

UNIVERSITY OF MACEDONIA

**THE EU POLICY AGAINST TRAFFICKING IN HUMAN BEINGS
WITHIN ITS BORDERS**

UNIVERSITY OF MACEDONIA

**DEPARTMENT OF BALKAN, SLAVIC AND ORIENTAL STUDIES AND
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HUMAN RIGHTS AND MIGRATION STUDIES

DISSERTATION WITH THE SUBJECT:

The EU policy against trafficking in human beings within its borders

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Abstract

The aim of this paper is to reflect on a phenomenon that is present in society and the economy and is constantly increasing: trafficking in human beings. It is a flagrant violation of human rights, a crime with no borders and a lucrative business fueled by demand. This issue is viewed from a European perspective, as the paper examines the action taken by European stakeholders to address this problem, particularly in the aftermath of the introduction of Directive 2011/36/EU, known as the Anti-trafficking Directive. It will start with the most critical pieces of legislation adopted from the Member States and the figures that describe the scope of the matter. Then the specific forms of trafficking in persons will be discussed and a picture of the situation in European countries and the measures taken will be conveyed. It will, furthermore, explain the differences between smuggling and human trafficking. Of course, reference is made to specific measures to combat this phenomenon, such as criminalizing the use of services of trafficked persons or assigning liability to companies. It also gives a picture of the actions taken to uncover this crime, such as financial investigation, cross-border cooperation, the use of databases and the training of officers. The paper, of course, describes the impact of the current pandemic on the trafficking phenomenon. Moreover, it enumerates the rights of the victims. In the end, there is a critical overview of the challenges in implementing the EU strategy. Overall, this paper endeavours to highlight the positive developments in this matter, but also to analyse the obstacles that the EU must overcome in order to truly ensure the protection of the exploited victims, the prosecution of the perpetrators who commit this heinous crime and, ultimately, the respect for fundamental human rights.

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“He faced the sea and the desert. Help him to face normality.”¹

“I trade people for the simple reason that the goods are cheaper than a Kalashnikov or a kilo heroine, I am less at risk if I sell a person instead of drugs or weapons, and besides, these goods are self-propelled, you kick them and it continues!”²

“Having turned over the stone and seen what has crawled out ... it has transformed my view on policing, victims and society - that another person can dehumanise an individual, break them so thoroughly and threat them despicably, like a piece of furniture that can be thrown out when it has served its purpose is incomprehensible. We cannot and must not let it continue.

¹ Introduction to the document of the European Union Agency for Fundamental Rights on the "Guardianship for unaccompanied children in Italy, update after the adoption of Law No.47 of 7 April 2017 and Legislative Decree No.220 of 22 December 2017". Available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2018-it-guardianship-legal-update_en.pdf (Last accessed 1st April 2022).

² It is the terrifying confession of a human trafficker documented in the International Organisation for Migration when asked why he was trafficking people instead of weapons or drugs. Κουταλιανού Ζώγια, Σε έξαρση το σύγχρονο δουλεμπόριο, εφ. Καθημερινή, 10/4/09. Available at: <https://www.kathimerini.gr/society/354889/se-exarsi-to-sygchrono-doylemporio/> (Last accessed 1st April 2022).

1. Introduction

1.1. The importance of the phenomenon of THB

October 18 and July 30, respectively, are the dates that Europe and the world have identified as the day when people need to be informed about a phenomenon that has long occurred but is still present: the trafficking³ of human beings or the so-called by some people modern-day slavery. It is a phenomenon that constitutes a grave violation of human rights in that it treats people as a commodity that can be bought and sold, and puts them into all kinds of labour with little or no payment and poor working conditions. This also includes threats and close surveillance of the victims. It does not require movement, namely crossing national borders, but it does not exclude it either. It brings billions in profits for perpetrators who take advantage of the vulnerability of potential victims such as poverty, conflicts, lack of education and of strong family ties. Actually, in the reality of globalization, trafficking in human beings is valued as the third profit after the arms and drug trade.⁴ Unfortunately, the fact is that people can change hands up to 15 times, unlike weapons, which can be sold two or three times and drugs only once.⁵ But the most important fact is that this is not a static phenomenon as it is influenced by world politics and crises like the pandemic. It is also very complex because it pertains to a whole chain of actors. Indeed, it has to do with organized crime and affects not only the victims as individuals but also society and the economy in the long term.

Still, human trafficking is a global phenomenon. It happens in every country and in every region. It continues to occur in the European Union as well. We delve into the case of Europe because, as it includes some of the wealthiest countries in the world, it has been an important market for the exploitation of victims, particularly through

³ The term "trafficking" was first introduced as an Anglo-Saxon term in the 17th century to define the trafficking of illegal products.

⁴ Κυριαζή Τένια, Εμπορία Ανθρώπων, Διεθνές και Ευρωπαϊκό Δίκαιο Προστασίας των Δικαιωμάτων του Ανθρώπου, Ίδρυμα Μαραγκοπούλου για τα δικαιώματα του ανθρώπου, Νομική Βιβλιοθήκη, σ.5.

⁵ Papadimitrakopoulos George, Happy trafficking: how criminals profit from an iniquitous trade, University of Cambridge, Research. Available at: <https://www.cam.ac.uk/research/discussion/happy-trafficking-how-criminals-profit-from-an-iniquitous-trade> (Last accessed 1st April 2022).

sexual exploitation, forced labour, exploitation of criminal activity, begging and illegal adoption.⁶ For this reason, the EU Security Union Strategy has set as a key action to fight organised crime and more particularly trafficking in human beings.⁷ But unfortunately, despite the various preventive and punitive actions, human trafficking is still omnipresent in Europe. Actually, according to the study on the economic, social and human costs of trafficking in human beings within the EU, the total cost of trafficking for the EU-28 (including Great Britain) in 2016 is calculated at 3.7 billion EUR (2.7 billion EUR for the EU-27). The cost of trafficking over one victim's lifetime is 312.756 EUR in the EU-28 (337. 463 EUR in the EU-27).⁸

1.2. Legal provisions and mechanisms to combat and report

THB

At the international level, the most important instrument to fight trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women Children (known as the Palermo Protocol) from the United Nations accompanying the UN Convention against Transnational Organized Crime (UNTOC).⁹ It was the first international legally binding instrument that introduced the definition of trafficking, which was adopted in 2000 but entered into force in 2003. While the Palermo Protocol

⁶ European Commission, Commission staff working document, accompanying the document Report from the Commission to the European Parliament and to the Council, Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, SWD (2020) 226 final, p.8 ref. 13.

⁷ European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy, COM (2020) 605 final, p.20.

⁸ Three are the main costs of trafficking: 1. use of services (e.g. law enforcement, health services, social protection) 2. lost economic output 3. lost quality of life. See: European Commission, Study on the economic, social and human costs of trafficking in human beings within the EU, Publications Office of the European Union, 2020, p.20.

⁹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Available at: <https://www.ohchr.org/sites/default/files/ProtocolonTrafficking.pdf> (Last accessed 1st April 2022).

is binding, its provisions do not actually obligate the state parties to take action against trafficking, but rather encourage them to implement some measures for this phenomenon.¹⁰ The main change brought about by the Protocol was that the crime of human trafficking is henceforth recognized prior to the actual exploitation.¹¹ The Palermo protocol came after the Convention on the Rights of the Child (CRC),¹² which was adopted in 1989 and entered into force in 1990, in which Article 35 refers to child trafficking. In addition, there was the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),¹³ which was passed in 1979 but came into force in 1981, Article 6 of which relates to trafficking in women. Of course, the very first time that the term "trafficking in persons" was introduced, was in 1949, in the preamble of the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.¹⁴ And let us not forget the recent Council of Europe Convention against Trafficking in Human Organs,¹⁵ which was signed in 2015 and entered into force in 2018.

Of course, the UN Sustainable Development Goals from the 2030 Agenda,¹⁶ which was signed in 2015 and came into force in 2016, should also be mentioned, more precisely the sub-goals 5§2, 8§7 and 16§2. We refer to goal 5§2, which mandates that we eliminate all forms of violence against all women and girls in the public and private

¹⁰ Κυριαζή Τένια, Εμπορία Ανθρώπων, Διεθνές και Ευρωπαϊκό Δίκαιο Προστασίας των Δικαιωμάτων του Ανθρώπου, Ίδρυμα Μαραγκοπούλου για τα δικαιώματα του ανθρώπου, Νομική Βιβλιοθήκη, σ.38.

¹¹ Europol, Situation report, Trafficking in human beings in the EU, The Hague, February 2016, Document ref. No 765175, p.5.

¹² Convention on the Rights of the Child. Available at:

<https://www.ohchr.org/sites/default/files/crc.pdf> (Last accessed 1st April 2022).

¹³ Convention on the Elimination of All Forms of Discrimination against Women. Available at:

<https://www.ohchr.org/sites/default/files/cedaw.pdf> (Last accessed 1st April 2022).

¹⁴ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Available at: <https://www.ohchr.org/sites/default/files/trafficpersons.pdf> (Last accessed 1st April 2022).

¹⁵ Council of Europe Convention against Trafficking in Human Organs. Available at:

<https://rm.coe.int/16806dca3a> (Last accessed 1st April 2022).

¹⁶ United Nations, Transforming our world: The 2030 agenda for sustainable development. Available at:

<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Last accessed 1st April 2022).

spheres, including trafficking and sexual and other types of exploitation. Also on goal 8§7, which states, inter alia, that we must take immediate and effective measures to eradicate forced labour, and end modern slavery and human trafficking. In addition to this goal, 16§2 points out that we must end abuse, exploitation, trafficking and all forms of violence against and torture of children.¹⁷

At the European level, on 5 April 2011, the European Parliament and the Council introduced Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA,¹⁸ the so-called Anti-trafficking Directive.¹⁹ This Directive, which was the first²⁰ binding instrument to address specifically human trafficking at a European level, refers to a minimum definition of the criminal offences considered to be trafficking. In fact, the definition of trafficking in the Anti-trafficking Directive was based on the Palermo Protocol, although the latter has a narrower enumeration of the criminal activities that constitute trafficking. In particular, Article 2§3 of the Anti-trafficking Directive mentions prostitution and other forms of sexual exploitation, forced labour or services, including begging, slavery and practices such as these, the exploitation of criminal activities and the removal of organs. Additional to the above, in recital 11, illegal adoption and forced marriage are mentioned. As noted, these

¹⁷ United Nations, Transforming our world: The 2030 agenda for sustainable development, pp. 22, 24, 30. Available at:

<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Last accessed 1st April 2022).

¹⁸ 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, and replacing Council Framework Decision 2002/629/JHA. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=EN> (Last accessed 1st April 2022).

¹⁹ The Anti-trafficking Directive had to be transposed into national law by 6 April 2013. The first report on the adoption of the Directive by the contracting parties was prepared by the Commission on 6 April 2015. Subsequently, the Commission published periodic reports about the implementation of the Directive in 2016, 2018 and most recently in 2020.

²⁰ The very first attempt from the EU to tackle human trafficking was the 1997 Joint Action to Combat Trafficking in Human Beings and the Sexual Exploitation of Children. In this Joint Action, Member States defined trafficking only in terms of sexual exploitation. The provisions were all optional and had no legally binding effect.

provisions do not contain an exhaustive list of the types of exploitation involved in trafficking. However, it represents the minimum, reflecting an awareness that other types may arise in the future. More precisely, Article 2§1 of the Directive contains the three constituent elements of the crime of trafficking in human beings, namely: 1. the act which is stipulated in the phrase "The recruitment ... over those persons" and pertains to the exercise of control over a person 2. the means which are specified in the phrase "by means ... over another person" and are referred to how control is obtained over a person 3. the purpose which is stipulated in the phrase "for the purpose of exploitation" and defines that the purpose of all the above is the exploitation of the trafficked person.²¹ The Directive is based on the three-P paradigm: prosecution, protection and prevention, which is the policy used worldwide to fight human trafficking. The criminal offence of human trafficking at a European level is also enshrined in the Charter of Fundamental Rights of the European Union.²² Specifically, it is prohibited in Article 5§3 as it constitutes a grave infringement of human dignity. Furthermore, it is also mentioned in Articles 79 and 83 of the Treaty on the Functioning of the European Union (TFEU)²³ as a matter that must be regulated by the EU and the drafting of the Anti-trafficking Directive actually derives from these provisions. In addition, it is prohibited in Article 4 of the European Convention on Human Rights (ECHR).²⁴ Even though the article is entitled "prohibition of slavery and forced labour" and makes no explicit reference to human trafficking, it is in fact referring to it in a broader sense.

²¹ European Commission, Working together to address trafficking in human beings, Key concepts in a nutshell, 2018, p.2.

²² Charter of Fundamental Rights of the European Union. Available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf (Last accessed 1st April 2022).

²³ Treaty on the Functioning of the European Union. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF> (Last accessed 1st April 2022).

²⁴ European Convention on Human Rights. Available at: https://www.echr.coe.int/documents/convention_eng.pdf (Last accessed 1st April 2022).

At this point, we must refer to the most important case of *Rantsev v. Cyprus and Russia* of the ECtHR.²⁵ The case concerns the applicant's daughter, Ms Rantseva, a Russian national, who came to work in Cyprus on a "cabaret-artiste" visa but abandoned her work. The manager of the cabaret took Ms Rantseva to the police station, where authorities instructed the manager to escort the woman to the immigration office. Instead, the manager confined her in a private apartment, where he stayed. The victim was later found dead. For the first time, the Court of Strasbourg found that trafficking in human beings engages the European Convention on Human Rights by violating the so-called "absolute" right to be free from slavery, servitude and forced labour that is stipulated in Article 4. So, human trafficking fell within the scope of this article, establishing specific positive obligations towards the Member States of the Council of Europe, namely the drafting of administrative measures and legal framework to dissuade this inhumane activity and the protection of victims of trafficking. This indicates that the offence of trafficking in human beings is a self-standing prohibition under Article 4, meaning that the person is protected by this provision even if the exploitation has not yet taken place. For the reason that it is intended, not actual exploitation.²⁶

To remain at the European level, another related to the topic document is the Council of Europe Convention on Action against Trafficking in Human Beings²⁷ (hereafter Anti-trafficking Convention), which came into force in 2008.²⁸ We could also mention the Council of Europe Convention on preventing and combating violence against women and domestic violence,²⁹ better known as the Istanbul Convention, which was adopted in May 2011 and which in Article 37 refers to forced marriage.

²⁵ Case of *Rantsev v. Cyprus and Russia* of the ECtHR (Application No.25965/04). Available at: <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/RANTSEV%20v.%20CYPRUS%20AND%20RUSSIA.pdf> (Last accessed 1st April 2022).

²⁶ Jovanovic Marija, The principle of non-punishment of victims of trafficking in human beings: A quest for rationale and practical guidance, *Journal of trafficking and human exploitation*, Vol.1, Nr.1, 41-76, Paris legal publishers, 2017, pp.50,51.

²⁷ Council of Europe Convention on Action against Trafficking in Human Beings. Available at: <https://rm.coe.int/168008371d> (Last accessed 1st April 2022).

²⁸ Also known as the Warsaw Convention.

²⁹ Council of Europe Convention on preventing and combating violence against women and domestic violence. Available at: <https://rm.coe.int/168008482e> (Last accessed 1st April 2022).

In relation to Greece, Law 4198/2013³⁰ establishes the offence of trafficking in Article 323A of the Criminal Code. Additionally, Article 351 of the Criminal Code expressly penalizes trafficking for the purpose of sexual exploitation, but also the use of sexual services exacted from victims. That being said, Law 4554/2018,³¹ which came into force in March 2020, is a step forward in protecting potential minor victims. Specifically, Articles 13-32 introduced the institution of guardianship for unaccompanied minors entering the European borders and the best interest of children.

All of this is not an exhaustive list of the international and European legislation addressing the trafficking phenomenon, but they are undoubtedly one of the most important and widely accepted tools to combat it.³²

With regard to the actors fighting and reporting the problem of trafficking, at the international level, should be mentioned the Inter-Agency Coordination Group against Trafficking in Persons (ICAT),³³ which is mandated by the UN General Assembly and brings together the most important organisations (ILO, IOM, UNICEF, UNIFEM, UNDAW, UNODOC).

At the European level, Article 19 of the Anti-trafficking Directive establishes the National Rapporteurs or Equivalent mechanisms (NREMS)³⁴ and determines that

³⁰ Greece, Law 4198/2013, Article 323A and 351 of the Criminal Code. Available at: <https://eucpn-org.translate.google/document/greek-policy-on-trafficking-in-human-beings? x tr sl=en& x tr tl=el& x tr hl=el& x tr pto=op,sc> (Last accessed 1st April 2022).

