



# STRATEGIC PROJECT

on

## Eurojust's action against trafficking in human beings

*Final report and action plan*



October 2012

# EUROJUST

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October 2012

## Strategic project on

*“Eurojust’s action against  
trafficking in human beings”*

Final report and action plan



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## FOREWORD BY THE PRESIDENT

Trafficking in human beings (THB) is a serious crime, often committed by organised criminal groups and involving severe violations of fundamental human rights and exploitation of victims. THB represents one of the main threats to the internal security of the European Union and the freedom of its citizens. Eurojust plays a key role in the fight against human trafficking, which has been, and remains, high on the EU agenda as one of the eight priorities in the fight against organised crime between 2011 and 2013. However, statistics show that the number of THB prosecutions and the number of THB cases referred to Eurojust for assistance remains low.

Together with Europol and other JHA agencies, Eurojust signed in October 2011, on the occasion of the 5th EU Anti-Trafficking Day, a Joint Statement to address THB in a coordinated, coherent and comprehensive manner. The joint effort includes assistance to Member States to increase the number of THB investigations and prosecutions and to coordinate cross-border action, so that human traffickers are brought to justice efficiently.

In this context, Eurojust took the initiative in 2012 to develop a strategic project entitled *Eurojust's action against trafficking in human beings*. This report summarises the project's findings by attempting to answer the following questions: *What are the reasons underlying such a small number of THB prosecutions and such limited involvement of Eurojust in THB cases? What can Eurojust do to improve the situation?* This report also highlights the main problems encountered by the national authorities in prosecuting THB and attempts to present solutions for addressing these difficulties.

In January 2012, Eurojust published the final results of its strategic project entitled *Enhancing the work of Eurojust in drug trafficking cases* and received positive feedback from practitioners, EU institutions and agencies. I hope that this report will also be seen as a useful tool in supporting effective prosecutions of traffickers. I am grateful that the Commission Communication on the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 calls on the Member States to involve Eurojust and Europol in all cross-border trafficking cases and to cooperate with Eurojust in implementing its action plan against THB, which accompanies this report.

I would like to express my gratitude to the Member States and to Croatia and Norway for their valuable contributions, which were essential in identifying and addressing the main problems in investigations and prosecutions of THB cases at national level. Particular thanks go also to the EU Anti-Trafficking Coordinator, the Commission, Europol, Frontex, CEPOL and the Council of Europe for their active participation and feedback during the April 2012 Eurojust strategic meeting on THB organised by the Project Team. Finally, I wish to warmly thank those at Eurojust who contributed to this study and to the Trafficking and Related Crimes Team at Eurojust, the initiator of this project.

Michèle Coninsx  
President

## EXECUTIVE SUMMARY

This report presents the results of the “*Strategic project on Eurojust’s action against trafficking in human beings*”. The table below provides a summary of the main findings of the project, including the main difficulties in the investigation and prosecution of THB cases and the main tools proposed by the Project Team to address the identified problems.

Main difficulties	Identified problems	Proposed solutions
<b>High evidentiary requirements in THB cases</b>	<ul style="list-style-type: none"> <li>• Victim testimony difficult to obtain</li> <li>• Oral evidence not corroborated by other evidence</li> <li>• Judicial cooperation problematic</li> <li>• Lack of resources</li> </ul>	<ul style="list-style-type: none"> <li>• Protection and assistance to victims</li> <li>• Non-prosecution and compensation of victims</li> <li>• Use of all possible sources of evidence</li> <li>• Use of financial investigations</li> <li>• Involve Eurojust and Europol, and use JITs</li> </ul>
<b>Identification of THB cases and victims</b>	<ul style="list-style-type: none"> <li>• Lack of knowledge, awareness and experience</li> <li>• Prosecution of less severe crimes</li> <li>• Shifting modus operandi of traffickers</li> <li>• Difficulties in detecting traffickers and victims (collusion – control)</li> <li>• Uncooperative and fearful victims</li> </ul>	<ul style="list-style-type: none"> <li>• Education and awareness</li> <li>• Specialisation necessary, but not sufficient</li> <li>• Knowledge and guidelines to identify THB</li> <li>• Covert investigations</li> <li>• Evaluation of cases and sharing of experiences</li> <li>• Involve Eurojust, Europol, and Frontex, and use JITs</li> </ul>
<b>Multilateral dimension of THB cases</b>	<ul style="list-style-type: none"> <li>• THB is complex to investigate and prosecute</li> <li>• Focus on national dimension of the case</li> <li>• Problems in judicial cooperation</li> <li>• Insufficient cooperation with stakeholders</li> <li>• Lack of resources</li> </ul>	<ul style="list-style-type: none"> <li>• Include all States involved</li> <li>• Involve Eurojust and Europol, and use JITs</li> <li>• Improve cooperation with third States</li> <li>• Multidisciplinary approaches</li> <li>• Establish network of THB prosecutors</li> </ul>
<b>Lack of knowledge and experience in THB cases</b>	<ul style="list-style-type: none"> <li>• Lacks of basic knowledge and awareness</li> <li>• THB specialisation often not available</li> <li>• Confusion with other crimes</li> <li>• Charging crimes other than THB</li> <li>• Understanding the entire THB phenomenon</li> <li>• Lack of resources</li> </ul>	<ul style="list-style-type: none"> <li>• Training of law enforcement, prosecutors and judges is essential</li> <li>• Involve experts and use experience of NGOs</li> <li>• Learning by doing</li> <li>• Involve Eurojust and Europol, and use JITs</li> <li>• Inter-institutional cooperation</li> </ul>

Main difficulties	Identified problems	Proposed solutions
<b>Asset recovery in THB cases difficult to obtain</b>	<ul style="list-style-type: none"> <li>• Asset recovery not sufficiently used</li> <li>• Problems in locating and tracing assets</li> <li>• Lack of resources, knowledge and expertise</li> <li>• Differences in legislation</li> <li>• Execution of MLA requests is problematic</li> </ul>	<ul style="list-style-type: none"> <li>• Always initiate financial investigations</li> <li>• Training of law enforcement and judiciary</li> <li>• Use of special investigation techniques</li> <li>• Involve Eurojust</li> <li>• Use JITs</li> </ul>

Main tools	Advantages
<b>Eurojust</b>	Stimulates and improves judicial cooperation; facilitates and speeds up execution of mutual legal assistance requests; organises coordination meetings and coordination centres; advises on best venue to prosecute THB, preventing and solving conflicts of jurisdiction; provides feedback and information to Member States, including links with other cases; facilitates cooperation with third States; supports the setting up and functioning of JITs; and could act as a centre of excellence for JITs.
<b>Europol</b>	Provides operational and strategic analytical support to the national authorities (in particular through analysis work files); provides Member States with emerging trends in the area of THB; assists Member States to better understand and investigate THB; and participates in JITs in a supportive role.
<b>JITs</b>	Suitable and useful tools for effective investigations and prosecutions of THB cases; and offer solutions for addressing the lack of financial resources needed to proceed with the investigations.

Based on the main conclusions of the project, a **Eurojust action plan against trafficking in human beings** is presented at the end of this report. The action plan covers the period 2012-2016 and lists the main priorities and actions planned by Eurojust in view of increasing the number of prosecutions of THB cases and of enhancing judicial cooperation in this area. A summary of the action plan is presented below:

Priority	Actions
<b>1) Enhancing information exchange to get a better intelligence picture at EU level in the field of THB</b>	<ul style="list-style-type: none"> <li>• Encourage Member States to properly implement Article 13 of the Eurojust Decision.</li> <li>• Promote and enhance the use of coordination meetings and coordination centres at Eurojust as venues for exchange of information in THB cases.</li> <li>• Promote, where appropriate, the participation of Europol in all THB cases and all coordination meetings in THB cases.</li> </ul>

Priority	Actions
<b>2) Increasing the number of detections, joint investigations and prosecutions in THB cases and enhancing judicial cooperation in this area</b>	<ul style="list-style-type: none"> <li>• Promote the involvement of Eurojust in all cross-border THB cases, in accordance with its mandate.</li> <li>• Promote and facilitate an increased number of THB multilateral cases that require coordination by Eurojust.</li> <li>• Continue to raise awareness on the advantages of JITs and encourage the competent authorities to increase the use of JITs in THB cases, with support from Eurojust and Europol.</li> <li>• Encourage Member States to communicate to Eurojust the setting up of JITs and the results of the works of JITs in THB cases, in accordance with Article 13(5) of the Eurojust Decision.</li> <li>• Encourage Member States to: <ul style="list-style-type: none"> <li>– find new and innovative ways to address THB and gather any type of evidence that could support, replace, or add to the victims’ testimony.</li> <li>– conduct financial investigations in THB cases with support from Eurojust and Europol.</li> <li>– - communicate to Eurojust their feedback on the outcome of Eurojust’s coordination meetings in THB cases.</li> </ul> </li> </ul>
<b>3) Improving coordination mechanisms in particular for training, expertise and operational activities</b>	<ul style="list-style-type: none"> <li>• Promote common training sessions on THB for law enforcement and judicial authorities and cooperate with EU institutions, agencies and relevant stakeholders, e.g. ERA, CEPOL, EJTN.</li> <li>• Support the Member States in establishing specialised THB units or personnel within prosecution services.</li> </ul>
<b>4) Increasing cooperation with third States in THB cases</b>	<ul style="list-style-type: none"> <li>• Promote, where appropriate, participation of third States in THB cases and in coordination meetings organised by Eurojust.</li> <li>• Appoint Eurojust contact points in third States that are identified as country of origin or transit of victims.</li> <li>• Negotiate and conclude cooperation agreements with third States identified as country of origin or transit of victims, where appropriate.</li> </ul>
<b>5) Using alternative approaches to combat human trafficking, such as multi-disciplinary approaches</b>	<ul style="list-style-type: none"> <li>• Promote multidisciplinary approach against THB as complementary to judicial approaches.</li> <li>• Support national multidisciplinary law enforcement units on human trafficking set up by the Member States.</li> </ul>
<b>6) Disrupting criminal money flows and asset recovery in THB cases</b>	<ul style="list-style-type: none"> <li>• Encourage consideration of cross-border asset recovery procedures in all THB cases.</li> <li>• Encourage Member States to communicate to Eurojust the results of confiscation procedures and return of assets.</li> </ul>

## 1. INTRODUCTION

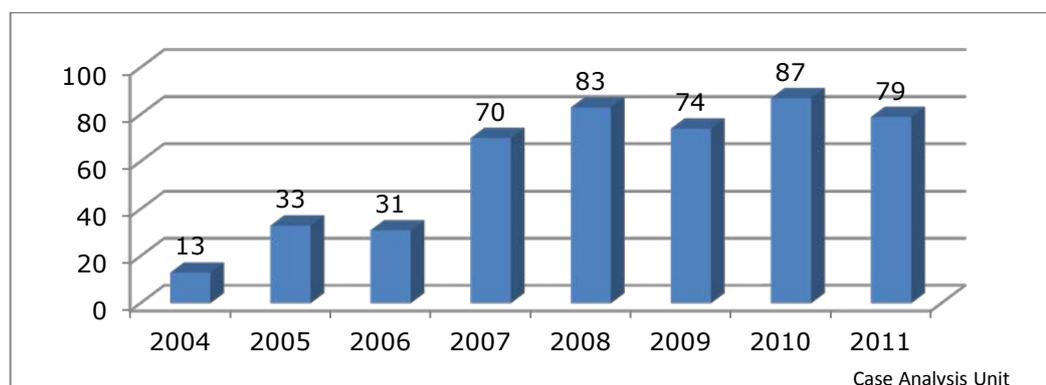
- Purpose** This report presents the final results of the “*Strategic project on Eurojust’s action against trafficking in human beings*” (hereinafter: the project). The project was approved by the College of Eurojust on 10 January 2012 with the following goals: 1) strengthen and improve cooperation between national judicial authorities in the fight against THB; 2) improve the efficient use of existing EU legal instruments; 3) intensify efforts in prosecuting THB at national level; and 4) enhance the involvement of Eurojust in THB cases. A Project Team (described in Appendix III) was appointed by the Eurojust’s Trafficking and Related Crimes Team to carry out the project.
- Scope** The project findings are based on the following project deliverables:
- An analysis of problems and best practices in judicial cooperation identified in 29 selected THB cases dealt with by Eurojust (hereinafter, “the analysis of casework”) in which at least one coordination meeting was held during the period 1 January 2008 - 31 December 2011. However, the qualitative analysis of casework is limited to available materials from the coordination meetings held in these cases (e.g. minutes, case evaluation forms) and, therefore, does not reflect the entire judicial cooperation picture in THB cases in the Member States.
  - Replies from the national authorities to Eurojust’s questionnaire on THB investigations and prosecutions developed by the Project Team (hereinafter, “the questionnaire”). A total of 29 replies were received and analysed (from the 27 Member States and from Croatia and Norway), as summarised in Appendix 1.
  - Outcome of Eurojust’s strategic meeting on THB, The Hague, 26-27 April 2012 (hereinafter, “the THB strategic meeting”), including feedback on the preliminary findings of the project received from prosecutors, judges and other practitioners specialised in fighting THB.
- Structure** The report commences with an overview of Eurojust’s casework on THB. Section 3 introduces the main problems encountered by the national authorities in investigating and prosecuting THB cases, as identified by the project. These difficulties are then detailed in sections 4-8 of the report. Sections 9 and 10 describe the advantages of involving Eurojust and Europol in THB cases and of using JITs in THB cases, while the last chapter summarises the main conclusions reached by the project.
- Next steps** Eurojust intends to reinforce its role in assisting national authorities to effectively investigate and prosecute THB cases. Therefore, Appendix 2 of the report contains the *Eurojust action plan against trafficking in human beings* that includes specific actions to address the main problems identified in THB investigations and prosecutions, key performance indicators and proposed timelines.

## 2. OVERVIEW OF THB CASES AT EUROJUST

This section provides a short introduction on the overall number of THB cases registered at Eurojust and a quantitative and qualitative overview of THB cases registered in the Eurojust Case Management System (hereinafter, "the CMS") during the period 1 January 2008 throughout 31 December 2011 (hereinafter: the "reporting period").

### 2.1 Number of registered THB cases (2004 – 2011)

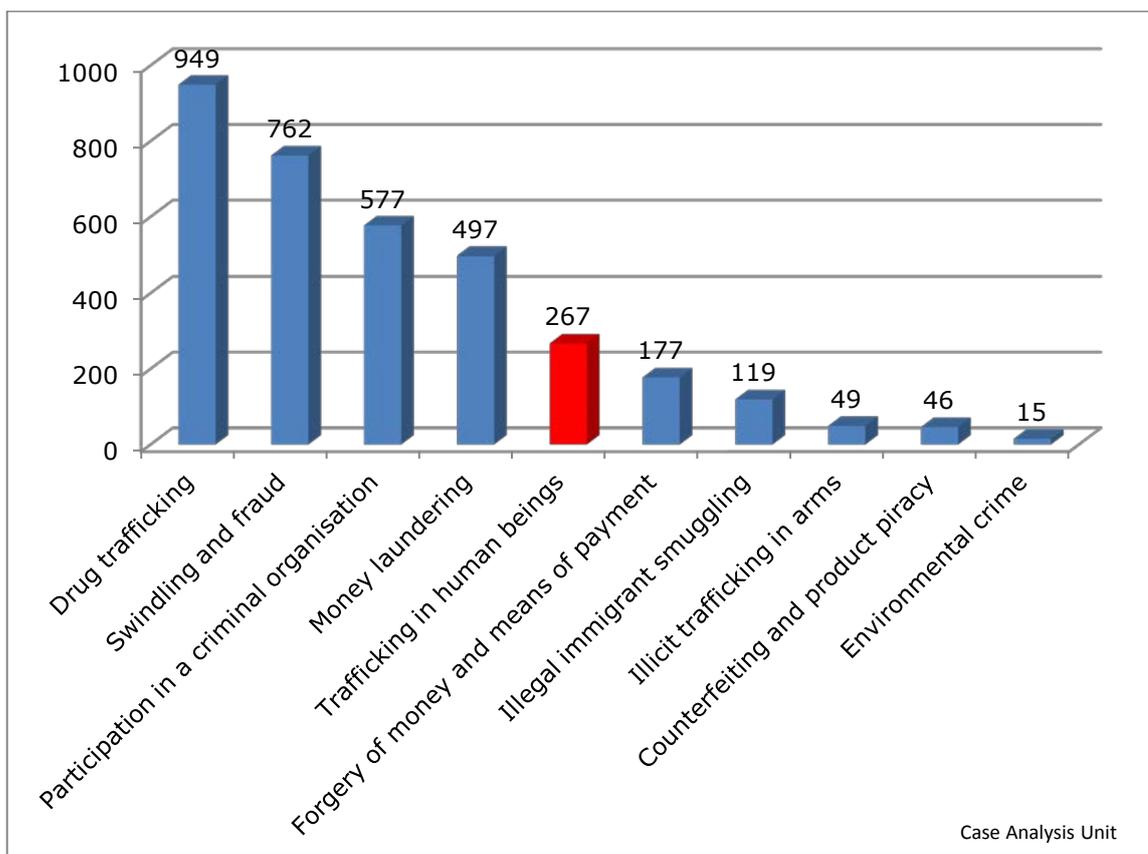
The total number of THB cases registered in the CMS has been and continues to be low. Since the creation of the CMS in 2004 until the end of 2011, out of 8251 case registered at Eurojust, only 470 were THB cases, representing only 5.6% of the total number of cases registered at Eurojust. Although a sharp increase in the number of THB cases registered in the CMS was noticed in 2007, the number of THB cases registered at Eurojust has consistently remained small, as represented in the chart below.



**Number of registered THB cases 2004-2011**

### 2.2 Distribution of crime types in the reporting period (2008-2011)

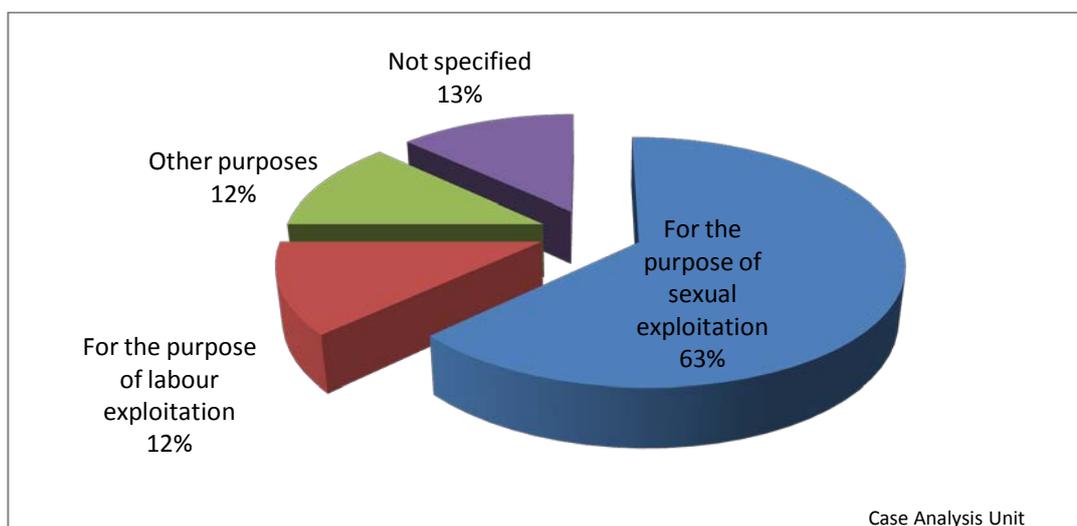
During the reporting period, a total of 267 THB cases were registered in the CMS. In Eurojust's casework, THB is placed fifth in number of cases compared with other crime types (see chart below).



