.



# First contact

## **The Netherlands: Directive on trafficking in human beings (2013A012 )**

- Informative talk ('intake') between victim and investigative authorities.
  - Victims receive information about criminal procedures and the investigative authorities receive information about the what/how/when/why etc.
  - Victims are informed about victim support services.
  - A transcript is made of this conversation. This transcript is however, in most cases, not part of the procedural documents.

Competent authorities can start an investigation without a decision of the victim whether to proceed.

## **The 'intake' can result in an official report of the crime.**

- The Netherlands: Directive on auditive and audiovisual registration of interrogations comes into force.
- Competent authorities can start an investigation without a decision of the victim whether to proceed.

# Special victim protection

## Foreigners:

- **The Netherlands: Directive on trafficking in human beings (2013A012)**
  - This directive contains special protection for victims who do not have the Dutch nationality.
  - B8/3 procedure

## Children (<18):

- **UN Convention on the Rights of the Child, art. 3.1:** "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration foreigners."
- 13 Oceans:
  - Victim support services, such as BNRM, CoMensha, the Ministry of Justice and Security, RvdK, LdH and Defence for Children worked close together with police and the Public Prosecutor throughout the proceedings.



Ministerie van Sociale Zaken en  
Werkgelegenheid

## Some authorities involved in the fight against THB

Some examples:



Ministerie van Veiligheid en Justitie

Gemeente ?



Police

ISZW

NIBUD

Fier



Immigratie- en Naturalisatiedienst  
Ministerie van Veiligheid en Justitie



Ministerie van Buitenlandse Zaken



Ministerie van Binnenlandse Zaken en  
Koninkrijksrelaties



Koninklijke Marechaussee



de Rechtspraak



comensha  
mensenhandel in beeld



Ministerie van Volksgezondheid,  
Welzijn en Sport

## **Statements:**

### **Statement 1.**

When can a victim of THB be qualified for the non-punishment principle and in which cases should a victim be punished?

### **Statement 2.**

Perpetrators use minors, because minors can not be penalized.  
In which way can this be discouraged?

### **Statement 3 (case).**

Three women from China were approached by a man. The man could smuggle them to the USA and promised the women that they would earn a lot of money. During a stopover at Schiphol, there was another woman with false passports. The woman provided the false passports to the women so they were able to continue the trip. Shortly after that, the women were arrested on suspicion of complicity of an attempt to possess a false passport.

Results of the interrogations

The three women had to pay a lot of money for the trip

They didn't know their final destination

They didn't know what kind of work they had to do in the USA

The man who organized the trip told them that they had to work 4 years for their return journey.

Attorney: the women were afraid for the criminal organization that arranged the trip. For that reason the three women didn't want to make a statement at the police.

At the hearing the attorney referred to the non-punishment principle.

**Question: What do you think? Can these three women be regarded as a victim or as a suspect?**

### **Statement 3 (outcome).**

The three women were convicted: 4 weeks of prison (two weeks were conditional)

Why?

The women didn't report to the police

No cooperation with the public prosecutor

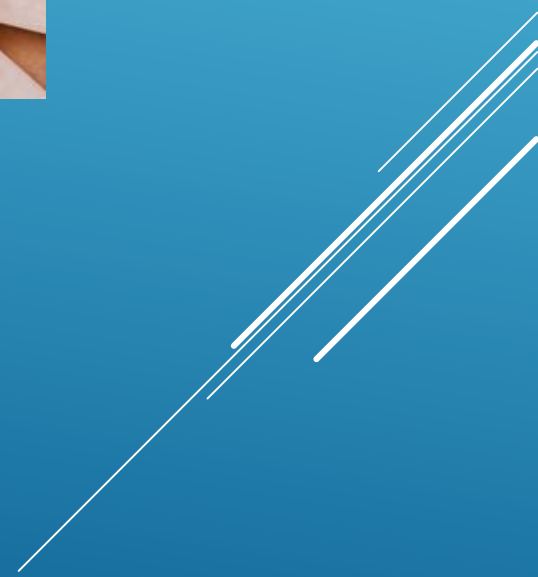
Result: They were not qualified as victims of trafficking in human beings, so the appeal on the non - punishment principle wasn't successful.

**Statement 4 (discussion).**

In what way are the principles of non-prosecution and non-punishment currently implemented in your country?



COMBINE FORCES AND  
KNOWLEDGE:







AWARENESS OF THE PUBLIC:

**QUESTIONS ?**

**Thank you for your attention !**

A decorative graphic consisting of several parallel white lines of varying lengths, arranged in a diagonal pattern from the bottom right towards the center of the slide.



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

# Working for a change: Regulatory measures, national models and (expected) impact on demand (reduction) in relation to THB for sexual exploitation

Results from the pan-European project



# Agenda

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DemandAT project overview: the concept of *demand*

---

Research on prostitution policies (in the context of DemandAT)

---

Problems with existing classifications

---

Repressive – Restrictive – Integrative: Intentions, policy instruments, impact and mode of governance

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Main properties of ideal types (overview)

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Findings

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## DemandAT: Demand-side Measures Against Trafficking

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- ✓ Clarified the meaning and relevance of demand in different policy areas
- ✓ Examined demand-side approaches in the context of trafficking in human beings
- ✓ Contributed to a better formulation of anti-trafficking policies addressing demand
  
- ✓ **Phase I:** theoretical analyses of the concept of demand (Vogel, 2017) and different types of policy interventions (Boswell and Kyambi, 2016) with a mapping of policy debates (Cyrus and Vogel, 2015; Cyrus 2015) and implemented policies across a large range of countries (Rogoz et al., 2016)
  
- ✓ **Phase II** focused on in-depth studies of particular fields (domestic work, sex work) and approaches (supply chains, law enforcement and information campaigns)
  
- ✓ **Phase III:** integrated approach and policy recommendations

## Concept of *demand*

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- Conceptually, the study suggests limiting the meaning of the concept of demand to its core economic meaning, i.e. the willingness and ability to buy a good or a service (Vogel, 2017)
  - What good or service is purchased and/or on what market?
  - Market interactions are not the most important for understanding THB
  - The focus is then on how market transactions (such as the purchase of specific goods by consumers) are linked to situations of trafficking
- Phrases such as “demand for trafficking in human beings” should be avoided, since trafficking is not a good or a service

## Research on prostitution

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- Concepts of “trafficking in human beings” and of “demand” are strongly linked with prostitution policies from a historical perspective
- In current debates, the reference to demand in the context of trafficking is discussed to a large extent in relation to the sex work sector
- Understand how demand for sexual services is addressed in different types of prostitution policies and
- Compare their potential impacts, particularly with regard to exploitation and trafficking in human beings in the sex work sector
  - Comparative research on ways in which demand-side measures operate in Sweden, Germany and New Zealand
  - Qualitative empirical research with Swedish men who purchased sexual services
  - Tripartite policy typology using the categories: repressive, restrictive and integrative

## Final DemandAT workshop in Brussels, May 2017





## Problems with existing classifications

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Prohibitionism – Abolitionism

Criminalisation – Regulation/Legalisation – Decriminalisation

Prefix (neo-abolitionism) or qualifying descriptions (e.g. de jure, de facto)

Cover parts of policy only

No consensus in meaning and application

=> obstructs discussion, impact assessment and policy improvement

=> need for clear classification to analyse, compare and evaluate policies

(Östergren, 2017b)

Suggestion of a tripartite typology: repressive, restrictive, integrative

# Repressive – Restrictive – Integrative

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## Intentions

- Understanding of prostitution, ideological justification, stated aim
- How Sex work is governed on the ground: “What is the sum of what the policy is intending to accomplish?” (Östergren, 2017a: 9)
  - To eradicate or limit the sector primarily through criminal law?
  - To integrate the sector into society through labour laws?
- 2 opposed views: commercial sex is seen either as a negative social phenomenon in itself (which should therefore be eliminated or restricted) or as a multifaceted phenomenon which includes negative elements (which are best dealt with by integrating it into the societal framework)

# Repressive – Restrictive – Integrative

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## Policy instruments

- Directed towards the sex work sector: laws, local ordinances and social initiatives, as well as the dominant discourse
- Criminal law used to discourage or prohibit 3<sup>rd</sup> party involvement, the sale and/or purchase of sexual services
- Zoning laws or licensing systems
- Labour, commercial and administrative law that regulates employment rights in the sector
- Rehabilitation programs for those who buy sex

# Repressive – Restrictive – Integrative

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## Impact

- Impact on the legal status of the *sector* and on its *participants*
- Dependent on how the policy is implemented by authorities in charge
  
- More than a law-on-paper perspective:
  - Implementation and
  - How the sector and its participants are regarded in society
  
- The impact to be assessed based on the actual consequences of policy instruments

# Repressive – Restrictive – Integrative

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Mode of governance (Wagenaar 2017 in Östergren 2017)

- Adversarial
  - Public agencies make decisions and impose their will on non-state actors
  - Ad-hoc cooperation, little to no effort to transform existing conflicts into cooperation
- Managerial
  - Public agencies may consider the views of non-state actors, consult them, but they are not included in the decision-making process
  - Decisions made unilaterally or through closed decision processes
- Collaborative
  - Public agencies reach out and engage with stakeholders in formulating and implementing policy
  - Collective decision-making process, formal, consensus-oriented and deliberative

## Findings (Östergren, 2017b)

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### Different policies tackle demand differently

- Sweden: Client criminalisation, awareness-raising campaigns to deter purchase
- Germany: Initiatives encourage cooperation btw. clients, agencies, NGOs & authorities
- New Zealand: Empowering sex workers (laws prohibiting client-pressure to provide service), influence intermediaries (codes of conduct), police liaisons (collaboration etc.)

### Quantitative impact on sector and THB is unknown

### Client criminalisation might be an obstacle to detect, report and prevent

- Depends on clients' individual ability to identify crimes, sense of individual responsibility and willingness to risk being charged when reporting crimes

### Policies influence relationship btw. participants and authorities

- Germany and New Zealand: Increased trust
- Sweden: Lack of trust

	<b>Repressive</b>	<b>Restrictive</b>	<b>Integrative</b>
Understanding	Negative social phenomenon	Negative social phenomenon	Multifaceted, containing negative elements
Governance mode	Adversarial	Adversarial/managerial	Collaborative
Intention	Eradicate sex work in order to protect society (and sex workers)	Restrict sex work in order to protect society and/or sex workers	Integrate in order to protect sex workers from stigma, violence and exploitation
Ideology	Religious, moral harm or radical feminist	Religious or moral harm	Rights based
Policy instruments	Criminal law prohibiting selling and/or purchasing sex, and third party facilitation. Campaigns aimed at deterring the sale and/or purchase of sex Exit, or behaviour rehabilitation programmes for those selling and/or purchasing sex.	Criminal law, bylaws and local ordinances regulating under which <i>conditions</i> sex sales can take place, i.e. laws against soliciting, zoning laws or licensing systems. Might have criminal law prohibiting third party involvement. Exit, or behaviour rehabilitation programmes for those selling and/or purchasing sex.	Labour, commercial and administrative law that regulates sex workers' employment rights, and specific legislation protecting them from exploitation Detailed implementation directives, and codes of conduct for authorities and operators. Campaigns and initiatives to combat stigma and collaboration between sector and authorities.

## Main properties of ideal types

	<b>Repressive</b>	<b>Restrictive</b>	<b>Integrative</b>
<b>Impact on sector</b>	Sex work sector always operates illegally	Sex work sector can operate legally, but under conditions more restrictive than those of other service sectors	Sex work sector can operate legally under conditions similar to other service sectors
<b>Impact on actors</b>	Sex workers have no access to labour rights Not possible or difficult to access social security systems; to seek social and medical assistance on own terms; to self organise; to collaborate with each other and/or authorities; and to self-regulate	Sex workers have partial or no access to labour rights Might have difficult to access social security system; to seek social and medical assistance on own terms; to self organise; collaborate with each other and/or authorities; and self-regulate	Sex workers have access to labour rights Can seek social and medical assistance on own terms, can self-organise, collaborate with each other and authorities, and self-regulate (i.e. develop codes of conduct and ethical standards)



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**Thank you very much for your attention!**

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# COUNTERING TRAFFICKING IN HUMAN BEINGS, PROTECTING VICTIMS AND ENHANCING FINANCIAL INVESTIGATIONS

ERA, TRIER 13 DECEMBER 2018



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

## DEMAND REDUCTION MEASURES AND THEIR EFFECTIVENESS

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Vice-President of GRETA, Council of Europe Group of Experts on Action  
against Trafficking in Human Beings

## WHAT IS DEMAND?

- Demand for sexual services – clients/customers/pimps
- Demand for labour – hospitality/tourism, construction, agriculture, domestic work, military, clothing manufacture, car washes, nail bars
- Demand for human organs – buyers, medical personnel
- Forced begging?