³¹ Greece, Law No. 4554 of 18 July 2018 on the regulatory framework for the guardianship of unaccompanied minors. Available at: https://ec.europa.eu/migrant-integration/library-document/greek-law-no-4554-18-july-2018-regulatory-framework-guardianship-unaccompanied_en (Last accessed 1st April 2022).

³² The American Convention on Human Rights, which was adopted in 1969 and entered into force in 1978, in Article 6 refers only to trafficking in women, not to trafficking in children or men. Whereas Article 5 of the African Charter on Human and Peoples' Rights makes no explicit reference to human trafficking, instead prohibits all forms of exploitation.

³³ The Inter-Agency Coordination Group against Trafficking in Persons, About us. Available at: <https://icat.un.org/about> (Last accessed 1st April 2022).

³⁴ European Commission, Together Against Trafficking in Human Beings, EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings. Available at: https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/intensifying-coordinated-response_en#eu-

their purpose is to conduct assessments of trafficking trends, measure the results of anti-trafficking policies, including collecting statistics in close collaboration with relevant civil society organizations working in this field, and report. The establishment of NREMs is compulsory for the Member States. Additionally, Article 20 of the above Directive requires Member States to provide the Anti-Trafficking Coordinator (ATC)³⁵ with the information referred to in Article 19, on the basis of which the ATC contributes to the biennial report carried out by the Commission on the progress made in the fight against trafficking in human beings. The EU ATC is based in the European Commission. Ms Myria Vassiliadou was the first to be placed in that position from 2011 to the end of February 2020. Another agency contributing to the fight against trafficking is the EU Civil Society Platform and the complementary ePlatform.³⁶ This initiative, in turn, originates again from the Anti-trafficking Directive, which acknowledges the importance of civil society actors, including recognized non-governmental organizations working with trafficked persons. The Platform was set up in 2013 as a critical action of the EU Strategy towards the eradication of trafficking in human beings 2012-2016 (priority D, action 3)³⁷ and summons up over 100 participants from the European Union and beyond. The Platform meets regularly twice a year,

[network-of-national-rapporteurs-or-equivalent-mechanisms-on-trafficking-in-human-beings](#) (Last accessed 1st April 2022).

³⁵ This body was first introduced in the "Stockholm Programme" and described more extensively in the Anti-Trafficking Directive.

European Commission, Together Against Trafficking in Human Beings, EU Anti-Trafficking Coordinator. Available at: https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/eu-anti-trafficking-coordinator_en (Last accessed 1st April 2022).

³⁶ European Commission, Together Against Trafficking in Human Beings, EU Civil Society Platform and ePlatform against trafficking in human beings. Available at https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/intensifying-coordinated-response_en#eu-civil-society-platform-and-eplatform-against-trafficking-in-human-beings (Last accessed 1st April 2022).

³⁷ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, the EU strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, pp.11,12.

including a joint session with the network of the National Rapporteurs or Equivalent Mechanisms, and is under the auspices of the Office of the EU Anti-Trafficking Coordinator. The online ePlatform was launched in 2014 in order to include more participants, advance the discussions held in Brussels and facilitate the exchange of information. Furthermore, there are ten EU agencies that cooperate with each other and more specifically on 13 June 2018 they signed a Joint Statement of Commitment intending to work together and address the phenomenon of human trafficking. These are the following: 1. the European Asylum Support Office (EASO) 2. the European Union Agency for Law Enforcement Cooperation (Europol) 3. the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-Lisa) 4. the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 5. the European Union Agency for Criminal Justice Cooperation (Eurojust) 6. the European Institute for Gender Equality (EIGE) 7. the European Border and Coast Guard Agency (Frontex) 8. the EU Agency for Fundamental Rights (FRA) 9. the EU Agency for Law Enforcement Training (CEPOL) and 10. the European Foundation for the Improvement of Living and Working Conditions (Eurofound).³⁸ These agencies also contribute to the work of the Commission regarding the progress reports that the latter carries out. Furthermore, we have to say that the application of the provisions of the Anti-trafficking Convention is monitored by the Groups of Experts on Action against Trafficking in Human Beings (GRETA)³⁹ according to Article 36. GRETA pays visits to the signatory countries and publishes activity reports.

For Greece, a National Rapporteur was appointed in 2013 under the Ministry of Foreign Affairs, namely Mr Heracles Moskof.⁴⁰

³⁸ European Commission, SWD (2020) 226 final, p.6.

³⁹ Council of Europe, Action against Trafficking in Human Beings, GRETA – the Group of Experts on Action against Trafficking in Human Beings. Available at: <https://www.coe.int/en/web/anti-human-trafficking/greta> (Last accessed 1st April 2022).

⁴⁰ Hellenic Republic, Ministry of Migration and Asylum, Heracles Moskof. Available at: <https://migration.gov.gr/en/leadership/eidikos-grammateas-prostasias-asynodeyton-anilikon/> (Last accessed 1st April 2022).

2. The trafficking phenomenon

2.1. The statistics of the phenomenon of THB

According to the study published by the European Commission on the data collection on trafficking in human beings in the EU (2020),⁴¹ which collected data for the period 2017-2018 from the 28 Member States, on the number of registered victims of human trafficking and on the number of traffickers, who were convicted, taking into account their gender, age, nationality and the forms of the exploitation, there are some interesting findings, which are the following. The reader must bear in mind that there is a difficulty in the identification of persons as trafficked and in the prosecution of exploiters as such, so one has to be careful when interpreting these figures. Nevertheless, the estimates describe some tendencies.

In terms of victims

- 26.268 victims of trafficking were registered in the EU-28 (14.145 for the EU-27). Unfortunately, there is a large dark number of undiscovered victims that are not represented in these figures.⁴² In fact, according to various estimates in the EU and even worldwide, the actual number of victims could be 5 to 10 (or even 20) times higher than those discovered.⁴³
- 58% of all registered victims were female (women and girls) and 39% were male in the EU-28⁴⁴ (72% of all registered victims were female while 23% were male in the EU-27⁴⁵).⁴⁶

⁴¹ The European Commission's data collection has provided data on human trafficking at EU level since 2008.

European Commission, Data collection on trafficking in human beings in the EU, Publications Office of the European Union, (2020).

⁴² European Commission, SWD (2020) 226 final, p.11.

⁴³ European Parliamentary Research Service, Implementation of Directive 2011/36/EU: Migration and gender issues, European implementation assessment, September 2020, p.30.

⁴⁴ 3% of the registered victims in the EU-28 were recorded with unknown sex.

⁴⁵ 5% of the registered victims in the EU-27 were recorded with unknown sex.

⁴⁶ European Commission, SWD (2020) final, p.12.

- 32% of all registered victims were children in the EU-28 (22% of all registered victims are children in the EU-27). In the EU-28 57% of the child victims are EU citizens (49% of whom are trafficked in their own country) and 41% are non-EU nationals.⁴⁷ In the EU-27, 74% of the child victims were EU citizens. Most of the child victims in the EU-27 were trafficked for sexual exploitation (64%)⁴⁸ and 16% in the EU-28 for forced labour (6% in the EU-27). 49% of the victims were girls in the EU-28 whereas the other half were boys (78% were girls and 21% in the EU-27).⁴⁹
- 46% of all registered victims were trafficked for sexual exploitation in the EU-28 (60% in the EU-27).⁵⁰ 54% of the reported victims of sexual exploitation were EU citizens in the EU-27, while 42% were non-EU citizens.⁵¹ 22% of all registered victims were trafficked for labour exploitation in the EU-28 (15% in the EU-27). Most of the registered victims of labour exploitation in the EU are located in the UK (64%).⁵² 24% accounted for other forms of exploitation, for example, exploitation for the purpose of forced criminality, forced begging, domestic servitude, removal of organs and benefit fraud in the EU-28 (18% in the EU-27).⁵³
- 41% of the registered victims in the EU-28 were EU citizens (49% in the EU-27).⁵⁴
- 27% of all registered victims were citizens of the reporting country in the EU-28 (internal, domestic or national trafficking).⁵⁵

⁴⁷ 1% of the trafficked children have unknown citizenship and 1% are assorted as "other".

Ibid.

⁴⁸ 37% of the child victims in the EU-28 were trafficked for sexual exploitation.

⁴⁹ European Commission, SWD (2020) 226 final, p.34.

⁵⁰ European Commission, SWD (2020) 226 final, pp.11,12.

⁵¹ European Commission, SWD (2020) 226 final, p.15.

⁵² European Commission, SWD (2020) 226 final, p.12.

⁵³ 8% of the registered victims was subjected to unknown form of exploitation in the EU-28 whereas that percentage was 7% for the EU-27.

Ibid.

⁵⁴ Ibid.

⁵⁵ Ibid.

- The first five EU countries of citizenship of all registered victims in the EU-28 were Romania, the United Kingdom, Hungary, France and Poland.⁵⁶ The first five non-EU countries of citizenship of all registered victims in the EU-28 were Nigeria, Albania, Vietnam, China and Sudan.⁵⁷

As for traffickers

- There were only 2.483 convictions for human trafficking out of 6.404 prosecutions in the EU-28 (there were 2.426 convictions for human trafficking out of 6.163 prosecutions in the EU-27).⁵⁸ This percentage certainly implies something about the police and the judicial system.
- 74% of the convicted in the EU were male and the majority of the traffickers were adults (93% of the condemned).⁵⁹
- Most of the traffickers were EU citizens, more specifically 72% of those convicted.⁶⁰
- A high percentage of all human traffickers in the EU were convicted of sexual exploitation, precisely 54%, whereas 16% were convicted of labour exploitation.
- The main countries of origin of EU citizens convicted for trafficking in the EU were Romania, France, Germany, Bulgaria and Lithuania. The top countries of origin of non-EU citizens condemned for trafficking were Morocco, China, Nigeria, Turkey, Albania and Brazil. These statistics apply to both the EU-27 and the EU-28.⁶¹

If we want to mention the Member States that have achieved the highest number of criminal prosecutions in the EU, it was France first, then Belgium, Romania, Austria and Bulgaria. France also recorded the highest figure of convictions for

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ European Commission, SWD (2020) 226 final, p.13.

⁵⁹ Ibid.

⁶⁰ European Commission, SWD (2020) 226 final, pp.13,44.

⁶¹ European Commission, SWD (2020) 226 final, p.44.

the offenders of human trafficking, followed by Romania, Germany, Spain and Belgium.⁶²

2.2. The phenomenon of THB and its forms

As a preliminary point, it must be emphasized that human trafficking does not always occur in a single form, but can have several combinations. For example, cases of multiple forms of exploitation have been reported, containing forced labour and criminal exploitation, sexual exploitation and forced illegal activities, forced begging and sexual exploitation, sexual exploitation and forced marriage, sexual exploitation and forced labour. It should be noted that in countries outside Europe another form of trafficking exists for the purpose of conscripting child soldiers. But now we are going to elaborate on each form separately.

2.2.1. THB for the purpose of sexual exploitation

As many Member States and civil society organizations note, sexual exploitation is the most common type of trafficking in human beings (e.g. AT, BE, CY, EE, DK, EL, HU, NL, RO, SK, ES).⁶³ In fact, women, the most vulnerable group of human trafficking, constitute the vast majority of the exposed victims of this type of exploitation. This underlines the gender aspect of this crime and is taken into account in Goal 5§2 of the UN Agenda 2030 for sustainable development.⁶⁴ Europol came to the conclusion that a large number of victims of sex trafficking are EU nationals from Eastern and Central Europe. In contrast, non-EU victims originate from Nigeria, where organized crime groups (OCGs) are still having an impact on organized crime in the EU,⁶⁵ even though Frontex reports that the number of arriving Nigerian women has

⁶² European Commission, Report from the Commission to the European Parliament and the Council, Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM (2020) 661 final, p.11.

⁶³ European Commission, SWD (2020) 226 final, p.15.

⁶⁴ See supra note 10.

⁶⁵ Europol, European Migrant Smuggling Centre, 4th Annual report, 2020, p.13.

been reduced⁶⁶. The route followed by trafficked women is more often in the stream of irregular migrants crossing the Central Mediterranean.

A high-risk sector for trafficking for the purpose of sexual exploitation is prostitution and the parties to the Anti-trafficking Directive have different approaches and legislation in this regard. Nevertheless, EU law offers minimum standard rules for the Member States to confront the criminal offence of human trafficking. They all agree that some high-risk environments exist, for example, street prostitution (e.g. HU, AT, FR), prostitution in private flats and homes (e.g. AT, SI, ES, CY, DK, HU), red-light districts (e.g. DE), hotel rooms (e.g. SI, DK) or other kinds of rented apartments, walk-in brothels (e.g. AT), bars and nightclubs (e.g. CY, BG, SI, ES, HU), massage services (e.g. SI, RO, CY, HU), escort agencies and services (e.g. DK, RO, HU, AT, FR).⁶⁷

Some European countries (e.g. BE, SI, ES) and organizations state that there is a downward trend in street prostitution, but concerned voices say this is due to the rise of sex trafficking through websites and online escort services. Specifically, many Member States report the change in the modus operandi of the traffickers, which nowadays is characterized by the massive use of the internet and new means of communication throughout the whole chain of human trafficking, since it is considered by the exploiters to be a less visible environment to lure new victims and a less straightforward way to find clients for these illegal activities. This concerns the initial stage of the victims' recruitment using social media, the transport of the victims by buying air or train tickets online, as well as scheduling of the accommodation, the communication between the perpetrators or the perpetrators with the victims through messages, the advertisement of the victims in social media (which facilitates the daily selling of the victims to multiple buyers or in online chats), watching the victims via online video surveillance and mobile phone tracking services, the duress of the victims with the exposure of nude images online and finally the transmission of the illicit profits through virtual payment methods. In fact, the European Parliament highlighted in a study that women do not have to be internet users to be victims of cyber violence or abuse. They may be the object of depiction through the distribution of rape videos or the product sold through websites.⁶⁸ In order to find their victims, the perpetrators take

⁶⁶ European Commission, SWD (2020) 226 final, p.16.

⁶⁷ Ibid.

⁶⁸ European Commission, SWD (2020) 226 final, p.21 ref. 48.

advantage of some vulnerability factors such as poor education, unprivileged socioeconomic situation or intellectual disabilities. Moreover, they deceive them by giving them the promise of finding a well-paying job. Violence is also a common means of controlling victims and traffickers often rape and drug victims to prevent them from escaping. Another characteristic of the perpetrators' profile is that, according to reports from the European Member States, traffickers originate more usually from the same country as the victims and are at a younger age compared to perpetrators of other forms of exploitation. Additional to the above, another characteristic is that the traffickers are for the most part men. However, as many Member States report, women also tend to have a growing presence in that illicit activity.⁶⁹

Concerning the protection and support of the victims by the relevant authorities, special measures have been taken specifically for women and girls in many high-risk environments (e.g. prostitution). The contracting parties to the Anti-trafficking Directive already have criminal investigations, covert surveillance and even internet surveillance (e.g. BG, DE, FI, PT, UK), awareness-raising campaigns (e.g. PT, BG), e-learning courses for public officials (e.g. SE) as well as training-related actions for high-risk groups such as migrants and refugees (e.g. LT, LV, RO, SI). Some Member States are also using technology to address trafficking, such as the Netherlands, where they use a web crawler during investigations in order to spot advertisements in the public accessible domain, which can lead to sex trafficking.⁷⁰ Additionally, some of them have made progress at an institutional level, such as establishing committees or working groups (e.g. AT, LU)⁷¹ and some Member States have organized specific training for police officers, prosecutors or judges. Furthermore, some countries provide social support to victims, for example, exit programmes for prostituted persons (e.g. FR, IE, MT) or professional reintegration for them (e.g. ES, FR) and provision of sexual health services. Moreover, Member States address human trafficking by taking measures in the context of Violence against Women and Gender-Based Violence (e.g. EL, FI, SE).⁷² In Sweden, for example, the Gender Equality Agency has increased efforts within the framework of the National Strategy to Prevent and Combat Men's Violence

⁶⁹ European Commission, SWD (2020) 226 final, p.17.

⁷⁰ European Commission, SWD (2020) 226 final, pp.20,21.

⁷¹ European Commission, SWD (2020) 226 final, p.18.