**Distribution of crime types (2008-2011)**

### 2.3 Purpose of trafficking in the THB cases registered at Eurojust in the reporting period

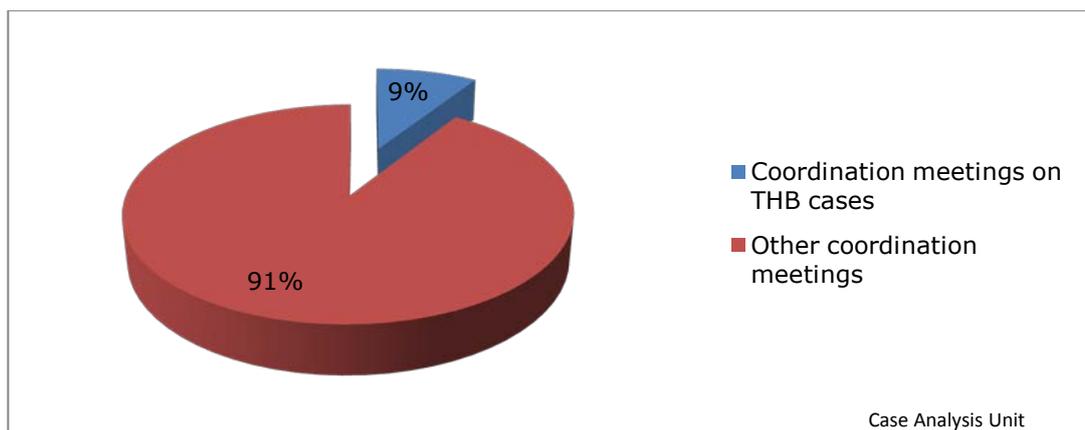
Depending on the purpose of trafficking, THB cases can be registered in the CMS in three sub-categories: THB for the purpose of sexual exploitation, THB for the purpose of labour exploitation and THB for other purposes. The distribution of those cases by percentage is illustrated in the chart below.



**Purpose of trafficking in THB cases 2008-2011**

## 2.4 Eurojust coordination meetings on THB cases during the reporting period

During the reporting period, Eurojust held a total of 520 coordination meetings, 49 of which were dedicated to THB cases, representing approximately 9% of the total number of coordination meetings at Eurojust<sup>1</sup> (see chart below). Complex cases may require more than one coordination meeting; therefore, the 49 above-mentioned coordination meetings involved 35 cases. In view of analysing these cases, the Project Team contacted the concerned Eurojust National Desks. However, due to data retention policies and time limits for storage of personal data in the CMS, only 29 out of 35 THB cases were retrieved for analysis by the Project Team.

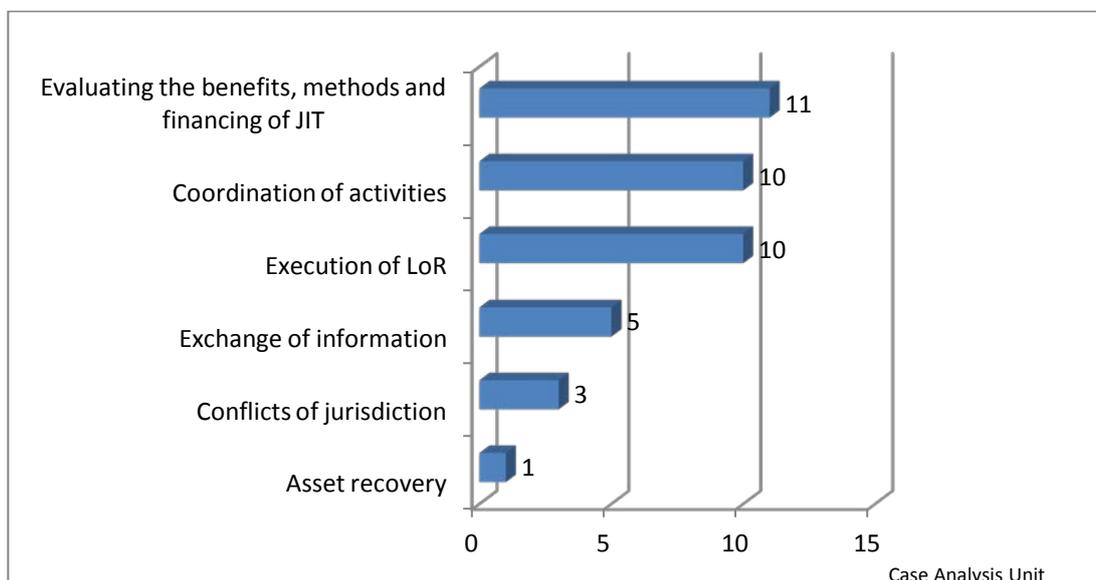


**Coordination meetings on THB cases**

## 2.5 Judicial coordination topics discussed in THB coordination meetings (2008-2011)

The main judicial topics discussed by the national authorities were determined by reading the minutes taken during those coordination meetings and studying the answers received from National Desks to the research questions prepared by the Project Team, as described in the chart below. During any given coordination meeting, one or more of these topics could have been discussed.

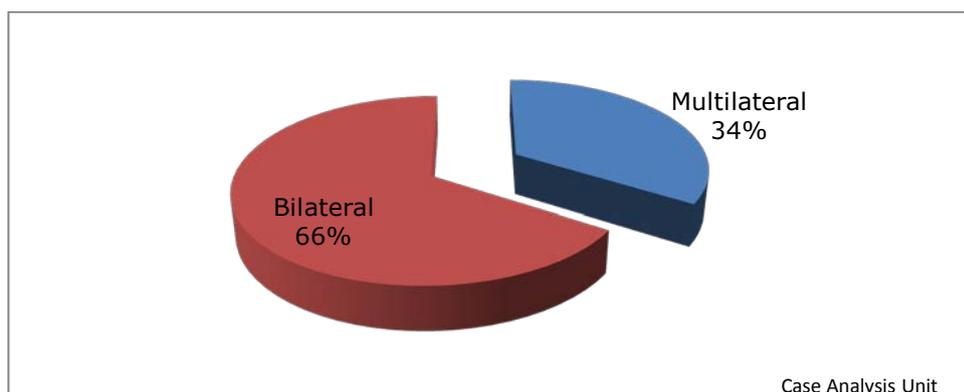
<sup>1</sup> It should be noticed that, despite the fact that in 2011 the number of coordination meetings on THB cases increased (representing 11.27% of all coordination meetings organised at Eurojust), the number of THB cases remained very low (representing only 5.5% of the total number of cases registered at Eurojust).



**Topics discussed in coordination meetings on THB cases**

**2.6 Proportion of multilateral / bilateral cases**

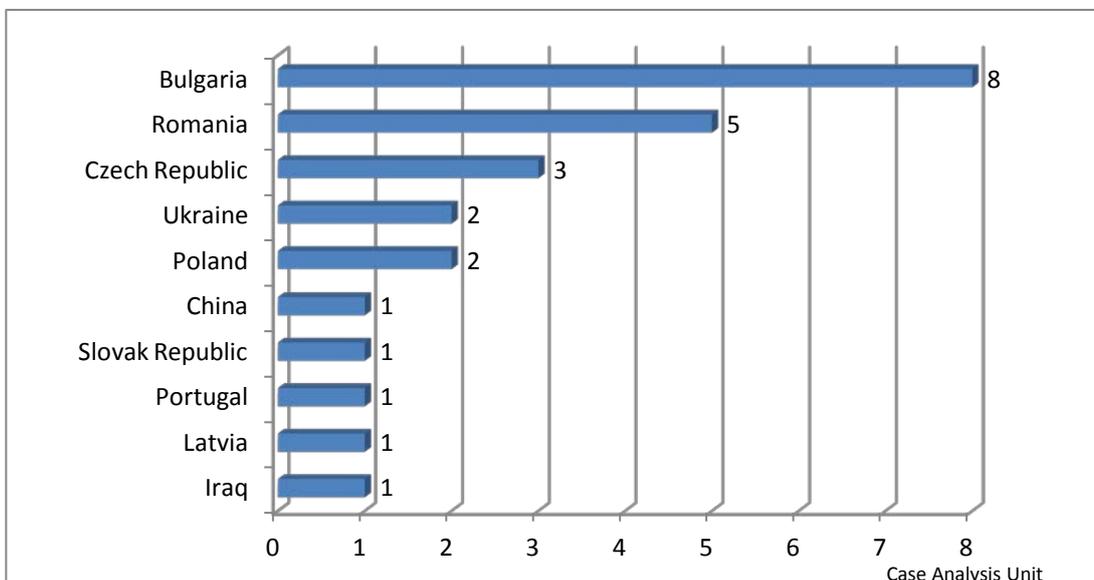
THB cases, involving origin, transit and destination countries, are per se complex multilateral cases. Therefore, to disrupt the whole “trafficking chain”, the involvement of several countries is essential. However, as shown by the chart below, the number of multilateral cases (involving three or more countries) during the reporting period is small. The analysis of the 29 cases confirms this finding (only 34% of the analysed cases were multilateral).



**Proportion of multilateral/bilateral cases**

## 2.7 Countries of origin of THB victims in cases analysed by the Project Team

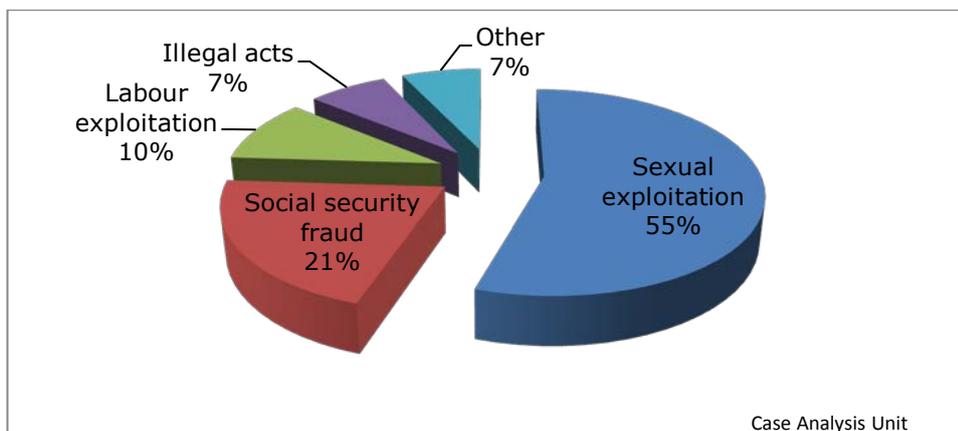
The analysis of casework shows that EU nationals as well as citizens from third States could become victims of THB. An efficient investigation must therefore always involve the relevant authorities from the countries of origin. The chart below illustrates the source countries for the victims of THB. In 4 cases, no information on the country of origin of the victims was available.



**Countries of origin of the victims in 29 cases analysed by the Project Team**

## 2.8 Purpose of trafficking in the 29 cases analysed by the Project Team

When the Project Team analysed the purpose of trafficking in the 29 cases, the findings indicated a diversity of THB purposes, ranging from sexual and labour exploitation, to trafficking to commit illegal acts, social security fraud, sham marriage and even trafficking of pregnant women for the purpose of selling their new-borns. This diversity is illustrated in details in the chart below.



**Purpose of trafficking in the 29 cases analysed by the Project Team**

The category "Other" in the chart above refers to:

- Cases where several purposes of trafficking have been identified;
- One case involving trafficking of pregnant women for the purpose of selling their new-borns; and
- Cases where the purpose of the trafficking is not possible to establish due to insufficient information held at Eurojust.

Although all cases analysed by the Project Team have been registered as THB cases in the CMS, six of them were subsequently assessed as relating to other crime types, such as illegal immigration or smuggling of persons. These assessments came to light following interviews conducted by the Project Team with the concerned Eurojust National Desks, at which point a more in-depth analysis of cases was carried out and confirmation that these six cases were not "proper" THB cases was established. The cause of this occurrence may be that when a case is registered in the CMS by the National Desk at a very early stage of an investigation, it is registered under "THB" on the basis of information received from the national authorities at that stage. However, as the investigation progresses, smuggling or illegal immigration is found to be the "correct" crime type. In such cases, the CMS registration is not always amended and, therefore, sometimes reflects the initial assessment.

### 3. IDENTIFICATION OF MAIN ISSUES

**Introduction** Although on several occasions the European Union has emphasized the need for the Member States to prioritise THB investigations and make use of the expertise already available within Eurojust and Europol, very little has been achieved in this respect. This situation is confirmed by the preliminary results of a data collection initiative on THB launched by the Commission in September 2011. According to these preliminary findings, which were presented during the THB strategic meeting, ***the total number of THB cases prosecuted in the EU remains small and the number of convictions on THB from 2008-2010 has decreased.***

Moreover, the overview presented in the previous section indicates that ***the overall number of THB cases registered at Eurojust has been and continues to be small,*** meaning that Eurojust is not being used yet to its fullest potential, or that Member States are not fully prosecuting all cross-border aspects of THB cases. The question is: why? This section introduces the main problems identified by the Project Team as impeding the effective prosecution of THB and the judicial cooperation between the competent national authorities in this field.

#### **Problems and solutions**

The Project Team, by means of the questionnaire, gathered information from the Member States and from Croatia and Norway on the reasons underlying the small number of THB investigations and prosecutions at national level, and the relatively limited involvement of Eurojust and Europol in THB cases. In particular, national authorities were asked to list the main problems faced in investigating and prosecuting THB, by ranking at least three of the most important obstacles encountered at national level. The replies to the questionnaire received by the end of February 2012 showed that the most significant difficulties (starting with the most serious ones) are:

1. *Evidentiary difficulties in THB cases.*
2. *Problems in the identification of THB cases and victims.*
3. *Problems related to the complex, multilateral dimension of THB cases.*
4. *Lack of specialised knowledge and experience in THB cases.*

The conclusions reached as a result of the THB strategic meeting, and the analysis of casework, confirm not only the existence of these four main obstacles, but also that ***the confiscation of traffickers' illegal assets is problematic.*** For these reasons, this report builds on five main issues encountered in the investigation and prosecution of THB in the Member States and in the judicial cooperation between the competent national authorities in this field. These main difficulties, together with solutions for addressing them, will be described in detail in the following sections of this report. The solutions suggested throughout this report reflect the position of Eurojust. However, this report also includes suggestions made by some of the participants at the THB strategic meeting, which should be read as opinions of practitioners and not necessarily as Eurojust's recommendations.

## 4. EVIDENCE RELATED PROBLEMS IN THB CASES

**Introduction** Issues related to evidence are, by far, the main problems faced by prosecutions targeting THB offences and related crimes. THB is often committed by Organised Crime Groups (hereinafter, "OCG") involving many suspects and affecting several countries. OCGs systematically intimidate victims and use money laundering to cover the financial footprints of the crime, making the investigation even more difficult. The whole chain of crimes should be prosecuted.

The goal of this section is to present evidence-related problems, based on the replies to the questionnaire and on the outcome of the THB strategic meeting during which two workshops dealt specifically with evidence issues<sup>2</sup>. Particular emphasis will be put on concerns related to the strong reliance on victims' testimony and on the importance of using financial investigation as a method to obtain further corroborative evidence. Subsequently, solutions are proposed, including recommendations from participants in the THB strategic meeting.

**Problems** *1. Oral evidence is important but not always sufficient to secure convictions*

The replies to the questionnaire indicated that victims' testimony provides crucial evidence in any THB investigation, and are relied upon heavily (if not totally) in the criminal proceedings. In particular, in some Member States, it would be hard to secure the conviction of traffickers in the absence of victims' testimony before the court. However, practitioners recognise that obtaining and maintaining the cooperation of victims throughout the judicial process is particularly difficult, mainly when victims originate from countries outside the European Union. For instance, problems appear in summoning victims for trial and securing their presence before courts, as often victims are not easily located or do not attend the trial. Another issue reported is that victims might change their previous statements when testifying in court. From the discussion during the THB strategic meeting, two main reasons were observed.

First, victims fear possible consequences for themselves or their families, or do not trust the investigating authorities. This situation worsens when victims are back in their home countries, because an additional jurisdiction needs to be involved in obtaining their testimony. To address this problem, several countries have taken steps in their legislation to facilitate the victims' social integration, to prevent secondary victimisation and to protect them against retaliation.

Second, some victims are unwilling to testify because they do not recognise themselves as victims of exploitation: they actually obtain an economic benefit from their activity (so called collusion-control) and might even consider their (working) conditions better than those existing in their home countries.

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<sup>2</sup> The workshops addressed the topics of evidence obtained from victims and evidence gathered from other sources.

Further consideration should be given to situations in which victims decide to modify or even withdraw their statements. This might hamper prosecution, especially in the Member States where criminal proceedings cannot continue if the victims' statements are withdrawn.

Both the replies to the questionnaire and the responses of the participants at the THB strategic meeting emphasized that victims' testimony is not sufficient *per se*. Moreover, the Project Team concluded that victims' testimony is in most of the cases the only oral evidence used in court. Investigators do not often consider other witnesses' statements that might support the prosecution and might eventually contribute to discovering the whole chain of trafficking.

*2. Corroborative evidence is not sufficiently used to support victims' testimonies*

As mentioned above, victims play a central role in the prosecution of traffickers. However, their statements might need to be supported by other evidence, as for instance, the statements might not be sufficient to prove criminal intent or expose the entire chain of trafficking activities (victims often "see" only part of the trafficking chain).

Nevertheless, obtaining corroborative evidence can be challenging.

For instance, in cases concerning THB for the purpose of sexual exploitation, gathering further corroborative evidence is difficult, as activities are becoming less visible due to a shift in the modus operandi of this crime, as described in section 5 of this report. Furthermore, although the Internet is increasingly used as a tool for recruiting victims and advertising sexual services, only few countries use the Internet as a means to gathering corroborative evidence, for instance by monitoring chat rooms where sexual transactions are arranged.