## WHO IS DOING THE DEMANDING?

- Traffickers
- Customers/clients
- Victims?

## DEMAND REDUCTION MEASURES

- Sexual exploitation
  - Criminalisation of the purchase of sexual services (**including outside national territory**)
  - Criminalisation of knowingly using the sexual services of a person you know has been trafficked – could also be rape
  - Awareness-raising measures
  - Naming and shaming
  - Severe penalties for convicted traffickers

## DEMAND REDUCTION MEASURES

- Labour exploitation
  - Effective, well-resourced labour inspectorates with power to make unannounced inspections of work places
  - Power to inspect private households (very problematic)
  - Awareness-raising in destination countries but also in source countries, of risks of labour exploitation
  - Transparency of supply chains
  - Naming and shaming
  - Severe penalties for convicted traffickers

## DIRECTIVE 2011/36/EU

- Article 4
- THB to carry a maximum penalty of at least five years' imprisonment
- Maximum penalty of at least ten years' imprisonment where victim is particularly vulnerable (including children), where the victim's life was endangered or where the THB was committed by use of serious violence and caused particularly serious harm to the victim
- Problem – where the offence is not prosecuted as THB but as a lesser offence

## ARTICLE 18 - PREVENTION

- Duty to take “appropriate measures” – education, training - “to discourage and reduce the demand that fosters all forms of exploitation” related to THB
- Awareness-raising campaigns, research and education programmes, aimed at reducing the risk of people, especially children, becoming victims of THB
- Regular training for officials likely to come into contact with trafficked persons or those at risk, including police officers, to enable them to identify and deal with trafficked persons and those at risk
- States to at least consider criminalising the knowing use of services “which are the objects of exploitation”

## COMMUNICATION FROM THE COMMISSION OF 2017 –FOLLOW-UP TO THE EU STRATEGY

- Priority A: Disrupting the business model and untangling the trafficking chain – as part of this the Commission will “further encourage those EU Member States, to the extent they have not done so, to criminalise those knowingly using services exacted from victims of trafficking”

## COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

- Article 6 – measures to discourage demand
- Parties to adopt or strengthen legislative, administrative, educational, social, cultural or other measures including
  - Research on best practices, methods and strategies
  - Raising awareness of the responsibility and role of media and civil society in identifying demand as a root cause of THB
  - Targeted information campaigns
  - Preventive measures, including educational programmes



## COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

- Article 19 – criminalisation of the use of the services of a victim
- Parties to “consider” criminalising the use of services which are the object of exploitation, “with the knowledge that the person is a victim of trafficking in human beings”

## EXAMPLES OF GOOD PRACTICE

- Compendium of good practices on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings
  - <https://edoc.coe.int/en/trafficking-in-human-beings/7203-compendium-of-good-practices-on-the-implementation-of-the-council-of-europe-convention-on-action-against-trafficking-in-human-beings.html>rope Convention on Action against Trafficking in Human Beings
- Norway – information campaigns against purchase of sexual services conducted at airports (aimed at young men going abroad)
- Romania – information campaign aimed at target groups and general public about abuse of trafficked persons, methods of recruitment and penalties for THB
- Montenegro – cooperation protocol agreed between Office for the Fight against THB and Union of Employers, aimed at combating THB



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

# FINANCIAL INVESTIGATIONS AND ASSET RECOVERY

13-14 DECEMBER 2018, ERA TRIER GERMANY

IVANKA KOTOROVA - NATIONAML MEMBER FOR

BULGARIA AT EUROJUST

and

EUROJUST OPERATIONS DEPARTMENT

# Outline

1. Use of **Joint investigation teams (JITs)** for financial investigations in THB cases
2. **Main judicial cooperation instruments and tools for asset recovery**
  - Cooperation among EU countries
  - Cooperation with non-EU countries

Including **Eurojust's** experience and findings

# 1. USE OF JITs for FINANCIAL INVESTIGATIONS IN THB CASES

# Financial investigations in THB cases

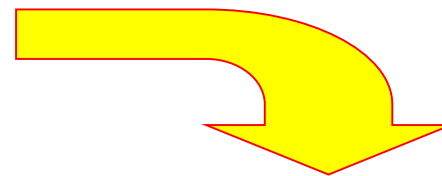
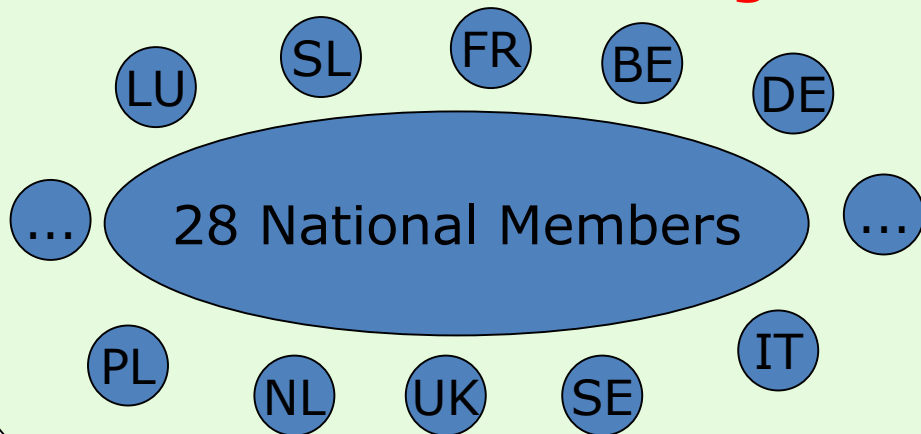
- **EU Strategy on THB 2012-2016 and follow up**
  - “Financial investigations of trafficking cases should be conducted **proactively** by Member States in cooperation with EU agencies, including **Eurojust** and Europol” (2.3.)
- The Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets in accordance with “The Stockholm Programme”

# Advantages of financial investigations

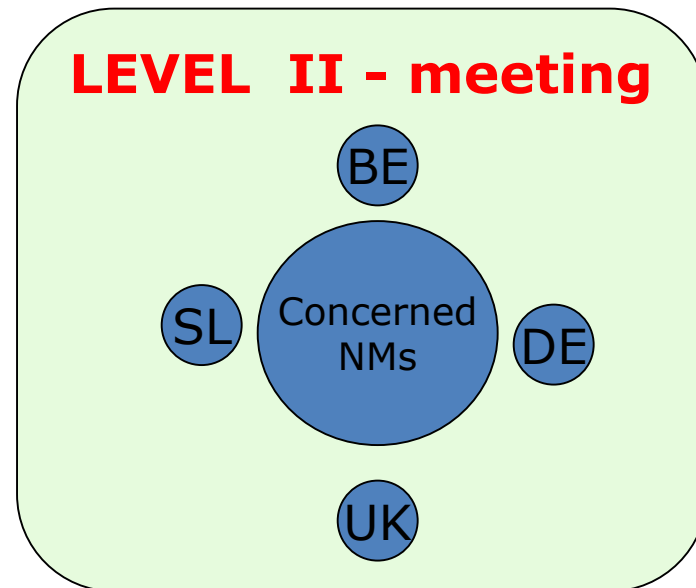
- One of the most important **tools** to effectively fight THB
- Facilitate the investigation of the **entire chain** of trafficking
- Allow **identifying** individuals/criminal network
- Indication of **where** the main suspects are to be found
- **Confiscate** the proceeds from trafficking
- **Reduce** future criminal activity
- Secure civil compensation claims for **victims**
- **Monetary incentive** for investigation and prosecution.

# Identification of suitable cases for JIT Eurojust operational meetings

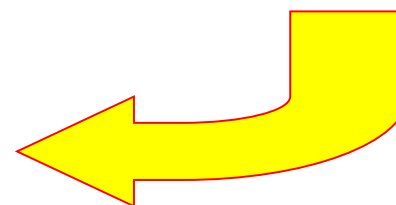
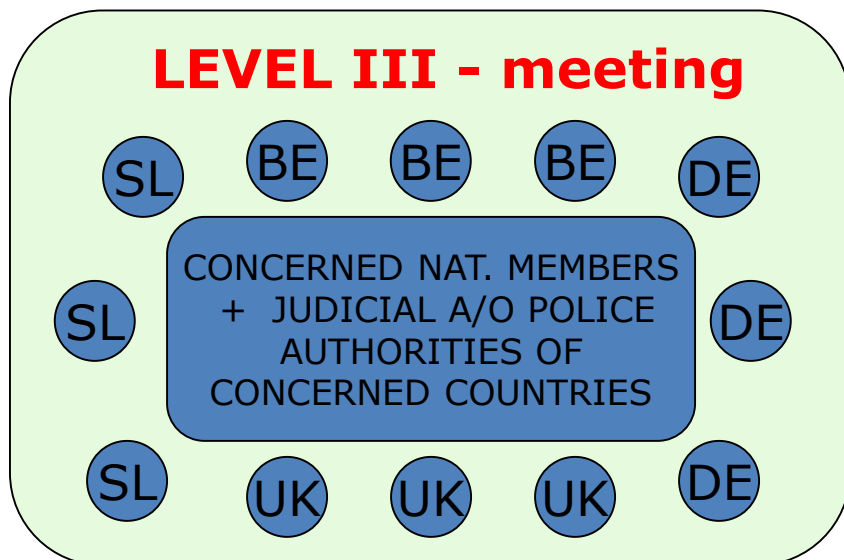
## LEVEL I - meeting



## LEVEL II - meeting



## LEVEL III - meeting



# Joint Investigation Team - why?

- To coordinate investigations cross-border
- To avoid slow mutual legal assistance
- To improve exchange of information
- To speed up investigations
- To share human resources