⁷² European Commission, SWD (2020) 226 final, p.20.

against Women in order to combat prostitution and trafficking for sexual exploitation.⁷³ Its aim is to collect studies on violence prevention and find gaps in the knowledge of the subject. More importantly, the European Commission has announced the Gender Equality Strategy for 2020-2025, which will set up online platforms in order to counter online violence against women. That will be succeeded through the voluntary cooperation between the relevant stakeholders.⁷⁴

Looking at the issue from the aspect of reducing the demand for sexual exploitation, several countries report that they have made amendments to their criminal law codes (e.g. EE, EL), have adopted new legislation (e.g. CY, LU, IE) or have changed the relative national laws from a gender-based aspect of view (e.g. EL, IE). For instance, in Ireland, a new Criminal Law, Act 2017, was passed in order to deteriorate the demand for sexual services. It did so by stipulating the offence of sexual activity with a trafficked person, with that crime carrying a penalty of up to 5 years of imprisonment and/or an unlimited fine.⁷⁵ There is also an interesting action in Sweden operated by three municipal services with a particular support unit for men who have purchased sexual services and for potential prostitution users.⁷⁶

It should be noted on this point that the cases of men trafficked for the purpose of sexual exploitation, as well as the transgender victims, remain unnoticed. Providing adequate psychological or legal assistance and housing facilities in order to relieve the pain of the victims and accommodate them also remains a challenge. Not to forget that this type of exploitation causes long-term, gender-specific, physical, gynecological and mental health problems. Several actors in civil society outline the above-mentioned concern of appropriate gender and trauma-sensitive counselling as a central challenge and point out that the professionals involved must be appropriately trained and cooperate with actors from many disciplines. In Finland, for instance, identifying victims and providing them adequate help, such as trauma-oriented therapy, still remains a challenge. In Spain, it is underlined that it is very difficult to adapt critical measures to victims with specific vulnerabilities, such as women with special needs.⁷⁷

⁷³ Ibid.

⁷⁴ European Commission, SWD (2020) 226 final, p.21.

⁷⁵ European Commission, SWD (2020) 226 final, p.19.

⁷⁶ Ibid.

⁷⁷ European Commission, SWD (2020) 226 final, p.20.

There is therefore a lack of a support system adapted to the particular needs of the many types of victims of trafficking for sexual purposes.

2.2.2. THB for the purpose of labour exploitation

Trafficking for the purpose of labour exploitation is constantly increasing, as reported by many Member States. It mainly affects men (68% of the registered victims in the EU-27, whereas 80% in the EU-28),⁷⁸ while in some sectors the victims are predominantly women, for example cleaning services, body care activities and housework. Portugal reports that women are also used in agriculture and in fact carry out tasks similar to the male victims, in addition to doing housework in the houses of the exploiters.⁷⁹ Indeed, traffickers use sexual violence as a means of control and many times women are getting raped by human traffickers. The relevant authorities often overlook this form of labour exploitation among female victims as they focus on sectors with a higher presence of male victims.

According to Europol, trafficking for labour exploitation is most common in less controlled sectors such as agriculture, where low-paid, low-skilled and intensive work is required. EU nationals are mostly employed around the year, while non-EU citizens are usually exploited in seasonal work.⁸⁰ As high-risk sectors, we can mention except from agriculture, the cleaning industry and private domestic work, factories, animal farms, the construction industry, nursing homes, night shops, pubs, private employment agencies, massage parlours, car washes, administrative and auxiliary services, forestry, trade, waste collection and recycling companies, shisha bars, transportation, textile and clothing industries, food manufacturing and packaging. Human trafficking to force people to work in the cannabis fields is also a well-known phenomenon. Also, another profitable business for human exploiters, which seems to be on the rise, is to exploit people in the manufacture of counterfeit consumer goods.⁸¹

⁷⁸ European Commission, SWD (2020) 226 final, p.22.

⁷⁹ European Commission, SWD (2020) 226 final, p.23.

⁸⁰ Europol, European Migrant Smuggling Centre, 4th Annual report, 2020, p.13.

⁸¹ Europol, Media and Press, News, Counterfeit goods produced in the EU on the rise, 2015.

Available at: <https://www.europol.europa.eu/media-press/newsroom/news/counterfeit-goods-produced-in-eu-rise> (Last accessed 1st April 2022).

A characteristic of this type of exploitation is the origin of the victims: Morocco, Romania, Moldova, Ukraine, India, Pakistan, Slovakia, the Philippines, Eastern European countries and Bangladesh.⁸² Besides that, many European States emphasize the fact that labour exploitation affects marginalized Roma communities and especially young Roma, for example from Bulgaria.

At this point, we could mention a well-known case of trafficking for forced labour involving nationals of Bangladesh, that took place in Greece, namely the case of *Chowdury and Others v. Greece* of the ECtHR.⁸³ The case concerned 42 Bangladeshi citizens, who were recruited by the exploiters to work under degrading conditions on the famous Manolada strawberry farms in Greece. Employers did not pay wages until workers went on strike and armed guards opened fire, injuring 30 workers. The Court of Strasburg considered that the operational measures taken by the authorities were not sufficient to prevent human trafficking, even though they were aware of the matter. In addition, the Court noted that a restriction on freedom of movement was not a condition sine qua non for a situation to be classified as trafficking for the purpose of forced labour. Thus, the Court recognized a violation of Article 4§2 of the European Convention on Human Rights because the Greek State had failed to fulfil its positive obligations to prevent exploitation, protect the victims and punish the perpetrators.⁸⁴

Regarding the modus operandi of the traffickers, it is a common practice to use fraudulent documents. In the Czech Republic, for example, they spotted cases of Moldovan nationals using forged Romanian documents and Ukrainian citizens holding a Polish visa, which granted them easier access to the European labour market.⁸⁵ The

⁸² European Commission, SWD (2020) 226 final, p.23.

⁸³ Case of *Chowdury and Others v. Greece* of the ECtHR (Application No.21884/15). Available at: https://sherloc.unodc.org/cld/case-law-doc/traffickingpersonscrimetype/irb/2017/chowdury_and_others_v.greece.html?lng=en (Last accessed 1st April 2022).

⁸⁴ European Court of Human Rights, Press release, Migrants who were subjected to forced labour and human trafficking did not receive effective protection from the Greek State, ECHR 112 (2017). Available at [:https://www.kok-gegen-menschenhandel.de/uploads/tx_t3ukudb/egmr_30.03.2017_presseerklaerung_englisch.pdf](https://www.kok-gegen-menschenhandel.de/uploads/tx_t3ukudb/egmr_30.03.2017_presseerklaerung_englisch.pdf) (Last accessed 1st April 2022).

⁸⁵ European Commission, SWD (2020) 226 final, p.23.

country of Estonia reports the same *modus operandi*.⁸⁶ In another country, Denmark, the traffickers' *modus operandi* was even more complex: Philippine and Sri Lankan drivers, recruited by agencies in the Philippines and hired by a Danish transport company through a Polish subsidiary, were transported to Denmark under humiliating conditions in containers.⁸⁷ Turning now to domestic servitude, which mainly affects women, traffickers steal the passports of the victims and confine them in the houses, thus alienating the trafficked from the freedom of movement.

In terms of victim protection, victim identification is the first step in helping them. The European countries enhance the cooperation between different stakeholders, such as immigration and asylum officers, tax and labour authorities, law enforcement agencies, border guards and governmental institutions. Measures have also been taken to improve victim identification by training work and social inspectors, judiciary,⁸⁸ social workers, customs and immigration authorities and employment agencies. Furthermore, inspections were planned in the Joint Action Days on labour exploitation (e.g. BE, CY, EL, HR, LT, FR, PT), such as the Europe-wide operation that took place from 14 to 19 May 2018 from Europol⁸⁹ and also in the framework of the European Multidisciplinary Platform against Criminal Threats/Trafficking in Human Beings (EMPACT THB) (e.g. AT, SE). However, many civil society actors highlight the fact that it is more challenging to detect labour exploitation in some sectors than in others, such as domestic work, construction, catering and hotel industry, textile factories and beauty salons. Another crucial step to protect high-risk groups from becoming victims, such as the Roma, is also being taken in Bulgaria, for example. In this case, mediators work in the neighbourhood with the ethnic Roma population to encourage them to enter the labour market by receiving education or registering with the Labour Office.⁹⁰ On this point, we have to mention that some of the measures taken in the EU focus not only on non-EU citizens who come to work in a Member State but also on EU citizens who work in another Member State. Also, a significant contribution to the protection of the

⁸⁶ European Commission, SWD (2020) 226 final, pp.23,24.

⁸⁷ European Commission, SWD (2020) 226 final, p.24.

⁸⁸ See: Eurojust, Prosecuting THB for the purpose of labour exploitation, Report, THB Project Team, December 2015.

⁸⁹ European Commission, SWD (2020) 226 final, p.25.

⁹⁰ European Commission, SWD (2020) 226 final, p.27.

victims at an international level was the ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, no.29 of the International Labour Organization (ILO)⁹¹ by 16 Member States between 2016 and 2019 (AT, BE, CY, CZ, DE, DK, EE, ES, FI, FR, IE, LV, MT, NL, PL, SE).⁹² Of great importance is Article 1§3, which makes reference to human trafficking. In addition, awareness-raising campaigns are carried out for job seekers in the context of migration and other high-risk sectors, such as seasonal workers in agriculture. In Portugal, for example, they distribute leaflets in different languages to seasonal workers in order to inform them of their labour rights. Again, the internet plays a significant role in these criminal activities, as underlined by the Fundamental Rights Agency (FRA), which indicates that in some areas of serious organised crime, Europol assists Member States with information about suspicious websites. Increasing the use of Europol's capabilities could help the Member States to take action against those operating deceptive recruitment sites, especially where human trafficking is suspected.⁹³ In 2020 the TAT (Tech Against Trafficking) cooperated with the OSCE (Organization for Security and Co-operation in Europe) and found in a research that over 300 technical tools exist, half of which act against labour exploitation.⁹⁴

Unfortunately, an increase in labour exploitation is to be expected, particularly in the agricultural sector, because organised crime groups will continue to create more intensive profits from the low-skilled and low-paid employment sectors.

2.2.3. Child trafficking

Trafficking in children affects both girls and boys, but unfortunately, it remains an underreported phenomenon in Europe. They are mainly trafficked for sexual exploitation and, in fact, as referred by Europol, underage prostitution can be very profitable for traffickers as clients generally tend to pay more for an encounter with a

⁹¹ Protocol of 2014 to the Forced Labour Convention, 1930. Available at:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:P029 (Last accessed 1st April 2022).

⁹² European Commission, SWD (2020) 226 final, p.28.

⁹³ European Commission, SWD (2020) 226 final, p.26.

⁹⁴ One-third counter the problem of sexual exploitation.

European Commission, SWD (2020) 226 final, p.50.

child than with an adult.⁹⁵ Human traffickers use minors not only in the sex industry but also for the purpose of forced criminality, for example, pickpocketing or shoplifting or for the cultivation and sale of cannabis or as many Member States report for labour exploitation. Greece reports that two-thirds of the trafficked minors are boys and are mainly exploited in the sex industry and for illegal activities.⁹⁶

According to Europol, the pattern of the traffickers is to use more often women to deceive children than when trafficking adult victims.⁹⁷ Another key feature of their tactics is to use fraudulent documents in order to conceal the actual age of the victims. In addition to that, traffickers operate in the reception centres of migrants to spot potential victims, such as unaccompanied minors and to transfer them to the destinations of exploitation.⁹⁸ For example, criminal gangs use unaccompanied asylum-seeking children or children whose asylum applications have been rejected to force them to sell drugs. Additionally, Sweden has drawn attention to the fact that there is an increase in "sugar dating", which involves older men approaching children not only for sexual exploitation but also to produce and distribute child sexual abuse photos. Another method used by traffickers is through the so-called "lover-boys" or "Romeo pimps", who are traffickers who trick young girls and boys into falling in love with them and then sexually exploiting them.

According to Frontex, the number of children crossing EU borders increased by 13% in 2018-2019 compared to the past and in 2019 alone the number of unaccompanied children increased by 35% in comparison to 2018.⁹⁹ Indeed, Frontex shares data on arriving children with the Fundamental Rights Agency and collaborates with other EU actors to support the fight against this tragic phenomenon of child trafficking. While this is not evidence of human trafficking, these percentages mean that these children without a guardian may already be or become victims of human trafficking.

⁹⁵ Europol, Europol public information, Situation report, Criminal networks involved in the trafficking and exploitation of underage victims, 2018, p.3.

⁹⁶ European Commission, SWD (2020) 226 final, p.17.

⁹⁷ European Commission, SWD (2020) 226 final, pp.17,35.

⁹⁸ Europol, European Migrant Smuggling Centre, 4th Annual report, 2020, p.12.

⁹⁹ European Commission, SWD (2020) 226 final, p.35.

Regarding the measures taken, the EU legal framework is generally child-sensitive. More specifically, the Anti-trafficking Directive provides some measures for children, such as the presumption of childhood in Article 13§2, the provision of education in Article 14§1, increased protection in the judicial proceedings in Article 15§§3,4,5 and the institution of guardianship for unaccompanied child victims in Article 16§§3,4. Furthermore, we cannot avoid mentioning the most important provision of the Directive on this matter, Article 2§5, which states that none of the means of deception or threat or abduction have been used, that still qualifies as trafficking in persons. For it is the act of placing a child in exploitative conditions that constitutes trafficking. We could also mention Directive 2011/92/EU¹⁰⁰ (the Child Sexual Abuse Directive), which criminalizes sexual activity with children in relation to child prostitution. In this case, the behaviour is punishable regardless of whether the client had knowledge of the trafficking situation of the victims. In this way, it helps indirectly to fight child trafficking for the purpose of sexual exploitation. Operational activities against child trafficking were also organized, for example, the Joint Action Days. They are carried out by EMPACT in collaboration with Europol, which carries out the operational project AP (Analysis Project) Phoenix. In fact, these actions resulted in the arrest of 58 people between 2018-2019.¹⁰¹ Moreover, the EU provides funding to enhance anti-trafficking projects that focus on combating child trafficking. In particular, the European Commission is calling for proposals within the framework of the Asylum, Migration, and Integration Fund (AMIF) and the Internal Security Fund-Police (ISF-P) with the aim of promoting measures for child trafficking.¹⁰² Another significant effort for particularly unaccompanied children is that the EU Agency for Fundamental Rights (FRA), together with the European Commission, issued a guide on children without parental care in the EU in 2019, addressing the problem of child

¹⁰⁰ Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0093&from=EN> (Last accessed 1st April 2022).

¹⁰¹ European Commission, SWD (2020) 226 final, p.35.

¹⁰² European Commission, SWD (2020) 226 final, p.36.

trafficking.¹⁰³ It should not be forgotten that some states have published handbooks on the use of child-sensitive language for the professionals who are more likely to come into contact with child victims of sexual exploitation and also trained them.¹⁰⁴ As an example of successful assistance to trafficked children, we can mention the Icelandic Barnahus model, which is being followed in many European countries. In the Netherlands too, they have taken measures to identify victims of child sexual exploitation, notably regarding minors exploited by "lover-boys". However, in Spain, it is underlined that it is challenging to adopt measures for victims of sexual exploitation with specific vulnerabilities, such as children with special needs.

On that point, it must be pointed out that many times cases of child trafficking for sexual exploitation are often regarded as cases of child sexual abuse, as reported by many civil society actors. Or instances of exploitation of children for the purpose of forced begging or forced criminal activity are often misperceived as public order issues or petty property crimes, leading to secondary victimisation.¹⁰⁵

Finally, we must underline what the European Parliament stated in the resolution of 26 November 2019 on the internal policies that need to be taken to end all forms of violence against children. Namely, and this is very important, that the rights of child victims must be taken into account, regardless of their nationality, that all contracting parties must implement the EU Anti-trafficking Directive aiming first of all at prevention, also at deterring the impunity that still exists among exploiters as well as at penalizing the use of services exacted from victims of trafficking.¹⁰⁶ In the end, we must draw attention to the fact that "the fight against sexual abuse and the sexual

¹⁰³ European Union Agency for Fundamental Rights, Children deprived of parental care found in an EU Member State other than their own, A guide to enhance child protection focusing on victims of trafficking, 2019.

¹⁰⁴ European Commission, SWD (2020) 226 final, p.18.

¹⁰⁵ Europol, Intelligence Notification 16/2014, Child trafficking for exploitation in forced criminal activities and forced begging, p.1.