Additionally, the replies to the questionnaire indicate that special investigative techniques, such as telephone interception and surveillance, are rarely used in THB investigations, a surprising revelation. The project findings show that the reasons for not employing more special investigation techniques in THB cases include the following:

- A lack of experience and specialised knowledge in investigating THB cases (for instance, covert investigations are rarely used in THB cases, as they require specific expertise).
- In many Member States, undercover agents are not permitted to induce suspects to commit offences other than those being investigated.
- The use of controlled deliveries is rarely acceptable in THB cases; such technique is quite likely to put victims at risk.
- Special investigative techniques present constraint: they require an extended period of time during which the unlawful situation persists to the detriment of the victim.

Finally, although most respondents to the questionnaire replied that financial investigations are a crucial tool for obtaining evidence and

ensuring recovery of illicit assets, several structural problems and deficiencies were also reported, raising the question whether financial aspects of THB investigations are actually addressed in practice and to what extent. Difficulties in financial investigations employed for the purpose of asset recovery will be specifically addressed in section 8 of this report.

*3. Difficulties in gathering evidence from other countries appear in practice*

Judicial cooperation amongst source, transit and destination countries is generally assessed by the Project Team as lengthy in the best case, and often as problematic; many times it results in a lack of willingness of the investigating authority to expand the investigations abroad<sup>3</sup>. Cooperation in evidence collection proves to be difficult to achieve, mainly due to different admissibility requirements in national legislations. In addition, transit countries are often reluctant to cooperate because THB activity has lower priority in these countries, and investigations draw resources from other cases.

## **Solutions**

*1. Ensure strong oral evidence from victims and from all possible witnesses*

The Project Team concluded that protection and support of victims should always be prioritised, also in view of securing their testimony. An environment where victims feel secure to testify is needed. Nevertheless, several aspects should be considered:

- Victims coming from third States might have an illegal residence situation in the country of exploitation. They need to feel confident and be granted unconditional assistance and support at least during the "reflection period" to secure their testimony. Innovative approaches should be considered, such as assistance programs to facilitate their integration in the destination country in the event they decide to stay.
- Victims should not be prosecuted or have penalties imposed upon them for minor offences (e.g. use of fake identity, pick pocketing) that they may have been compelled to commit while being trafficked, in line with Article 8 of the Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims.
- National authorities should also consider providing compensation to THB victims, for instance from assets confiscated from traffickers.
- Victim interviews should be conducted by trained staff in a safe environment and, if possible, documented on video. At trial, the use of video conferencing from safe locations should be encouraged, mainly for two reasons: (1) to avoid secondary victimisation by confronting victims with their exploiters; and (2) to ensure that victims can render testimony even when they have returned to their home countries.

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<sup>3</sup> For more details on difficulties encountered in judicial cooperation in THB cases, please refer to section 6 of this report.

*Other suggested solutions from the participants to the THB strategic meeting<sup>4</sup>*

- In some Member States, victims' statements can be secured before trial whenever a risk exists that they might leave the country or change their initial statement. This procedure involves organising a hearing by a judge in the presence of the defence lawyer of the suspect during the pre-trial investigation. This practice must nevertheless be used carefully as the presence of the victim at the hearing will make the traffickers aware of the investigation (as they must be notified). Furthermore, any change or withdrawal of victims' testimony is investigated in some Member States whenever this evidence is the main source available to attempt to ascertain whether the victims or their families have been threatened.
- Whenever possible in accordance with applicable national legislation, testimony of police officers or other authorities (e.g. border guards) that received the initial statements from the victim or that participated in special investigative activities (e.g. surveillance or house searches) could be used, to put less pressure on the victim and, eventually, provide supporting information.
- The use of expert witness testimony or expert witness reports could also be considered as a source of additional information at the trial stage. For instance, in one case involving victims from Nigeria, a voodoo priest was present during the victims' hearings to make them confident that their testimony would not be against their religious beliefs. An expert victim was also employed: she had once been a prostitute from Nigeria and thus could provide an objective description of the situation faced by the Nigerian victims, explaining the voodoo and other local beliefs used by the traffickers to force the women into prostitution.
- Persons that have used the services of victims of THB (e.g. domestic labour and sexual service), irrespective of the fact that their behaviour is criminalised or not, could be heard in court to provide further important evidence.

*2. Financial investigations should always be conducted in THB cases*

One of the main findings of the project is that financial investigation is a very important tool to obtain evidence and to ensure recovery of proceeds of crime, as stressed by most of the respondents to the questionnaire. Financial investigations examine the monetary flows, which allow locating and identifying the individuals involved in the criminal network, the roles in the organisation, the countries involved, etc. Knowledge of the money flow from the source country to the destination country, via the transit countries, facilitates the investigation of the entire chain of trafficking, and could provide a strong indication of where the main suspects are to be found.

This finding is in line with the Commission Communication on the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (hereinafter "the EU Strategy on THB") which stresses in Point

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<sup>4</sup> Please note that these solutions do not necessarily reflect the opinions of the College of Eurojust.

2.3, Action 2, that financial investigations of trafficking cases should be conducted **proactively** by Member States in cooperation with EU agencies, including Eurojust and Europol. Furthermore, in line with the EU Strategy on THB, Eurojust also believes that financial investigation should be used more often to overcome some of the problems mentioned above related to a lack of, or insufficient evidence from, victims and other witnesses that might hamper prosecution of THB cases. More details on the advantages that financial investigations could bring are described in section 8 of this report.

### *3. Any other types of evidence should be used*

Investigators should be more proactive in looking for any other type of corroborative evidence to ensure that all elements of the trafficking chain are subject to prosecution. As traffickers continuously develop new forms and means of exploitation, investigators must learn to make use of all possible investigative techniques tailored to each particular case. Investigative techniques, such as searches, infiltration, surveillance, and interceptions of telecommunications, could be successfully used in THB cases. GPS surveillance of traffickers could show how OCGs operate. Infiltration by undercover agents has proven to be an effective means of providing important evidence to the prosecutor on individuals dealing with THB. However, these techniques cannot be employed in all Member States.

*The participants in the THB strategic meeting suggested the following other solutions to obtain further evidence to be used in court proceedings<sup>5</sup> :*

- Problems related to admissibility of evidence could be overcome by free evaluation of evidence in court.
- Prosecutors should take a holistic approach and target not only the direct offenders, i.e. the traffickers, but also those who play an instrumental role in facilitating the crime. Such approach would entail measures of a non-criminal nature, such as shutting down websites related to prostitution (e.g. advertising, recruitment); using "SMS bombs" towards customers, making them aware that victims of THB are used for the prostitution services advertised and asking for information; administrative controls on hotels or establishments used for prostitution; and cooperation with civil associations and NGOs to detect indicators of human trafficking.
- Every effort should be made to obtain sufficient evidence for bringing charges on THB-related crimes. *In extremis* and to avoid a situation of impunity, participants suggested prosecuting crimes other than THB when all efforts to obtain sufficient evidence to bring charges of THB failed. In this situation, prosecutors should focus on other related crimes (e.g. facilitation of illegal immigration, forgery of documents, fraud, tax evasion) that might have a higher likelihood of success.

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<sup>5</sup> Please note that these solutions do not necessarily reflect the opinions of the College of Eurojust.

### *4. Eurojust can provide valuable support to evidence-gathering*

Due to the cross-border nature of THB, cooperation amongst different jurisdictions is absolutely necessary. Eurojust can be involved to ensure coordination, stimulate cooperation, and provide advice as to which Member State would be in a better position to prosecute.

A majority of the questionnaire's respondents and participants in the THB strategic meeting have positively assessed the support rendered by Eurojust in THB cases, even in cases which did not lead to conviction.

The analysis of casework also shows the added value of Eurojust's intervention in gathering and exchanging evidence amongst different jurisdictions. In 8 out of the 29 cases analysed by the Project Team, coordination meetings held by Eurojust facilitated locating and interviewing witnesses that returned to their countries while the investigation was still on-going. The coordination meetings were also used to support and accelerate the execution of mutual legal assistance requests, particularly with the view of collecting evidence.

More details about the advantages of involving Eurojust in THB cases are described in section 9 of this report.

### *5. The role of Europol*

The involvement of Europol in THB investigations is also considered necessary, and most of the respondents to the questionnaire have cited Europol's added value in THB investigations. Its role as facilitator of exchange and analysis of information is widely recognised.

More details about the advantages of involving Europol in THB cases are provided in section 9 of this report.

### *6. JITs are useful tools for gathering and exchanging evidence in THB cases*

More details about the advantages of using JITs in THB cases are described in section 10 of this report.

## **Case Illustration**

A case was registered at Eurojust in which a Bulgarian OCG trafficked pregnant Bulgarian women to Greece. The mothers were forced to give up their new-borns for adoption to Greek couples. The criminal organisation used falsified IDs for the victims. As the investigation of the cases was at different stages in the involved Member States, the Bulgarian authorities asked Eurojust for assistance in coordinating and facilitating the investigations. This included executing a Bulgarian rogatory letter, discussing the differences in the legal systems and information on setting up a JIT (which eventually was not established). Eurojust held a coordination meeting to agree on how to solve these issues and facilitate the investigations. Police and judicial authorities from Bulgaria and Greece participated in the meeting, and Europol attended the meeting to assist the Member States. As decided in the coordination meeting, additional meetings between the National Members of Greece and Bulgaria with their investigative and police authorities later took place. As a result, police authorities from Greece

and Bulgaria intensified their cooperation. Furthermore, relevant legal information was exchanged directly, or through Eurojust, where it was analysed at two level-2 meetings between the Bulgarian and Greek Desks. Furthermore, Eurojust facilitated the execution of five European arrest warrants from Bulgaria to Greece. During the coordination meeting, Bulgaria and Greece also planned the dates of arrests. As a result of the coordinated actions, six suspects from the criminal network were arrested in Bulgaria and five in Greece. Greece has granted a postponed surrender of the five arrested persons. However, even though the trial in the district court in Greece was finalised with conviction of traffickers, the sentence of the district court was appealed. Therefore, the convicted persons are still in Greece. Cooperation in this very sensitive case is still ongoing between the judicial and police authorities of Greece and Bulgaria.

## 5. IDENTIFICATION OF THB CASES AND VICTIMS

**Introduction** One of the main difficulties encountered in the investigation and prosecution of THB is the initial identification of cases and victims. As shown by the replies to the questionnaire, the respondents have confirmed that this obstacle is a major challenge, second only to the biggest obstacle, which is related to the gathering of evidence. The importance of identifying victims has also been recognised in the EU Strategy on THB<sup>6</sup>, where it is the first of five identified priorities. Therefore, this section will address the issue of identification of THB cases and victims as described by the respondents to the questionnaire.

**Problems** 1. *Difficulties are encountered in identifying THB cases*

Traffickers are frequently prosecuted for less serious crimes, such as procuring or facilitating illegal immigration, rather than for THB crimes. This situation is partly due to the fact that THB consists of many specific elements that can individually be prosecuted as stand-alone crimes, and partly due to a lack of knowledge, awareness and experience among investigators, prosecutors and judges or misconceptions of the phenomenon. It is also due to an insufficient number of investigators and scarce use of intelligence-based investigation. As a result, the THB indicators frequently remain neglected or simply undiscovered.

The *modus operandi* used in sexual exploitation is furthermore gradually shifting from activities taking place in public settings (such as red light districts and street prostitution), to more concealed forms such as escort services, private housings and striptease parlours, private clubs and massage parlours. This change contributes to the difficulty of discovering and thus identifying THB cases. In addition, numerous prostitution services are offered by sex workers, some of which are particularly complicated to discover, such as webcam-sex. To avoid detection, traffickers can also relocate the victims to other countries, and use the anonymity of the Internet as a discreet method of recruiting new victims, diversifying sex-services, dispatching victims over different countries and even publicising their services. In addition, sham marriages can be used to facilitate the entrance and residence of victims in the European Union for the purpose of sexual exploitation.

2. *Problems appear in identifying THB victims*

Both the *modus operandi* of traffickers and the profile of traffickers and victims have changed. The traffickers use a new tactic: instead of abusing the victims, locking them up and taking all the profits generated by the victims, they seek a more “balanced arrangement”, sometimes resulting in the victims consenting to deliver sex services in return for some limited benefits. A new form of exploitation (collusion-control) has also developed recently in which the victims are involved in the profits of their own exploitation. As a result, the victims perceive themselves as “accomplices” and thus are less likely to cooperate with

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<sup>6</sup> Please note that identification, protecting and assisting victims of trafficking is mentioned as priority A.

law enforcement and judicial authorities. In addition, victims of trafficking for forced labour might not identify themselves as victims at all, as many times traffickers take advantage of the extremely difficult economic situation in the countries of origin. Therefore, victims sometimes accept to be exploited as they consider this situation more appealing to them than the hardship of their country of origin.

Additionally, most THB victims are reluctant to disclose to law enforcement and judicial authorities what has happened to them because they are highly traumatised and fearful of severe reprisals from the traffickers if they cooperate in an investigation. They might fear not only for their own safety but also for the safety of their families. On many occasions, victims are dependent upon the traffickers; they may not speak the language, may have a low level of education, and may not know their rights or how to defend them. Furthermore, they may have entered the country illegally and may consequently be afraid of being sent back or of other reprisals should they be discovered by the police. Finally, victims might come to the attention of national authorities not as victims, but rather as offenders, as they could be forced to participate in illegal acts, for example transporting drugs. All these circumstances pose challenges to law enforcement personnel when trying to discover victims and deal with this particular type of crime.

One further complication needs to be considered: the child victim of THB. Children are a particularly vulnerable group of victims, naturally dependent on others and thus more easily abused. In the EU Strategy on THB, children are noted as particularly vulnerable to both victimisation and re-trafficking. Eurojust casework from 1 January 2004 to 30 May 2011 shows a total number of 148 cases involving children. Only three of these cases concerned children as victims of trafficking. However, a small number of cases may not be an accurate reflection of the magnitude of the problem. As an illustration, one single perpetrator was responsible for the abuse of more than 100 children in one Eurojust case of travelling child sex offenders.

### **Solutions**

#### *1. Education, awareness and specialisation are needed*

Due to the complex nature of THB, general education and awareness about this phenomenon is essential if THB is to be detected. In particular, the authorities that first meet the potential victims need to have a basic knowledge, guidelines and information on what to look for and to whom to turn in suspected THB cases.

Specialised prosecutors and law-enforcement units are further important elements in combating THB. Eurojust considers an encouraging element that the number of Member States that have established such specialisation both on prosecutorial and police level has increased. The EU Strategy on THB requires the Member States to establish national multidisciplinary law enforcement units on human trafficking. However, specialisation alone is not sufficient.

Clear and simple procedures should be implemented to ensure that any suspected THB case is followed up in a professional and structured fashion to reduce the risk that the identification of victims is neglected.

Another solution requires more proactivity in the identification of victims (e.g. by seeking environments where potential victims could be found). During the THB strategic meeting, Dutch authorities reported that they have held workshops for several hundred hotel staff members to train them in recognising victims of THB and, in this way, have improved their awareness regarding potential THB victims.

Additionally, undercover operations may be used for investigation purposes, and also to assist in identifying THB victims.

A further useful step that prosecutors and investigators could take is to evaluate THB cases to identify the factors contributing to effective prosecution, and also the reasons for failing to prosecute the entire chain of trafficking or failing to identify trafficking as such.

Finally, according to Article 13(6) of the revised Eurojust Decision, Member States are required to inform Eurojust about complex THB cases affecting at least three Member States. In response, Eurojust could identify links to other cases, and communicate them to the concerned Member States. For more details about the added value of involving Eurojust in THB cases, see section 9 of this report.

*2. Other proposals suggested by the participants in the THB strategic meeting:*

- Prosecutors and investigators could gather and share information in a more structured fashion at national level. To accomplish this goal, tools such as matrices or other types of profiling would be useful. These tools, however, have limitations, the first being the need for constant updates, and the second being that not all types of exploitation can be easily profiled. For instance, sexual exploitation is easier to profile than other types of exploitation.
- JITs are useful tools for identifying victims. More details about the advantages of using JITs in THB cases can be found in section 10 of this report.
- Europol and Frontex can also assist the Member States in identifying THB cases and victims.

### **Case illustration**

A Polish criminal group that trafficked more than 200 people to the UK as part of a multi-million pound benefit fraud has been unmasked following a joint investigation by the Polish and UK authorities. The criminal group, based in Poland, promised work in the UK to at least 230 victims. They trafficked the victims into the country, had them stay at various addresses and tricked them into signing papers to open bank accounts. The criminals then fraudulently applied for tax credits and other benefits using the victims' details. The money was paid into the newly created accounts, which were then emptied by members of the OCG and sent back to the leaders in Poland, while the trafficked victims were left unattended. The two-year operation, initiated by the prosecution office of a Polish region, has culminated in 29 arrests in Poland and five addresses searched in London, where also two other people were arrested. During the operation, the UK authorities

investigated more than 230 tax credit awards with a value in excess of £ 2.000.000. The investigation included the collection of over 200 statements taken from vulnerable victims who were exploited. Police in the Central Unit for Trafficking in Human Beings in Poland stated that this form of trafficking is a new phenomenon. In the past, authorities were familiar mainly with cases where people were trafficked for prostitution or for slavery. This new form of trafficking is, however, becoming more and more common.

## 6. THE MULTILATERAL DIMENSION OF THB CASES

**Introduction** This section deals with the difficulties encountered by national authorities in investigating and prosecuting THB due to its multilateral dimension. Nearly half of the countries that replied to the questionnaire indicated that the multilateral dimension characterising THB cases is burdensome for the national authorities in charge of the investigation or prosecution. The analysis of casework confirms this finding. The multilateral dimension is characterised by the number of countries involved, and by the complex nature and particularities of this serious crime. The specific problems associated with the multilateral dimension of THB are described below, followed by suggested solutions for addressing them.

**Problems** 1. *The very complex nature of THB makes this crime difficult to investigate.*

The project findings demonstrate that managing a THB investigation is extremely time consuming and complex, requiring concerted efforts by several countries (source, transit and destination), as well as considerable resources and expertise. The results of the project also show that THB cases are more difficult to investigate and prosecute than many other cases due to their complex multidimensional aspect. The complexity of the crime arises from different factors, including its “hidden nature” (which frequently goes unreported), the relationship between exploiters and victims, the involvement of a number of suspects and victims, countries or locations, acts (e.g. recruitment, transport, harbouring, transfer and abduction), the need to secure protection and assistance to victims during the investigations, the need to obtain evidence from abroad, the fact that THB victims might appear as offenders to the authorities when they are forced to commit petty crimes, the fact that assets illegally gained by the traffickers are difficult to trace, freeze and confiscate, the increased use of the Internet as a way to recruit victims.