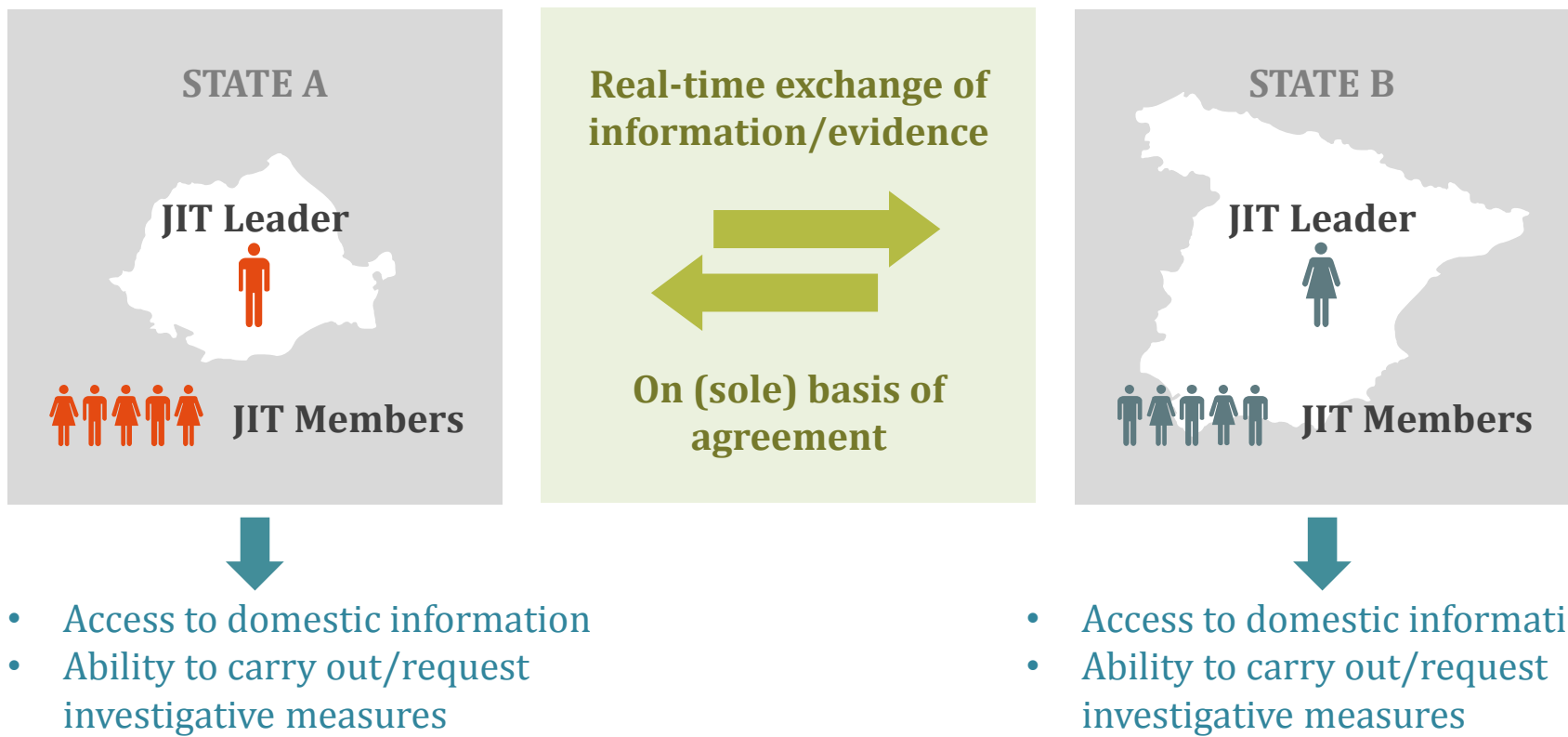


# JITs - LEGAL BASIS

- **2000 MLA Convention**
- **Council FD 2002/465/JHA on JITs of 13.6.2002**
- 2<sup>nd</sup> Additional Protocol to the 1959 European Convention on Mutual Assistance in criminal matters of 8.11.2001
- Convention on Mutual Assistance and Cooperation among customs officers of 18.12.1997 (Naples II)
- UN Convention against Transnational Organized Crime of 15.11.2000 (Palermo Convention)
- Agreement on Mutual Legal Assistance between the EU and the USA of 25.6.2003
- Police Cooperation Convention for South East Europe, 2006

# The JIT concept

## Exchange of information and evidence within a JIT



# Purpose of the JIT

*This section should briefly describe the objectives of the JIT (including collection of evidence, coordinated arrest, asset freezing ...).*

In this context, Parties should consider including the initiation and completion of a **financial investigation** as one of the JIT *objectives*.

*(financial aspects of investigations - 2017 revised model agreement)*

## Model agreement In 2010 and updated 2017

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 11 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000<sup>(1)</sup> (hereinafter referred to as the Convention) and the Council Framework Decision of 13 June 2002 on joint investigation teams<sup>(2)</sup> (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 1.

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<sup>(3)</sup>.

4. Period covered by the agreement

In accordance with Article 1(3) of the Convention and Article 1(1) of the Framework Decision, JIT 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 107, 12.7.2000, p. 1.  
(2) OJ L 162, 29.6.2002, 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. It shall cover the competent authorities which sign the agreement, shall be aware of the content of the OAP. The OAP must be a flexible document containing practical agreements on a common strategy 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 list regarding the points related to the possible content of the OAP is set out in Appendix 01 to the model agreement.

# Composition of the JIT

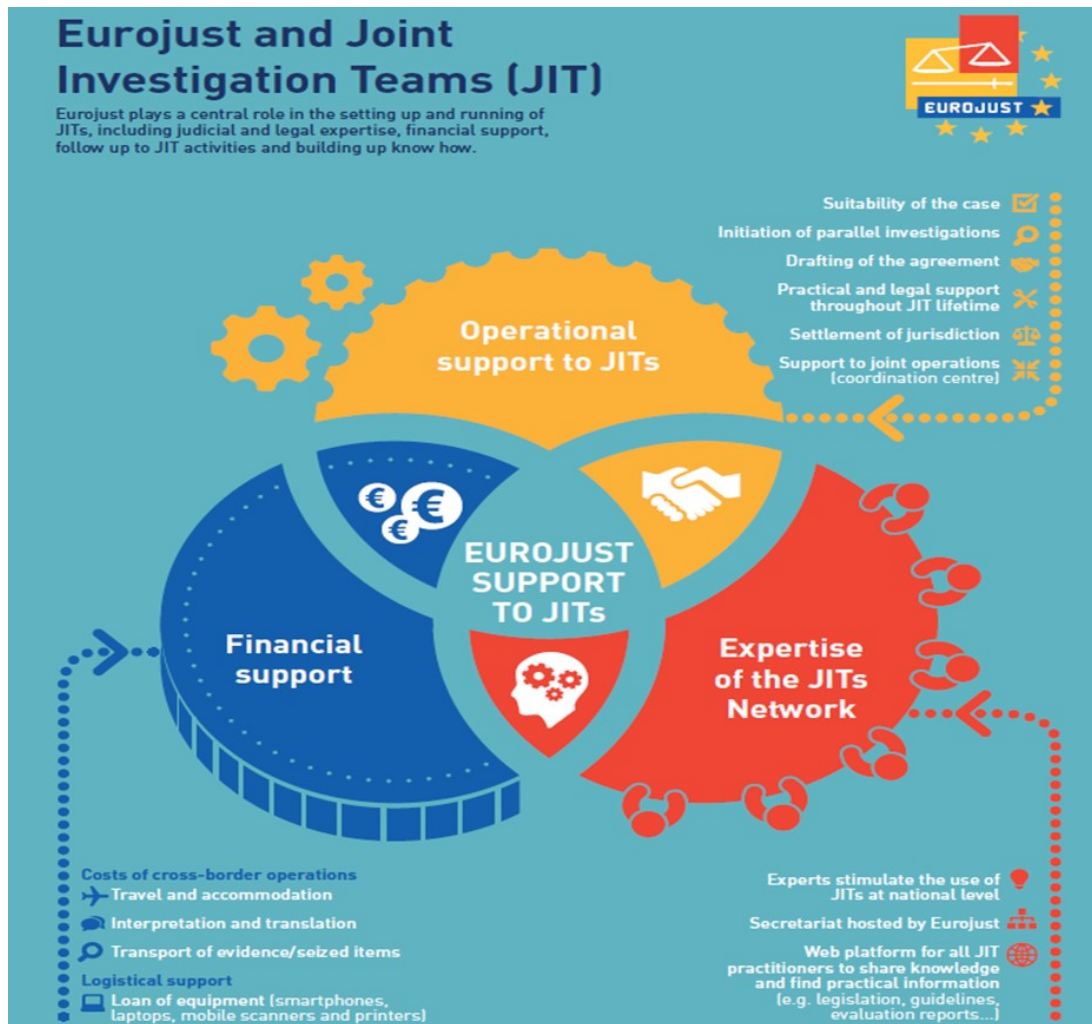
- Competent authorities carrying out the criminal investigation (law enforcement and judiciary)
- Transposition: in some MSs (NL), tax investigating authorities can participate in the JIT, as competent authorities
- *Model agreement*: “...When needed, the JIT may include national **asset recovery experts**”
- Optional: Eurojust, Europol, OLAF



# Eurojust's experience

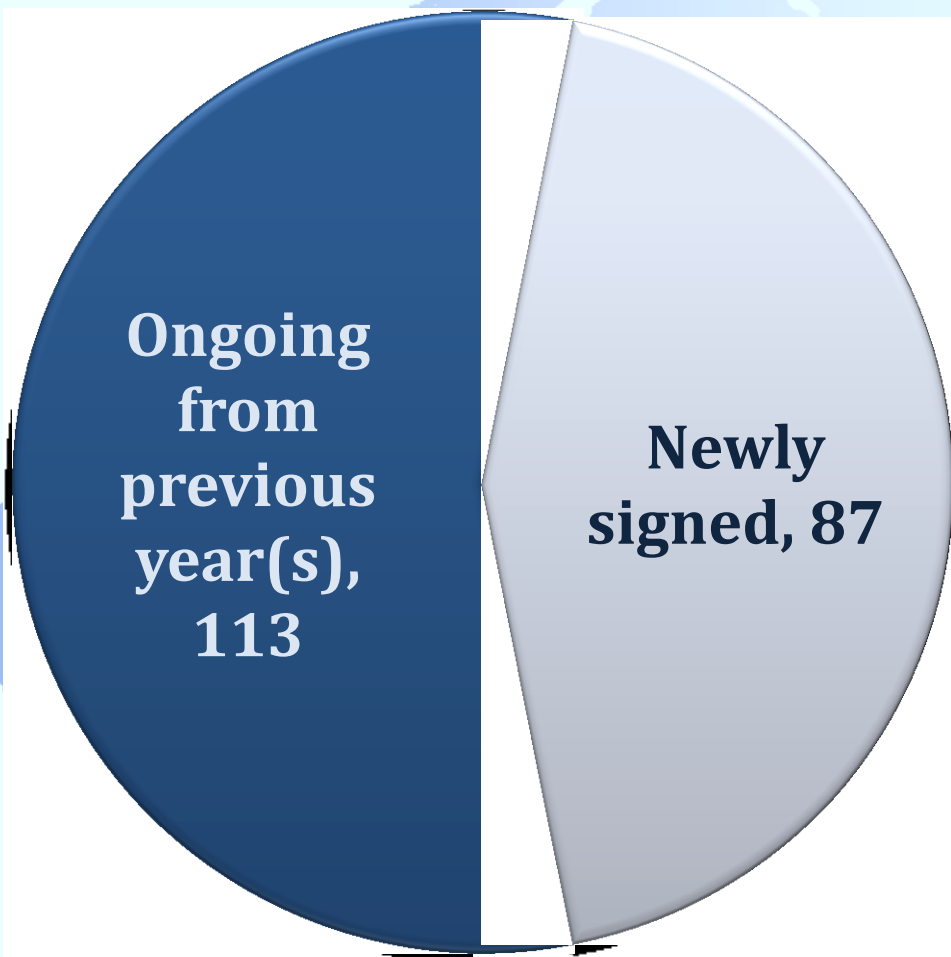
- The need for a **cultural change** in the attitude towards financial investigations, seen as secondary to crim. invest.
- **JITs are used** for the purpose of financial investigations
  - JITs where specific MS are members **always** have an element of financial investigation
  - Purpose of the JIT sometimes referred **widely** (e.g. *dismantle OCG*) to facilitate the extension to other offences and perhaps include “financial investigations”?
- **Financial investigative department** within prosecution services?
- Specialised **training** for police, prosecutors and judges on how to conduct a financial investigation is needed.
- Competent authorities: **tax investigative authorities**