¹⁰⁶ European Parliament, Resolution of 26 November 2019 on children's rights in occasion of the 30th anniversary of the UN Convention on the Rights of the Child, at para 46. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2019-0066_EN.html (Last accessed 1st April 2022).

exploitation of children is often a fight against organized crime and trafficking in human beings".¹⁰⁷

2.2.4. THB for the purpose of forced criminality and forced begging

Trafficking for forced criminality usually affects younger people. It includes both male and female victims, which originate mostly from the Maghreb area (mainly Morocco), Africa (particularly Nigeria) and also from ethnical minorities, containing Roma communities which come from Bosnia, Herzegovina and Romania.¹⁰⁸ Victims are used in many areas of minor property crime, from theft, shoplifting and pickpocketing to aggravated robbery and fraud. Europol reports that large numbers of victims of this type of exploitation are related to cannabis cultivation, and Eurojust reports on EU nationals who are trafficked only to sell drugs.¹⁰⁹ So, trafficking for working in cannabis and selling it encompasses two types of human trafficking, i.e., labour exploitation and forced criminality.

People who are used for forced begging come in the main from Eastern European countries.¹¹⁰ Another characteristic of the profile of the victims is that they usually belong to high-risk groups, such as persons with physical disabilities, people from financially underprivileged backgrounds and persons with substance and alcohol use disorders. It is characteristic of this particular type of human trafficking that family members of the victims are often involved in this illegal activity as perpetrators or mediators.

Both forms, forced criminality and forced begging, are characterized by a high degree of mobility between the countries in order to avoid exposure to the authorities.

2.2.5. THB for the purpose of forced marriages

Forced marriages are also called sham marriages. They are sometimes concluded after an outright kidnapping or with the purpose to receive a bride price or

¹⁰⁷ Council of the European Union, Council conclusions on combating the sexual abuse of children- Council conclusions (8 October 2019), 12862/19, at para 4.

¹⁰⁸ European Commission, SWD (2020) 226 final, pp.30,31.

¹⁰⁹ European Commission, SWD (2020) 226 final, p.30.

¹¹⁰ European Commission, SWD (2020) 226 final, p.31.

even for debt release. This form of exploitation mainly affects women or girls, and the majority of the victims originate from marginalized Roma communities, from Morocco but also from Europe.¹¹¹ From the above, we can understand the gender dimension of this type of exploitation. Typically, traffickers take advantage of the victims' vulnerable condition, such as poor economic situation, drug addiction and mental disabilities to exploit them. Many times, EU residents perform sham marriages with non-EU nationals in order to give the latter the chance to get a residence permit in an EU country, also known as marriages of convenience.

The phenomenon of sham marriages has become a significant concern in the EU as these women are often subjected not only to further sexual and/or labour exploitation but also to domestic violence after their wedding.

2.2.6. THB for the purpose of other forms of exploitation

According to reports from the Member States, there are also other types of human exploitation, which are the following: trafficking for the sale of babies and illegal adoptions, surrogate motherhood and the sale of organs. And EU citizens can also be victims of all of these. In fact, Greece and Cyprus are considered destination countries for unlawful adoptions by virtue of their relevant legislation.¹¹²

Concerning the protection of the victims, for example, a new law on trafficking in human organs was adopted in Belgium in 2019, which established the non-punishment of the victims in compliance with the provisions of the Council of Europe Convention against Trafficking in Human Organs.¹¹³

2.3. High-risk groups affected by THB

2.3.1. Roma people

First of all, we can understand that the most common victims of human trafficking come from marginalized communities facing economic deprivation and/or social inequalities. One example is the Roma communities and in particular women and

¹¹¹ Ibid.

¹¹² European Commission, SWD (2020) 226 final, p.32.

¹¹³ European Commission, SWD (2020) 226 final, p.33.

children. They are used for many forms of exploitation, but most of all for the commission of property crimes. In the Exploratory Opinion of the document "The situation of Roma women", the European Economic and Social Committee (EESC) stressed that Roma women and children are disproportionately influenced by all forms of exploitation and especially human trafficking, which goes against the provisions of the Charter of Fundamental Rights of the European Union.¹¹⁴ The European Commission tries to treat the Roma as victims and rights-holders rather than perpetrators, especially in cases of forced criminality. But action to counter the trafficking of Roma is still tenuous, as only two Member States have taken a step in this direction (AT, HU).¹¹⁵

2.3.2. Migrant and refugee women

The Member states underline the increase in the number of victims who are asylum seekers or who come from war zones. EIGE draws attention to the fact that as more and more women and girls are found among those who run away from their countries, the number of women and girls exposed to trafficking and forced marriage is increasing.¹¹⁶ Many civil society actors have expressed concern about trafficked persons from developing countries such as Nigeria and other African countries or Latin America, who are being forced by traffickers to apply for asylum in order to obtain residence permits. Then the traffickers can legally exploit the victims. For example, many women apply for international protection under the control of the traffickers and are then employed in the sex industry.

¹¹⁴ European Economic and Social Committee, The situation of Roma women (exploratory opinion requested by the European Parliament), SOC/584, at para 4.6.2.

¹¹⁵ European Commission, Communication from the Commission to the European Parliament and the Council, Report on the implementation of national Roma integration strategies - 2019, SWD (2019) 320 final, p.10.

¹¹⁶ European Commission, SWD (2020) 226 final, p.40.

2.3.3. Unaccompanied children

Many civil society organisations and EU agencies underline the vulnerability of unaccompanied children. Frontex released some data which led to the following conclusion: in 2019 the number of unaccompanied children (UAC) increased by 35% compared to 2018. The percentages are Afghans (27%), Syrians (11%), Tunisians (11%), Sudanese (6%), Pakistani (5%) and Somalis (4%).¹¹⁷ According to reports, the most devastating fact is that these minors are being coerced into crimes on behalf of the criminal networks and many of the children are subjected to physical violence and sexual exploitation. EASO has developed the Training Module on Interviewing children in order to educate professionals who come into contact with the vulnerable group of unaccompanied children.¹¹⁸

2.4. Modus operandi of traffickers, organised crime groups and polycriminality

Civil organizations and the competent authorities of the Member States report and analyze the means by which the exploiters exercise control over the victims. They use for example threats, harassment or blackmailing, debt bondage, withholding travel documents, threats of deportation and reporting to the authorities, wage control of victims, denial of medical care, psychological abuse, restricted mobility and isolation, miserable living conditions, exploitation of the victim's situation due to the language barrier, blackmail with pornographic material and online video surveillance. They also use drugs to ensure obedience from the victims in order to sexually exploit them or make the victims of labour exploitation work longer. Europol sees a trend these days among the exploiters to exercise more psychological than physical control over the victims. However, physical violence remains, for example, France reports that Roma girls who were sent to France to be exploited in street prostitution, were first kidnapped and raped. Or Roma girls from Serbia and Bosnia were physically abused and then sent to France to marry pimp residents.¹¹⁹

¹¹⁷ European Commission, SWD (2020) 226 final, p.41.

¹¹⁸ European Commission, SWD (2020) 226 final, p.42.

¹¹⁹ European Commission, SWD (2020) 226 final, p.45.

A well-known method of recruiting victims is, as already mentioned, the "lover-boy" method, which is still a famous route. They are also called "Romeo pimps" and their modus operandi is to make vulnerable young girls and boys fall in love with them. Once they gain their trust, they begin to exploit them, especially in the sex industry. This method is also called "happy trafficking" because the trafficker presents a positive narrative to the victim about a "happy" and worthwhile employment opportunity in another country.¹²⁰

More often human traffickers cooperate with organized crime groups (OCGs), in which well-structured networks operate internationally with the contribution of cross-border intermediaries. The most threatening groups are generally able to control the entire human trafficking process, from recruiting victims to reinvesting the illicit profits, despite being relatively small (up to 15 people).¹²¹ A well-known example of this is Nigeria's organised criminal networks, which traffic their female compatriots, both adults and minors, into Europe using a voodoo practice called juju.¹²² They find their victims through a fake promise of a well-paid job or lure them with a free trip to Europe at all the cost of the exploiters, but when they arrive in Europe the victims fall into debt bondage, which can account for more than 30.000 €. Indeed, the Nigerian criminal networks have a long-established presence in the EU and know how to take advantage of the legal framework. More precisely, the human exploiters try to legalize their status, but also their victims'. In fact, many of them acquire residence permits or have refugee status.¹²³

Some reports refer to "micro-networks" mainly in the sex industry, where pimping is organized in small groups of up to five people or individually. Traffickers are also sometimes grouped by family or ethnicity to help them navigate each stage of trafficking and keep the profits in a small group of the same people.

¹²⁰ Papadimitrakopoulos George, Happy trafficking: how criminals profit from an iniquitous trade, University of Cambridge, Research, 2015.

¹²¹ Europol, Situation report, Trafficking in human beings in the EU, The Hague, February 2016, Document ref. No 765175, p.13.

¹²² Europol, European Migrant Smuggling Centre, 4th Annual report, 2020, p.22. See also: European Commission, SWD (2020) 226 final, p.45.

¹²³ Europol, European Migrant Smuggling Centre, 4th Annual report, 2020, p.22.

Member States have reported about the presence of Nigerian, Romanian, Bulgarian, Slovakian, Chinese and Pakistani criminal networks.¹²⁴

Moreover, many European agencies observe that organised crime groups are involved not only in human trafficking but also in other crimes, such as migrant smuggling, extortion, terrorism, money laundering, document fraud, payment card fraud, cybercrime, drugs trafficking and cultivation, smuggling of goods, usury, health crimes, ammunition possession, embezzlement and other financial crimes. A notorious example of this polycriminality according to Europol is the aforementioned Nigerian criminal networks. Europol reports that 20% of the organised crime groups that facilitate migrant smuggling are also involved in human trafficking for the purpose of sexual and labour exploitation. Europol also states that organised crime groups operating in the Western Balkans are engaged in migrant smuggling, human trafficking and drug trafficking.¹²⁵ More specifically, it is a common phenomenon to traffic persons in order to coerce them to work in cannabis cultivation or to transfer drugs across the borders. These victims are usually held under debt bondage so that they can continue to be exploited. An example of polycriminality is the following case: A Romanian organised crime group trafficked more than 50 Romanian families with the promise of a job in Germany. However, once they arrived, the criminal group forced the victims to sign fake working documents and apply for social benefits, only to appropriate the victims' money, then launder it and send it back to Romania.¹²⁶

2.5. Smuggling of migrants

It is not uncommon for trafficking to be confused with another phenomenon, migrant smuggling, also known as facilitation of illegal migration (FII). The latter is described in Article 3 of the Migrant Smuggling Protocol¹²⁷ as facilitating unauthorized

¹²⁴ European Commission, SWD (2020) 226 final, p.46.

¹²⁵ Europol, European Migrant Smuggling Centre, 4th Annual report, 2020, p.18.

¹²⁶ Eurojust, Press release, Social benefit fraud ring dismantled, 2018. Available at: <https://www.eurojust.europa.eu/social-benefit-fraud-ring-dismantled> (Last accessed 1st April 2022).

¹²⁷ Protocol against the smuggling of migrants by land, sea and air, supplementing the United Nations Convention against transnational organized crime. Available at: https://www.unodc.org/documents/middleeastandnorthafrica/smuggling-migrants/SoM_Protocol_English.pdf (Last accessed 1st April 2022).

entry into a country by land, sea or air in order to provide facilitators with a financial benefit. Of course, similarities exist between trafficking and smuggling otherwise the two would not be confused, but significant differences exist, too. Beginning from the differences, there are the following:¹²⁸

1. The consent of smuggled persons is a volitional act. On the other hand, the consent of trafficked persons is either missing in the case of abduction or is extorted through coercion or taken away by deception or in any case it is taken by an abusive method. This is the main dichotomy between smuggling and human trafficking.
2. Smuggling is characterized by transnationality because it has to do with the illegal crossing of the borders of a state by a person who is not a national of that state. Trafficking can take place either by crossing a state's borders (legally or illegally) or sometimes within the borders of a state (internal, domestic or national trafficking).
3. In smuggling, the objects¹²⁹ in order to enter another country use illegal documents (fraud or stolen). On the other hand, in trafficking, they can use either legal or illegal ones.
4. The offence of smuggling ends when the migrants arrive at their destination. But as far as human trafficking is concerned, the crime continues with the ongoing exploitation of the person.
5. The profits from smuggling originate from the transportation of migrants, whereas from trafficking derive from the exploitation of the victims.
6. Smuggling is considered a crime against the state and trafficking is a crime against the individual.

Another difference, which is not of a legal nature but gives a gender dimension to these two activities, is that the majority of the smuggled objects are men, while in trafficking it is women.

¹²⁸ Apostolopoulos Konstantinos, Human trafficking and migrant smuggling, the case of the south-eastern European sea-borders, Research Institute for European and American Studies, research paper No.157, pp.24,25.

¹²⁹ The smuggled persons are called objects, whereas the trafficked are called victims or survivors.

Regarding the similarities, it is evident that in both offences, human beings are involved, that the business is profitable and that criminal networks are conducting all of the illicit activity. Also, smugglers can use the same routes to enter the borders of a country as traffickers. Furthermore, the causes of smuggling resemble trafficking in that they are poverty, conflicts and discrimination. And it is very important to say that smuggling operations involve human rights violations as well as trafficking. Well, as far as the fight in the EU against the smuggling phenomenon is concerned, major players such as Europol, Frontex, CEPOL, Eurojust, EASO and FRA play a role, as they do with the trafficking phenomenon.

At this point, it must be underlined where the confusion is taking place. It lies in the fact that many times the facilitators of smuggling are in reality traffickers. This means that people can agree to be smuggled at the outset. However, then they may find themselves pushed into an exploitative situation by the facilitators, for example working under cruel conditions to pay for the transport (debt bondage).¹³⁰

¹³⁰ Apostolopoulos Konstantinos, Human trafficking and migrant smuggling, the case of the south-eastern European sea-borders, Research Institute for European and American Studies, research paper No.157, p.23.

3. Preventing THB by countering the culture of impunity

3.1. The criminalisation of the use of services demanded by victims

The first progress report of the European Commission has made it clear that human trafficking is a demand and profit-driven crime. A victim-centred approach must adequately and effectively address prevention and counteract the demand that fuels all forms of trafficking, as stated in the Anti-trafficking Directive. This implies that we need to tackle not only the root causes that make people more vulnerable to trafficking, such as poverty, gender inequality and irregular migration, but also bring to justice all who benefit from this crime and exploit the victims.¹³¹ In other words, to prevent the phenomenon of human trafficking means it is necessary not only to take measures to raise awareness among the general public and potential victims, measures to train the appropriate professionals but also efforts to reduce the factors that generate victims' vulnerability. But it is not only the vulnerabilities themselves that suggest trafficking in human beings but also the vast profits that human exploiters acquire from these criminal activities. So, if we reduce the demand for trafficking, we would deprive traffickers of economic gain and reverse the motus that "crime pays".

According to Article 18§4 of the Anti-trafficking Directive, in order to reduce demand, the contracting parties must make amendments to their national legislation so that the use of services that constitute a form of exploitation is punishable, if it is known that the person offering that service is a victim of human trafficking. Depending to the Commission Report of 2016,¹³² ten Member States established a criminal offence for all forms of exploitation (BG, EL, HR, CY, LT, MT, PT, RO, SI, UK).¹³³ For example, in the Bulgarian Criminal Code, an individual who uses the services of a person

¹³¹ European Commission, SWD (2020) 226 final, p.52.

¹³² European Commission, Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23(2) of the Directive 2011/36/EU, COM (2016) 719 final.

¹³³ European Commission, COM (2016) 719 final, p.3.

trafficked for all forms of exploitation is punished not only by deprivation of liberty of 3 to 10 years but also with a hefty fine. And it should be noted that in this provision, the consent of the victim is irrelevant.¹³⁴ Another similar example is Croatia, but it goes a little further as it imposes the same punishment on those who knowingly use the victim's services as those who are human traffickers.¹³⁵ The example of Lithuania is also of great importance, as not only natural but also legal persons are liable for the abovementioned acts.¹³⁶ Indeed, it is crucial to identify not only individuals as users of the victims' services but also businesses that may appear legitimate, such as labour-market agencies, transport enterprises and communication technology companies. Of course, users can also be consumers, who are individuals, as they buy products produced by victims of labour exploitation without looking for clear signs of exploitation such as low prices.