2. *National authorities focus on the national dimension of investigations. Links are sometimes not detected, or are even disregarded.*

The multilateral dimension of THB influences the choices that need to be made by the national authorities when initiating and conducting criminal investigations. These choices have a considerable effect on the way in which the investigation and prosecution is advanced or impeded. THB encompasses recruitment, transport, and exploitation, in most cases involving different countries (source, transit and destination). In order to effectively fight THB, the chain of trafficking must be investigated and the entire criminal network (which could be active in more than one country) must be disrupted, instead of solving individual cases at national level in isolation. However, a number of replies to the questionnaire highlighted that police investigations are often focusing primarily on the national dimension of a case, greatly reducing the possibility to identify and prosecute all aspects of trafficking. At the same time, the overview presented in section 2 of this report shows that most of the THB cases registered at Eurojust are

bilateral and that only a few are multilateral. This means that national authorities often restrict the investigation or prosecution to the national component, or at the best, that they widen it to one other (Member) State. Moreover, the project findings indicate that links to other countries are either undetected or disregarded. The analysis of casework confirms this conclusion. It shows that in some of the cases links with other countries were detected but apparently not further explored to Eurojust's knowledge. The participants at the THB strategic meeting acknowledged that time constraints, lack of resources and difficulties in cooperating with certain countries can lead to the non-investigation of further detected links.

*3. Judicial cooperation between Member States in THB cases is problematic.*

The project findings indicate that, with increasing frequency, the source, transit and destination countries for THB are all located within the European (so-called "internal trafficking"), with a number of Member States (particularly Bulgaria and Romania) being source countries of THB victims. This is shown in chart 2.7 in section 2 of this report. The results of the questionnaire (shown in Appendix 1) confirm that Romania and Bulgaria are more frequently referred to as source countries. One would expect enhanced judicial cooperation between the Member States (source, transit, and destination countries), facilitated by the large number of cooperation instruments adopted at EU and international level. However, the project findings indicate that difficulties appear in establishing effective judicial cooperation in THB cases. First, the very complex nature of THB cases calls for the collection of large amounts of evidence that need to be obtained from several jurisdictions. The analysis of casework and the replies to the questionnaire show that significant time delays are encountered in the issuing, translation and execution of MLA requests. This situation occurs primarily because in most THB cases rogatory letters contain a multitude of requests for evidence<sup>7</sup>, e.g. location and hearing of many victims, telephone interceptions, searches, location of suspects, identification of bank accounts, tracing of assets, etc. The delays in MLA execution are also related to a lack of clarity as to the authority to contact in specific countries, lack of means to execute the requested cooperation, or lack of interest (in particular, the replies to the questionnaire indicate that excessive delays have appeared in practice when evidence was needed from transit countries that have often different priorities than destination or source countries).

The questionnaire's replies point, at the same time, to other major obstacles encountered in judicial cooperation between Member States, including:

- Difficulties in conducting joint investigations, due to different stages or extent of connected investigations and prosecutions;
- Lack of coordination of parallel investigations;

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<sup>7</sup> For instance, in one case analysed by the Project, the drafting and translation of a MLA request for location and hearing of hundreds of victims and witnesses who returned to their home countries during the criminal investigation took several months due to the size of the rogatory letter.

- Difficulties in gathering evidence from other Member States and in obtaining information on subsequent links in the chain;
- Problems related to the admissibility of evidence gathered in other countries;
- Lack of knowledge or experience in judicial cooperation;
- Differences in national legislations;
- Difficulties in identifying victims of THB for the purpose of forced labour;
- Difficulties in ensuring the protection of witnesses in foreign countries;
- Uncertainty regarding the definition of THB in a number of EU countries. In this respect, some Member States have provoked their Supreme Courts to provide interpretations of the crimes that should be regarded as THB in an effort to achieve clarity, at least at national level.

*4. Problems appear in the judicial cooperation with third States in THB cases.*

The results of the project indicate that third States appear frequently as source countries of THB, as shown in Appendix 1. More than half of the respondents to the questionnaire reported difficulties in judicial cooperation with third States. These include: (1) delays in or lack of replies to the execution of requests for legal assistance; (2) significant time and financial resources invested in translation of documents and interpretation; (3) difficulties in obtaining evidence from third States, due to poor infrastructure, as well as difficulties in tracing individuals and assets (for instance, Nigeria and Vietnam do not have a database or any similar record system to identify and trace individuals, or DNA or fingerprint banks that could considerably assist in the identification of potential suspects or victims); (4) problems related to admissibility of evidence gathered in third States; (5) difficulties in contacting the competent authorities in third States; (6) corruption in certain third States that puts investigations and prosecutions in the Member States at risk; (7) difficulties in cooperation with certain countries (e.g. China, Nigeria, Morocco), particularly with respect to the sharing of information and development of information on ongoing investigations; (8) difficulties in implementing bilateral MLA treaties between Member States and third States (for instance, although the MLA Treaty between the UK and Vietnam provides for the possibility of obtaining testimony of persons via videoconference, no mechanisms exist in Vietnamese law for giving effect to this provision); and (9) lack of cooperation agreements or contact points in third States. The analysis of casework confirms these difficulties and shows that cooperation with third States in THB cases is very difficult to achieve. By looking at the 29 THB cases analysed by the Project Team, links with third States were identified in eight cases. However, the concerned third State (i.e. Turkey once and Ukraine twice) was contacted in only three out of the eight cases and, finally, only in one case did a third State (i.e. Ukraine) participate in a coordination meeting at Eurojust. The limited involvement of third States in cases dealt with by Eurojust (especially in coordination

meetings) could be explained by data protection issues (in the absence of cooperation agreements with the concerned third States), but also by other reasons, including a lack of resources, a lack of trust and a lack of contact points in third States.

*5. Cooperation with relevant stakeholders is many times lacking.*

The results of the project show room for improvement in cooperation in THB cases between judicial and law enforcement authorities and other relevant stakeholders. Only in a very small number of cases analysed by the Project Team did judicial authorities cooperate with relevant stakeholders, such as social benefits agencies, tax authorities, security agencies, financial services companies and NGOs dealing with assistance and sheltering of THB victims. For example, the analysis of casework shows that only in one THB case, the JIT members cooperated closely with Western Union and MoneyGram in a money laundering investigation to examine transactions made by traffickers.

*6. Lack of resources impedes effective investigations and judicial cooperation*

A number of Member States reported encountering difficulties in finding the necessary resources for initiating or conducting effective THB investigations. This situation also hampers the effectiveness of connected investigations in other countries.

*7. The involvement of Eurojust and Europol in THB cases is limited.*

Despite the added value of involving Eurojust and Europol in THB cases (as presented in section 9 of this report), national authorities request their assistance in a limited number of THB cases, as is clear from an analysis of the statistics at both Eurojust and Europol. Moreover, some national authorities have never involved Eurojust nor Europol in THB cases, as indicated in the replies to the questionnaire shown in Appendix 1. At the same time, the analysis of casework also shows that Europol was only involved in 19 of the 29 analysed cases. The insufficient awareness on the roles of Eurojust and Europol in THB cases might impede effective judicial cooperation and coordination of actions needed for disrupting the criminal networks.

**Solutions**

*1. Involvement of Eurojust and Europol in all cross-border THB cases, according to their mandates.*

The analysis of casework shows that the involvement of Eurojust (and Europol) in THB cases brings added value to investigations and prosecutions. Following the same line, a number of States replying to the questionnaire clearly indicated that Eurojust and Europol should be more involved in THB cases. The EU Strategy on THB encourages the Member States to involve Eurojust and Europol in all cross-border trafficking cases. Furthermore, "*Member States should make full use of EU agencies and share information with a view to increasing the number and quality of cross-border investigations at the level of law enforcement and at judicial level<sup>8</sup>*". By sharing information with

<sup>8</sup> Please refer to Action 3 "Increasing cross-border police and judicial cooperation" in Priority C "Increase prosecution of traffickers".

Eurojust, Member States would be able to benefit from Eurojust's assistance and support in prosecuting the whole THB chain, including the leaders of the OCG, and in confiscating their assets. The added value of involving Eurojust and Europol in cross-border THB cases is described in section 9 of this report.

*2. JITs are suitable and efficient tools in investigating THB cases.*

The advantages of using JITs in THB cases, followed by a description of the JITs analysed by the project (including their purpose, legal basis, problems addressed, role of Eurojust and the results of their work) is presented in section 10 of this report.

*3. Multidisciplinary approaches to organised crime prove to be suitable and useful in THB cases.*

The Project Team found that supplementing the traditional judicial approach to organised crime with innovative measures, such as multidisciplinary approaches, is becoming common practice, especially in some of the Member States. The central principle is that a large number of stakeholders, including not only law enforcement and judicial authorities, but also banks, administrative authorities, NGOs, housing associations, tax authorities, immigration services, labour inspectorates, border guards, private parties, among others, can play an important role in preventing and fighting organised crime. The Project Team noted that THB could be better addressed by multidisciplinary approaches that supplement the judicial ones. The need for such approaches is also advocated by the EU Strategy on THB. In particular, the conclusions of the Eurojust meetings<sup>9</sup> highlight that the cooperation and exchange of information amongst all relevant stakeholders would be beneficial in combating transnational THB cases. For instance, administrative information can assist in gathering evidence and conducting financial investigations in THB cases. Cooperation with NGOs can be essential in locating, getting in contact with and assisting THB victims, as NGOs sometimes have better information on victims than the police or the prosecution services. Challenges remain in the building up of mutual trust among relevant players and legal constraints related to the exchange of information and admissibility of evidence. In addition, the analysis of the replies to the questionnaire shows that only several States have developed close cooperation between different authorities, e.g. police, prosecutors, NGOs and judges<sup>10</sup>. A successful and innovative approach to address THB is the so-called "Barrier Model", which was presented during the THB strategic meeting as a best practice used in the Netherlands for several years. The goal of the Barrier Model is to eliminate opportunities by creating obstacles to the commission of a crime. The model identifies illicit actors (service providers) and illicit activities at each critical phase of the trafficking (entrance into the country,

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<sup>9</sup> Eurojust Strategic Seminar on "A Multidisciplinary Approach to Organised Crime: Administrative Measures, Judicial Follow-up and the Role of Eurojust", held in Copenhagen on 11-13 March 2011, and Eurojust THB Strategic Meeting.

<sup>10</sup> Some States also reported using guidelines on how to better deal with THB, including requirements for the law enforcement and judicial authorities to work with others, for example, in protecting, assisting and reintegrating victims.

housing, identification of victim, work and finance stages). The approach attempts to involve relevant stakeholders that are in a position of constructing structural barriers at each of these trafficking stages<sup>11</sup>.

*4. Increased cooperation with third States brings added value to THB cases.*

Despite the problems detected in relation with cooperation with third States, some successful cases were reported. During the THB strategic meeting, a case was discussed involving Nigerian female victims trafficked to the Netherlands and forced to work as prostitutes. Victims were influenced by voodoo practices to remain in the trafficking situation. The Netherlands successfully cooperated with Nigeria and with the other Member States involved. Innovative investigation techniques were used, including the presence of a voodoo priest during the victims' hearings. On the assumption that involvement of third States and multilateral cooperation in THB cases are essential elements necessary to disrupt entire criminal networks, a significant number of European countries have put in place initiatives to effectively cooperate with third States in THB cases, as shown from the replies to the questionnaire. These initiatives could be seen as best practices, including:

- Cooperation agreements with third States at law enforcement or prosecution level;
- Cooperation with NGOs in third States, especially concerning victims' protection activities;
- Use of liaison officers/magistrates posted in third States;
- Use of embassies, IberRed, Interpol, Eurojust and/or the Southeast European Law Enforcement Center (SELEC); and
- Projects to build capacity and increase cooperation (e.g. the Netherlands has organised THB training modules in the Dominican Republic, Dutch Caribbean and Colombia; Finland has established cooperation with FINNAIR at Asian airports for the purpose of training ground staff to detect and analyse possible THB indicators).

*5. Consider the establishment of an EU network of THB prosecutors (or use the existing international networks as a forum for THB prosecutors).*

This solution was proposed by some of the participants in the THB strategic meeting as a tool for increased international cooperation between specialised THB prosecutors. The network(s) would facilitate the sharing of experiences, lessons learnt, best practices, and difficulties in investigating and prosecuting THB.

**Case illustration**

An investigation of THB for the purpose of sexual exploitation of women was initiated in the Czech Republic in 2010 after a mother reported that her daughter was missing. Links with the United Kingdom were soon detected, as the suspects were identified as Czech male

<sup>11</sup>Barriers could take the form of regular controls, screening of paperwork of passengers, removal of licenses etc. which increase the risks and costs of human traffickers to be identified.

citizens residing in the UK and bringing female victims into the UK with a promise to be married to UK citizens. After arriving in the UK, the Czech victims (aged between 19 and 35 years) were forced to become prostitutes and some of them raped. A parallel investigation started in the UK in January 2011 and criminal intelligence had been exchanged via Europol. The UK authorities asked for the support of Eurojust in this case in February 2011. Following Eurojust's advice, the UK and Czech Republic agreed that a JIT would be a suitable tool for cooperation, to investigate and prosecute THB for sexual exploitation, breach of immigration laws and rape, to identify, locate and rescue the THB victims, and to seek the best venue for prosecution. Due to significant differences between the two legal systems, Eurojust provided extensive advice in drafting the JIT agreement and the operational action plan. Moreover, Eurojust held a coordination meeting where the main issue addressed was to prevent a conflict of jurisdiction, as both countries had grounds for prosecution. With Eurojust's assistance, taking into consideration the legal systems of the two Member States and the fact that most crimes were committed on UK soil, the JIT members agreed that UK would take the lead and prosecute the crimes. In addition, the JIT members received from Eurojust (on five occasions) the necessary funding via the Eurojust JIT Funding Project to cover the costs of joint investigations. The case progressed swiftly, with successful outcomes. The team members were regularly in contact and just four months after the signing of the JIT agreement at Eurojust, 11 suspects were arrested in the UK and 3 suspects were arrested (based on EAWs) in the Czech Republic (and later surrendered to the UK); additional victims (45 in total) were also identified. The investigation has so far led to the conviction of 7 defendants.

## 7. KNOWLEDGE AND EXPERIENCE IN THB CASES

**Introduction** This section deals with the problems and possible solutions related to the lack of experience or lack of specialised knowledge of authorities involved in investigations and prosecutions of THB. In responding to the questionnaire, more than half of the Member States (15 countries) identified these gaps as posing serious problems when dealing with THB cases. The lack of knowledge and experience are often factors that generate many of the problems identified in other sections of this report.

**Problems** As is the case with other types of criminality, THB cases often go undetected or unreported. Therefore, the real dimension of the problem remains unknown, possibly due to denial of the problem on the level of society. This denial also affects law enforcement resulting in a number of THB cases remaining unrecorded. As a consequence, lack of proper knowledge might result in misinterpretation of concrete elements of THB, including the *modus operandi* of traffickers and the recognition of a person as THB victim. Failing to achieve the right focus may occur on all levels, from law enforcement to judiciary.

Insufficient experience or knowledge of the specificities of THB cases can have a significant negative influence on criminal proceedings, in some instances even leading to the investigation of different crimes. Usually these offences are components of THB, such as crimes related to prostitution or forced labour. In addition, illegal immigration is very often confused with THB, although these two offences are clearly different. Thus, the criminal behaviour will only be partially addressed and important aspects thereof (e.g. whether an OCG is or is not involved, international links) will be missed and remain uncovered. If the competent authorities cannot recognise a person asking for help as a victim of THB, the victim may even be accused of committing a crime (e.g. as an illegal immigrant), which will inevitably weaken trust in law enforcement agencies. As a consequence, more cases go unreported and victims show less willingness to cooperate.

The *modus operandi* of traffickers is becoming increasingly subtle and more concealed, as mentioned in previous sections, meaning that THB is very difficult to monitor and investigate. Lack of specialisation may be one of obstacles to proper investigation and prosecution.

Police authorities are the first to deal with a THB case. They must identify the victims to ensure effective investigations. In addition, the way in which investigations are carried out and their focus will have a significant impact on the subsequent stages of the criminal proceedings. Problems may appear even at the trial stage, for instance in the event a judge focuses attention on "subjective factors" related to the victim (such as a victim's consent), without considering other "objective elements" (such as the presence of a situation of exploitation).

Some countries mention as a challenge in their responses to the questionnaire the lack of or insufficient training for the judiciary on

THB. A related problem detected is the lack of interest by judges in receiving specialised training. In some cases trainings have been offered but very few judges have accepted them.

In addition to assessing authorities' general THB-related knowledge and experience, ascertaining where exactly the specialised knowledge or experience are lacking is also important. The Project Team assessed whether the specific responsibilities to deal with THB are allocated to specialised forces or specialised units within the existing law enforcement and judicial structures. Replies to the questionnaire provide the following statistical result: all respondents indicated that specialised staff on THB is available within police and, 9 in border guards. In addition, 20 Member States plus Croatia and Norway mentioned that such specialisations exist in prosecution offices, while only three countries indicated such expertise within their courts. Thus, specialisation is mostly available on the level of law enforcement, to a lesser extent on the level of prosecution, and quite rarely within the courts.

Another problem is the lack of sufficient human resources. Often States have very few or only one dedicated investigative team responsible for THB that, in addition to its primary role as an investigative force, must also provide tactical advice to other non-specialised units. In a few instances, replies to the questionnaire show that some countries do not have specialised THB units, but only persons responsible for THB cases. The question, however, is whether or not such people are available to support others and share their expertise. In addition, units or departments responsible for organised crime in general also often must handle THB cases.

Whether the formal allocation of the task comes with real knowledge, experience and the necessary time to properly assess and identify cases is not always self-evident. Thus, combining non-specialist experience with shortage of time might result in a qualitative and quantitative challenge. The small percentage of THB cases within the total workload in some countries might also be associated with the related problems of analysing cases and coming to correct conclusions.

### **Solutions**

The questionnaire addresses whether the States are developing initiatives to counter the lack of knowledge in the THB field. These initiatives are presented below:

- All over Europe a number of measures are being adopted at national level to further enhance knowledge and awareness of THB. The adoption of measures, such as national action plans, strategies and programmes for enhancement, practical guidelines, manuals, handbooks or recommendations, all contribute to this goal. 24 Member States plus Croatia and Norway reported these types of initiatives at national level, although only 17 of these States apply them outside the law enforcement environment.
- Training is considered to be of vital importance in addressing existing deficiencies, although only 11 Member States make reference to specific measures. For instance, some Member States

invite foreign experts to participate in their programmes recognising the importance of the international dimension of THB in their training activities. Participation of foreign experts in trainings already implies the inter-institutional cooperation on both international and national level, including joint working groups and actions of governmental agencies. In this process, social welfare or immigration authorities also need to be involved to ensure cooperation between civil society, often in the form of NGOs assisting THB victims, and governmental organisations.