# Support by Eurojust



# JITs 2017 supported by Eurojust

Total JITs supported: 200



**THB, 26**

Swindling and fraud, 19

Drug trafficking, 12

Terrorism, 8

Migrant smuggling, 6

Org. Property crime, 5

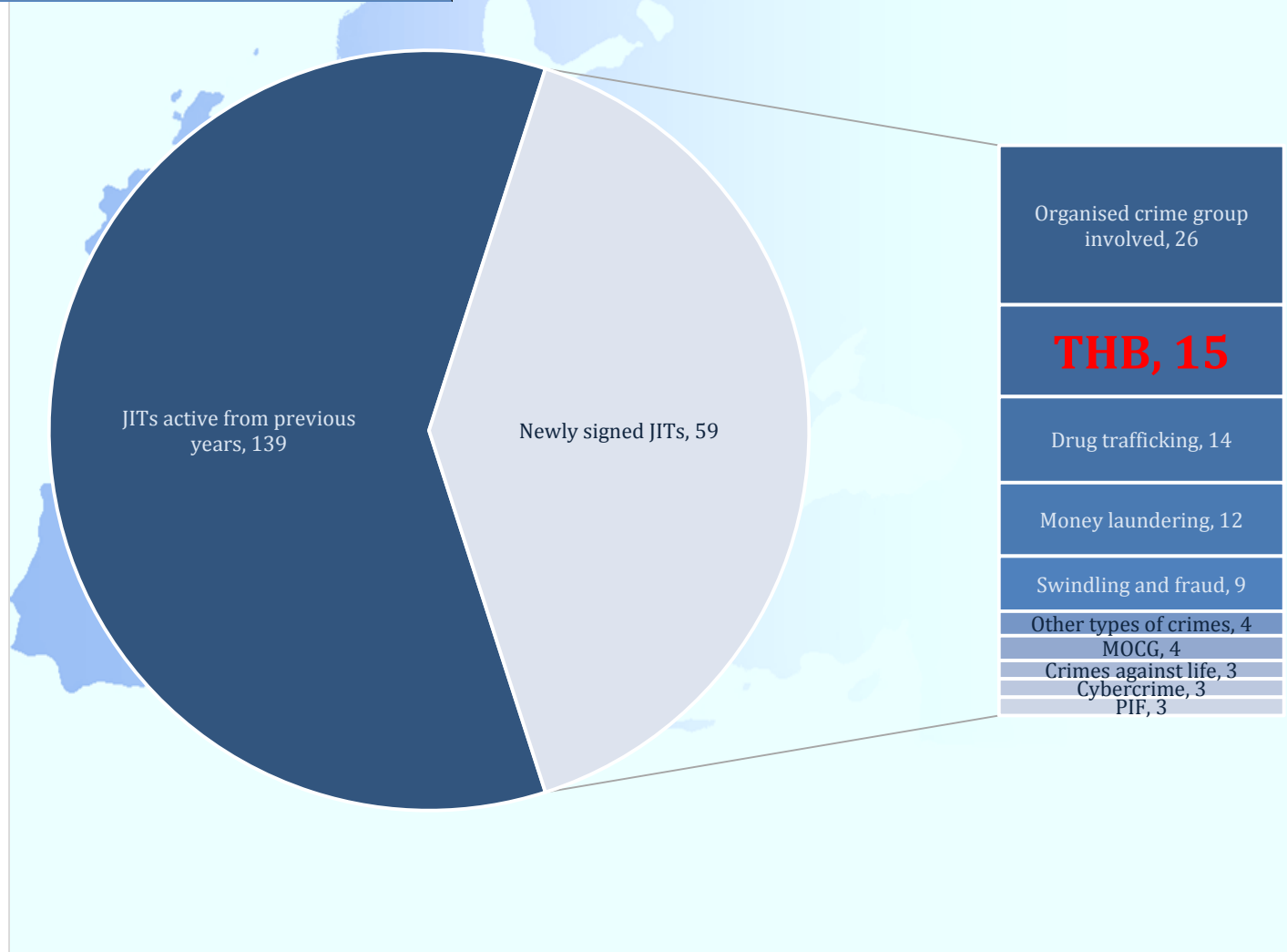
Cybercrime, 4

Corruption, 2

PIE crimes, 1

# JITs January - October 2018

Total of JITs supported: 198





# Examples - JITs in THB cases

- Financial investigation as **one of the purposes** of a JIT was observed in some cases.
- In some MS, JITs always have an element of financial investigation
- In one case, all other objectives of the JIT had been achieved except the financial investigation.
- For this reason, JIT members agreed on its extension.
- In this case, one JIT member required further investigation to establish whether two individuals had:
  - *i*) unjustified resources (on the face of their life style, spending habits and actual income), and
  - *ii*) any type of relation with some of the other suspects in the criminal investigation so that the two persons could be linked to the criminal investigation.

# JIT solely for financial investigations

- Eurojust THB case - four suspects
- Head of OCG was **convicted** and was serving a seven-year sentence.
- **1<sup>st</sup> coordination meeting** at Eurojust took place **after the conviction.**
- Money in 10 bank accounts in MS A (app. **500 000 Euro**), and no explanation for the finances
- WU payments - head of the OCG had a benefit of app. **1 million Euros** laundered out of MS A to MS B, and then to other countries.
- **JIT set up strictly for the financial investigation** – Eurojust support
- **JIT set up after the conviction.** The criminal proceedings had completely finished. The proceedings were quasi-civil; civil because the balance of probabilities was a lower standard of proof than in criminal proceedings.

# JITs Experts Network

- *EU Network of JITs experts* - established in July 2005.
- Since 2010, it has a Secretariat, hosted by Eurojust.

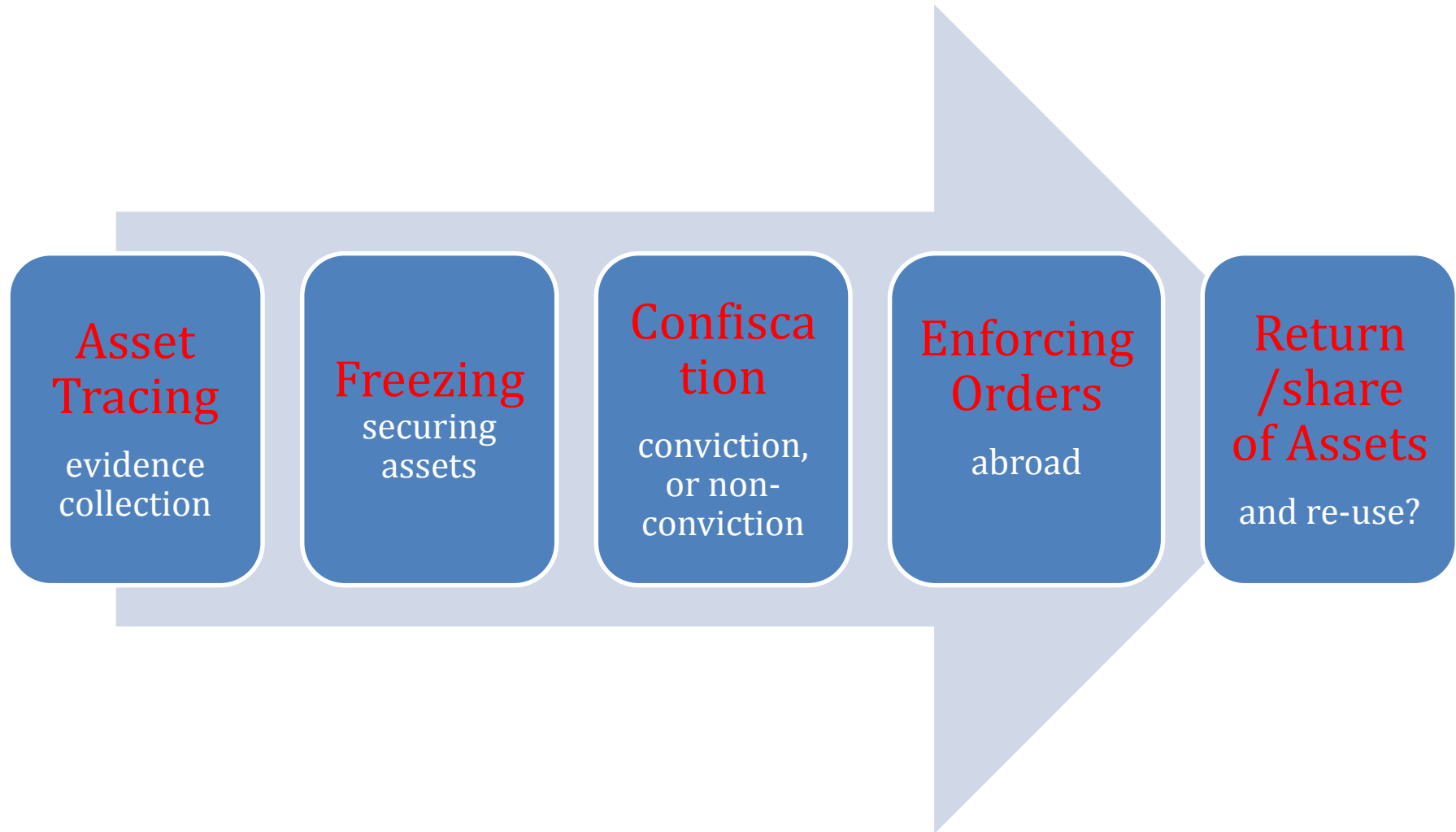


## 2. MAIN INSTRUMENTS FOR ASSET RECOVERY



Asset  
Recovery

# International cooperation is essential



# Challenges to International Cooperation

- Coordination and collaboration with domestic agencies and ministries in multiple jurisdictions with different legal systems and procedures
- Complexity and variety of international instruments
- Different views of interpretation on international instruments
- Civil –Common Law Jurisdictions
- Civil - Criminal Model
- Concern about exchange of information for civil enquiries
- Recognition and enforcement of civil confiscation orders
- Limitations on Disclosure
- Admissibility of Evidence
- Security and Data Protection
- Special invest. techniques + skills to “follow the money” beyond borders
- Ability to act quickly to avoid dissipation of the assets
- Questions regarding asset sharing ...

# COOPERATION AMONG EU COUNTRIES



# Main instruments for cooperation

- **Joint Investigation Teams**

The general **principle of mutual recognition** = all judicial decisions in criminal matters taken in one EU country will be directly recognised and, enforced by another Member State.

1. COUNCIL FD 2003/577/JHA on the execution in the European Union of **orders freezing** property or evidence
  1. COUNCIL FD 2006/783/JHA on the application of the principle of mutual recognition to **confiscation orders**
- *Future: Regulation 2018/1805 on the Mutual Recognition of freezing and confiscation orders (published OJ 28.11.2018)*



# CFD 2003/577/JHA on freezing orders

- It extends the principle of mutual recognition to freezing orders.
- Its purpose is to secure evidence or seize property.
- Can be excluded if it does not comply with the principles of due process in the domestic country.
- It only operates in relation to orders made within the framework of criminal proceedings.

# 2006/783/JHA 6th October 2006. On the application of the principle of mutual recognition to confiscation orders

- Final penalty imposed by a court **following proceedings in relation to a criminal offence** or offences definitive deprivation of property.
- Inter alia, for the purpose of **restitution to a victim**
- Rights granted to the **bone fide** third parties will be preserved.
- **Property** - the proceeds of an offence or either the **full value** or part value of such proceeds, or constitutes the **instrumentalities** of such offence or ...liable due to extended powers of confiscation
- States **can opt in or opt out of extended confiscation.**
- The execution of is governed by the **law of the executing state.**
- If the amount obtained from the execution of the confiscation order is **below €10,000** it stays with the executing state, in all other cases 50% of the amount which has been obtained shall be transferred by the executing state.

# CoE 1990 Strasbourg Convention

## Convention on Laundering, Search and Seizure and Confiscation of the Proceeds of Crime

- Proceeds: any economic advantage from criminality
- Instrumentalities: used to commit the crime
- Confiscation of proceeds only following conviction
- Value based confiscation must be possible
- International cooperation
- Freezing orders pending trial
- Recognition of foreign orders
- Spontaneous exchange of information
- Money Laundering offence

# Directive 2014/42/EU: Overview

- Directive on the Freezing and Confiscation of Proceeds of Crime in the European Union (adopted 3 April 2014)
- **Aim** to establish minimum rules on freezing and confiscation for serious cross-border and organised crime.
- **Did not replace the existing EU legal framework**
- Legal basis of Article 83(1) TFEU so scope limited to 9 serious crime types:
  - Terrorism
  - Trafficking in human beings and sexual exploitation of women and children
  - Illicit drug trafficking
  - Illicit arms trafficking
  - Money laundering
  - Corruption
  - Counterfeiting of means of payment
  - Computer crime and
  - Organised crime.
- Deadline for transposition: 4 October 2016.