In addition, there are some parties to the Anti-trafficking Directive that have not issued explicit legal provisions criminalizing the use of services of trafficked people or have established a selective criminalization (e.g. AT, BE, CZ, DE, EE, ES, FR, HU, IT, LV, LU, NL, PL, SK).¹³⁷ Some of those countries, where this phenomenon is not explicitly regulated, resort to laws related to sexual offences or child sexual exploitation (e.g. IT, ES, NL, BE).¹³⁸ Furthermore, some Member States have only penalized particular forms of exploitation, for example, Finland and Ireland only penalised the use of the services of trafficked people for the purpose of sexual exploitation. Also, some Member States have incorporated Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals¹³⁹ into their legislation, which in Article 9 punishes illegal employment in all cases, containing the case where the employer knows that the employee is a victim of human trafficking. But even this legislation has minimal

¹³⁴ Ibid.

¹³⁵ European Commission, COM (2016) 719 final, pp.3,4.

¹³⁶ European Commission, COM (2016) 719 final, p.4.

¹³⁷ Ibid.

¹³⁸ Ibid.

¹³⁹ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0052-20090720&from=EN> (Last accessed 1st April 2022).

range because it only refers to labour exploitation and third-country nationals residing illegally in the EU, leaving aside the victims who are EU nationals and victims who are third-country nationals but are lawfully staying in the EU.

It should be noted at this point that there lies a difficulty. These Member States, which established the use of services of trafficked persons as a criminal offence and require the user's previous knowledge that the person's services they use is a trafficked person, have an issue with collecting evidence. Meaning that the burden of proof rests with the prosecutor, while the suspects are taking advantage of the presumption of innocence and are not obliged to prove their innocence. The only exception to this rule is Ireland, where the burden of proof is shifted to the defendant.¹⁴⁰ Another problem is the level of knowledge of the user. The definition of criminal liability, only in the case where the user has direct and actual knowledge that the person is indeed a victim of human trafficking, degrades the treatment of this issue.

As a conclusion driven by the abovementioned Commission Report of 2016¹⁴¹ there is no coherent legislation in the EU that can curb the demand for services of trafficked victims.¹⁴²

Well, according to another document, which is the statistics and research presented in the Third Progress Report of the European Commission,¹⁴³ few parties to the Anti-trafficking Directive have either enacted new laws or amended the existing ones in order to reduce demand. For example, in Cyprus on 27 July 2019, Anti-trafficking Law 60(I)2014¹⁴⁴ was amended by a new law 117(I)/2019¹⁴⁵. Current Article 17A penalizes the act of any person demanding or receiving or using any work or services from a victim of human trafficking for the purpose of sexual exploitation, with the aggravating circumstance of the victim being a child. Moreover, Article 2 defines demand as not only when a client buys the services of a trafficked person or an

¹⁴⁰ European Commission, COM (2016) 719 final, p.7.

¹⁴¹ See supra note 133.

¹⁴² European Commission, COM (2016) 719 final, p.10.

¹⁴³ European Commission, SWD (2020) 226 final.

¹⁴⁴ Cyprus, Anti-trafficking Law 60(I)2014. Available at:

http://www.cylaw.org/nomoi/arith/2014_1_060.pdf (Last accessed 1st April 2022).

¹⁴⁵ Cyprus, Law 117(I)2019. Available at: http://www.cylaw.org/nomoi/arith/2019_1_117.pdf (Last accessed 1st April 2022).

exploiter recruits and exploits the victims of trafficking, but also when an employer hires a trafficked person or a club owner employs victims of human trafficking and even everyone else implicated in the trafficking chain. Additionally, it is immaterial that the person who used the victim's services was not aware of the disadvantageous status of the latter. Also in another country, Sweden, a new law based on voluntary participation in a sexual act was passed in 2018 (chapter 6 section 1a of the Criminal Code),¹⁴⁶ which indirectly affected the phenomenon of human trafficking. To be specific, the law introduced a new offence of "grossly negligent rape", according to which a perpetrator who engages in a sexual act with a person who is under threat or physical pressure or in a vulnerable position can be sentenced to rape because of grossly negligent of this crime. The prerequisite is that the perpetrator knew or was grossly negligent whether the other person participated in sexual intercourse voluntarily. This broader criminal liability can be used in the event of human trafficking for the purpose of sexual exploitation, provided that taking part in a sexual act voluntarily can only take place if the persons can express their own will. And being in a vulnerable position as being trafficked to join prostitution invalidates the ability of voluntary participation. In Luxemburg, too, the Law of 28 February 2018 does not accuse victims of sexual exploitation of soliciting. On the contrary, clients who consciously use the services of a child or a trafficked person are being prosecuted.¹⁴⁷

Aside from the above, some Member States such as Latvia, Hungary and Spain started to discuss criminalizing the use of services of trafficked persons.¹⁴⁸ However, when criminalizing the users of services of trafficked persons some practical issues arise, which some Member States have already pointed out. For example, it can be challenging to prove the perpetrator's intention. Also, when knowledge of a lower degree of the perpetrator is required, then that can lead to punishing people, for example, just for buying cheap products. Additionally, existing national laws can make

¹⁴⁶ Sweden, Criminal Code. Available at:

https://www.legislationline.org/download/id/8662/file/Sweden_criminal_code_am2020_en.pdf,

p.47 (Last accessed 1st April 2022).

¹⁴⁷ European Commission, Together against trafficking in human beings, Luxemburg, at para 2. Available at: https://ec.europa.eu/anti-trafficking/member-states/luxembourg_en (Last accessed 1st April 2022).

¹⁴⁸ European Commission, SWD (2020) 226 final, p.57.

it difficult to enter private homes in order to control whether sexual exploitation is taking place. Ultimately, there are also doubts as to whether a particular legal act can reduce demand.

3.2. Corporate liability

In the past few years, the role of companies as potential perpetrators of trafficking has grown in importance. Indeed, corporations are involved in human trafficking by either recruiting and exploiting people or by laundering the profits from illegal activities.

Aware of this situation, the two most important anti-trafficking legal instruments of Europe call on states to impose sanctions on legal persons involved in this crime. In particular, Article 22 of the Anti-trafficking Convention requires the parties to establish criminal, civil or administrative liability for legal entities in order to hold them accountable for the crime of trafficking in human beings. Likewise, Article 5 of the Anti-trafficking Directive obliges all Member States to take action against legal persons who commit the offence of trafficking. Also, Article 6 of the Anti-trafficking Directive lays down criminal and non-criminal penalties and stipulates that the punishment should be effective, proportionate and dissuasive. To go further, recital 16 and Article 10§2(b) of the above Directive provide that a jurisdiction should be created to ensure the prosecution of international groups, whose centre of criminal activity or else their country of residence is in a Member State and which are committing the offence of trafficking in third countries. However, it must also be noted that Article 22§4 of the Anti-trafficking Convention and Article 5§3 of the Anti-trafficking Directive state that corporate liability does not exclude individual liability.

The "Transposition report" of the European Commission indicated that all Member States have complied with the Directive in a broader sense, namely introducing criminal or administrative liability of legal persons for the different types of capacities or positions of the offenders.¹⁴⁹ Of course, the penalties for these actions differ from

¹⁴⁹ European Commission, Report from the Commission to the European Parliament and the Council, assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23(1), COM (2016) 722, final, p.5 at para 2.1.4.

one Member State to another and some of them have also imposed other optional penalties. The ultimate goal is to break the trafficking chain by discouraging demand. More precisely, the aim is that the supply and value chains proceed with due diligence so as not to exploit human beings and mainly in the clothing sector, which is the greatest challenge. But the trafficking chain is multi-layered and is characterized by various financial exchanges. It implicates recruitment agencies, labour market intermediaries, travel agencies (bus, truck, taxi drivers) and visa services. Indeed, the contemporary production form of the companies is the cascade subcontracting where they share responsibilities with a whole range of entities, making the work of labour inspectors more difficult.

Civil society actors underline the need for transparency in the supply chain industry and recommend that due diligence must be obligatory for legal entities.

As an example of efforts in this area, we can mention Ireland, which carried out the National Plan on Business and Human Rights 2017-2020.¹⁵⁰ Its goal is to materialize the UN Guiding Principles on Business and Human Rights.¹⁵¹ And the most important action is to share best practices on human rights due diligence and establish supply chain controls. Austria has also launched a program in order to investigate how quality seals can be used to tackle labour exploitation in the international supply industry.¹⁵² Furthermore, the UK has adopted the Modern Slavery Act 2015, which, inter alia, requires companies to make a human trafficking statement (section 54).¹⁵³ The latter describes the steps companies have taken to eradicate human trafficking from their supply chains. The first conviction of a company director for trafficking for forced labour under the Modern Slavery Act 2015 was in February 2016. The manager of two

¹⁵⁰ European Commission, SWD (2020) 226 final, p.61.

¹⁵¹ UN Guiding Principles on Business and Human Rights. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (Last accessed 1st April 2022).

¹⁵² European Commission, SWD (2020) 226 final, p.61.

¹⁵³ UK, Modern Slavery Act 2015. Available at: <https://www.legislation.gov.uk/ukpga/2015/30/section/54> (Last accessed 1st April 2022).

bed-making factories was sentenced to imprisonment because he knew or should have known that his employees were victims of trafficking.¹⁵⁴

¹⁵⁴ Council of Europe, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, GRETA (2016)21, p.71 at para 283. Available at: <https://rm.coe.int/16806abcde> (Last accessed 1st April 2022).

4. Increasing results through investigations, databases and training

4.1. Special investigation techniques and financial investigations

As a serious and clandestine crime, trafficking in persons requires particular methods of inquiry, including physical and electronic surveillance, searches of premises and people, undercover investigations, tracking of bank accounts, breaking the confidentiality of communications or location or traffic data, and seizure of property.

Some parties to the Directive have set up specialized anti-trafficking units within the police force, for instance, in Latvia and Slovakia. In fact, in Latvia, this specialized team has conducted more investigations than other police units.¹⁵⁵ However, it must be highlighted that not all Member States have specialized police units for trafficking in human beings. Furthermore, the aim is to ensure that cases of human trafficking are followed up by specialized prosecutors who have been trained in relevant workshops and conferences. Of course, when combating organized crime, multi-agency action is more effective. For this reason, many units in Poland and Sweden work together to conduct inspections, such as border guard officers, labour inspectors, economic inspectors and prosecutors.¹⁵⁶ In France, too, anti-trafficking measures are organised by multi-disciplinary units (GIR), which allows for a more methodical approach to this issue. Their national action plan was adopted in 2019 and they have already closed down many legal entities involved in sexual exploitation, such as hotels and massage parlours.¹⁵⁷

No one can deny that human trafficking is a very lucrative crime. As an example, we can take France, which reported that in 2017-2018 criminal assets related to trafficking for sexual exploitation increased from 6 to 10 million EUR.¹⁵⁸ Tracking illicit profits is part of the pre-trial investigation aimed at tracking down illegal assets and property in order to bring money laundering crimes to justice. The aim is to turn

¹⁵⁵ European Commission, SWD (2020) 226 final, p.62.

¹⁵⁶ Ibid.

¹⁵⁷ European Commission, SWD (2020) 226 final, p.62.

¹⁵⁸ European Commission, SWD (2020) 226 final, p.63.

human trafficking into a "high-risk, low return" crime. The Council of the EU in its conclusions highlighted the value of the "follow the money approach" in the fight against organised crime and requested from all Member States to also conduct financial investigations within the framework of EMPACT (European Multidisciplinary Platform Against Criminal Threats)¹⁵⁹ as well as to enhance cross-border cooperation between FIUs (Financial Intelligence Units), law enforcement agencies and Asset Recovery Offices.¹⁶⁰ More precisely, if a legal person shows suspicious economic activity, this is reported to the relevant FIU. An example of this can even be casinos. As a major step in the war against organised crime and thus money laundering in the EU, we can cite the following: in 2019, a Directive¹⁶¹ was passed regulating direct access to bank account registries, which of course facilitates financial investigations. Also, as a successful example of conducting financial investigations, we can mention the Netherlands, where there was cooperation between a bank, the FIU, a ministry, the police and a scientific community. The bank identified unusual transactions of labour exploitation and reported them to the national FIU. The FIU then forwarded this information to the Ministry of Social Affairs and Employment.¹⁶²

However successful financial investigations remain a challenge. This is due to the fact that the exploiters use cash payments or cash couriers or even money transfers through a system of lenders or private companies. To confirm the above, Bulgaria reports that it is not uncommon for illegal money to be carried out by persons unrelated to the crime, such as truck drivers. Cash movements are often below 10.000 EUR, which are excluded from cash controls in the EU.¹⁶³ It should also be noted that the

¹⁵⁹ One of the priorities of EU Policy Cycle-EMPACT 2022-2025 is to dismantle criminal networks involved in trafficking. Europol, EU Policy Cycle-EMPACT, Available at:

<https://www.europol.europa.eu/crime-areas-and-statistics/empact> (Last accessed 1st April 2022).

¹⁶⁰ Council of the European Union, Council conclusions on enhancing financial investigations to fight serious and organised crime, 8927/20, pp.3,7.

¹⁶¹ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L1153&from=EN> (Last accessed 1st April 2022).

¹⁶² European Commission, SWD (2020) 226 final, p.65.

¹⁶³ Ibid.

poly-criminal nature of organized crime means that illegal profits, for example from the sexual exploitation of women, are sometimes reinvested in other forms of crime such as drug trafficking.

The final stage of an economic investigation is the seizure of criminal profits. To this end, the EU has adopted Directive 2014/42/EU (Confiscation Directive)¹⁶⁴ on the freezing and confiscation of the means and profits from crime to ensure that crime does not pay. Additionally to that, Regulation 2018/1805¹⁶⁵ was also issued, which has made a major contribution to asset recovery. As an example of a successful opportunity to recover assets related to human trafficking, we can refer to the following cases directed by Eurojust in which 5 million EUR in cash and assets were seized. It comprised a case of labour exploitation and money laundering (seized money, jewellery, bank documents, etc.), a case of sexual exploitation (seized cars, cash, jewellery, computers, etc.) and a case of human trafficking with victims from Nigeria (seized money, cryptocurrencies, illegal assets, web domains, etc.).¹⁶⁶

The problem, however, is that some Members States indicate that there is a lack of resources, such as technical equipment or analytical software or even law enforcement personnel and that financial investigations are not systematically planned in all cases of trafficking in persons. The Organization for Security and Cooperation in Europe (OSCE) points out also that there is a lack of adequate training for investigators and a poor exchange of good practices. Even with regard to the confiscation of assets from crime, the current quota in the EU is still low despite all attempts and is only 1.1% according to Europol.¹⁶⁷ One reason for this is that it is difficult to seize assets located

¹⁶⁴ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014L0042-20140519&from=EN> (Last accessed 1st April 2022).

¹⁶⁵ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1805&from=EN> (Last accessed 1st April 2022).

¹⁶⁶ European Commission, SWD (2020) 226 final, pp.69,70.

¹⁶⁷ Europol, Does crime still pay? Criminal asset recovery in the EU, Survey of statistical information 2010-2014, 2016, p.11.

abroad, and more importantly when the illegal revenues are mixed with profits from legitimate businesses.

And in the end, we must not forget that the goal is that the confiscated proceeds from these illicit activities are invested in victim protection support and compensation.

4.2. Cross-border cooperation and joint investigations

The cooperation between EU actors, but also internationally, is an imperative as crime is increasing due to globalization. The exchange of data and information between the Member States, participation in joint investigation teams (JITs), contacts with liaison officers and police-judiciary meetings organized by Europol and Eurojust are becoming more and more urgent. The authorities also use instruments such as the European Investigation Order¹⁶⁸ and the European Arrest Warrant (EAW)¹⁶⁹. And it is very often to extradite persons and another country to undertake the legal process. In addition, Member States are reporting cases to Eurojust for assistance, and this number has grown over the period 2018-2019 compared to previous years. Specifically, they reported 150 human trafficking cases in 2018 and 183 in 2019 for assistance. The number of coordination meetings organized by Eurojust also increased to 43 in 2018 and 53 in 2019.¹⁷⁰ Moreover, Eurojust helps Member States with the concentration and admissibility of evidence, such as testimonies from victims and witnesses, provides financial information and carries out arrests. Also, in many cases where there is a conflict of jurisdiction and a possible violation of the ne bis in idem principle, Eurojust suggests the best country for jurisdiction to prosecute the human exploiters, mainly taking into account the nationality of the victims. A fact that proves the international aspect of the trafficking phenomenon and that action is already being carried out in a broader context. An example of cooperation between countries is the following, officials from Greece and Bulgaria held meetings in 2019, with the support of Europol,

¹⁶⁸ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014L0041-20220313&from=EN> (Last accessed 1st April 2022).