- Appropriate high-quality training for judges and prosecutors is essential. Practitioners' interest might be raised by interactive trainings (e-learning, e-library, IT-Cloud, Guidelines, Action Cards, central knowledge database, academic articles and publication of convictions etc.). Whenever possible, trainers should include experts, and focus on case studies, latest trends and phenomena (e.g. voodoo religion used to influence victims) and cultural issues.
- NGOs should be invited to join training sessions as they often meet the victims even before the police.
- Strategies or action plans are important but not sufficient. Competent authorities should be encouraged to learn by doing, i.e. investigating cases and consequently, acquiring the experience and the expertise they need.
- Several bodies at EU level have been set up to assist national authorities in tackling cross-border crime, including THB cases (i.e. Eurojust and Europol). Member States are encouraged to benefit more from their experience and expertise. For example, Eurojust's coordination meetings have proved to be very efficient instruments supporting direct cooperation amongst judicial authorities. Eurojust could support trainings and awareness sections on THB investigations based on its knowledge. Appropriate collaboration and sharing of information and knowledge across the European Union makes the investigation more efficient and generally also enhances knowledge about handling of THB cases.
- Several participants in the THB strategic meeting suggested including Eurojust's powers and mandate in the training curriculum for judges and prosecutors. In addition, the operating guidelines of prosecution services should refer to the added value of involving Eurojust in cross-border cases.
- JITs, which can be financially supported directly by the Commission and by Eurojust through its JIT Funding Project, also have potential to increase the efficiency of THB investigations and assist national authorities in enhancing their knowledge and expertise in THB investigations. More details on the advantages of using JITs in THB cases can be found in section 10 of this report.

**Case illustration**

France investigated a hierarchically organised Bulgarian criminal group, controlling an international prostitution network of more than 100 Bulgarian women by violent means, frequently using kidnapping, fraud,

aggression, threats and even murder to maintain their business. The coordinated investigation between France, Bulgaria and Italy not only uncovered a network of business structures in Bulgaria and other countries, used for money laundering and managed by the intermediate beneficiaries and their relatives, but also the involvement of Albanian organised crime groups in the money laundering process for the Italian branch of the network. The profits were estimated at 10 million EUR. Money transfers via Western Union with a total estimated benefit of approximately 2.5 million Euros were examined and, as a result, the investigation identified both the intermediate and final beneficiaries of this illegal trade. France issued EAWs against two of the main suspects serving sentences in Bulgaria. However, Bulgaria refused their surrender based on the *ne bis in idem* principle. France requested Eurojust to assist and facilitate in this matter. Eurojust organised a coordination meeting, bringing prosecutors and investigators from the two involved countries together. The French authorities managed, under the facilitation of Eurojust, to provide satisfactory justification that the "French crimes" were not the same as the "Bulgarian crimes" and the EAWs were executed. The two main suspects were temporarily surrendered to France for prosecution and attendance to the trial. After the trial they returned to Bulgaria to serve their sentences of 8 and 6 years respectively.

## **8. ASSET RECOVERY**

**Introduction** OCGs, and in particular those involved in THB, carry out their activities mainly for the purpose of obtaining an economic gain. This gain is used for affording offenders a luxurious standard of living and also for financing subsequent operations, thus ensuring continuity of their criminal endeavour. Therefore, preventing the criminals from obtaining profits is a major disruptive element because, without their illegal gains, no incentive to commit offences exists and no resources are available to carry out their illegal activities. Further, ensuring that illegally gained assets are identified and confiscated has an additional positive effect when they are used to compensate the victims or are allocated to the State authorities to be used to support the fight against crime.

The replies to the questionnaire generally acknowledge economic gain as a crucial component of THB. In several Member States, in cases where the economic benefit from THB is significant, the penalties for these types of crimes are reflected in national legislation. Asset recovery comprises different interconnected activities such as tracing, locating, freezing, confiscating, sharing, managing and returning the assets. These processes are complex and present an additional difficulty in THB cases because of the very important cross-border component requiring the involvement of several jurisdictions with different substantive and procedural legislations.

The replies to the questionnaire show that financial investigations and subsequent asset recovery are widely recognised as important, and are often run jointly with criminal investigations in THB cases. However, at the same time, the replies highlight structural problems and deficiencies in this respect, raising the question of whether asset recovery actually happens as a standard practice or it is rather an accepted principle that is not implemented in practice.

This section considers the national and international problems related to asset recovery identified as common to the countries that responded to the questionnaire, and examines possible solutions thereof.

**Problems** An issue mentioned in several replies to the questionnaire is the lack of capacity in terms of time, resources and expertise to properly run asset recovery or financial investigations. National competent authorities rather often have limited resources and, because asset recovery entails a considerable workload, manpower and time are often allocated only to the most immediate needs of the non-financial part of the investigation. At the same time a lack of specialised training results in decreased effectiveness in THB-related financial investigations, and in significantly less use of the asset recovery tool. Remarkably, almost all respondents to the questionnaire stated that they typically run financial investigations in THB cases.

A series of additional obstacles, some of them common to any type of organised crime investigation, have been observed. They refer to difficulties encountered in identifying and tracing illegally obtained

assets, especially when they are located in different countries. First, according to several participants in the THB strategic meeting, the lack of centralised bank registers in some countries and strict bank secrecy regulations in some jurisdictions limit the possibilities to efficiently and accurately trace all financial assets of suspects. Second, suspects use third persons, especially family members, to conceal ownership of assets. Third, THB is a cash-intensive business; therefore, criminals rarely use bank services and asset tracing becomes very difficult. All these problems are closely related to the high standards of evidence required in some of the Member States, which call for unambiguous proof that the assets in question are generated from a specific criminal act. Without such proof, asset confiscation cannot be ordered.

In addition, proceeds of crime are to a large extent used to sustain a high standard of living and the remaining benefit is often not invested in movable or immovable assets in the destination country, where the investigation and prosecution often take place. Rather, crime proceeds are very often routed to the branches of the criminal groups located in the source countries, again avoiding the use of financial institutions and hence increasing the difficulty to follow the money trail. Europol confirms that THB revenues are channelled through regular money remittance systems (e.g. Western Union, MoneyGram), alternative remittance systems (e.g. Hawallah) and cash couriers.

Furthermore, international cooperation presents specific challenges. Differences in substantive and procedural law may raise issues such as admissibility of evidence or fulfilment of the principle of double criminality in relation to asset freezing and confiscation. International treaties with some key source countries are not in place and, even when a legal basis is present, cooperation in practice is often difficult, negatively impacting information exchange both at police and judicial level. The execution of mutual legal assistance requests is expensive and imposes serious constraints on a number of countries. Finally, the process of execution of those requests is often lengthy because they entail supplementary workload for administrations which are already under heavy stress. This is particularly true for THB transit countries, as they are not affected by this phenomenon to the same extent as destination countries and, thus, give it a lower priority.

**Solutions**

A general finding of the evidence related workshops of the THB strategic meeting was that asset recovery and financial investigations should be launched at a very early stage, in parallel to THB criminal investigations. In this respect, a change of attitude and culture in police and prosecution services is needed in order to acknowledge that this economic component is crucial for successfully disrupting the criminal networks. Law enforcement and judicial authorities need specialised knowledge in conducting financial investigations. This specialisation may not necessarily involve setting up specialised financial units, but at least involve financial training to units and personnel investigating THB.

Several Member States have central bank registers and other registers concerning ownership of different types of assets (e.g. real estate and motor vehicles). In these countries, information on the assets related

to a suspect can be made available more swiftly due to the existence of such registers.

In some Member States, the burden of proof in confiscation cases is reversed; therefore, the suspect must be able to justify the legality of the assets at his disposal to avoid confiscation. The reversed burden of proof and the creation of registers of assets were suggested by several participants during the THB strategic meeting and, therefore, do not necessarily reflect the views of the College of Eurojust.

Other proposals during the THB strategic meeting included the use of other investigative techniques, such as interceptions of communications to obtain information on assets when channels other than regular banking systems (e.g. money transfers via remittance systems or cash shipments) are used. Administrative measures may also be adopted to prevent re-investment of proceeds from crime. Administrative authorities could use criminal intelligence as a basis for denying permits or licenses for otherwise legal activities. For example, when a trafficker tries to open a hotel with money from THB activity and the police authorities have intelligence identifying the illicit origin of money, this situation may be communicated to the administrative authority and be used as a reason for denying the requested permit. The maxim "*International cooperation is not an option but an obligation*", which resulted from the conclusions of the THB strategic meeting, should be adopted and actually implemented by all countries. When asset recovery cases show links with other countries, such cases should be followed up by all countries involved and the requested countries should actively cooperate in the investigations.

The *leitmotiv* in the majority of contributions to the questionnaire refers to the need to involve Eurojust as the key facilitator in cross-border judicial cooperation. Eurojust can serve as a means to coordinate actions, speed up legal assistance, and discuss and assist in solving legal problems stemming from the application of differing legislations or jurisdictional difficulties by identifying, for example, which Member State is in a better position to prosecute.

### **Case illustration**

A case between Romania and the UK was opened at Eurojust, involving an OCG trafficking children from Romania to the UK, with the aim of exploiting them to commit crimes (mainly stealing and begging). The criminal group arranged accommodation and transport, organised and supervised the criminal activities in the UK and collected the money obtained by the victims. Eurojust held several meetings between the judicial authorities from both Member States to clarify the differences between the two legal systems and to advise on the best place to prosecute, taking into consideration the different evidentiary requirements of the two countries. Moreover, Eurojust satisfactorily assisted in the setting up of a JIT, in which both Eurojust and Europol participated in a supportive role. The JIT received substantial European Commission funding and Eurojust also provided assistance. An investigation into money laundering and fraud was conducted to freeze assets in Romania, where the proceeds of crime had been invested in real estate. Examination of Western Union and MoneyGram transactions corroborated the financial data received from France,

Spain and Italy. During a large operation in Romania, with the support of 120 Romanian police officers, 200 gendarmes together with 26 police officers from the UK and 2 intelligence analysts from Europol, 34 home searches were conducted simultaneously, and 118 people were arrested. Large sums of money, 13 high-value automobiles, 6 large houses and 30 firearms were seized. More than 160 victims, aged between 7 and 15 years, were identified, and 27 people were prosecuted for trafficking of minors, participation in an OCG and money laundering. This THB case represents a successful example of international cooperation in investigation and asset recovery.

## 9. THE ADDED VALUE OF INVOLVING EUROJUST AND EUROPOL IN THB CASES

**Introduction** This section introduces a summary of the roles that Eurojust and Europol could play in THB cases to assist the national authorities.

**Problems** The previous sections addressed several problems encountered by national authorities in the investigation and prosecution of THB cases and in the judicial cooperation within and beyond the EU borders in transnational THB cases. The role of Eurojust and Europol in assisting national authorities in dealing with such problems is presented below.

**Solutions** 1. *The involvement of Eurojust can bring added value to THB cases*

**Eurojust's mission** - Eurojust was established in 2002 to support and strengthen cooperation and coordination between national authorities of the Member States in the investigation and prosecution of serious cross-border crimes. The instruments available at Eurojust, combined with Eurojust's long experience and knowledge gained in cross-border cases dealing with serious and organised crime, including THB, can certainly bring added value to THB cases. By referring a case to Eurojust for assistance, many of the problems encountered in THB cases by investigating and prosecuting authorities could be addressed. Eurojust could facilitate (and speed up) the execution of MLA requests and European orders and warrants, and could also provide the national authorities with relevant information needed to solve legal or practical issues that are (or may be) encountered in THB cases. For example, Eurojust could provide information on whether criminal proceedings against the same individual(s) are ongoing in another country for the same facts, whether a house search, the freezing or confiscation of assets is possible in another Member State and, if so, under which conditions. Eurojust could also assist in the clarification of differences in the requirements for the gathering and admissibility of evidence or for coercive measures, etc.

**Coordination meetings organised by Eurojust** are vital tools for Member States' prosecutors and investigators in cross-border cases. These meetings bring together the competent national authorities and Eurojust National Members involved in the case, as well as representatives from other relevant EU partners (e.g. Europol). They offer the opportunity to all the representatives from the authorities involved to personally meet each other and build a solid working relationship. Coordination meetings are planned by Eurojust to provide for the exchange of information on linked investigations and for coordinating operational action. Eurojust can facilitate and coordinate criminal cases from the beginning of an investigation up until the final court decision.

**Eurojust can play the role of a coordination centre** - To ensure that agreements made at coordination meetings are subject to timely execution by all parties, the idea of a coordination centre was introduced at Eurojust in 2011. The purpose of a coordination centre is

to support and coordinate at the Eurojust's premises joint action(s) (such as arrests, searches, and seizure of property) taking place simultaneously in several Member States, as agreed by participants during coordination meetings. The analysis of casework shows that in several THB cases a coordination centre was successfully installed at Eurojust, organised by National Desks with support from Eurojust's Case Analysis Unit. These centres allowed a real-time overview of the actions conducted in several countries on a specific action day. The results of these actions could be shared by all participants in the joint actions.

**Prevention and solving conflicts of jurisdiction** - Eurojust plays an important role in this area, advising on which Member State is best placed to prosecute, based on the facts and merits of each case.

**Eurojust plays an important role in the setting up and functioning of JITs** - This role will be described in details in section 10 of this report.

**Information and feedback provided by Eurojust to national authorities** - The revised Eurojust Decision envisages a more proactive role for Eurojust in the exchange of information with national authorities. Its Article 13(a) sets out that Eurojust will provide competent national authorities with information and feedback on the results of processing information transmitted by Member States, including the existence of links with cases already stored in Eurojust's CMS. Therefore, Eurojust can assist national authorities in obtaining a "broader picture" of the crime they are investigating by detecting links. This aspect is particularly important for THB cases, which often concern OCGs operating in several countries. This aspect has been highlighted by a number of Member States replying to the questionnaire. Eurojust suggests that national guidelines to prosecutorial units should always include a reminder that national authorities must inform their Eurojust National Member of complex THB cases in line with Article 13(6)(a) of the revised Eurojust Decision. Naturally, this input must be followed by an immediate response from Eurojust regarding links detected in other countries. Some of the replies to the questionnaire also stressed that Eurojust's feedback is crucial, pursuant to Article 13(a) of the revised Eurojust Decision, to the authorities that first provided the information. Moreover, Eurojust should play a more proactive role in this regard, and encourage national authorities to go beyond their own borders by sharing best practices, and raising awareness of the added value Eurojust and Europol can bring. At the same time, Eurojust should collect feedback from national authorities on cases in which it provided assistance (lessons learned), and carry out strategic analysis on the basis of information on convictions for THB at the EU level.

**Eurojust facilitates the cooperation with third States** - As mentioned in the previous sections, cooperation with involved third States is essential in THB cases. Eurojust has the ability to establish and maintain cooperative relations with third States which may take different forms. First, Eurojust has established *contact points* in many non-EU countries, namely: Albania, Argentina, Bosnia and Herzegovina, Brazil, Cape Verde, Canada, Croatia, Egypt, the former

Yugoslav Republic of Macedonia, Iceland, India, Israel, Japan, Kazakhstan, Korea, Liechtenstein, Moldova, Mongolia, Montenegro, Norway, Russian Federation, Serbia, Singapore, Switzerland, Thailand, Tunisia, Turkey, Ukraine and the USA. These contact points may facilitate relations with the concerned third countries in different domains, although subject to restrictions, such as on the exchange of personal data. Second, Eurojust, by virtue of its legal personality, can conclude agreements with third States regulating the relationship between Eurojust and third States that might include the exchange of information in common cases, the processing of personal data and the participation in meetings. Such agreements might also provide for the secondment of liaison prosecutors at Eurojust to further enhance this cooperation. Eurojust has concluded bilateral agreements with Norway, Iceland, the USA, Croatia, Switzerland, and the former Yugoslav Republic of Macedonia; and it is negotiating the conclusion of agreements with Ukraine and the Russian Federation. Moreover, the current Eurojust's priorities include initiating possible negotiations of cooperation agreements with Israel, Albania, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Turkey and Cape Verde. Eurojust's priorities also refer to contacts aimed at exploring possibilities for future cooperation agreements with Latin American countries (Brazil, Colombia and Mexico, in particular).

*2. Europol could provide valuable support to national authorities in THB cases*

The role that Europol could play in THB cases was presented during the THB strategic meeting. Participants were informed by Europol's representative that a secure computerised system, available 24/7, provides the capability for direct exchange of information between Europol and national authorities. The collected information is analysed and re-distributed to national authorities in the form of usable information packages. Moreover, Europol can provide the Member States with emerging trends in human trafficking, assisting them to better understand and investigate THB cases. Reference was also made during the THB strategic meeting to the small number of THB cases registered at Europol. This number reflects the possibility that THB statistics might be "polluted" by immigrants smuggling cases. Europol has noted confusion among some national authorities between the crimes of THB and smuggling of immigrants on some occasions. Europol and Eurojust have worked on this front to raise awareness on this issue at national level. In addition, the analysis of casework indicates that Europol's involvement in THB cases registered at Eurojust has included, *inter alia*, operational and strategic analytical support, particularly through analysis work files, participating in JITs in a supportive role (for instance, by deployment of "mobile offices" and other technical equipment, by providing communication platforms, strategic, technical and forensic support and tactical and operational expertise to JIT members).

**Case illustration**

After detecting counterfeit Indian passports, the Finnish Border Guard investigated a network of Indian and Sri Lankan citizens suspected of THB and facilitating aggravated illegal immigration of persons of Tamil

origin into the European Union (frequently using a route through the United Arab Emirates, Kenya, Tanzania, Turkey and Finland). The Finnish Border Guard requested the assistance of Eurojust in setting up a JIT to facilitate the exchange of information and judicial cooperation. A JIT between Finnish and French authorities was set up, with the participation of Eurojust and Europol. Several meetings at both Eurojust and Europol were organised during the investigation. The targets were defined during the last coordination meeting at Eurojust and a decision was made to set up a coordination centre at Eurojust to coordinate the joint action day. Eurojust provided a real-time overview of the actions in several countries and solved problems related to the execution of EAWs, rogatory letters and warrants. In addition, a Europol operational centre was set up to allow real-time exchange of information and evidence between police and judicial authorities in the countries concerned and to provide immediate analysis of the data collected. Judicial authorities and over 100 law enforcement officers from Finland, France and Belgium ran the joint operation. Documentary evidence and goods were seized during 23 searches in the Member States involved, and a total of 27 suspects were arrested and interrogated. The main target was arrested in France and charged with facilitating illegal immigration. This case clearly shows the added value of involving Eurojust and Europol during an action day.

## 10. THE USE OF JITS IN THB CASES

**Introduction** The use of JITS in THB cases has been identified throughout this report as one solution for addressing some of the problems encountered in the investigation and prosecution of cross-border THB cases. The Project Team found that many national authorities now recognise that the efficiency and effectiveness of THB investigations and prosecutions would be seriously impeded if only MLA requests were employed (even to the point that proceedings may not be taken against certain suspects due to a number of legal difficulties and limited human and financial resources). Solutions for effective investigations and prosecutions of traffickers are increasingly found in the establishment of JITS, as a tool for national authorities to overcome the disadvantages of MLA and, sometimes, the lack of resources and expertise. This section describes the advantages of using JITS in THB cases based on the findings from the replies to the questionnaire, from the analysis of 10 JITS evaluated by the project and from the conclusions of the THB strategic meeting.