# Identification and investigation: STRs and FIUs

- **Fourth AML Directive:** Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing
  - Each Member State is required to **establish a FIU** responsible for receiving and analysing suspicious transaction reports and other relevant information (Article 31).
  - **Cooperation between FIUs:** Member States shall ensure FIUs cooperate to the greatest extent possible and exchange, spontaneously or upon request, any information that may be relevant for the processing or analysis of information by another FIU, even if type of predicate offences possibly involved has not yet been identified (Article 50).
  - **Refusal** to exchange information must be limited to “**exceptional circumstances**” where it would be contrary to fundamental principles of national law (Article 50(3)).
  - **FIUs will receive and analyse suspicious transaction reports**, disseminate information to competent authorities and seek information from obliged entities. FIUs shall also be “empowered to take urgent action” at the request of an FIU in another Member State (Article 31(5)).
  - The definition of “criminal activity” in the 4th AML Directive now includes **tax crimes** relating to both direct and indirect taxes – **predicate offence** (Recital 11)

# COOPERATION WITH NON-EU COUNTRIES



# Instruments for cooperation

- UNTOC United Nations Convention against Transnational Organized Crime
- Council of Europe Convention on Mutual Assistance in criminal matters 1959 (plus Protocols)
- Council of Europe Convention on laundering, search and seizure and confiscation of the proceeds of crime (Strasbourg 1990)
- Other international conventions
- MLA treaties
- Special agreements (for ex., asset sharing agreements).

# Eurojust

## Cooperation agreements and Contact Points





# Contact Information

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## ”Follow the money”

The use of BITCOIN-virtual currency and how it fuels the Human Trafficking Market – a particular challenge for law enforcement in solving THB cases





# Agenda **for today**

**01**

**Let`s see the Romanian law!**

**02**

**The illicit income**

**03**

**Follow the illegal gain**

**04**

**Financial investigation of trafficking in human beings and the use of internet to trace financial flows**

**05**

**AMLD 5 solutions**





# Incrimination of trafficking in human beings in Romanian law





# Romanian Law

## Romania has ratified

- United Nations convention against transnational organized crime and the protocols thereto
- Directive 2011/36/EU OF THE European Parliament and of the council on preventing and combating THB and protecting its victims

## Trafficking in, and exploitation of vulnerable persons

### Slavery art. 209 Penal Code

Pressing of keeping an individual in a state of slavery, as well as the trafficking in slaves shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

### Trafficking in human beings art. 210 Penal Code

(1) Recruitment, transportation, transfer, harboring or receipt of persons for exploitation purposes:

- a) by means of coercion, abduction, deception, or abuse of authority;
  - b) by taking advantage of the inability of a person to defend themselves or to express their will or of their blatant state of vulnerability;
  - c) by offering, giving and receiving payments or other benefits in exchange for the consent of an individual having authority over such person,
- shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

(2) Trafficking in human beings committed by a public servant in the exercise of their professional duties and prerogatives shall be punishable by no less than 5 and no more than 12 years of imprisonment.

(3) The consent expressed by an individual who is a victim of trafficking does not represent an acceptable defense.





# Romanian Law

## Trafficking in underage persons art. 211 Penal Code

(1) Recruitment, transportation, transfer, harboring or receipt of a juvenile for the purpose of their exploitation shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

(2) If such act was committed under the terms of Art. 210 par. (1) or by a public servant while in the exercise of their professional duties and prerogatives, it shall be punishable by no less than 5 and no more than 12 years of imprisonment and a ban on the exercise of certain rights.

(3) The consent expressed by an individual who is a victim of trafficking does not represent a acceptable defense.

## Pressing into forced or compulsory labor art. 212 Penal Code

An act of compelling a person, in cases other than the ones established by the legal stipulations, to work against their will or to compulsory labor shall be punishable by no less than 1 and no more than 3 years of imprisonment.

## Pandering art. 213 Penal Code

(1) The causing or facilitation of the practice of prostitution or the obtaining of financial benefits from the practice of prostitution by one or more individuals shall be punishable by no less than 2 and no more than 7 years of imprisonment and a ban on the exercise of certain rights.

(2) In the event that a person was determined to engage in or continue the practice of prostitution through coercion, the penalty shall be no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

(3) If such acts are committed against an underage person, the special limits of the penalty shall be increased by one-half.

(4) Practicing prostitution means having sexual intercourse with various individuals for the purpose obtaining financial benefits for oneself or for others.





# Romanian Law

## Exploitation of beggary art. 214 Penal Code

(1) An act of an individual who causes a juvenile or a person having physical or psychic disabilities to resort repeatedly to the public's pity in order to ask for material help or benefits from financial benefits from such activity shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine.

(2) If such act is committed in the following situations:

- a) by a parent, guardian, curator or by the person under whose care the begging person is;
- b) by means of coercion,

it shall be punishable by no less than 1 and no more than 5 years of imprisonment.

## Use of underage persons for mendicancy art. 215 Penal Code

The action of a person who is of age and has the capacity to work, who resorts repeatedly to the public's pity in order to ask for material help, by using the presence of a juvenile for this purpose, shall be punishable by no less than 3 months and no more than 2 years of imprisonment or by a fine.

## Use of an exploited person's services art. 216 Penal Code

The action of using the services listed under Art. 182, provided by a person about whom the beneficiary knows that they are a victim of trafficking in human beings or of trafficking of underage persons, shall be punishable by no less than 6 months and no more than 3 years of imprisonment or by a fine, unless such action is a more serious offense.

## Punishing the attempt art. 217 Penal Code

The attempt to commit the offenses set forth by Art. 209-211 and Art. 213 par. (2) shall be punishable.





# Romanian Law

## Child pornography art. 374 Penal Code

- (1) The production, possession for display or distribution, the purchase, storage, display, promotion, distribution and supplying, in any manner, of child pornography shall be punishable by no less than 1 and no more than 5 years of imprisonment.
- (2) If the acts set out in par. (1) are committed using a computer system or other means of data storage, it shall be punishable by no less than 2 and no more than 7 years of imprisonment.
- (3) The act of unlawfully accessing child pornography through computer systems or other means of electronic communication shall be punishable by no less than 3 months and no more than 3 years of imprisonment or by a fine.
- (4) Child pornography means any material that shows a juvenile displaying a sexually explicit behavior or that, even if not presenting a real person, simulate a juvenile with such behavior in a credible manner.
- (5) The attempt shall be also punishable.

## Trafficking in migrants art. 263 Penal Code

- (1) Recruitment, instructing, guiding, transporting, transferring or harboring individuals for the purposes of fraudulently crossing Romania's state border shall be punishable by no less than 2 and no more than 7 years of imprisonment.
- (2) When the act was committed:
  - a) in order to obtain material gain, directly or indirectly;
  - b) using means that endanger the life, integrity or health of the migrant;
  - c) by subjecting migrants to inhuman or degrading treatment,it shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.
- (3) The attempt shall be also punishable.







# Romanian Law

## Creation of an organized crime group art. 367 Penal Code

(1) The act of initiating or creating an organized crime group or of joining or supporting such a group in any way shall be punishable by no less than 1 and no more than 5 years of imprisonment and a ban on the exercise of certain rights.

(2) When the offenses included in the purpose of an organized crime group are punished by life imprisonment or by a term of imprisonment exceeding 10 years, it shall be punishable by no less than 3 and no more than 10 years of imprisonment and a ban on the exercise of certain rights.

(3) If the acts set out in par. (1) and par. (2) were followed by the commission of an offense, the rules on multiple offenses shall apply.

(4) No penalty shall apply to the individuals who committed the acts set out in par. (1) and par. (2) if they report the organized crime group to the authorities before it was discovered and before the commission of any of the offenses included in the purpose of the group.

(5) If the perpetrator of one of the acts referred to in par. (1) - (3) facilitates, during the criminal investigation, discovery of the truth and the prosecution of one or more members of the organized crime group, the special limits of the penalty are reduced by one-half.

(6) An "organized crime group" means a structured group, made up of three or more persons, which exists for a certain period of time and acts in a coordinated manner for the purpose of perpetrating one or more offenses.





**The illicit income:  
FIAT currency vs.  
cryptocurrency**

# Main purpose of the THB offenders

## Obtaining large benefits in a short time

- Usually, the offender will try to hide the illicit income by committing other crimes, like money laundering for dissembling the transactions.
- Traditional FIAT currencies and the scriptural ones have become more easy to trace by the investigators, usually leaving clues, as they are regulated and manipulated through institutions that are subject to governmental regulation. We should not take into consideration for this discussion the organised crime groups that have "cash carriers" or the ones that trade using "HAWALA" methods.
- "HAWALA" is an informal transfer system usually used by migrant smugglers.
- So, as the traffickers search for anonymity, they usually trade with new currencies, using cryptocurrencies.





**Follow the illegal  
gain**

# Let`s discover the Bitcoin



"The one thing that is missing, but will soon be developed, is a reliable e-cash, a method whereby on the Internet you can transfer funds from A to B, without A knowing B or B knowing A"

*1999, Milton Friedman, awarded in Nobel Memorial Prize in Economic Sciences*



Bitcoin was not the first virtual currency. Centralised digital currencies have been coming and going since the 1990s. Yet, its popularity over the last few years has been so great that many people have started using the terms ‘virtual currency’ and ‘bitcoin’ interchangeably.

In 2009, bitcoin emerged as the first decentralised digital currency. This meant that for the first time in history, one person could send a secure payment directly to another without using a third party as an intermediary. To date, bitcoin remains the most important cryptocurrency that boasts over €10 billion in market value. Its increasing adoption allows for a practical legitimate use including investment, trade, person-to-person transactions or payment for goods or services online.

Bitcoin is based on a combination of several technologies, one of which is a public key cryptography dictating that two different keys are required to send and receive transactions. A public key can be distributed to anyone in order to receive a payment while the private key that should only be known to its owner is used to create a signature for a transaction that cannot be forged.

Public key cryptography solves two fundamental problems all digital currencies face:

- It allows users to uniquely identify their addresses in the system.
- It prevents users to spend coins they do not own.

## Key addresses vs. wallets

Both the private and public keys are stored in a bitcoin wallet. One person can possess any number of bitcoin wallets and each wallet can store any number of private keys. These private keys are used to generate public keys. A public key, when hashed, turns into a bitcoin address.

A private key acts as a lock for the bitcoin addresses. The owner of a private key has access to the funds stored on the corresponding bitcoin address. Private keys and bitcoin addresses are commonly stored in a wallet within a **wallet.dat file**. Both file and private keys are perfectly portable. The file can be copied from one drive or USB key to another and the private key can be exported to another bitcoin wallet. All of the above fundamentals apply not only to bitcoin but to other cryptocurrencies as well.

The vast majority of bitcoin addresses are between 30 and 35 characters long and start with a number 1. However, those who have already spent some time looking at the blockchain may also have noticed bitcoin addresses starting with number 3. These addresses are called pay-to-script (P2SH) hash addresses.

For an investigator, it is enough to know that by far the most popular example of a pay-to-script hash address is a multi-signature transaction, where multiple keys have to sign a transaction to release funds — for example, **3KgtbGgaX2ngstNpvyv7LwpHSweVeqGbpM**



# Strings to watch for at the crime scene/ in the suspect's computer



There are three most common representations of the private key:

1. Hex:

1E79423A4ED27608A15A2616A2B0E5E52CED330AC530EDCC32C8F  
FC6A520AED1

2. Private key is longer than the bitcoin address and starts with number 5:

5J3hzQ41KoJX64H5YRTqS9YB9LVGacU2qusL37Ys1eVpJTgnr4u

3. Compressed private key may look similar but starts with either K or L:

KyoPrwwmvSZymMrJLRhePV6jTFFpGU6uMVLv5nQhkMM4dpDKaMgG

In addition, there are three most common representations of the public key or a bitcoin address.

A public key is rarely found. What is usually discovered is a bitcoin address:

1. Public key:

04e2ff72520d37  
d88c61d0bac1c  
aa6fccec4ffefd3  
72d22247686aff  
a1ebdeea52d0  
dd2135

2. Normal bitcoin address:

13mE8VYvGym8Rj  
9ddHoagcNxmDs1  
SAxbNJ

3. Pay-to-script hash bitcoin address:

3KgtbGgaX2ngst  
Npvyv7LwpHSwe  
VeqGbpM



*During the house search, any notes, printed documents or electronic evidence containing strings resembling those above should be collected.*



# Inspecting a suspect's wallet



01

The IP addresses of the nodes the client is connecting to can be found in the standard Bitcoin Core client (Help -> Debug Window -> Peers on both PC and Mac wallet)

02

When inspecting the suspect's wallet, the remote node with the earliest connection time may give the investigator an idea of how long the suspect's wallet was open.