¹⁶⁹ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02002F0584-20090328&from=EN> (Last accessed 1st April 2022).

¹⁷⁰ European Commission, SWD (2020) 226 final, p.71.

to combat illegal adoptions and sexual exploitation.¹⁷¹ Furthermore, best practices can be exchanged through multilateral visits, as was the case between Greece, Albania and North Macedonia.¹⁷² However, it is also important that Member States work with non-EU countries to provide legal assistance or investigate cases of human trafficking, as did Slovenia, which collaborated with China to dislocate organised criminal groups using people for illegal activities.¹⁷³

Another important tool, as mentioned above, is the liaison officers, who are posted from one country to another to facilitate access to information and assist the investigations, and mainly the parallel investigations. To be precise, they deploy officials to the trafficking countries of origin and transit countries, taking into account any country from which another country receives trafficked persons. For this reason, the Czech Republic posted an officer in Romania, the United Kingdom in France and the Netherlands in Bucharest. Unfortunately, not so often are officials appointed to African countries that are considered to be the countries of origin for trafficked persons. Nevertheless, France has placed two magistrates on the African continent, but the opposite has also been applied, officials from the countries of origin of trafficking were designated to destination countries. For example, public prosecutors from Nigeria have been appointed as liaison magistrates to Italy and Spain.

Of much importance also are the joint investigation teams, which are supported by Eurojust. The number of joint investigation teams conducted by Eurojust has increased compared to previous years, to 118 in the period 2018-2019.¹⁷⁴ In this action, Eurojust carries out the investigation, provides information about the admissibility of the evidence, gives funding for travel and translation expenses, and provides suitable equipment. Many Member States have taken part in these teams, such as Romania.¹⁷⁵ In this way, it is possible to disband the whole organized crime group and not just individual members.

EMPACT also runs Joint Action Days (JADs) to fight cross-border crime. Many EU agencies such as Europol, Eurojust and Frontex take part in this action. Many

¹⁷¹ European Commission, SWD (2020) 226 final, p.72.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ European Commission, SWD (2020) 226 final, p.76.

¹⁷⁵ Ibid.

Member States (e.g. BE, DE, IE, EL, FI, HR, LT, PT, SE, SK) participated in Joint Action Days and conducted investigations in venues, arrests of suspects and all targeting sexual and labour exploitation as well as child trafficking.¹⁷⁶ As another example of JADs, we can mention an EU-wide action week that was organized in 2018 aiming at child trafficking. The result was the identification of 51 children and 72 adults as victims who were used for labour, sexual exploitation and forced begging.¹⁷⁷ Another example of Joint Action Days was in 2019 when Europol was responsible for this action and 22 Member States and Switzerland participated. In the end, 476 victims of human trafficking were identified¹⁷⁸.

4.3. Using large databases to detect THB

For the first time in 2011, the EU set up an agency, eu-LISA,¹⁷⁹ which uses the existing large-scale information technology (IT) systems to ensure the security of Member States. So in this way, it contributes to the fight against human trafficking. The large-scale IT systems operating under the auspices of eu-LISA are the already existing Schengen Information System II, the Visa Information System and Eurodac.¹⁸⁰ With the help of the three tools mentioned above, it is possible to identify and recognize people involved in human trafficking, i.e. victims, traffickers and witnesses, but also objects, such as boats, vehicles, containers and travel documents. Eu-LISA is constantly evolving to develop a new information system for border management and internal security (interoperability) aimed at the collaboration between current and future IT systems. This latest move will create better tools to prevent the crime of human trafficking by detecting criminals hiding behind fake identities. More specifically, we refer to the Common Identity Repository (CIR) and the Multiple Identity Detector (MID), which enable better identification of persons, who could be perpetrators or

¹⁷⁶ European Commission, SWD (2020) 226 final, pp.77,78.

¹⁷⁷ European Commission, SWD (2020) 226 final, p.78.

¹⁷⁸ Ibid.

¹⁷⁹ The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice. Available at: <https://www.eulisa.europa.eu/About-Us/Who-We-Are> (Last accessed 1st April 2022).

¹⁸⁰ European Commission, SWD (2020) 226 final, p. 80.

victims of trafficking by double-checking the information in the large-scale IT databases.¹⁸¹

The Schengen Information System (SIS II) provides access to alerts from the competent authorities of the Member States, in particular, to identify women and children who are victims of human trafficking. The number of alerts in 2019 was 91 million.¹⁸² SIS II is now introducing a new type of alert, known as preventive alerts, in accordance with Article 32§1d(i) and 32§1e of Regulation (EU) 2018/1862¹⁸³. It is about potential victims, children and adults, to prevent them from travelling when they are at risk of being trafficked. The victims and traffickers are identified using biometric data used by several Member States. Eu-LISA compiles statistics on these types of alerts in order to provide a better plan in deciding how to prevent this phenomenon.

The Visa Information System (VIS) is vital in combating visa-shopping and irregular migration by enabling cooperation between consulates and border crossing points. The demanding role played by the VIS is demonstrated, for example, by the visa applications submitted in just one year, in 2019 it was 77 million.¹⁸⁴ Ultimately, the VIS guarantees the application of the EU's Common Visa Policy in the Schengen area.

The European Asylum Dactyloscopy Database (Eurodac) contributes to the process of asylum applications by third-country nationals with its extensive database of fingerprints of asylum seekers and irregular migrants and can thus identify persons suspected of a crime. In 2019 Eurodac stored 5,7 million sets of fingerprints.¹⁸⁵

¹⁸¹ European Commission, SWD (2020) 226 final, p. 81.

¹⁸² European Commission, SWD (2020) 226 final, p.80.

¹⁸³ The Regulation entered into force in December 2019 and will be fully implemented from December 2021.

Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018R1862-20210803&from=EN> (Last accessed 1st April 2022).

¹⁸⁴ European Commission, SWD (2020) 226 final, p.80.

¹⁸⁵ Ibid.

4.4. Training of officials

The training of relevant officials on the multi-dimensional phenomenon of trafficking in human beings is essential, which is why it is required by Article 18 of the Anti-trafficking Directive. In September 2018, CEPOL, with the participation of the European Commission, ran a training course entitled "Trafficking in human beings for labour exploitation-Understanding the EU legal and policy framework" for police officers, border guards and prosecutors from the Member States.¹⁸⁶ Another EU agency, EIGE, organized a webinar with CEPOL in June 2020 with the aim of "Gender-specific measures in anti-trafficking actions" with the contribution of the European Commission.¹⁸⁷ In addition, the European Judicial Training Network (EJTN) has organized many seminars for prosecutors and judges in the Member States (e.g. BE, FR, FI, RO) in order to inform them about specific subjects in the trafficking phenomenon, such as the non-prosecution of victims principle, the right of victims to legal assistance and compensation.¹⁸⁸ Furthermore, the EU Fundamental Rights Agency organized five trainings with the Greek National Centre for Social Solidarity, the Norwegian Refugee Council and the Office of the National Rapporteur on Trafficking with the main purpose of informing officials in the hotspots about the implementation of the National Referral Mechanisms and training them to better identify victims of human trafficking in hotspots.¹⁸⁹ Another action taken by Frontex was the following, it published handbooks called VEGA for the Frontex instructors for fundamental rights, focused on protecting the vulnerable children at airports.¹⁹⁰

Many Member States are investing in the development and training of professionals involved in the asylum procedure. A good example of this would be Cyprus, which has trained the psychologists who manned the mental health services at the hotspots to better identify the victims of trafficking. The psychologists also learned

¹⁸⁶ European Commission, SWD (2020) 226 final, p.85.

¹⁸⁷ European Commission, SWD (2020) 226 final, p.84.

¹⁸⁸ European Commission, SWD (2020) 226 final, p.82.

¹⁸⁹ European Commission, SWD (2020) 226 final, p.85.

¹⁹⁰ Frontex publishes VEGA Handbook: Children at airports. Available at:

<https://frontex.europa.eu/media-centre/news/news-release/frontex-publishes-vega-handbook-children-at-airports-bvtPly> (Last accessed 1st April 2022).

how to get victims to report their victimization to the police.¹⁹¹ In 2019, the Greek National Referral Mechanisms (NRM) organised seven 3-day training courses for first-line professionals, such as police officers and coast guards, in the Aegean islands as well as on the mainland.¹⁹² In particular, they focused on the gender dimension of this phenomenon, which is the disproportionate trafficking of women and girls for the purpose of sexual exploitation. Also, the Swedish Migration Agency published a guide on the best interest of the child in international protection procedures in 2019. This handbook helped caseworkers to have effective contact with child victims, as they are more vulnerable than adults and do not speak easily about their experiences of human trafficking.¹⁹³

As already mentioned, new information technology has emerged, which makes the work of officials more difficult. For this reason, some Member States have included the use of the internet in their training. For instance, in Slovakia, a training programme was carried out with cybercrime police officers that focused on trafficking and the darknet. Webinars on the internet as an intermediary in human trafficking have also been organised in Greece.¹⁹⁴

Another form of very creative training that is being introduced in some Member States is the form of the "serious game", i.e. simulation and role-play of the human trafficking cycle by many actors, including social workers and judicial officials.

5. Impact of the COVID-19 pandemic on THB

The current COVID-19 pandemic, which broke out in 2020, affects people worldwide. This outbreak inevitably has a negative influence on the phenomenon of trafficking and especially cross-border trafficking, as human traffickers use social inequalities and people's economic and social vulnerabilities to find victims.

More precisely, the financial crisis we are experiencing has raised unemployment rates mainly in the poorest countries. This means that poverty in origin

¹⁹¹ European Commission, SWD (2020) 226 final, p.87.

¹⁹² European Commission, SWD (2020) 226 final, p.90.

¹⁹³ European Commission, SWD (2020) 226 final, p.89.

¹⁹⁴ European Commission, SWD (2020) 226 final, p.84.

countries has increased, so people are more vulnerable to being prey to ruthless exploiters. Therefore, they are willing to undertake a risky journey to another affluent country, many times to another continent, in search of a better life and work. So the first and more significant impact of the pandemic on human trafficking is that its numbers are going to augment.

Also, due to restricted mobility, it is now more challenging than usual to identify the victims. In Spain, for example, perpetrators began to use digital platforms, such as Airbnb, instead of brothels, in order to rent apartments for sexual exploitation, a fact that inevitably hinders police efforts to find victims.¹⁹⁵ Also, in many cases, these lockdown measures led to a shift from street prostitution to online prostitution. For instance, in Germany, brothels and similar establishments were temporarily closed and, as a result, hidden prostitution increased.¹⁹⁶ In addition, there have been reports of an increase in grooming children online and sexual exploitation of them on the internet. In general, technology enables more criminal activity due to COVID-19. Another impact of the pandemic is the fact that many NGOs have suspended their field offices and shelters or have switched their services to the internet. Without access to safe accommodation, legal and psychological assistance victims of trafficking are therefore vulnerable to revictimization. And in any case, it is difficult for victims such as foreigners and poor people to have access to computers. Immigration centres have also been closed in some countries, such as Malta, preventing UNHCR and NGOs from offering help and legal information to potential victims of human trafficking.¹⁹⁷

Furthermore, many criminal justice processes and activities, as well as victims' rights to request compensation, have been postponed. In fact, Eurojust reported that COVID- 19 has resulted in difficulties in the execution of arrest warrants, investigation orders and joint investigation teams. Of course, the health of victims of trafficking becomes more precarious due to the pandemic because they are more likely to contract the disease as their living and working conditions are far too hazardous. Moreover, the repatriation of the victims to their country of origin is delayed.

¹⁹⁵ Council of Europe, 10th General report on GRETA's activities, covering the period from 1 January to 31 December 2020, p.31 at para 60.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

However, as the pandemic spread, some countries did not ease their effort in support of the most vulnerable parts of the community. For example, the Ministry of Equality in Spain has introduced a Contingency Plan against gender-based violence, which is exacerbated by COVID-19, with a special focus on protecting the rights of victims of human trafficking for the purpose of sexual exploitation. It provides for a minimum subsidy for victims and a living alternative to hotels.¹⁹⁸ In Portugal, the Observatory on Trafficking in Human beings researched how the pandemic aggravated the inequalities that enable exploitation. They used the results in order to organize training seminars and awareness campaigns.¹⁹⁹ In Italy, the Department for Equal Opportunities did not request any new project proposals for victim assistance but extended the existing ones until the end of 2020. But the European instruments also reacted accordingly to this pandemic with regard to the security and rights of non-privileged foreign workers, who can also be trafficked. For example, on 19 June 2020, the European Parliament adopted the Resolution on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis.²⁰⁰ This text urges the European Commission and the Member States to provide equal treatment to third-country nationals as they do to EU citizens. That is equal access to health care, public services and trade union support. In the same vein, in July 2020 the European Commission adopted the Guidelines on seasonal workers in the EU in connection with the COVID-19 outbreak.²⁰¹ This document ensures the rights of workers regardless of whether they are EU citizens or not. It protects the health, safety and other rights of workers and, above all, invites the Member States to conduct regular labour inspections with the support of the European Labour Authority (ELA). In addition to the above

¹⁹⁸ Council of Europe, 10th General report on GRETA's activities, covering the period from 1 January to 31 December 2020, p.32 at para 65.

¹⁹⁹ Council of Europe, 10th General report on GRETA's activities, covering the period from 1 January to 31 December 2020, p.34 at para 75.

²⁰⁰ European Parliament resolution of 19 June 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis. Available at: https://www.europarl.europa.eu/doceo/document/TA-9-2020-0176_EN.html (Last accessed 1st April 2022).

²⁰¹ European Commission, Communication from the Commission, Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak, 2020. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0717\(04\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0717(04)&from=EN) (Last accessed 1st April 2022).

measures, in July 2020 the Council of Europe’s Anti-Trafficking Division took action by calling on NGOs to develop proposals aimed at preventing trafficking and assisting trafficked people during the time of the COVID-19 pandemic.²⁰²

²⁰² Council of Europe, 10th General report on GRETA’s activities, covering the period from 1 January to 31 December 2020, p.34 at para 76.

6. Legal rights of victims of THB

To begin with, EU legislation guarantees the support and protection of victims of human trafficking in many different documents, such as the Anti-trafficking Directive, the Anti-trafficking Convention, the Directive 2012/29/EU²⁰³ on victim's rights (hereinafter the EU Victims' Rights Directive), the Council Directive 2004/81/EC²⁰⁴ on residence permits to third-country nationals and the Directive 2004/80/EC²⁰⁵ on compensation for crime victims. Of course, each Member State can set more rights than the standard from the above legislation. The most important are the following:²⁰⁶

1. First, in accordance with recital 14 and Article 8 of the Anti-trafficking Directive and Article 26 of the Anti-trafficking Convention, countries must refrain from prosecuting victims of trafficking for illegal acts they committed as a result of trafficking. The reason for this crucial provision is to avoid further victimization, the so-called secondary victimisation and to motivate them to be involved in the criminal proceedings against the perpetrators. In Cyprus, for example, migrants who are third-country nationals charged with illegal entry

²⁰³ This Directive is considered as the cornerstone of the EU victims' rights framework, which is applicable in the Member States since November 2015.

Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0029&from=EN> (Last accessed 1st April 2022).

²⁰⁴ Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0081&from=EN> (Last accessed 1st April 2022).

²⁰⁵ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004L0080&from=EN> (Last accessed 1st April 2022).

²⁰⁶ European Commission, The EU rights of victims of trafficking in human beings, Publications Office of the European Union, 2013.

and unlawful employment will not be convicted if the authorities discover that there are victims of trafficking.²⁰⁷ Nevertheless, it should be noted that victims of forced criminality are often not recognized as such.

2. Another significant right accorded to the victims, originating from countries outside the EU, is the recovery and reflection period, which is at least 30 days. This is granted through Article 6 of the Council Directive on residence permits and Article 13 of the Anti-trafficking Convention in order to rest and decide whether or not to cooperate with justice and file a complaint against the exploiters. The expulsion of the victims is also prohibited during this period.
3. In addition, another basic right is the residence permit. As stated in recital 17 of the Anti-trafficking Directive, Article 8 of the Council Directive on residence permits and Article 14 of the Anti-trafficking Convention, victims who are third-country nationals can apply for a residence permit, provided that they are willing to cooperate in the persecution of the perpetrators. This permit must last at least six months and can be renewed.