**Overview** The replies to the questionnaire indicate that already 14 Member States have experience in setting up JITS in THB cases. Eurojust casework shows that JITS are increasingly seen as efficient judicial cooperation tools. In 17 of the 29 cases analysed by the THB Project Team, the establishment of a JIT was considered by the national authorities, either before or during a coordination meeting at Eurojust. In the end, discussions lead to the setting up of a JIT in 10 cases. The reasons for not establishing a JIT in the remaining cases included: (1) unsuitability of a JIT (due to different stages in investigations at national level), or (2) extreme sensitivity of the case at national level. Cases have also been recorded where the grounds for not agreeing in the establishment of a JIT have not been disclosed. Most of the analysed JITS have dealt with complex investigations of trafficking for sexual exploitation of women, and trafficking of children (girls and boys) for the purpose of sexual abuse, sham marriages, and/or for committing offences (e.g. theft and pick pocketing). All JITS were set up bilaterally between Member States on the basis of the 2000 MLA Convention and the 2002 Framework Decision on JITS. The initial duration of the JITS varied from 8 months to 12 months. Some of the joint investigations were extended for one or more terms due to the complexity of the cases. Although links with third States were detected in two cases, these third States did not participate in the JITS due to a lack of legal basis.

**JIT purposes** Analysis shows that the scope of JITS had been carefully considered in each case and inserted in the JIT agreements. Most of the JIT agreements included a wide purpose, such as the identification, investigation, arrest and prosecution of traffickers, as well as the gathering, sharing or exchange of relevant information and documentary evidence and their subsequent use in judicial proceedings. One JIT had, nevertheless, a narrower, specific approach. In this case, the purpose of the JIT agreement included a list of

investigative measures planned to be conducted jointly (i.e. approximately 100 interceptions of telecommunications; undercover operations; action day planned for spring 2010 when approximately 100 searches, arrests, and victims' and witnesses' testimony would be conducted simultaneously in two Member States). Two of the JITs went further with their goals, also providing for the location, identification, rescue, care, rehabilitation and support of the victims of trafficking pending criminal proceedings. In addition, six of the JITs agreements indicated that identification, freezing, seizure and confiscation of criminally obtained assets would be a separate objective, and in three cases confiscation of assets to provide financial compensation for the victims was specifically mentioned. One JIT was established with the sole purpose of conducting money laundering investigations (linked to THB), consideration being given to targeting traffickers from an angle where they are most vulnerable: their money and property. Three JITs agreements included provisions regarding the need to agree on an investigation and prosecution strategy and on the appropriate jurisdiction (one of the agreements referred to the support needed from Eurojust to achieve these goals).

### **Problems addressed by JITs**

Although this is not specifically mentioned in the agreements, most JITs focus on problems related to conflicts of jurisdiction and the need to agree on the best venue for prosecution. Difficulties related to gathering and admissibility of evidence due to differences between the legal systems of the Member States (including different provisions on disclosure of evidence, on the possibility for police officers to provide oral statements in court, on disclosure regimes for unused material, on the use of telephone interceptions as evidence in court) were also addressed before or after the setting up of JITs. A few examples of problems addressed by JITs are presented below. In one JIT, the agreement contained special provisions on covert investigations (especially for telephone intercepts), mentioning that any data collected by such means will be used only for the criminal proceedings covered by the JIT and destroyed immediately afterwards. In accordance with the applicable law, the JIT members also agreed to inform all persons affected by the interception after the completion of the measure, taking into consideration that it would not harm the scope of investigation, public safety or integrity of individuals. Moreover, one JIT dealt with problems related to the principle of *ne bis in idem*, as the investigations detected that few members of the OCG were found to be arrested and indicted in a Member State not participating to the JIT. In another case, discussion took place regarding whether Europol's reports could be used as evidence in national court proceedings. Modalities for a successful gathering of evidence in relation with reluctant and vulnerable child victims belonging to a closed community (of Roma people) were also sought in a JIT. Finally, problems related to availability of resources and ways to obtain funding for conducting joint investigations were addressed.

### **The role of Eurojust in setting up and functioning of JITs**

The revised Eurojust Decision provides that Eurojust (acting through the National Members concerned or as a College) may ask the competent authorities, providing their reasons, to set up a JIT. National Members (and their deputies and assistants) are entitled to participate in JITs (including in their setting up) either as national competent

authorities or on behalf of Eurojust. The project findings show that Eurojust plays a very important role in supporting JITs. In one case analysed by the project, the national authorities regarded JITs as “a new territory”: therefore, the expertise of Eurojust in this area, due to its extensive experience in JITs, was considered crucial. A distinction between Eurojust’s role before and after the establishment of a JIT is presented below.

First, *before the setting up of JITs*, in all cases analysed by the Project Team it resulted that Eurojust has been involved from early stages and provided advice to national authorities on whether a JIT was necessary and suitable in specific cases and on the objectives of the JIT. Eurojust has also assisted the JIT members to decide which Member State offered the best chances of effective prosecution and conviction of traffickers (many times by delivering opinions based on differences in evidentiary burdens). Eurojust has provided support by guiding and advising the national authorities extensively on the drafting of JIT agreements and operational action plans (hereinafter, the “OAPs”). For example, in one case, in line with the national legislation of one of the JIT members, Eurojust advised including in the purpose of the JIT agreement “the investigation of all other offences that stem from the facts of the JIT and are committed for the purpose of carrying out the offences which the JIT is investigating”, to avoid that such offences would not be covered by the joint investigation and, therefore, remain unpunished. Issues stemming from the different legal systems of the Member States (that might have impeded gathering and admissibility of evidence in courts) have been clarified with the support of Eurojust. For example, in one case, Eurojust advised the national authorities to include in the OAP of the JIT a special provision, stemming from the Bulgarian legislation. This provision clarified that, even though persons involved in the conduct of the investigation (i.e. police officers and prosecutors) would be prevented from giving oral evidence before a court in Bulgaria, they would be entitled to give evidence before a court in the other Member State that was part in the JIT. In another case, Eurojust assisted the national authorities in examining the question whether the JIT agreement could give retroactive access to evidence that had been obtained in national criminal proceedings before the entry into force of the JIT agreement. Another example of assistance provided by Eurojust consisted of clarifications given on the special requirements for hearing minors in a specific Member State, which determined arrangements by the JIT members to hear the child victims in the presence (via videoconference) of their parents or legal guardians, of a psychologist and of a representative of an authority for child protection.

All analysed JITs agreements were signed during or following coordination meetings at Eurojust. Besides its advisory and supportive role, Eurojust contributes substantially to the establishment of JITS by advising and raising awareness on funding possibilities of JIT activities and by providing the requested financial and logistical support to JITS via the Eurojust JIT Funding Project. Casework analysis shows that 8 out of the 10 JITS have received funds from Eurojust at least once (and one JIT obtained funds directly from the Commission’s Programme on Prevention of and Fight against Crime). The funds served several

purposes, enabling the operational teams, for example, to travel and meet to discuss operational strategies and exchange intelligence, to identify large numbers of victims and witnesses, to translate significant quantities of evidential data (including telephone intercept materials, covert surveillance materials, and testimonies of victims and witnesses), and to ensure interpretation during operational meetings or during interviews with victims and witnesses. In one case, the funding was used by investigators from Germany to travel to remote areas in Romania twice in order to take the testimony of Romanian female victims and witnesses. Without this financial support, the testimony of victims and witnesses could not have been secured, as substantial travel and accommodation costs would have been incurred to ensure the presence in court of victims and witnesses.

The involvement of Eurojust *after the setting up of JITs* differs from case to case. While all but one JIT agreement provided for the participation of Eurojust National Members (or their deputies) in a supportive or coordination role, the contact between the JIT members and the Eurojust participants in JITs was rather limited in a few cases. Nevertheless, Eurojust has played a facilitating role in most of the cases, assisting in the drafting of the amendments and extension of the JITs agreements and OAPs, in the organisation of coordination meetings, in the coordination of simultaneous joint actions, and in providing supplementary funding for JITs when needed. For example, in one case Eurojust successfully played the role of a “coordination centre” for simultaneous actions scheduled by the JIT members on a specific day, actions which resulted in 19 arrests of suspects in both Romania and Germany. The good practice of setting up a coordination centre at Eurojust was also used in a JIT investigating THB involving France and Bulgaria, where during an agreed action day, 6 EAWs and 13 house searches were simultaneously executed in France, Bulgaria, Belgium and Poland with direct support from Eurojust national desks and Europol. To conclude, the feedback received from national authorities in some of the cases analysed by the Project Team indicates that the JITs would not have been created or progressed so quickly without the assistance of Eurojust.

**Eurojust as a centre of excellence in JITs**

Article 13(5) of the revised Eurojust Decision contains an obligation for the Member States to provide Eurojust with information regarding the setting up and results of the work of JITs to enable Eurojust to play therefore a central role in collecting best practices and results of JITs from all over the European Union. However, this obligation is not yet fully implemented in all the Member States; therefore, situations occur when such information is not transmitted to Eurojust or the information proves to be limited. Nevertheless, the analysis of cases shows that progress or results of the joint investigations have been communicated in most cases, sometimes on a regular basis, at the request of the National Desks at Eurojust or at the initiative of the national authorities involved in JITs. The information includes the number of arrested or prosecuted suspects, of identified victims, of EAWs executed, operational deployments, joint surveillance and searches conducted, assets seized or confiscated, links identified with other countries and, in one case, even the possibilities of links with terrorist activities

employed by the OCG. However, while the analysis of cases shows that all OAPs provided for conducting financial investigations whenever appropriate, information on the initiation, progress and results of these financial investigations was received by Eurojust in only two cases, so assessing whether this object has been achieved is difficult.

**Case  
illustration**

Bulgaria started an investigation into an OCG suspected of drug trafficking. As intelligence showed that the criminal organisation also operated in the Netherlands trafficking women into prostitution, the Bulgarian authorities asked the Dutch authorities information on several suspects. Trafficked victims were exchanged periodically in the Netherlands, Belgium and Austria. A number of suspects was planning to permanently reside in the Netherlands to continue their criminal activities. After a Dutch delegation visited Bulgaria twice, and information on the criminal network was exchanged, Eurojust's assistance was sought. During the investigation, Eurojust held three coordination meetings to discuss the legal issues in the case and to provide advice and assistance to the Member States. In addition, Eurojust assisted in drafting the JIT agreement, the OAP and annexes. The JIT was established for one year with participation of both Eurojust and Europol. The JIT received funding from Eurojust, which enabled JIT participants to travel to Bulgaria and the Netherlands for operational meetings, the translation of relevant documents and interpretation during the operational meetings. Two suspects were arrested and, although the suspect's assets were investigated, a successful confiscation in the Netherlands did not occur. The Bulgarian and Dutch authorities were very satisfied with the level of judicial cooperation.

## 11. CONCLUSIONS

THB is a serious crime often committed by OCGs, generating substantial profits for traffickers and affecting victims of all ages and genders around the world. The Project Team concluded that THB poses more challenges to investigations and prosecutions than many other crimes. Nevertheless, the project identified possible solutions to increase the effectiveness of THB investigations and prosecutions. This section summarises the main conclusions drawn by Eurojust from the results of the project, as follows:

### **Gathering and admissibility of evidence:**

1. Victims' testimony in THB cases constitute essential evidence:
  - Efforts should be made to locate, protect, assist and encourage the victim to cooperate.
  - Victims' testimony should be facilitated by trained staff and, whenever possible, obtained via videoconferencing and/or secured before trial.
  - Member States are encouraged to establish the principle of non-prosecution of victims for the illegal acts that they have been compelled to commit.
  - Efforts should be made to secure compensation for victims.
2. Often victims' testimony needs to be supported by corroborative evidence, especially when victims change or withdraw their statements. Evidence other than victims' testimony is also needed to reveal the entire chain of trafficking, of which victims may not be aware of.
3. Other sources of evidence that could be used in THB cases include:
  - a) Oral evidence (e.g. hearing of witnesses, hearing of "customers" that used the services provided by victims, hearing of court expert witnesses)
  - b) Special investigative techniques (e.g. surveillance, covert investigations, interception of telecommunications, monitoring of Internet chat-rooms)
  - c) Financial investigations are important sources of evidence that should be initiated at the start of the THB investigations. Knowledge of financial flows through all countries concerned allows the entire chain of THB to be investigated and can give a strong indication of where the main suspects are to be found.
4. The exchange of evidence between jurisdictions is often problematic and causes delays:
  - More cross-border THB cases should be referred to Eurojust whenever problems regarding gathering and admissibility of evidence are encountered.
  - JITs should be increasingly used in THB cases to speed up cooperation and solve difficulties encountered in investigations,

including problems related to lack of resources for starting investigations.

- Europol could assist in securely facilitating the exchange and analysis of information.

**Identification of THB cases and victims:**

5. A lack of knowledge, awareness and experience in THB cases among investigators, prosecutors and judges results in THB cases not being identified as such and being prosecuted as less severe crimes. The evolving nature and modus operandi of THB are particularly challenging for identification of THB cases.
6. THB victims are often difficult to identify due to their reluctance to reveal themselves to the authorities. In addition, the profiles of both traffickers and victims are changing. New forms of exploitation (e.g. collusion-control) have developed involving the participation of victims in the profits of their exploitation.
7. Education and awareness are essential. Specialisation of law enforcement and judicial authorities in THB is necessary, but not sufficient. The authorities likely to be the first to meet potential THB victims need basic knowledge, guidelines and information on what to look for and to whom to turn when they suspect that a person is a victim of THB.
8. Proactive approaches in identifying THB cases and victims are needed, such as:
  - Seeking environments in which potential victims are likely to be found.
  - Use of undercover operations.
  - Evaluation of THB cases by investigators and prosecutors to allow the identification of factors that impede or make THB cases successful and the sharing of lessons learnt.
  - Seeking the assistance of Eurojust, Europol and Frontex in solving problems related to identification of THB cases and victims.
  - Use of JITs in THB cases to facilitate better identification of cases, and better identification, rescue and protection of victims, as well as links between the cases, when appropriate.

**Multilateral dimension of THB cases:**

9. THB investigations are extremely time consuming and complex, requiring concerted efforts by several countries, as well as considerable resources and expertise. National authorities sometimes focus on the national dimension of the THB case; links with other States are not always detected or are sometimes ignored.
10. Several problems in judicial cooperation between source, transit and destination countries appear in practice, especially when cooperation involves non-EU States.

11. Lack of resources and limited cooperation with relevant stakeholders represent obstacles to the initiation and conduct of effective investigations and prosecutions in THB cases.
12. To overcome the above-mentioned problems in THB cases and to increase multilateral cooperation, Member States are encouraged to:
  - Increase judicial cooperation with other States - to disrupt the entire chain of trafficking and, to this end, involve Eurojust and Europol in all THB cross-border cases, in accordance with their mandates.
  - Make more use of JITs to better address the complex multilateral dimension of THB cases and to facilitate increased mutual trust amongst competent authorities.
  - Increasingly use multidisciplinary approaches to fight THB. Cooperation with NGOs can be essential. Nevertheless, the building up of mutual trust amongst the relevant stakeholders and matters related to the exchange of information and admissibility of evidence must be carefully considered.
  - Share experiences, lessons learnt, best practices and difficulties in investigating and prosecuting THB by using existing international networks or by creating a specialised network within the European Union as a forum for THB prosecutors.

### **Knowledge and experience in THB cases:**

13. THB is a specific crime type, and its investigation and prosecution require specialised know-how. Lack of knowledge and experience in THB cases constitute two of the main obstacles to investigation and prosecution of THB.
14. Law enforcement authorities are usually the first to meet THB victims and to identify them as such. Awareness is crucial. Nevertheless, specific know-how in THB cases is also needed for judicial authorities, to ensure effective investigations, prosecutions and convictions of traffickers.
15. Training is one way to improve know-how in investigating and prosecuting THB cases. The quantitative and qualitative aspects of training are important. Training must be tailored, interactive, involve experts, focus on case studies, latest trends and phenomena, and possibly include NGOs' experience.
16. People who regularly deal with THB cases need to be trained. Member States are encouraged to initiate THB training sessions for law enforcement and judicial authorities, and to increase inter-institutional cooperation and cooperation with civil society, governmental and non-governmental organisations.
17. Another way to improve the knowledge and experience in THB cases is "learning by doing". The existing tools (e.g. JITs) and expertise at EU level (e.g. Eurojust and Europol) could be instrumental in assisting national authorities in cross-border

investigations and prosecutions of THB cases and should be fully used.

**Asset recovery:**

18. The importance of tracing, locating, freezing, confiscating, sharing, managing and returning proceeds from THB cases is recognised by all Member States. However, the Project Team detected that asset recovery processes are not sufficiently used.
19. Financial investigations should always be initiated in parallel with THB investigations to target traffickers where they are most vulnerable: their money and property.
20. International cooperation in asset recovery cases is often problematic, especially due to the following reasons:
  - Problems related to tracing of illegally obtained assets (e.g. lack of centralized bank registers in some countries, use of third persons to conceal ownership of suspects' assets, scarce use of bank services, crime proceeds not often invested in destination countries where investigations take place).
  - Differences in substantive and procedural laws governing freezing and confiscation in the Member States.
21. Lack of resources and expertise in conducting financial investigations are obstacles commonly encountered by national authorities in the asset recovery process.
22. JITs could be used as effective tools for conducting financial investigations and for addressing the lack of resources and expertise.
23. Law enforcement and judicial authorities should receive training in conducting effective financial investigations in THB cases.
24. Investigation techniques (e.g. observations and surveillance) should be employed in THB cases to locate assets owned or circulated outside the regular financial and administrative channels.
25. Member States should consider referring more asset recovery cases to Eurojust. With its extensive experience in the area of judicial cooperation, and with its growing number of contact points and cooperation agreements, Eurojust could play an important role in facilitating the recovery of proceeds from crime in THB cases.

**Eurojust:**

26. Eurojust, as the EU judicial cooperation body, has been identified throughout the project as essential in supporting Member States in addressing and solving difficulties encountered in investigations and prosecutions of THB cases.
27. More cross-border THB cases should be referred to Eurojust for assistance. For instance, Eurojust is able to:
  - Organise coordination meetings with all judicial authorities involved
  - Play the role of coordination centre in simultaneous actions

- Assist in preventing and solving conflicts of jurisdiction
- Facilitate cooperation with third States in THB cases
- Facilitate the conclusion of agreements on the return and sharing of confiscated assets
- Assist in the setting up and in the functioning of JITs

28. National authorities are also encouraged to inform their Eurojust National Member of complex THB cases in line with Article 13(6)(a) of the revised Eurojust Decision. This input shall be followed by information and feedback from Eurojust, including the existence of links with other cases in the CMS.