If there is a sign of a recent outgoing transaction, the RAM should be preserved as a priority. It is likely that the password is still stored in the RAM. Since there is no currently way of circumventing the password protection, extraction of the password from RAM significantly increases probability of bitcoin seizure.

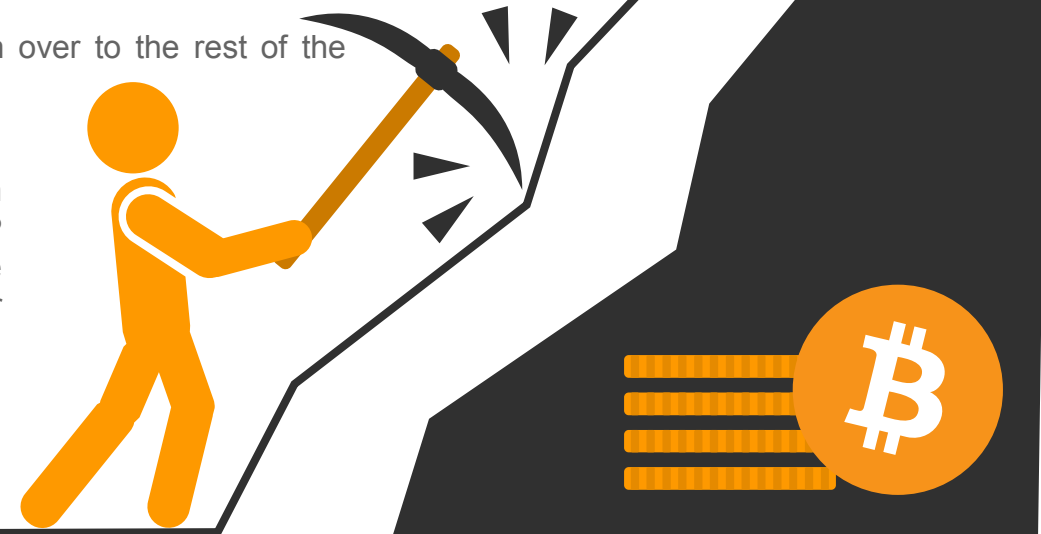
03

To conduct deanonymisation, it would be necessary to open a connection to all bitcoin nodes active in the network and for each transaction to find the IP address of the client that first broadcast the transaction to the network.

Based on how bitcoin works, the first person who sends a transaction over to the rest of the bitcoin network should be the payer.

04

It is recommended that LE does not spend investigation resources on trying to monitor the bitcoin network in order to discover the payer's IP address. Instead, LE should keep in touch with partners in the specialised private sector and academia who may invest in running their own nodes in the bitcoin network.



# Bitcoin wallets and seizure



Identify the suspect and seize bitcoins that were stolen or used to facilitate criminal activities.

Bitcoins are not actually stored 'on' a device; instead, the device stores a wallet that contains the private key that allows the bitcoins to be spent.



## The private key will be controlled:

1. by a wallet installed on the suspect's computer, phone or external storage device including a HW wallet or USB disk;
2. by a paper wallet or being written on a piece of paper;
3. by the third party who manages bitcoins for someone else — usually — or the virtual currency exchanger or online wallet provider. In these cases, the third party may be in control of the private key.

# Bitcoin wallets and seizure



## Software wallets

These wallets provide a graphic user interface (GUI) that allows the users to conveniently check the balance on their bitcoin addresses and the list of recent transactions and to send/receive bitcoins. Some of the most popular software wallets are Bitcoin Core and Electrum. A key difference between the original client Bitcoin Core (previously also known as Bitcoin-Qt) and many other software wallets is that the former requires download of the full blockchain

Most of the other wallets are so-called lightweight wallets that only download the portion of the blockchain that is relevant for the user rather than the full blockchain. Software wallets store wallet.dat file on a local drive. access to the suspect's computer is all that is required to access the bitcoins and transfer them to an LE-controlled wallet

*The light wallets* are particularly popular on mobile devices and smartphones that are short on disk space, computing resources and battery. As the blockchain gradually increases in size, we can expect increasing number of users to move from full to lightweight clients or online or mobile wallets such as Coinbase, Blockchain.info, Xapo or Circle. Since these wallets do not store blockchain locally, they are dependent on third party online services to parse the blockchain and return relevant results to the user's wallet. When a wallet requests specific data, it reveals the bitcoin addresses it stores, which creates a privacy risk and provides an interesting opportunity for a bitcoin investigator.

# Bitcoin wallets and seizure



## Mobile devices

Access to the private keys for mobile wallets requires:

- (a) unlocking the phone;
- (b) opening the wallet application, which may be locked by a PIN/fingerprint verification.

users who own large amount of bitcoins store the majority of bitcoins in paper, hardware or a software wallet and would only use the mobile wallet to store smaller amounts of bitcoin for day-to-day transactions

## Web wallets

Access to web wallets requires knowledge of the username or wallet ID, password and possibly twofactor authentication codes. The best-known web wallet is the one operated by the most popular blockchain explorer [blockchain.info](https://blockchain.info)

## Paper wallets

Paper wallets store private keys completely offline. All that is required for access to bitcoins is the private key that can be printed and stored exclusively on paper. The private key is often accompanied by a public key and corresponding QR codes. Afterwards, the keys are saved to a piece of paper and any files created on the computer can be deleted. . Most wallets allow import of private keys and this option can be commonly seen in File -> Import menu.

## Deterministic wallets

So-called deterministic wallets, which can be either software, online wallets or paper or hardware wallets, derive private keys from a seed, quite commonly in form of 10 to 15 words that may or may not form a sentence. The key advantage of the deterministic wallet for a typical user is the ease of backup and recovery. If the user remembers or writes down the seed to a deterministic wallet, he or she no longer has to worry about unrecoverable wallet files or corrupted hard drive. Instead, he or she may recreate a new wallet from the seed. This would reliably recover all private and public keys from the wallet so the seed can essentially be thought of as the master password. That also means that if an attacker or investigator discovers the seed he or she will gain an immediate access to all bitcoin addresses in the deterministic wallet.

# Bitcoin wallets and seizure



## Hardware wallets

A hardware wallet is a special type of bitcoin wallet which stores the user's private keys in a secure hardware device. This wallet securely stores the private keys so that it cannot be transferred out of the device in plaintext.

How hardware wallets sign transactions:

1. Hardware wallets often receive a transaction from a computer typically via USB.
2. The hardware wallet signs the transaction.
3. The signed transaction is then transferred back to the computer and broadcast to the network.

This process does not reveal a private key. Therefore, this process does not expose the private keys to an accessible internet connection. Access to the private keys stored on a hardware wallet requires physical access to the device.

Some bitcoin wallets have a convenient interface for signing and verifying messages. Bitcoin Core offers these functions right under File in the main menu. Despite the prominent placement, these functions are often not understood or actively used by the majority of bitcoin users.



**Seizing the illegal  
BITCOIN in order to  
compensate the  
victims of THB**

# Seizing the illegal BITCOIN



**To seize the bitcoins at the suspect's premises, investigators have to locate:**

1. the bitcoin wallet on the suspect's hard drive — in which case a password is needed to manipulate the bitcoins as the vast majority of wallets nowadays are encrypted;
2. the suspect's private key — in which case there is a need to import it into a wallet;
3. the suspect's recovery seed (usually 12-24 random words).

To seize bitcoins it is not sufficient to simply copy the wallet.dat file, import the private key or enter the recovery seed into the LE-controlled software. The investigator has to transfer these into a bitcoin address controlled by law enforcement.

Alternatively, the bitcoin address can also be provided to LE by a bitcoin exchanger. This is particularly useful if LE seek to immediately convert seized bitcoins to fiat currency (a traditional currency such as € or \$)

## How to investigate bitcoin transactions

Unknown creator Satoshi Nakamoto: 'The public can see that someone is sending an amount to someone else, but without information linking the transaction to anyone.' As mentioned earlier in this guide, all bitcoin transactions can be viewed and inspected without a need to send subpoenas or MLATs .



**Google it!**



**Use a  
blockchain  
explorer**

Before trying anything else, one should simply run the BTC address through the search engine. The successful hits often lead to online forums such as [bitcointalk.org](http://bitcointalk.org), where the bitcoin addresses feature in the messages, signatures or profiles of the discussants. Many forums display public information on the person who created the post including nickname, contact details and lists of all posts along with associated timestamps. Furthermore, IP logs, activity summaries, personal/private messages and additional contact details may be provided by the administrators on request.

All bitcoin transactions dating back to the very beginning of 2009 are recorded in bitcoin blockchain, a large public database storing all data in an unencrypted state. The blockchain is not stored centrally — it is stored by thousands of individuals and companies around the world running bitcoin clients. Anyone can download the blockchain files and try to dissect the data, import it to a database and query it.

# Seizing the illegal BITCOIN



**Tracing bitcoin transactions using miners!**



**Commercial tracing and attribution tools for investigators**

Every single participant may see a slightly different list of transactions. This is due to many factors including the distributed nature of the network, network latency, different implementation of bitcoin clients and malicious actors trying to spend the same input twice or otherwise abuse the network. Therefore it is common that some nodes in the network know about a particular transaction while some others do not. And so there is a need to establish which set of transaction is the 'correct' one.

There are commercial tools available on the market that are customised to cater for an investigator's needs. These are often superior to a combination of the open source tools as they may offer:

- improved clustering of addresses;
- a higher number of identified entities;
- an improved user interface;
- the possibility to import/export data;
- references to bitcoin addresses and transactions harvested from both the clear web and darknet;
- further functionality, such as searching for the shortest path to an entity that can identify the suspect;
- assistance with specific investigation-related queries.