For EU citizens, the right to remain within the territory of the Member States is regulated by Directive 2004/38/EC.²⁰⁸

4. Both during the reflection period and the period after the residence permit has been issued, the victims have the right to receive medical and psychological treatment, and even if they do not have sufficient means to live, the state has to provide for them according to Articles 11 of the Anti-trafficking Directive and Articles 7 and 9 of the Council Directive on residence permits. By way of example, in Cyprus, under Law 60(I)2014, the government allocates a rent subsidy and a monthly allowance to victims of trafficking who do not live in a shelter.²⁰⁹

²⁰⁷ Council of Europe, GRETA, Evaluation report, Cyprus, Third evaluation round, p.26 at para 91. Available at: <https://rm.coe.int/greta-2020-04-fgr-cyp-en/16809eb53f> (Last accessed 1st April 2022).

²⁰⁸ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF> (Last accessed 1st April 2022).

²⁰⁹ Council of Europe, GRETA, Evaluation report, Cyprus, Third evaluation round, p.41 at para 166. Available at: <https://rm.coe.int/greta-2020-04-fgr-cyp-en/16809eb53f> (Last accessed 1st April 2022).

5. Apart from the above, all victims have the right to free legal advice and legal representation, under Article 12§2 of the Anti-trafficking Directive and Article 13 of the EU Victims' Rights Directive.
6. Furthermore, protection of victims during criminal proceedings is provided in Article 12 of the Anti-trafficking Directive, Articles 28 and 30 of the Anti-trafficking Convention and Chapter 4 of the EU Victims' Rights Directive. According to this, victims have the right to participate in witness protection programmes in order to protect their physical integrity from revenge or intimidation by the offenders. Besides that, they are entitled to special treatment to avoid revictimization, such as repeated interviews during the trial and visual contact with the traffickers. Psychologists or psychiatrists may also contribute to the process by preparing victims in order to testify. To meet this need of the victims, some Member States made changes in their legislation. As an example, we can mention Article 218 of the Greek Code of Criminal Procedure,²¹⁰ which provides for testimonies to be given by audio or visual electronic means and the avoidance of giving witnesses' personal data. In Cyprus, they assist the victims by providing them with new phone devices and phone numbers to minimize contact and retaliation by the traffickers. Sometimes they accompany the victims with police forces or with members of NGOs and patrol the shelters in which the victims reside.²¹¹
7. We must not forget that minors are also entitled to special treatment during criminal proceedings and even need it more than adults. Article 15 of the Anti-trafficking Directive and Articles 23 and 24 of the EU Victims' Rights Directive give them increased protection. According to them, the number of interviews must be kept as low as possible and an adult can accompany the child there. The criminal hearings must also take place in-camera and without the child's direct personal presence. Above all, the children's privacy must be protected from any public disclosure that could lead to the reveal of their identity.

²¹⁰ Greece, Article 218 of the Code of Criminal Procedure. Available at:

<https://www.lawspot.gr/nomikes-plirofories/nomothesia/n-4620-2019/arthro-218-kodikas-poinikis-dikonomias-nomos-4620-2019> (Last accessed 1st April 2022).

²¹¹ European Commission, SWD (2020) 226 final, p. 101.

8. Also, victims of human trafficking are entitled to compensation. This is vital to the recovery of those who have been exploited by the traffickers as it will alleviate the damage they have suffered. For this reason, this right is exercised in accordance with Article 17 of the Anti-trafficking Directive, Article 16 of the EU Victims' Rights Directive and Article 15§3 of the Anti-trafficking Convention. Compensation consists of all material and/or non-material damage inflicted on the victims. The victim can obtain reimbursement either through civil court proceedings, or through criminal proceedings, or from a state fund. Especially, as regards exploited irregular migrants, who are victims of trafficking, they can bring actions for unpaid wages in labour courts, as stated in Article 6 of Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009, providing minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Article 1 of Directive 2004/80/EC applies in particular to compensation in the event of international human trafficking. Pursuant to that the victim, who is a citizen of a country other than the one in which the trafficking took place, can apply for reimbursement in the state of residence. This is of course submitted to the authorities of the state in which the crime was committed. These are known as assisting authorities and are established in the country of residence.
9. Of great importance is also the issue of the European Protection Order as stipulated by Articles 5 and 6§1 of the Directive 2011/99/EU.²¹² Following that, this order can be issued when the victim is in another Member State and a protection measure against the trafficker was issued in the victim's former place of residence. In this case, the protective measure under the criminal law of one country extends to another EU country.
10. Besides that, victims of human trafficking who are third-country nationals are entitled to international protection and should be protected against refoulement, that is return to a country where there is a risk of torture, death, persecution or

²¹² Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0099&from=EN> (Last accessed 1st April 2022).

other ill-treatment. A general right resulting from Articles 2 and 21 of Directive 2011/95/EU.²¹³

11. For victims who are third-country nationals who have to leave the EU and return to their country of origin, Article 7§1 of Directive 2008/115/EC²¹⁴ stipulates a period for voluntary return of between seven and thirty days. If the principle of non-refoulement would be violated or the physical and mental condition of the victim does not allow it, the return must of course be postponed as Article 9 of the abovementioned imposes.

In the case of unaccompanied minor victims, deportation from the country of destination can only be enforced after taking into account the best interest of the child following Article 10 of Directive 2008/115/EC.

12. As for the victims' integration and labour rights, they are again regulated by EU legislation. Everyone, regardless of EU or third-country national, can enjoy the right to fair working conditions in terms of safety, limitation of maximum working hours, rest periods and freedom of association under Articles 15 and 31 of the Charter of Fundamental Rights of the European Union. Residence permit holders, who are third-country nationals, can also have access to vocational programmes and education in order to regain a normal life, in accordance with Articles 11 and 12 of the Council Directive on residence permits.

With regard to children, Article 14§1 of the Anti-trafficking Directive and Article 10(b) of the Council Directive on residence permits guarantee that minor victims who are third-country nationals have the right to participate in the education system.

²¹³ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0095&from=EN> (Last accessed 1st April 2022).

²¹⁴ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008L0115&from=EN> (Last accessed 1st April 2022).

7. Critical review of the implementation of the EU policy against THB

7.1. Key issues in combating THB

As outlined above, the Member States have introduced a wide range of fundamental rights for trafficked persons through numerous regulations. They have also established many governmental or non-governmental actors who help combat trafficking in human beings. Hence, one might assume that all of these efforts could effectively solve this huge and painful problem. In reality, however, many of these measures are only on paper and there are many challenges in their practical application. When implementing the relevant European regulation and strategy, one could describe the following concerns:

1. One of the most difficult tasks to solve is the early identification of trafficked people. As the Commission notes, recognition is one of the "five broad needs of the victims", namely respect and recognition, assistance, protection, access to justice and compensation.²¹⁵ According to Article 11§2 of the Anti-trafficking Directive and Article 10§2 of the Anti-trafficking Convention, the recognition of a trafficked victim as such begins when there are "reasonable grounds" to believe that someone has been trafficked. But neither the Directive nor the Convention specifies this term, leaving a large margin of appreciation to the Member States.²¹⁶ It is, therefore, uncertain when a person will have to be considered a potential victim in order to gain access to their rights and, of course, when the consequent recovery and reflection period will begin.

²¹⁵ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, The EU strategy towards the eradication of trafficking in human beings 2012-2016, p.6.

²¹⁶ Bosma Alice and Rijken Conny, Key challenges in the combat of human trafficking, Evaluating the EU trafficking strategy and EU trafficking Directive, New Journal of European Criminal law, Vol.7, Issue 3, 2016, p.323.

In fact, in cases of labour exploitation, it is hard to distinguish between exploited workers within and outside the framework of trafficking in human beings in order to grant them the rights of trafficked persons.

2. The problem of the conditional protection of victims. Article 11§3 of the Anti-trafficking Directive states that assistance to exploited people should not depend on the willingness of victims to contribute to the criminal investigation or proceedings. However, let us take into account recital 18 of the above Directive. We conclude that access to assistance and support for victims who are residing in a Member State without a residence permit is limited only to the recovery and reflection period. And of course, this restriction does not promote the rights of the victims.²¹⁷
3. The issue of prosecuting and punishing victims of trafficking for crimes committed under the directions of the exploiters is somewhat problematic. Specifically, the wording of the non-prosecution and non-punishment clause²¹⁸ contained in Article 8 of the Anti-trafficking Directive and Article 26 of the Anti-trafficking Convention does not give the Member States strict instructions in such cases. Specifically, it has been noted that the use of words "entitled" in the Anti-trafficking Directive and "possibility" in the Anti-trafficking Convention are both rather timid, a fact that leaves room for discretion.²¹⁹ While some countries have provisions specifically for trafficked persons, others rely on the defence to enforce this clause. And the result is that many of the victims experience the agony of criminal proceedings against them. Furthermore, the relevant provision only refers to criminal activities in which the victims are involved, although it remains unclear whether this can also be transferred to

²¹⁷ Bosma Alice and Rijken Conny, Key challenges in the combat of human trafficking, *Evaluating the EU trafficking strategy and EU trafficking Directive*, *New Journal of European Criminal law*, Vol.7, Issue 3, 2016, pp.324,325.

²¹⁸ The Palermo Protocol, the first international instrument on human trafficking makes no reference to the principle of non-prosecution and non-punishment of victims of trafficking. A provision establishing the first element of the principle appeared for the first time in the Anti-trafficking Convention, followed by the EU Anti-trafficking Directive, which extended its scope to both elements of that clause.

²¹⁹ Wilson Piotrowicz Ryszard and Sorrentino Liliana, Human trafficking and the emergence of the non-punishment principle, *Human Rights Law Review*, 2016, pp.7-10.

administrative offences such as invalid identity cards or working papers.²²⁰ Thus, it is again at the discretion of the contracting parties to specify this, which leaves some countries leeway for a narrower interpretation of the criminal offences.

There is also another problematic situation when the former victim of trafficking is involved in the trafficking of another person, a phenomenon known as the cycle of abuse. Unfortunately in these cases, there is not always concrete evidence that the victims were manipulated or forced to participate in this illegal activity as a result of being trafficked.²²¹

Of course, the prevailing problem is that states do not identify victims early enough in order to protect them from prosecution or conviction. So undoubtedly, some victims of human trafficking will be revictimized as they will be punished for the above acts.

At this point, we could refer to the case of *V.C.L. and A.N. v. the United Kingdom* of the ECtHR²²² in which the Court of Strasbourg addressed for the first time the link between Article 4 of the European Convention on Human Rights and the prosecution of victims and potential victims of human trafficking. The case concerned two Vietnamese nationals, under the age of 18, who were arrested for working on cannabis farms. The victims were prosecuted and convicted for this act. The Court noted that the fact that the applicants were discovered on cannabis farms, when they were minors, should alone raise the suspicion that they had been trafficked. So, the Court held that the authorities of the Member State had not carried out an assessment of the vulnerable status of the prosecuted and convicted persons, despite reasonable suspicions that these individuals had been trafficked. As a result, the trials were not fair,

²²⁰ Bosma Alice and Rijken Conny, Key challenges in the combat of human trafficking, *Evaluating the EU trafficking strategy and EU trafficking Directive*, *New Journal of European Criminal law*, Vol.7, Issue 3, 2016, p.320.

²²¹ Wilson Piotrowicz Ryszard and Sorrentino Liliana, Human trafficking and the emergence of the non-punishment principle, *Human Rights Law Review*, 2016, p.18.

²²² Case of *V.C.L. and A.N. v. the United Kingdom* of the ECtHR (Applications Nos. 77587/12 and 74603/12). Available at: <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-207927%22%5D> (Last accessed 1st April 2022).

leading to a violation of Article 6§1 (Right to a fair trial) of the European Convention on Human Rights.

4. The state of impunity for the perpetrators. Charges and convictions of the exploiters remain low, suggesting that investigations into trafficking cases are difficult. For example, there were initially 11.788 suspects in the EU-27 in 2017-2018, leading to 6.163 prosecutions and of which only 2.426 were convicted.²²³ The challenge for law enforcement lies in the difficulty of evidencing the complex elements of the crime, the right level of knowledge to conduct financial investigations and the gaps in cross-border and international cooperation.

For instance, as far as the evidence-gathering process is concerned in corporate liability, providing the link between a parent company and the agent who committed the crime is difficult as the person may be employed by a subsidiary company. Most EU Member States recognize parent-subsidiary structures in their national legislation, but not all have the legal ability to prosecute the parent companies for the acts of the subsidiary.

However, we could mention a paradigmatic case of joint liability of legal persons for human trafficking, the so-called Carestel case,²²⁴ which took place in Belgium. In this case, the company Carestel, which manages the motorway services in part of Belgium, signed a contract with a third party, the German-based company Kronos, to have Kronos clean the toilets at the motorway rest area. Several inspections carried out by the labour inspectorate found that the people working in the toilets were all foreign nationals, who had no knowledge of the language and therefore could not understand the contract they had with the third party, Kronos. Most importantly they were working for long hours with

²²³ European Commission, Report from the Commission to the European Parliament and the Council, Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims COM (2020) 661 final, p.10.

²²⁴ Case No.2012/3925 of First Instance Court of Gent, 19th chamber. Available at:

<https://sherloc.unodc.org/cld/case-law->

[doc/traffickingpersonscrimetype/bel/2012/case_no.20123925.html?lng=en&tmpl=htms](https://sherloc.unodc.org/cld/case-law-)

<https://www.ituc-csi.org/IMG/pdf/201502102041> (Last accessed 1st April 2022).

a very small salary and were living in a house belonging to Kronos. The Court of Gent found that the working and living conditions of the employees were not in line with human dignity. The national Court also stressed that the accomplice in the crime of trafficking for labour exploitation need not have acted intentionally to be considered as such. The only requirement is that this person willingly and knowingly assists in the crime staged by the actual perpetrator. Thus, in 2012, the Court ruled that the commissioning company, Carestel, which has delegated tasks to a third party, Kronos, and became aware of the unacceptable working conditions that the third party imposed on workers and did not decide to terminate the contract with the subsidiary, was an accomplice in this exploitation.

Especially when it comes to trafficking for the purpose of labour exploitation, corporate convictions are hard to find, although each country has a legal basis for corporate liability. Natural persons are more frequently prosecuted than legal persons, even if victims are exploited in the context of the latter's work situation. As an example, we can take Romania, where only three companies have been convicted of committing human trafficking. It is also indicative that in another country, the Netherlands, in 2010, a few years after the entry into force of the Anti-trafficking Convention, only one company was convicted of trafficking.²²⁵ However, if legal persons are prosecuted, the natural person responsible for the crime can evade prosecution and thus continue the exploitative practices in another form. This fact was observed in the Netherlands and therefore the state introduced new legislation to try to punish not only the illegal activities of the companies but also the people behind them.²²⁶

And of course, we cannot even talk about the compensation of the injured victims from businesses, which is even rarer to find. In the UK, for example, the very first such judgment against a company was only issued in 2016.²²⁷

²²⁵ Rijken, C.R.J.J. and Bosma, A.K., A review of the implementation of the EU strategy on human trafficking by EU Members, Tilburg University, 2014, p.68.

²²⁶ Ibid.

²²⁷ Focus on labour exploitation, Press release, Historic compensation win for victims of trafficking for labour exploitation, 10 June 2016. Available at: <https://www.labourexploitation.org/news/historic-compensation-win-victims-trafficking-labour-exploitation> (Last accessed 1st April 2022).

Additionally, another Directive, the Employers' sanctions Directive,²²⁸ is seen as an essential tool in the fight against trafficking in human beings as it discourages the recruitment of illegal third-country nationals, who are obviously much more susceptible to exploitative practices (this is envisaged in recital 7 of the Anti-trafficking Directive). Unfortunately, even though by May 2014 all parties to this Directive had transposed their obligations into their national law, the number of people prosecuted under these provisions was small.²²⁹ Beyond that, it is obvious that the Employers' sanctions Directive cannot apply to trafficked persons who are legally residing in Europe or EU citizens.

5. The issue of the application of the Dublin III Regulation²³⁰ in relation to the return of trafficked people to the country of first entry. In particular, as some Member States report (AT, FI, NL, SE), victims of human trafficking are sent back to the country of first entry, such as Italy or Spain, where they may have succeeded to escape from the network that exploited them, something which may jeopardize the rights and the best interest of the victims. Moreover, other Member States outline that victims who are discovered in the asylum procedure and will return to the EU entry country (unless a crime has been committed on their territory or an investigation has been initiated), in fear of the return, disappear from the asylum procedure until the Dublin process ends. This, in turn, can make these individuals vulnerable again to criminal groups. In fact, EASO's Vulnerability Expert Network points to the problem of the disturbing application of the Dublin III Regulation to trafficked victims and the need to

²²⁸ Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

²²⁹ Bosma Alice and Rijken Conny, Key challenges in the combat of human trafficking, *Evaluating the EU trafficking strategy and EU trafficking Directive*, *New Journal of European Criminal law*, Vol.7, Issue 3, 2016, p.326.