### **Europol:**

29. Europol involvement in THB cases could bring added value to investigations. Increased participation by Europol in cross-border THB cases is needed.
30. Europol can provide operational and strategic analytical support in THB cases, particularly through its analysis work files.
31. Europol can assist Member States in better understanding and investigating THB cases by providing them with emerging trends in the field of human trafficking.
32. Eurojust supports the participation of Europol in coordination meetings in THB cases and in JITs on THB cases.

### **JITs:**

Last, but not least, *JITs* are increasingly used by national authorities in THB cases, as they prove to be suitable, expeditious tools for addressing problems encountered in the investigation and prosecution of THB.

33. Member States are encouraged to use JITs whenever appropriate in THB cases and to set them up as early as possible.
34. Eurojust plays an important supportive and coordinating role in JITs (e.g. advising on whether a JIT is suitable in specific cases, defining the JIT's purposes, identifying which jurisdiction is best placed to prosecute, drafting and amending JIT agreements and OAPs, and clarifying other legal issues stemming from differences in legislation).
35. Eurojust also plays an essential role in supporting JITs financially. The financing of JITs by Eurojust is recognised by national authorities as a rapid, expeditious solution that facilitates the establishment of JITs at short notice.
36. Eurojust shall continue to raise awareness of the advantages that JITs could bring in THB cases, and on the funding possibilities of JITs.
37. Member States are encouraged to send information to Eurojust on the setting up and the results of the work of JITs in THB cases in accordance with Article 13(5) of the revised Eurojust Decision.

Eurojust could collect and disseminate best practices and results of JITs, acting as a centre of excellence in this area.

## **APPENDIX I: FINDINGS OF THE EUROJUST QUESTIONNAIRE ON THB INVESTIGATIONS AND PROSECUTIONS**

This appendix will present a summarised description of the main findings of the analysis of the responses to the questionnaire submitted to the participating countries that have contributed to this project: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom.

The purpose of the questionnaire was to gather information on the reasons underlying the limited number of THB investigations and prosecutions at national level, and the relatively limited involvement of Eurojust and Europol in THB cases. The questionnaire consisted of 13 questions and their answers will be summarised in this section.

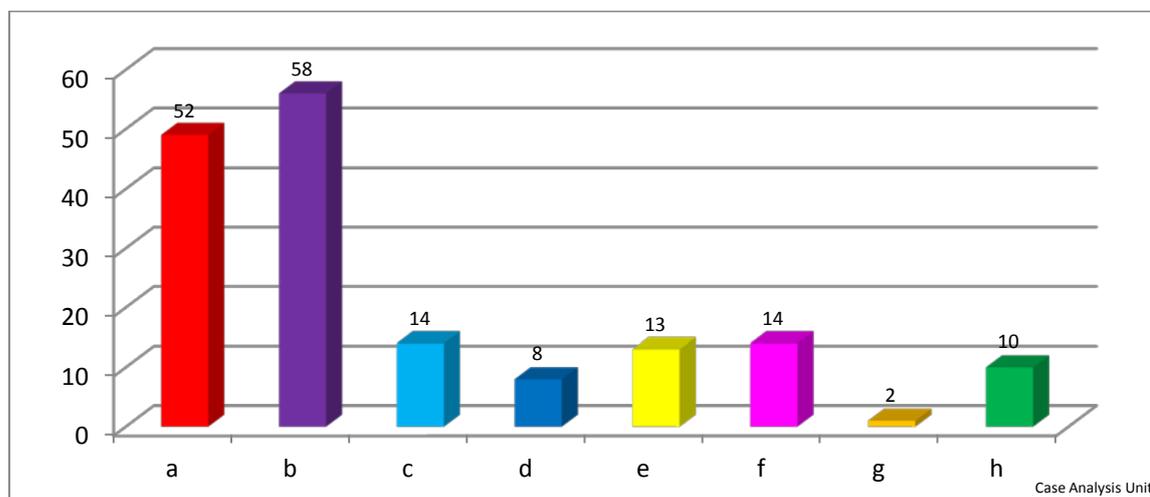
### **Question 1:**

Participants were asked to rank at least three of the most important obstacles faced in investigating and prosecuting THB cases from a list of possibilities prepared by Eurojust:

- a) Difficulties in identifying the victims of and/or difficulties in identifying cases of THB.
- b) Difficulties in obtaining evidence.
- c) Reliance only on victims' testimony, lack of or inadequate use of other sources of evidence.
- d) Legislative problems.
- e) High standards for evidence.
- f) Lack of experience or lack of specialised knowledge in THB cases.
- g) Interpretation problems.
- h) Complex multilateral dimension of THB cases.

Participants were also encouraged to add, as appropriate, any other significant difficulty.

While analysing the replies to the questionnaire, the Project Team allocated 3 points to the most serious encountered obstacle, 2 points to the second-ranked serious obstacle and 1 point to the third-ranked obstacle. The total amount of points received for each of the main difficulties indicated by the respondents are presented in the chart below:



As highlighted in section 3 of the report, the most significant difficulties, starting with the most serious ones, are:

- Evidence-related problems.
- Problems in the identification of victims and THB cases.
- Problems related to the complex multilateral dimension.
- Lack of specialised knowledge and experience in THB cases.

### Question 2:

Participants were asked to assess whether a significant number of THB cases go unrecorded in their jurisdiction, and, if so, to specify the main reasons for this situation.

The majority of respondents (16 participants) recognise that a serious risk exists that THB cases go undetected in their countries, either being completely ignored or prosecuted as different crime types. The main reasons for the complete lack of detection of the crime of THB include the increasingly concealed nature of THB (e.g. use of the Internet, private massage parlours, brothels disguised as regular businesses) and the fact that victims do not always report the crime to the police due to a number of factors, including fear, language problems, and difficulties in cooperating with the competent authorities.

Concerning prosecution of THB as a different offence, most of the responses indicate that prosecuting THB cases as different crime types is due to lack of expertise and difficulties in obtaining evidence, mainly from victims.

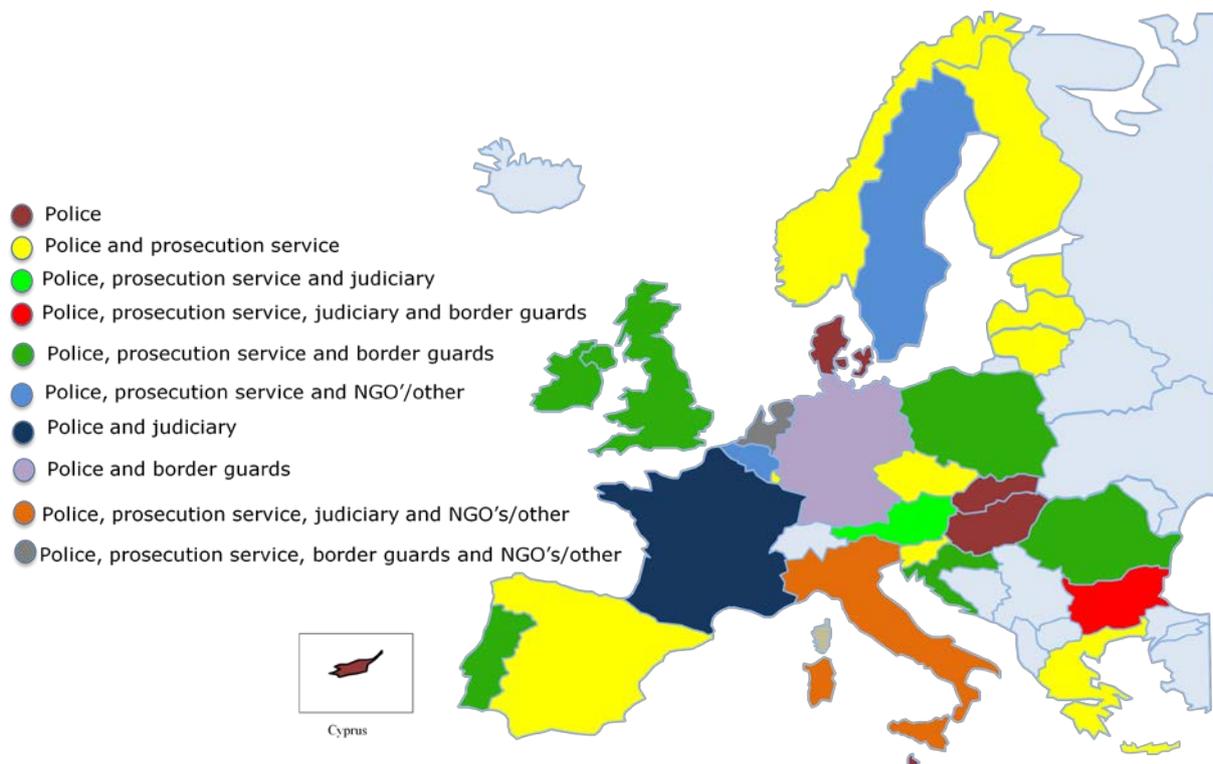
A different approach is mentioned by the UK, where investigation and prosecution of THB cases (as with any other criminal offence) is based on the opportunity criteria.

**Question 3:**

Participants were asked whether specialised units/persons responsible for THB investigations/prosecutions are available in their jurisdictions and, if so, to indicate their location (for instance, in the police, in the prosecution service, etc.).

The table and chart below provide a detailed overview of the presence of specialised units/persons in every participating country:

Country	Police	Prosecution service	Court	Border guards	NGOs/Other
<b>Austria</b>	✓	✓	✓		
<b>Belgium</b>	✓	✓			✓
<b>Bulgaria</b>	✓	✓	✓	✓	
<b>Croatia</b>	✓	✓		✓	
<b>Cyprus</b>	✓				
<b>Czech Republic</b>	✓	✓			
<b>Denmark</b>	✓				
<b>Estonia</b>	✓	✓			
<b>Finland</b>	✓	✓			
<b>France</b>	✓		✓		
<b>Germany</b>	✓			✓	
<b>Greece</b>	✓	✓			
<b>Hungary</b>	✓				
<b>Ireland</b>	✓	✓		✓	
<b>Italy</b>	✓	✓	✓		✓
<b>Latvia</b>	✓	✓			
<b>Lithuania</b>	✓	✓			
<b>Luxembourg</b>	✓	✓			
<b>Malta</b>	✓				
<b>Netherlands</b>	✓	✓		✓	✓
<b>Norway</b>	✓	✓			
<b>Poland</b>	✓	✓		✓	
<b>Portugal</b>	✓	✓		✓	
<b>Romania</b>	✓	✓		✓	
<b>Slovak Republic</b>	✓				
<b>Slovenia</b>	✓	✓			
<b>Spain</b>	✓	✓			
<b>Sweden</b>	✓	✓			✓
<b>United Kingdom</b>	✓	✓		✓	



#### Question 4:

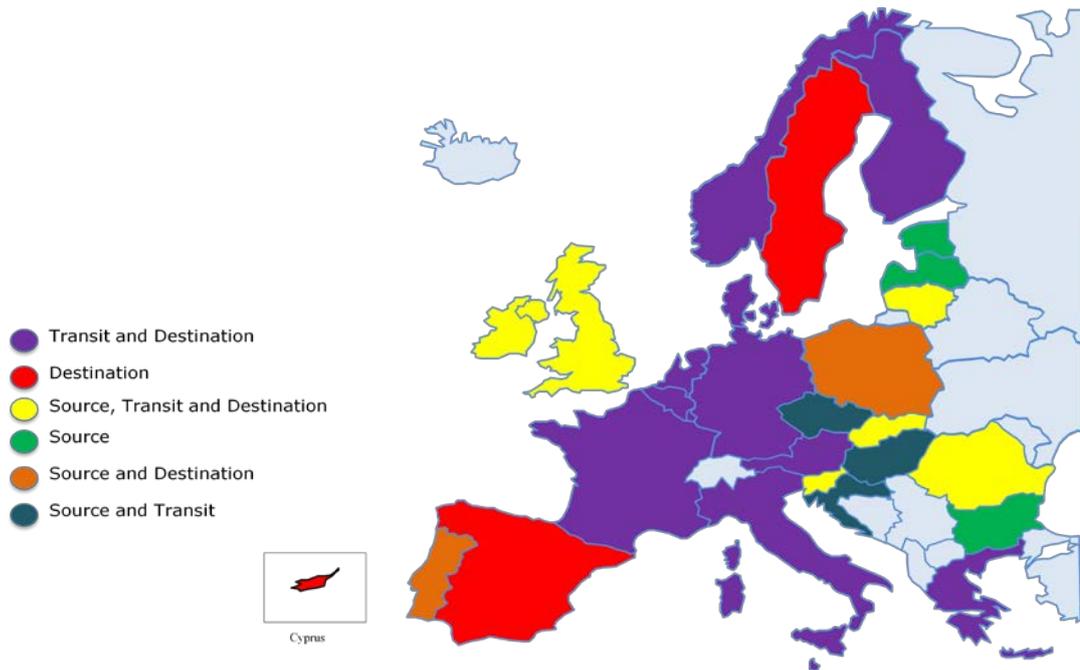
Participants were asked whether their national legislation is sufficient to address THB as such or whether they considered the need in their countries to amend applicable legislation.

The majority of respondents (20 participants) consider their legislation adequate to combat THB and have on-going consultation processes to transpose into their national law the provisions of the Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims. A minority of participants (6 respondents) simply attached their respective regulations without further assessing their suitability.

**Question 5:**

Participants were asked whether they considered their country as a source, transit and/or destination for THB.

The chart below summarises the responses:



**Question 6:**

Participants were asked to indicate the most common source countries of THB cases affecting their jurisdiction.

The chart below summarises source countries of THB victims as indicated by participants:

Country	Times mentioned	Country	Times mentioned
Romania	16	Nepal	1
Nigeria	13	Ireland	1
Bulgaria	9	Ecuador	1
China	8	Algeria	1
Ukraine	7	Mongolia	1
Russia	6	Bosnia & Herzegovina	1
Brazil	4	Serbia	1
Vietnam	4	Egypt	1
Albania	3	Syria	1
Thailand	3	Dominican Republic	1
Hungary	3	Bangladesh	1
Belarus	3	Sri Lanka	1
Estonia	3	Ethiopia	1
India	2	Slovakia	1
Morocco	2	Iraq	1
Poland	2	Afghanistan	1

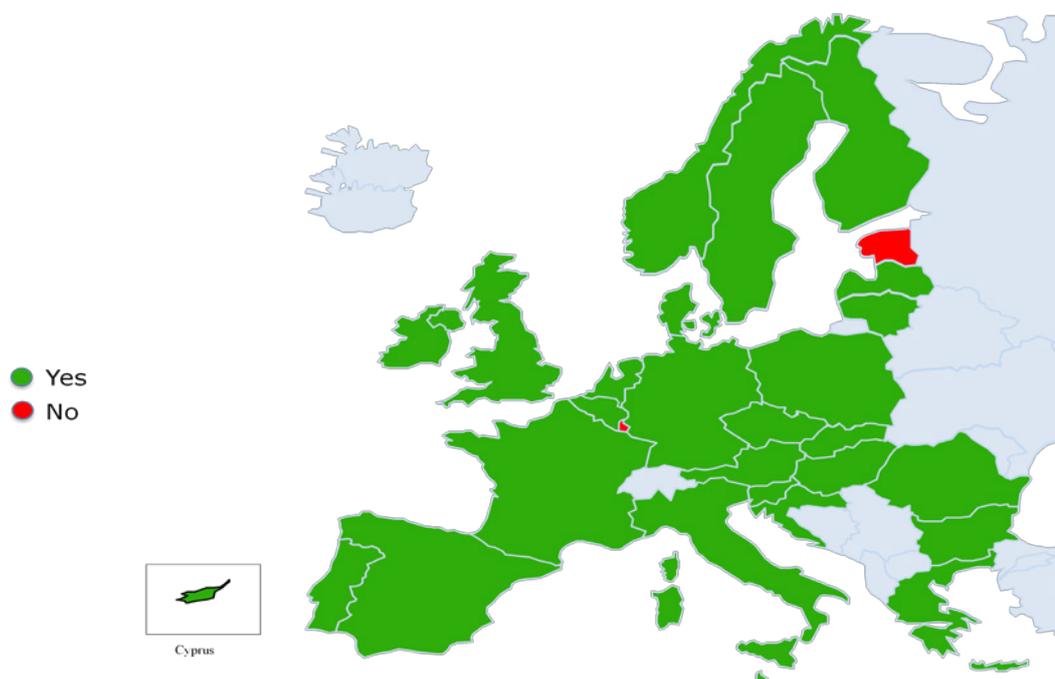
Lithuania	2	Paraguay	1
Moldova	2	Czech Republic	1
Philippines	2	Slovenia	1
Cameroon	2	Turkey	1
South Africa	1	Pakistan	1

### Question 7:

Participants were asked whether initiatives such as guidelines, protocols, etc. exist in their countries to reduce the number of undetected THB cases and/or to make investigations and prosecutions more effective.

Only two countries (Estonia and Luxembourg) do not have in place specific guidelines concerning THB investigations. Four countries (Cyprus, Germany, Denmark and Latvia) have mentioned initiatives only at law enforcement level.

The chart below illustrates the above results:



### Question 8:

Participants were asked whether they conduct financial investigations in THB cases and, if so, to indicate whether these investigations aim at obtaining further evidence and/or recovering proceeds from THB.

The table below illustrates the above results:

Countries which conduct financial investigations	For evidence gathering	For asset recovery
Austria	N/A	N/A
Belgium	Yes	Yes
Bulgaria	Yes	Yes
Croatia	No	Yes
Cyprus	Yes	No
Czech Republic	N/A	Yes
Denmark	Yes	N/A
Estonia	Yes	Yes
Finland	Yes	Yes
France	Yes	Yes
Germany	Yes	Yes
Greece	Yes	Yes
Hungary	Yes	Yes
Ireland	Yes	Yes
Italy	Yes	Yes
Latvia	Yes	Yes
Lithuania	Yes	Yes
Luxembourg	Yes	Yes
Malta	Yes	Yes
Netherlands	Yes	Yes
Norway	Yes	Yes
Poland	Yes	Yes
Portugal	Yes	Yes
Romania	Yes	Yes
Slovak Republic	Yes	Yes
Slovenia	Yes	No
Spain	Yes	Yes
Sweden	Yes	Yes
United Kingdom	Yes	Yes

### Question 9:

Participants were asked whether good cooperation initiatives with third States in THB investigations exist (e.g. cooperation agreements, liaison magistrates, through NGOs).

A majority of the respondents (18 participants) have established cooperation for THB matters with third States, mainly through their embassies, and more specifically make use of liaison magistrates and police liaison officers. Some of respondents indicated that they cooperate with NGOs in third States.

### Question 10:

Participants were asked whether they experienced obstacles in international cooperation in THB cases and, if so, to specify the main difficulties encountered.