# Seizing the illegal BITCOIN



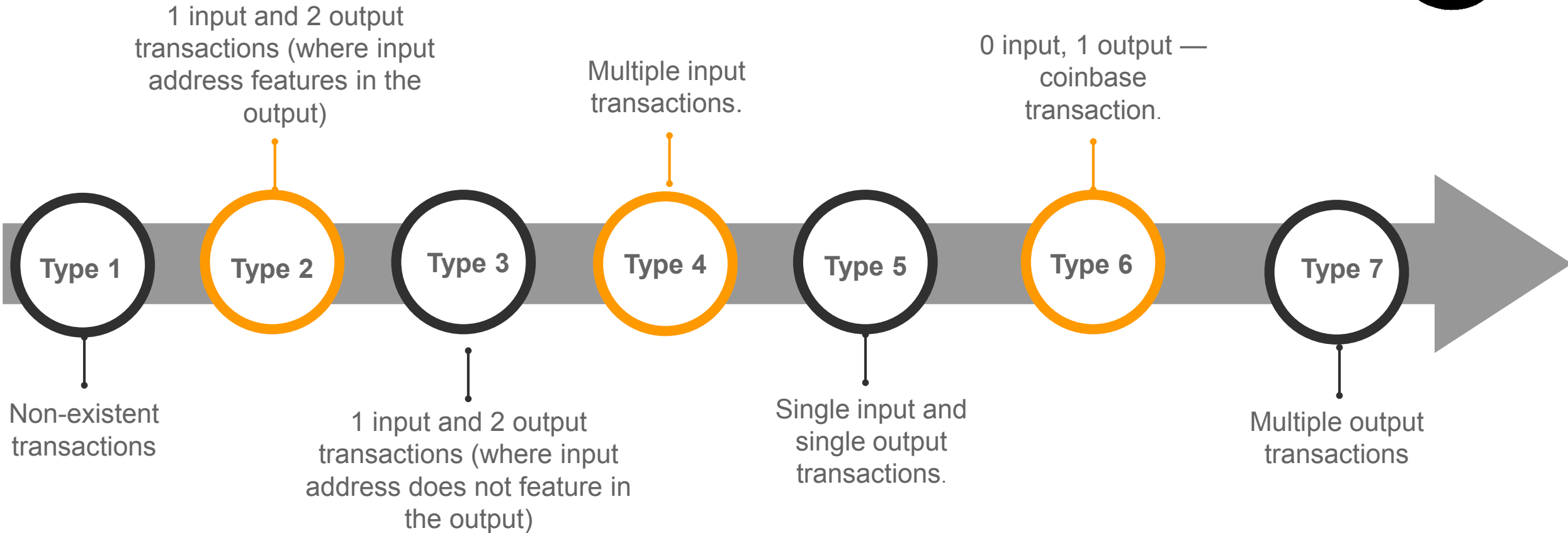
Tracing  
bitcoin  
transactions

**It is necessary to understand the following basic rules for the transactions:**

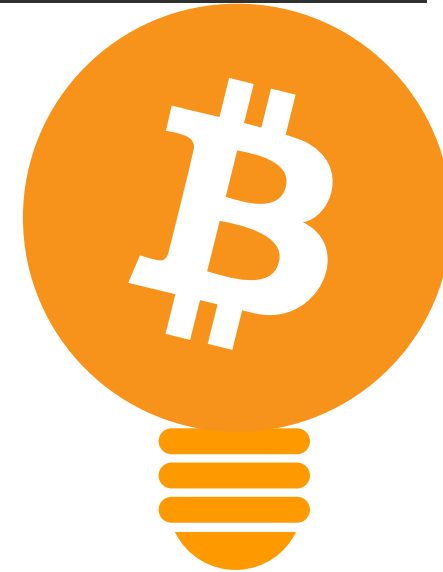
1. One person can have multiple wallets and one wallet can hold multiple bitcoin addresses.
2. A non-zero number of bitcoins must be transferred from one address to another.
3. Each transaction has an input and output side. Input shows where bitcoins are coming from and output shows where the bitcoins are going to.
4. The addresses on the input side must have a sufficient amount of bitcoins available for the transaction. It is not possible to send more bitcoins than one already has in one's possession.
5. All addresses on the input side will be fully spent.
6. The majority of transactions in the blockchain and practically all recent transactions have to include a fee; otherwise miners may not put the transaction into the blockchain.
7. The amount of all inputs must be equal to amount of all outputs plus the fee for the transaction (Sum of inputs = sum of outputs + fee). Bitcoin transactions follow the zero sum logic so what goes in must come out.

A transfer from one bitcoin address to another does not necessarily represent a movement of funds from one person to another and it may not even represent a movement between two different wallets. One address may send bitcoins to another address and but these two addresses may still reside in the same wallet. What is 100 % certain is that the flow of bitcoins from one bitcoin address to another and everything else is a mere hypothesis.

# Types of transactions



# Recommendations for the investigators



**We highly recommend that, due to very technical method, the transaction analysis must be done by a digital police officer and an analyst officer, under the supervision of the main Investigator**

# Seizing procedure



The bitcoin does not 'physically exist', meaning potential investigative and legal challenges arise for law enforcement and the Courts.

**The United Nations Office on Drugs and Crime ('UNODC')** published a 'Basic Manual on the Detection and Investigation of the Laundering of Crime Proceeds Using Virtual Currencies' (hereinafter 'Manual') providing a guide as to how the Bitcoin can be located and seized.

According to the Manual, the way in which Bitcoin can be located and seized is by locating and taking control of the Bitcoin wallet. This is because the bitcoin wallet contains the intrinsic information of the private keys. It can either be seized by the authorities by taking away the instrument (e.g. the hard drive) or by transferring the balance to the Bitcoin wallet that is in the control of the State.

## **Jurisdictional Issue**

The advantage of locating and seizing the Bitcoin wallet is that the potential complex jurisdictional issues that the use of virtual currencies creates, (as it operates in the online environment that blurs the national borders) can be avoided. The physical location of the instrument containing the Bitcoin wallet will in most cases be considered as the rightful jurisdiction for the purposes of freezing, seizure and confiscation.



# A 4-step process to seizing a suspect's Bitcoin



Once it is discovered that criminal activity may involve bitcoin, there is often limited time to access the suspect's wallet. At this step, law enforcement should determine if it is possible to access the wallet by obtaining necessary passcodes or keys. Access should be restricted to all devices that may contain bitcoin.

Law enforcement must have its own bitcoin wallet to store seized bitcoins. If the bitcoin wallet is not encrypted, law enforcement has complete access (provided proper warrants have been obtained for the seizure of the device). If the bitcoin wallet is encrypted, getting the suspect to volunteer the encryption code is the easiest method of access. If the suspect does not offer the encryption code, an admission that the suspect knows the encryption code is helpful in obtaining an order compelling the suspect to unlock the wallet. If immediate access to the suspect's wallet is not possible, the device should be switched to airplane mode or placed in a faraday bag to prevent tampering. Once decrypted, law enforcement can transfer the seized bitcoin to their wallet. Note there are different ways of transferring the bitcoin depending on how it was stored by the suspect.



Law enforcement must ensure that their bitcoin wallet is secure. For example, a web-based wallet should only operate on a secure server. Establishing a bitcoin vault (if possible) also provides additional security because transfers out of the wallet are subject to approval by multiple parties.

Bitcoin is often used on the dark web, which is a part of the Internet that requires special software access. The dark web provides a layer of anonymity for illicit transactions using bitcoin. However, it is still possible to trace seized bitcoins back to these dealings. This is done by accessing a 'blockchain' ledger that stores information which is similar to a full history of banking transactions.



# A short review of detecting illegal cryptocurrencies. Few ideas

1

## Open source

Often, the OCG's members expose their goods in online: Facebook, Twitter. etc. Luckily, some of the assets must be registered (cars, terrains, houses), If these are not present in the suspect's financial balance, a cryptocurrency investigation can be launched

2

## HumInt

One of the most common gathering information police method. Human sources could lead to the discovery of goods, bank accounts, secret meeting and plans, new victims etc. Not always these information can use as judicial evidence, because of the risk of identity deconsipation.

3

## Victim interview

The best source of intelligence and evidences.

4

## Suspects statement

Sometimes some of the suspects can give important details in order to take advantage of an agreement with the prosecutor or the judge.

5

## JIT's /LoR's benefits

Ask the support of the foreign agencies. It also might have better IT techniques.

6

## IT private companies

There are commercial tools available on the market that are customised to cater for an investigator's needs. It may offer:

- improved clustering of addresses;
- a higher number of identified entities;
- an improved user interface;
- the possibility to import/export data;
- references to bitcoin addresses and transactions harvested from both the clear web and darknet;
- further functionality, such as searching for the shortest path to an entity that can identify the suspect;
- assistance with specific investigation-related queries.

7

## Devices DataExtract

When do house searches, be always accompanied by a digital police investigator. Also look after handnotes, QR codes, passwords etc.

8

## Look for Hardware wallets like TREVOR or BITLOX

A hardware wallet is a special type of bitcoin wallet which stores the user's private keys in a secure hardware device. This wallet securely stores the private keys so that it cannot be transferred out of the device in plaintext.









9

## RED FLAG SYSTEM

Compare all the data's that you collect with others authorities (foreign police force) databases, that they have from other investigations  
Asset tracing Implementing 'red flag' indicator systems to notify relevant authorities about certain wallets

# Main cryptocurrencies used in criminal activities



Coin	Bitcoin	Ethereum	Ripple	Litecoin	Dash	Monero	Doge	Zcash
Ticker	BTC	ETH	XRP	LTC	DASH	XMR	DOGE	ZCE
Logo								
Total value	\$37.7B	\$15.8B	\$13,2B	\$1.5B	\$980M	\$598M	\$401M	\$337M
Price	\$2308	\$176	\$0.34	\$29.3	\$134	\$42	\$0.004	\$243
Started	Jan 2009	Jul 2015	2012	Oct 2011	Jan 2014	April 2014	Dec 2013	Oct 2016
Unique selling point	Leader	Smart contracts	Relations with banks	Early follower	Privacy Instant Tx	Privacy	Marketing	Privacy
Address starts with	1, 3	0x	r	L	X	4	D	t1, t3, z1, z3
Address length	26-35	42 hex	34	34	34	95	34	35 or 96
Private key starts with	5, L, K	random	s, p	6, T	7, X	random	K, L, 6	K, L
Private key length	51/52	64 hex	51/52	51/52	51/52	64 hex	51/52	51/52
Largest Exchanges (>5% share)	Poloniex Bitfinex Kraken GDAX Bitstamp	Poloniex Kraken Bitfinex GDAX xBTCe	Poloniex Kraken Ripple BTC38	Poloniex OKCoin Huobi BTC38 Bitfinex	Poloniex YoBit HitBTC Bitfinex	Poloniex HitBTC Bitfinex	Poloniex BTC38 Jubi Yuanbao	Poloniex HitBTC Bitfinex Yunbi Kraken



# AML D 5 EFFECT



# Anti money laundering Directive 5



**DIRECTIVE (EU) 2018/843 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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/EU**

“A digital representation of value that can be digitally transferred, stored or traded and is accepted by natural or legal persons as a medium of exchange.”

**Information Sharing.** In order to enhance and simplify access to information on the identity of holders of bank and payment accounts, the 5AMLD requires EU Member States to put centralized automated mechanisms in place at the national level to identify payment accounts and bank accounts held by a credit institution, thereby developing a central source to identify all bank accounts for an individual person.

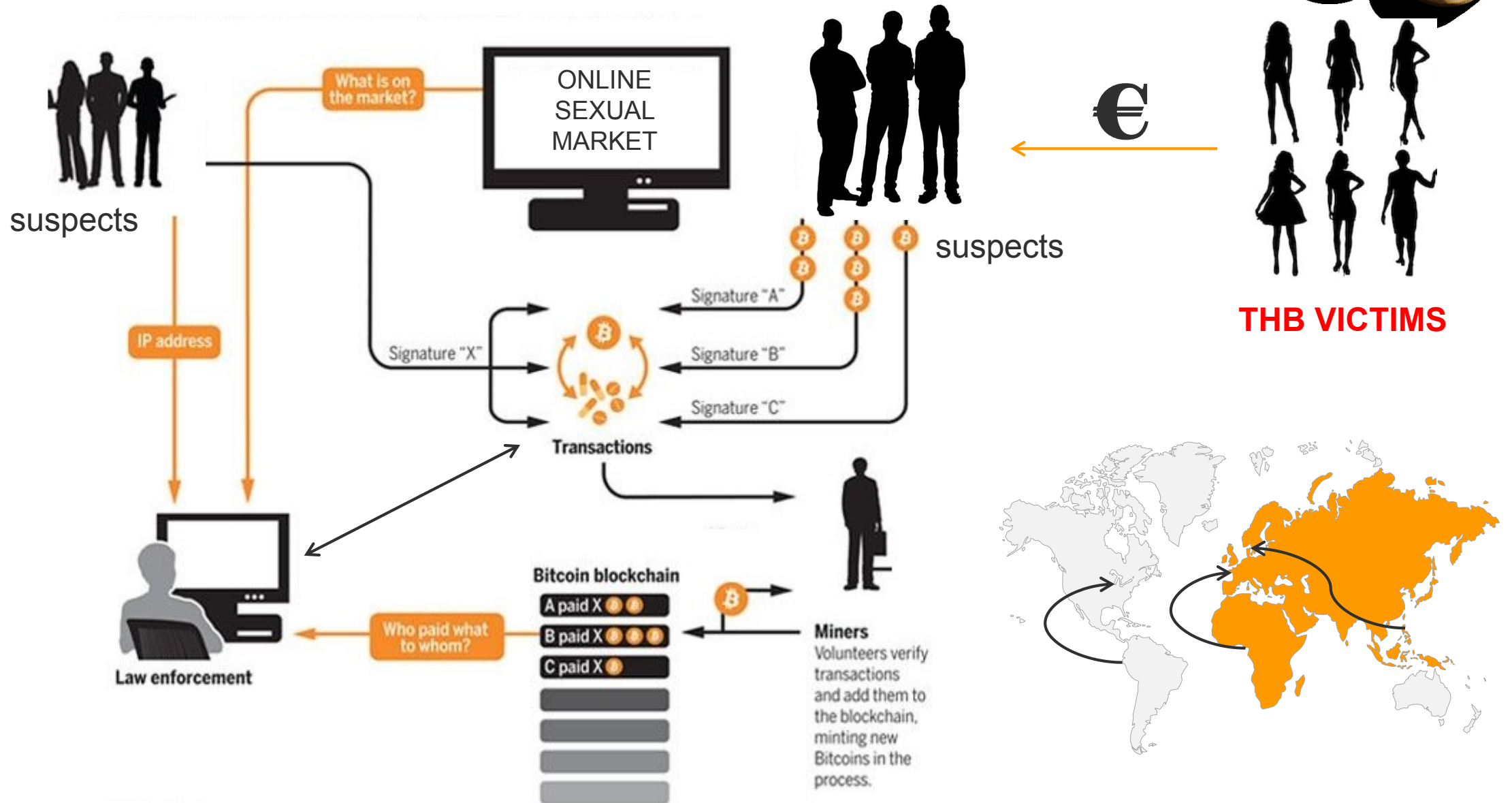
**Enhanced Due Diligence.** The 5AMLD will require Member States to apply a specific list of enhanced due diligence (EDD) measures for transactions involving entities on a list of high-risk third countries defined by the European Commission. This proposal outlines the minimum EDD measures obliged entities must apply, which will provide for a formalized approach and alignment of such EDD measures with the list of actions drawn up by the FATF. This will ultimately lessen differences in regulatory requirements between States, minimizing cases where a select number of EU countries commercially benefit relative to others adopting more stringent EDD requirements. Critically, this aims to reduce the ability of terrorists to exploit weaknesses in these measures.

The 5AMLD also brings Virtual Currency Exchange Platforms ( ), Digital Asset Platforms and Custodian Wallet Providers (CWPs) under the scope of the framework and includes them within the definition of ‘obliged entities’, conferring them the same responsibilities as financial institutions, requiring them to apply KYC and EDD controls and conduct ongoing transactions monitoring with the requirement to immediately report suspicious activity to government entities.

The anonymity of crypto and virtual currencies facilitates the potential misuse for criminal purposes, in order to combat the 5 AMLD proposes that EU Financial Intelligence Units (FIUs) should be able to obtain authoritative identity information allowing them to associate addresses to its owner. AMLD5 would enter into force by the end of 2019.



# CRIMINAL DRAW





# Conclusions

Bitcoin is far from completely anonymous. Yes, it is true that bitcoin blockchain itself does not reveal any information that could lead to identification of a payer and a recipient.

On the other hand, a combination of open source research, commercial tools and information provided by private sector can lead to identification of suspects and their financial activities. Bitcoin was not created with the objective of being completely anonymous. Instead, it combines an interesting mix of transparency and privacy for its users, which is referred to as pseudonymity. This concept is best explained by its to-this-day-unknown creator Satoshi Nakamoto: *'The public can see that someone is sending an amount to someone else, but without information linking the transaction to anyone.'*

More and more criminals accept cryptocurrencies payments in their illegal activity. They are preferred by migrant smugglers, like the following scheme: the migrants are paying the services of the final guide in a FIAT currency, and after that he is exchanging the money into BITCOIN for paying the other members of the OCG. Also, lately some of the legal brothels or escorts agencies accept BITCOIN payments(for example VIP Passion, Bubble Escorts or Bunny Ranch). Police force should be very preventive because might be a risk that the traffickers, hiding behind legal companies, could create organised crime groups for sexual exploitation of the girl/minors, so that illegal incomes might be hard to trace.



**Pitești Brigade of Countering  
Organized Criminality  
Unit of Combating Human  
Trafficking**

# Thank you!

Deputy superintendent

Alexandru VIZIRU

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# Verfahren vor Gericht in Menschenhandelsfällen

Fragen zur Sicherung, Verwertung und Würdigung  
von Beweisen

Ulrich Nachtberger  
Richter des Landesgerichts für Strafsachen  
Wien



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



# Einführung



Zu den Dimensionen, die Menschenhandel tatsächlich erreicht, gibt es bloß Schätzungen. Obwohl verschiedenste Formen des Menschenhandels existieren, konzentrierte sich die Bekämpfung des Menschenhandels traditioneller Weise auf die sexuelle Ausbeutung im Bereich der Sexarbeit. Anderen Formen des Menschenhandels, wie zum Beispiel dem Bereich der Arbeitsausbeutung, wurde erst in den letzten Jahren verstärkte Aufmerksamkeit zugewendet. Unterschiedliche Ausprägungen des Phänomens Menschenhandel verlangen aber auch nach unterschiedlichen Ermittlungsansätzen, wobei eine breite und umfassende Herangehensweise erforderlich ist, um Ermittlungen erfolgreich zu führen und Opfer wirksam schützen zu können.



# Einführung



Menschenhandel ist in der Regel ein sehr komplexes Verbrechen, das eine Vielzahl von krimin

Erfolgreiche Ermittlungen in Menschenhandelsfällen bedürfen daher eines breiten Ermittlungsa

Erfolgreiche Ermittlungen erfordern zudem ein Überdenken der Stereotype, die man gemeinhin



# Einführung



Die Komplexität von Menschenhandelsfällen zeigt sich sowohl auf der

## **Ebene der Tatsachen**

als auch auf der

## **Ebene der rechtlichen Grundlagen**





# Rechtliche Grundlagen



Grundlage strafrechtlicher Bestimmungen betreffend den Menschenhandel ist das VN „Zusatz

Artikel 3 des Palermo Protokolls unterscheidet zwischen folgenden Elementen:

**Handlungen**

**Mitteln**

**Zielen**



# Rechtliche Grundlagen



## Handlungen

- Anwerben
- Befördern
- Verbringen
- Beherbergen
- Aufnahme



# Rechtliche Grundlagen



## Handlungen

Anwerben: Treffen einer Vereinbarung, die auf intensives Betreiben des Täters



# Rechtliche Grundlagen



## Handlungen

Befördern: heißt transportieren (auch bloße Organisation des Transports)



# Rechtliche Grundlagen



## Handlungen

Beherbergen: heißt dauerhafte oder vorübergehende Gewährung von Unter

Sonstiges Aufnehmen verlangt eine gewisse Betreuungstätigkeit.



# Rechtliche Grundlagen



## Mittel

- Androhung oder Anwendung von Gewalt oder anderen Formen der Nötigung
- Entführung, Betrug, Täuschung, Missbrauch von Macht, Ausnutzung besonderer Hilflosigkeit
- Gewährung oder Entgegennahme von Zahlungen oder Vorteilen zur Erlangung des Vermögens



# Rechtliche Grundlagen



## Ziele

### Zum Zweck der Ausbeutung

- Ausnutzung der Prostitution anderer
- andere Formen sexueller Ausbeutung
- Zwangsarbeit oder Zwangsdienstbarkeit, Sklaverei oder sklavereiähnliche
- die Entnahme von Organen
- Bettelei ( EU-Richtlinie 2011/36/EU zur Verhütung und Bekämpfung des Menschenhandels und zum Sch



# Richterliche Tätigkeit



## Subsumtion

Bedeutet die Anwendung einer Rechtsnorm auf einen Lebenssachverhalt (= „





# Richterliche Tätigkeit



Zu allen Tatbestandsmerkmalen müssen im Urteil Feststellungen zur

- objektiven Tatseite (äußere Tatsachen)
- subjektiven Tatseite (innere Tatsachen – Vorsatz)

getroffen werden und jede Feststellung begründet werden (Beweiswürdigung)



# Rechtliche Grundlagen



## **Vorsatz** (§ 15 dStGB):

Wer die Verwirklichung eines gesetzlichen Tatbildes ernstlich für möglich hält



# Rechtliche Grundlagen



## **Vorsatz auf Ausbeutung:**

Ausbeutung: ....rücksichtslose, nachhaltige Unterdrückung vitaler Interessen.

Bei Arbeitsausbeutung: ....grob unzureichende Entlohnung (dt. Rechtsprechu



# Richterliche Tätigkeit



## Beweisführung

Beweis ist die überzeugende Begründung für die Richtigkeit oder Unrichtigkeit



# Richterliche Tätigkeit



## Beweisführung

Die öst und dt StPO kennt keine Beweisregeln sondern folgt dem Grundsatz d



# Richterliche Tätigkeit



## Beweisführung

Die öst StPO kennt keine abschließende Aufzählung von Beweismitteln (Zeug



# Richterliche Tätigkeit



## Beweismaß

Nicht „zwingende“ – Gewissheit ist erforderlich, vielmehr genügt ein nach der



# Richterliche Tätigkeit



## In dubio pro reo

Bleiben Zweifel an Täterschaft und Schuld, so ist der Beweis nicht erbracht, u





# Richterliche Tätigkeit



## Zwischenresümee:

Eine Vielzahl von zum Teil sehr unbestimmten Tatbestandsmerkmalen „mit an

**Welche Probleme auf der Tatsachenebene stehen diesen komplexen rec**



# Richterliche Tätigkeit



## Problembereiche:

- . Feststellung eines Anfangsverdachts
- . Schwierige Opferidentifikation
- . Mangelhafte Personalbeweise
- . Spannungsverhältnis zwischen Opferschutz und Beweisanforderungen.
- . Mangelnde Ressourcen der Ermittlungsbehörden für weitergehende Ermittlungen
- . Grenzüberschreitende Ermittlungen



# Richterliche Tätigkeit



## Feststellung eines Anfangsverdacht

- Menschenhandel geschieht oft in Bereichen, in denen die Polizei ohne konk
- Andere Behörden wie zB Arbeitsinspektorat, Asyl-, Zoll- und Grenzbehörden



# Richterliche Tätigkeit



## Schwierige Opferidentifikation

- Opfer kooperieren häufig nicht, da sie in einem wirtschaftlichen, psychische
- Opfer betrachten sich oft selbst nicht als Opfer.



# Richterliche Tätigkeit



## Mangelhafte Personalbeweise

- Opfer sagen als Zeugen oft (vermeintlich) widersprüchlich aus, weil sie in ein
- Opfer sind bis zur Hauptverhandlung als Zeugen oft nicht mehr verfügbar od



# Richterliche Tätigkeit



nungsverhältnis zwischen Opferschutz und Beweisanforderung

- Videoaufzeichnungen der Opferaussagen sind manchmal kein Äquivalent zu
- Aussageverweigerungsrechte (zB § 66a Abs 2 Z 2 öStPO) ers
- Gewährung von Fristen bis zur Tätigkeit einer Zeugenaussage können Glau



# Richterliche Tätigkeit



urcen der Ermittlungsbehörden für weitergehende Ermittlungs

- Telefonüberwachungen
- Observationen
- Aufdeckung von Finanzströmen (über Banken und auch Hawala) nicht nur z
-



# Richterliche Tätigkeit



## Grenzüberschreitende Ermittlungen

- sind zeitintensiv (was häufig in einem Spannungsverhältnis zum Beschleunigungsgesetz steht)
- Ausländische Behörden kooperieren gelegentlich nicht
- Richter und Staatsanwälte haben gelegentlich noch immer Scheu oder wenig Interesse
- Digitale Beweise über zB Facebook, Whatsapp, Apple etc sind meist nur mit Hilfe von IT-Fachkräften zu beschaffen





# Richterliche Tätigkeit



•Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates

•

•Vorschlag für eine Richtlinie des Europäischen Parlaments und des Rates zu



# Verbesserungsansätze



- Schulungen für sämtliche Behörden, um einen Anfangsverdacht auf Menschenrechte zu vermeiden
- Schulungen von Justizbehörden in Bezug auf internationale Kooperation



# Links

## Rechtsgrundlagen



- EJN Atlas [https://www.ejn-crimjust.europa.eu/ejn/EJN\\_Home.aspx](https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx)
- Eurojust
- Europäische Ermittlungsanordnung (Richtlinie 2014/41/EU)
- Europäische Sicherstellungsanordnung (RB 2003)
- Internationale Rechtshilfe
- Europäisches Übereinkommen 1959 (Europarat)
- UN Übereinkommen gegen die grenzüberschreitende organisierte Kriminalität
- JITs



# Änderung des Blicks auf Menschenhandelsdelikte



- Beweisführung weniger auf Personalbeweise (Opferaussagen) stützen (Mar
- Aufdeckung von Finanzströmen und Aufspüren von Vermögenswerten, um d



**Fragen**

**Diskussion**