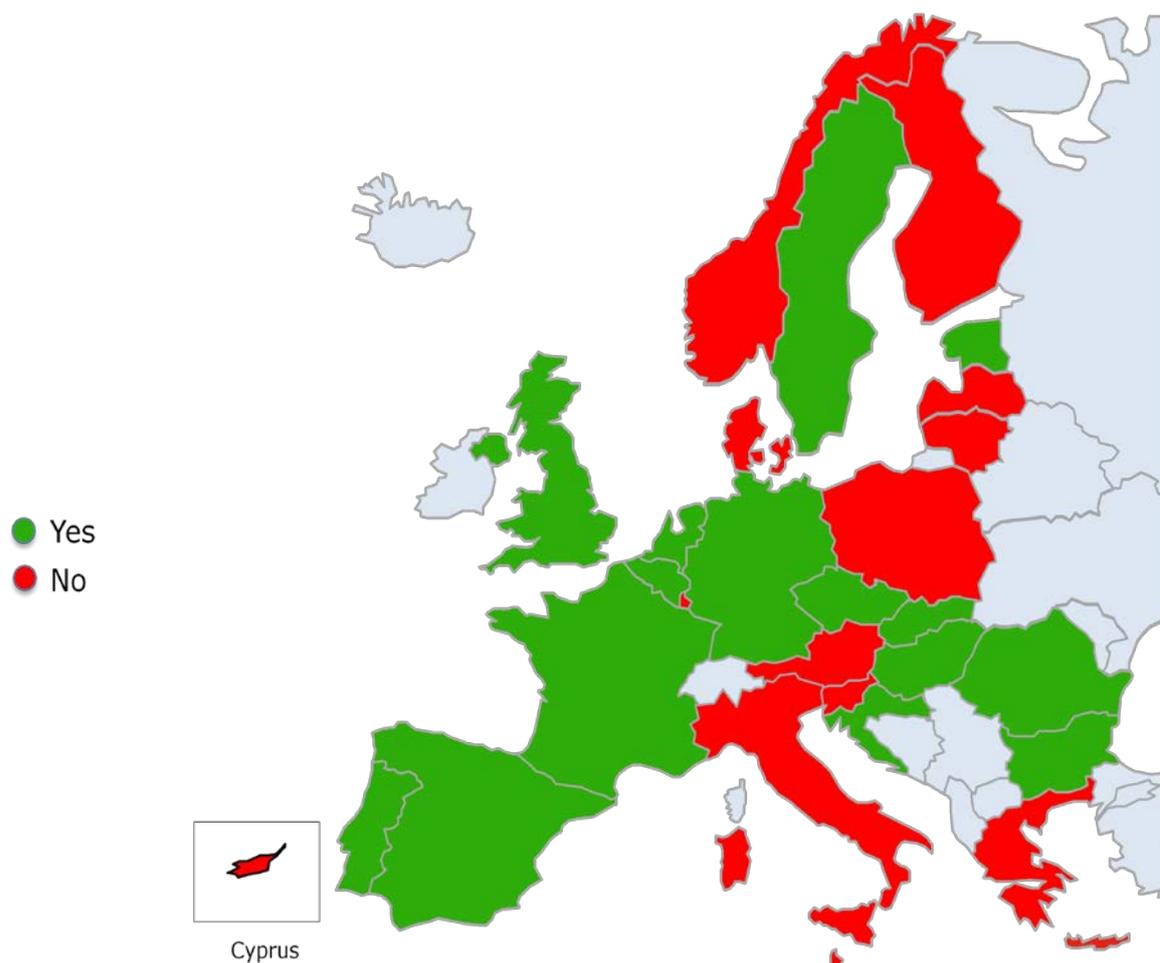
The majority of respondents (17 participants) did report problems in international judicial cooperation, while a minority (9 participants) did not indicate any difficulties.

The main problems reported include:

- Delays in execution of MLA requests (including from Member States).
- Lack of cooperation and exchange of information (this problem appears more frequently in relation to African and Asian countries, and more specifically Nigeria and China).
- Differences in legislation and judicial systems, particularly problems concerning admissibility of evidence.

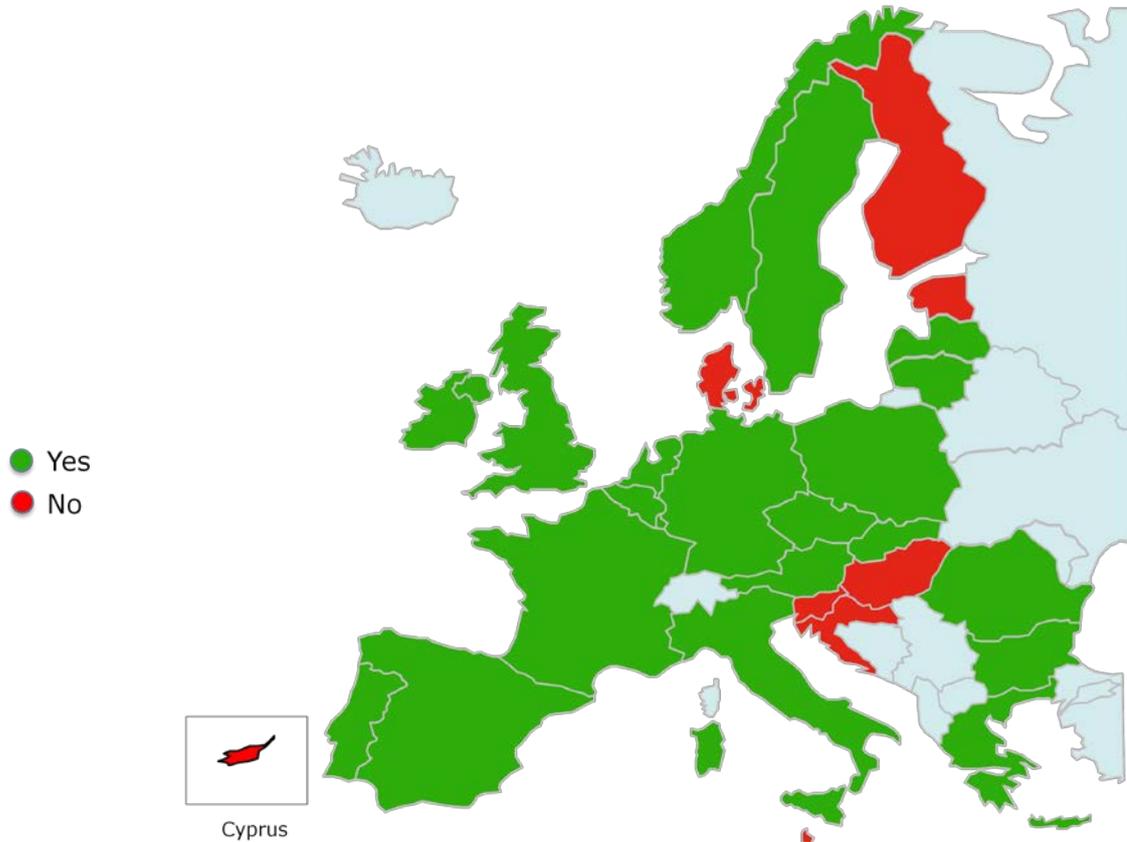
### Question 11:

Participants were asked to indicate whether JITs are used as instruments to fight THB in their countries. The chart below illustrates that 15 countries do use JITs in THB cases.



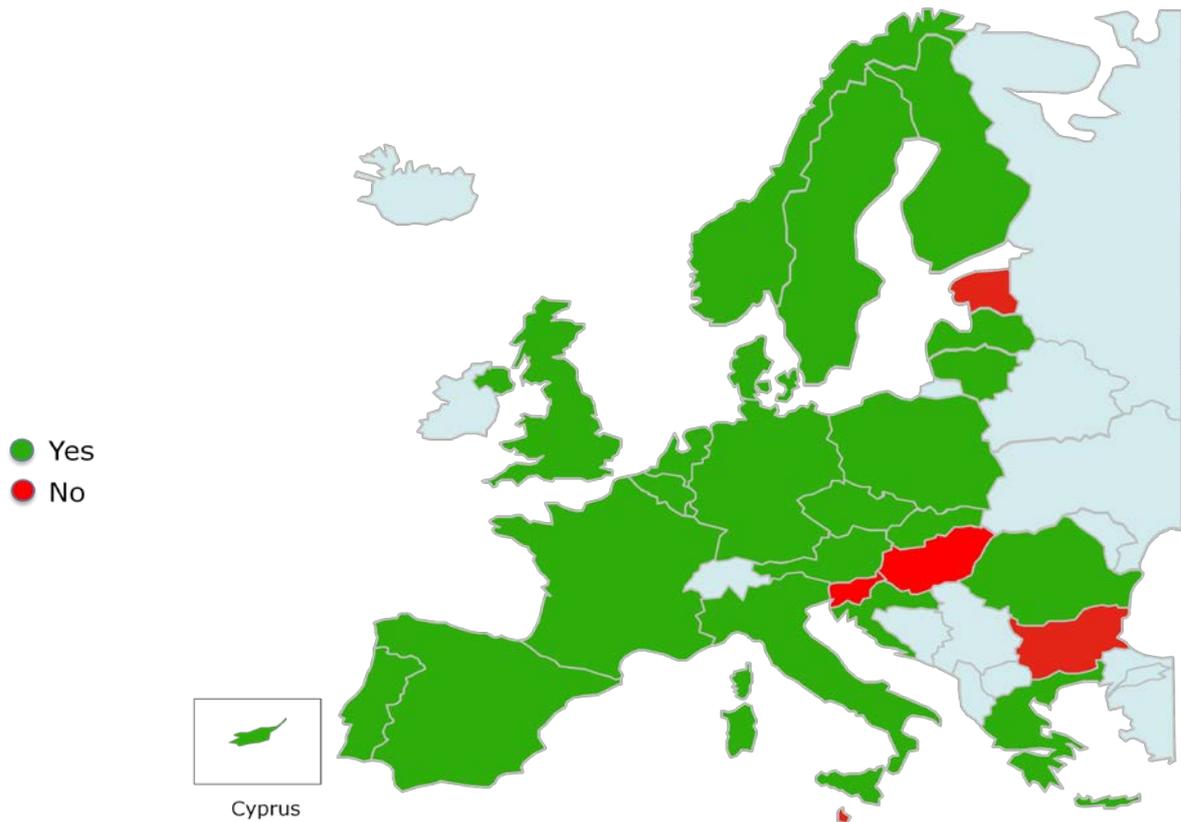
**Question 12:**

Participants were asked whether they refer THB cases to Eurojust and to indicate the advantages and disadvantages for doing so. The majority of respondents (21 participants) do refer THB cases to Eurojust, as illustrated in the chart below. The added value of involving Eurojust in THB cases includes the possibility of bringing together different authorities to coordinate their actions, facilitating the exchange of views and information, etc.



**Question 13:**

Participants were asked whether they involve Europol in THB investigations and to indicate the advantages and disadvantages for doing so. The majority of respondents (23 participants) do refer THB cases to Europol, as illustrated in the chart below, mainly to facilitate the exchange of information.



## **APPENDIX II: EUROJUST ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2012 – 2016**

The Project Team identified several solutions that might assist the national authorities in increasing the number of investigations and prosecutions of THB cases and in enhancing judicial cooperation in this area. In addition, a number of project conclusions were presented in section 10 of the report identifying main areas and actions for improvement with support from Eurojust.

The Eurojust action plan against trafficking in human beings (the “action plan”) has been designed based on the results of the project. The action plan takes into consideration:

- The strategic goals identified by the Standing Committee on operational cooperation on internal security (COSI) in relation to the priorities set by the Council for the fight against trafficking in human beings (2011 - 2013),
- The actions proposed in the Commission’s Communication on the EU Strategy towards the Eradication of Trafficking in Human Beings 2012 - 2016, and
- Eurojust’s commitments resulting from the Joint Statement of the Heads of the EU JHA Agencies on the occasion of the 5th EU Anti-Trafficking Day.

The action plan covers the period 2012 - 2016 and lists main priorities/areas for improvement and actions recommended and supported by Eurojust, as well as key performance indicators and timing schedules.

Eurojust will regularly monitor the progress achieved in implementing the action plan and will carry out an evaluation of its results in 2017.

## EUROJUST ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2012–2016

Priority	Actions	Strategic Targets	Timeframe
1) Enhancing information exchange to get a better intelligence picture at EU level in the field of THB	Encourage Member States to properly implement Article 13 of the revised Eurojust Decision, by notifying Eurojust of serious THB cross-border cases. Based on the information received, Eurojust coordinates responses and provides competent national authorities with feedback, including possible links between criminal proceedings on the same targets.	Amount of information sent by Member States increases. Feedback and links identified by Eurojust and communicated to the Member States in a timely fashion.	2012-2016
	Promote and enhance the use of coordination meetings and coordination centres at Eurojust as venues for exchange of information in THB cases. In this respect, ensure that coordination meetings and coordination centres are well prepared in advance, effectively conducted and followed up.	The quantity and quality of coordination meetings and coordination centres at Eurojust increase in THB cases.	2012-2016
2) Increasing the number of detections, joint investigations and prosecutions in THB cases and enhancing judicial cooperation in this area	Promote, where appropriate, the participation of Europol in all THB cases and all coordination meetings in THB cases. Europol's analytical contribution should be more actively pursued as a basis for coordination of efforts and opening of parallel investigations, where appropriate.	Number of Eurojust's THB cases and THB coordination meetings where Europol is invited to participate increases.	2012-2016
	Promote the involvement of Eurojust in all cross-border THB cases, in accordance with Eurojust's mandate and the EU Strategy on THB.	Number of THB cases registered at Eurojust increases.	2012-2016
	Promote and facilitate an increased number of multilateral THB cases that require coordination by Eurojust.	The number of multilateral THB cases compared to the total number of THB cases registered at Eurojust increases.	2015
	Continue to raise awareness on the advantages of JITs and encourage the competent authorities to increase the use of JITs in THB cases, with support from Eurojust and Europol.	The number of JITs in THB cases supported by Eurojust increases.	2013
	Encourage Member States to communicate to Eurojust the setting up of JITs and the results of the works of JITs in	Report on results of the works of JITs in THB cases referred to	2014

## EUROJUST ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2012–2016

Priority	Actions	Strategic Targets	Timeframe
	<p>THB cases, in accordance with Article 13(5) of the revised Eurojust Decision.</p> <p>Encourage Member States to:</p> <ul style="list-style-type: none"> <li>– find new and innovative ways to address THB and gather any type of evidence that could support, add, or replace victims' testimony;</li> <li>– conduct financial investigations in THB cases with support from Eurojust and Europol; and</li> <li>– communicate to Eurojust their feedback on the outcome of Eurojust's coordination meetings in THB cases, which allows an evaluation of the effectiveness of the cross-border actions.</li> </ul>	<p>Eurojust.</p> <p>Whenever appropriate, Eurojust should promote the use of financial investigations in THB cases and include this point in the agendas of coordination meetings.</p> <p>Feedback on the outcome of Eurojust's interventions received and evaluated.</p>	2013–2015
<b>3) Improving coordination mechanisms in particular for training, expertise and operational activities</b>	<p>Promote common training sessions on THB for law enforcement and judicial authorities and cooperate with EU institutions, agencies, bodies and relevant stakeholders, e.g. ERA, CEPOL, EJTN.</p> <p>Support the Member States in establishing specialised THB units or personnel within prosecution services.</p>	<p>Eurojust participates in training sessions on THB.</p> <p>Contacts are established with the national authorities whenever requested.</p>	2012–2016
<b>4) Increased cooperation with third States in THB cases</b>	<p>Promote, where appropriate, participation of third States in THB cases and in coordination meetings organised by Eurojust.</p> <p>Appoint Eurojust contact points in third States that are identified as country of origin or transit of victims.</p> <p>Negotiate and conclude cooperation agreements with third States where appropriate.</p>	<p>Number of THB cases and coordination meetings in THB cases attended by third States increases.</p> <p>Number of Eurojust contact points in third States increases.</p> <p>Number of cooperation agreements increases.</p>	2012–2016
<b>5) Using alternative approaches to</b>	<p>Promote the multidisciplinary approach against THB, including encouraging Members States to improve inter-institutional cooperation between bodies, agencies and</p>	<p>Whenever appropriate, Eurojust should encourage Member States to use multidisciplinary approaches in</p>	2012–2016

## EUROJUST ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2012 – 2016

Priority	Actions	Strategic Targets	Timeframe
<b>combat human trafficking, such as multi-disciplinary approaches</b>	institutions involved in the fight against THB, as complementary to judicial approaches.	THB cases and include this point in the agenda of coordination meetings.	
<b>6) Disrupting criminal money flows and asset recovery in THB cases</b>	Support the national multidisciplinary law enforcement units on human trafficking set up by the Member States, in line with the EU Strategy on THB.  Encourage consideration of cross-border asset recovery procedures in all THB cases and promote discussion on asset recovery possibilities in all coordination meeting on THB cases.  Encourage Member States to communicate to Eurojust the results of confiscation procedures and return of assets, allowing an evaluation of the effectiveness of the cross-border actions.	Contacts established with the units and support provided.  Whenever appropriate, Eurojust should encourage Member States analyse asset recovery possibilities and include this point in the agenda of in coordination meeting agendas.	2013  2012-2016  2015

### APPENDIX III: METHODOLOGY AND STAFF ACKNOWLEDGEMENTS

<b>Sources and methods</b>	<p>The Project Team carried out the following activities:</p> <ul style="list-style-type: none"><li>• <i>Drafting of the questionnaire on THB.</i></li><li>• <i>Collection, summary and analysis of replies to the questionnaire.</i></li><li>• <i>Quantitative and qualitative analysis of THB cases registered at Eurojust.</i></li><li>• <i>Selection of THB cases for in-depth study: 29 THB cases registered in the period 2008 - 2011 with a coordination meeting held during the same period.</i></li><li>• <i>Collection of available documents for the THB cases analysed: minutes of the meetings, presentations, case evaluation forms, etc.</i></li><li>• <i>Identification of the main research questions: 14 questions agreed by the Project Team to collect information from cases in a systematic fashion (e.g. the reason and stage of involving Eurojust in the case; agreements reached during coordination meetings; initiation of investigations in other countries, etc.).</i></li><li>• <i>Preparation of a standardised case report to collect the replies to research questions in a uniform way and consolidation of the case reports in one matrix.</i></li><li>• <i>Analysis of THB cases based on the standardised case reports.</i></li><li>• <i>Organisation of the THB strategic meeting to present the preliminary findings of the project and discuss problems and solutions for increased cooperation in THB cases with specialised THB prosecutors, judges and experts.</i></li><li>• <i>Analysis of the conclusions of the THB strategic meeting.</i></li><li>• <i>Drafting of the report based on the replies to the questionnaire, analysis of casework and outcome of the THB strategic meeting.</i></li></ul>
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