²³⁰ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013R0604-20130629&from=EN> (Last accessed 1st April 2022).

stop pushbacks to the EU entry countries in cases where the victim has been exploited there.²³¹

Of course, as noted by many civil society organisations, the right of (suspected) victims of trafficking, who fall under the Dublin III Regulation, to a reflection and recovery period or the right to reside in the EU outside the country of entry remains an issue.²³²

6. Other practical problems that arise have to do with a-typical and vulnerable groups. First of all, we need to refer to male victims, who are an a-typical group and require a different approach than women, as pointed out by some Member States (e.g. LU, NL, DE).²³³ Other Member States (FI) have highlighted the lack of protection facilities, especially for men, and as an example, we can cite Cyprus, which does not offer state shelter to male victims. On the contrary, a good example of specialized treatment for men can be cited in the Netherlands, where the Ministry of Health, Welfare and Support has worked with five organisations to provide care services for male victims of sexual exploitation.²³⁴ Generally speaking, men are a group that is often neglected because they are reluctant to tell their stories in the identification process, because they are afraid of portraying themselves as weak.

Another vulnerable group, that is not in the spotlight, are the victims with mental or physical disabilities. However, some Member States have made efforts to include these people in their anti-trafficking strategy. We can take Croatia as an example, where all services are accessible to people with reduced mobility.²³⁵

Also, we must not forget to mention the Roma. They are often described and marginalized as perpetrators of criminal acts, which is why European political actors do not see them as victims, let alone recipients of equal treatment. Nonetheless, many Roma women and children are victimized like other

²³¹ European Parliamentary Research Service, Implementation of Directive 2011/36/EU: Migration and gender issues, European implementation assessment, September 2020, pp.113,114 at para 7.2.8.

²³² European Parliamentary Research Service, Implementation of Directive 2011/36/EU: Migration and gender issues, European implementation assessment, September 2020, pp.114.

²³³ European Commission, SWD (2020) 226 final, p.101.

²³⁴ Ibid.

²³⁵ Ibid.

European citizens, especially in forced marriages, illegal adoptions and forced begging.

The last group at risk are children, particularly unaccompanied minors. Although the Anti-trafficking Directive provides protective measures for them, Member States do not always adapt their policy to child victims. In the Netherlands, for example, children who do not have a residence permit can obtain a residence permit under the same conditions as adults. Namely, if they want to remain in the country, they are obliged to cooperate with the responsible authorities after the reflection period. But, needless to say, this decision is more difficult for them than for adults because they cannot comprehend the whole problematic situation.²³⁶

7.2. Evaluation of the EU Directive and EU policy on combating THB

On the one hand, as can be seen above, several steps have been taken by the European Union to curtail this vile underground trade. First of all, the adoption of the Anti-trafficking Directive led to changes in the human trafficking legal landscape. It has broadened the framework of exploitation, as recital 11 recognizes forced begging, illegal adoption and forced marriage as forms of trafficking. Apart from that, it tightened up the sanctions for perpetrators by expressly stating in Article 4 that the offence carries a maximum penalty of at least five years' imprisonment or, in the case of an aggravating circumstance, a maximum penalty of at least ten years' imprisonment. Indeed, there was no reference to precise penalties, neither to the previous Council Framework Decision of 19 July 2002 on combating trafficking in human beings, nor to the Council of Europe Convention on Action against Trafficking in Human Beings. Further, Article 9 and recital 15 of the Anti-trafficking Directive ensured that the initiation of criminal prosecution should not depend on the victim bringing charges in order to prosecute the offenders, or that the criminal procedure will continue even if the victim dropped the charges. Even more, for underage victims, it provides that criminal

²³⁶ Bosma Alice and Rijken Conny, Key challenges in the combat of human trafficking, *Evaluating the EU trafficking strategy and EU trafficking Directive*, *New Journal of European Criminal law*, Vol.7, Issue 3, 2016, p.327.

prosecution against their exploiters can begin after they have reached the age of majority. Moreover, Article 9 of the Directive recommends that the contracting parties make available all measures used in organised crime to tackle trafficking. Fact that underlines the attention that must be paid to this phenomenon. And the most important contribution of the above legal document to the dark situation of trafficking is the protection measures for the victims, as listed in Articles 11-17, of course in conjunction with other Directives.

So, the contracting parties to the Anti-trafficking Directive have amended their legislation to ensure compliance as it is compulsory. They adopted new National Action Plans or National Strategies (e.g. BG, CY, DK, FR, HR, HU, LT, NL, PL, PT, RO, SE, SI, SK) or considered the modification of the relevant documents and policies (e.g. LU, LV, ES).²³⁷ They established new monitoring bodies dedicated to the fight against trafficking in human beings (e.g. DE, FI, LT, IE, SI).²³⁸ Cooperation between key actors, including at the political level, as well as between law enforcement and judicial authorities, has been achieved in both a national and a transnational context. Awareness campaigns, education programmes and training initiatives have been carried out to reduce the risk of people becoming victims of trafficking. Studies and reports increased knowledge about the phenomenon and thus contributed to the development of adequate response strategies. In addition, some countries such as Finland²³⁹ are investing in measures to prevent the re-victimisation of trafficked victims by improving their working skills in order to find paid work without exploitation, thereby helping them to rebuild independent lives. Many Member States also emphasize that the participation of GRETA in the Council of Europe has paved the way to combat trafficking for all forms of exploitation (e.g. CY, DE, LU).²⁴⁰

Moreover, trafficking is an area of crime that has played a significant role in the EU Policy Cycle for the organised and severe international crime for 2018-2021, with the aim of tackling trafficking in human beings in the EU for all forms of exploitation,

²³⁷ European Commission, SWD (2020) 226 final, p.14.

²³⁸ Ibid.

²³⁹ Finnish Immigration Service, Unique project improves the working life skills of victims of human trafficking, 11.6.2020. Available at: <https://migri.fi/en/-/ainutlaatuinen-hanke-kehittaa-ihmiskaupan-uhrien-tyoelamaosaamista> (Last accessed 1st April 2022).

²⁴⁰ European Commission, SWD (2020) 226 final, p.14.

including sexual and labour exploitation and all forms of child trafficking (Priority 5).²⁴¹ Additionally, given the transnational challenges posed by trafficking in human beings, the Internal Security Fund will finance a number of measures to improve policies to combat this phenomenon.²⁴² One objective of these actions is, inter alia, to improve the exchange of best practices, including cross-border cooperation between law enforcement authorities and the judicial system. Furthermore, one of the goals of the European Commission's 2021-2025 strategy to tackle organised crime is to expedite the creation of a group of specialized prosecutors against trafficking.²⁴³ Also, the European Commission encourages the Member States to prevent illegal profits from entering the legal economy and society in order to disrupt the criminal business model of trafficking used by organised crime groups.²⁴⁴ Even further, it is stressed by the European Parliament, that the EU must continue to provide financial support to the Asylum, Migration and Integration Fund (AMIF), the Daphne Programme,²⁴⁵ the European Social Fund and the Internal Security Fund (ISF), which create projects to combat trafficking.²⁴⁶ Besides that, it calls on the Member States to develop measures to combat the exploitation of the marginalised Roma community for the period 2020-

²⁴¹ Council of the European Union, Council conclusions on setting the EU's priorities for the fight against organised and serious international crime between 2018 and 2021-Council conclusions (18 May 2017), p.8.

²⁴² European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy on combatting trafficking in human beings 2021-2025, pp.4,5.

²⁴³ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy on combatting trafficking in human beings 2021-2025, p.12.

²⁴⁴ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy on combatting trafficking in human beings 2021-2025, p.9.

²⁴⁵ The Daphne program was one of the very first anti-trafficking policy instruments at the EU level, starting in 1997. The other was the STOP Programme in 1996. Both had a very strong human rights perspective.

²⁴⁶ European Parliament, Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI)), at para 3.

2030 and to pay more attention to the particular needs of the sidelined LGBTI people.²⁴⁷ It is also worth mentioning that one of the central goals of the New Pact on Migration and Asylum adopted in September 2020 is to establish partnerships at an international level, for example, to create economic opportunities for people in the origin countries.²⁴⁸ Furthermore, closer cooperation of Member States with non-EU countries is supported by many EU instruments, such as the Global Strategy for the Foreign and Security Policy of the European Union, the Action Plan on Human Rights and Democracy 2020-2024, the EU Gender Action Plan for external action (2021-2025) and the Joint Communication "Towards a comprehensive strategy with Africa".²⁴⁹

On the other hand, despite national initiatives and legal advances, human trafficking remains a severe threat in the European Union, endangering thousands of people each year, especially women and children. After reviewing Member States' policies on the various forms of trafficking and assessing their efforts to address the critical challenges identified, it is easy to conclude that more needs to be done in the 3P policy, namely the three areas of prosecution, protection and prevention. In fact, owing to the strong operation that the UN has developed in the fight against "human trade", we could even add two more areas, namely the provision of services to victims and partnerships at national, bilateral and multilateral level (five p's).²⁵⁰

Starting with the Anti-trafficking Directive, there must be some amendments. For example, someone may notice that there are some vague and unclear terms, such as the following: In Article 2§1 the term "abuse of power" implies that there is a power imbalance, namely that one of the people involved must be superior to the other. But

²⁴⁷ European Parliament, Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI)), at para 12.

²⁴⁸ Factsheet: New Pact on Migration and Asylum, p.16. Available at: https://ec.europa.eu/info/sites/default/files/new-pact-on-migration-and-asylum-package_1.pdf (Last accessed 1st April 2022).

²⁴⁹ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy on combatting trafficking in human beings 2021-2025, p.17.

²⁵⁰ Μαγκλιβέρα Δ. Κωνσταντίνου, Εμπορία ανθρώπων: Ποινική καταστολή και προστασία των δικαιωμάτων των θυμάτων (Συγχρόνως ανάλυση του Νόμου-Προτύπου του ΟΗΕ για την Καταπολέμηση της Εμπορίας Ανθρώπων), Ακαδημία Αθηνών, Δημοσιεύματα του Κέντρου Ερεύνης της Ελληνικής Κοινωνίας, Αθήνα/Δεκέμβριος 2014, σελ.27.

the provision does not define what is the appropriate economic divide between two persons to give rise to "abuse of power".²⁵¹ Also, in Article 2§1 we note the concept "abuse of a position of vulnerability", which constitutes an important element of the crime. The provision explains that this means that the victim has no other acceptable alternative than to submit to the abuse. But someone can argue that if no actual violence is committed, the victim actually has another alternative, for example continuing to live in abject poverty like other people. So, what is an acceptable alternative for one person may not be an alternative for another. Therefore, if we accept that the term refers to what a piece perceives as an acceptable alternative, then this tends to lead to a subjective criterion that does not allow for a particular definition of the crime towards the victim. So, in both cases, it could certainly be said that we are in conflict with the principle of legality here.²⁵² But most importantly, both terms leave a margin of appreciation to national legislators²⁵³ and thus create a diverse landscape in relation to the offence of trafficking in human beings. It would be preferable if the EU adopted a more precise definition of the "abuse of a position of vulnerability", for example specifying that the victim is in a vulnerable position when basic goods such as life, liberty, physical integrity or living conditions severely limit their freedom of choice, so there is no other possible option but to submit to the abuse.²⁵⁴ In parallel with the above, problems arise with the vague concept of "forced labour or services" in Article 2§3. The preamble of the Anti-trafficking Directive (recital 11), states that this term refers to 1930 ILO Convention No 29 on Forced or Compulsory Labour. But the ILO itself admitted that the term "forced labour" in Article 2§1 of the abovementioned Convention creates

²⁵¹ Satzger Helmut, Zimmermann Frank and Langheld Georg, *The Directive on Preventing and Combatting Trafficking in Human Beings and the Principles Governing European Criminal Policy – A Critical Evaluation*, EuCLR, p.114.

²⁵² Satzger Helmut, Zimmermann Frank and Langheld Georg, *The Directive on Preventing and Combatting Trafficking in Human Beings and the Principles Governing European Criminal Policy – A Critical Evaluation*, EuCLR, p.113.

²⁵³ Examples of different definitions of the term «abuse of a position of vulnerability" can be found: European Commission, *Study on case-law relating to trafficking in human beings for labour exploitation*, Final report, Publications office of the EU, 2015, p.35.

²⁵⁴ Συμεωνίδου-Καστανίδου Ε., *Η Οδηγία 2011/36/ΕΕ για την αντιμετώπιση της εμπορίας ανθρώπων: Θεμελιώδεις επιλογές και προβλήματα εφαρμογής*, Νομική Σχολή Πανεπιστημίου Αθηνών, Τιμητικός Τόμος Νικολάου Κ.Κλαμαρή, τόμ.1, 2016, at para III 1.1. §1151.

challenges to the national legislators. It is therefore understood that the detailed description of this term in the Anti-trafficking Directive would contribute to a more coherent approach to the offence of trafficking for labour exploitation.²⁵⁵ It is also necessary to clarify whether the removal of organs, illegal adoption or forced marriage can constitute the crime of trafficking if there is no financial gain involved.²⁵⁶ Moreover, as already mentioned (chapter 7.1., point 1), there is a need to determine the term "reasonable grounds" in Article 11, a crucial point from which all the rights of the victim derive.

Besides that, as explained above (chapter 6, point 3) in recital 17, the Anti-trafficking Directive does not address the requirements for residence permits for third-country nationals and refers to Directive 2004/81/EC. Based on the latter Directive, however, the granting of a residence permit is closely linked to the victim's willingness to cooperate with the competent authorities against the perpetrators and not just to a victim position. But this, of course, cannot be an incentive to the victims to reveal the exploitation. It is, therefore, appropriate to amend the provisions regarding the granting of residence permits.²⁵⁷

Now, concerning the penalties in Article 4 of the Directive, it is needed to establish sanctions also in the case of attempting and participating in the basic offence of human trafficking.²⁵⁸

Also, as mentioned above (chapter 7.1, point 3) Article 8 does not provide any real incentive for victims to report the abuse against them as they fear punishment. But when the European legislator has to weigh up whether to detect and prosecute human traffickers or instead to punish the actions committed by victims of traffickers, then the answer must be clear so that the victim can be assured that they will not be punished at

²⁵⁵ Ibid.

²⁵⁶ Συμεωνίδου-Καστανίδου Ε., Η Οδηγία 2011/36/ΕΕ για την αντιμετώπιση της εμπορίας ανθρώπων: Θεμελιώδεις επιλογές και προβλήματα εφαρμογής, Νομική Σχολή Πανεπιστημίου Αθηνών, Τιμητικός Τόμος Νικολάου Κ.Κλαμαρή, τόμ.1, 2016, at para III 1.1. §1152.

²⁵⁷ Συμεωνίδου-Καστανίδου Ε., Η Οδηγία 2011/36/ΕΕ για την αντιμετώπιση της εμπορίας ανθρώπων: Θεμελιώδεις επιλογές και προβλήματα εφαρμογής, Νομική Σχολή Πανεπιστημίου Αθηνών, Τιμητικός Τόμος Νικολάου Κ.Κλαμαρή, τόμ.1, 2016, at para III. 2.1 §1155.

²⁵⁸ Συμεωνίδου-Καστανίδου Ε., Η Οδηγία 2011/36/ΕΕ για την αντιμετώπιση της εμπορίας ανθρώπων: Θεμελιώδεις επιλογές και προβλήματα εφαρμογής, Νομική Σχολή Πανεπιστημίου Αθηνών, Τιμητικός Τόμος Νικολάου Κ.Κλαμαρή, τόμ.1, 2016, at para II. 2.

the same time as reporting trafficking. This should apply, for example, to begging, prostitution without a license, illegal entry and theft.²⁵⁹

Speaking of Article 17, which provides for compensation, plays a fundamental role in the social inclusion of victims. What is certain, however, is that it is one of the least implemented provisions of the Directive. Not to say that the wording of the provision is inadequate, as human trafficking is not always committed by using violence. Hence, there should be more innovative measures, such as the amendment of the provision, the first instance payment by the state of the compensation awarded by courts, the setting up of specific national funds for the victims and, moreover, the involvement of trade unions in order to assist victims to claim wages or compensation.²⁶⁰

Also, despite the prevention initiatives, the demand for services from victims of human trafficking has not decreased, so more action and legal measures need to be taken. While the Anti-trafficking Directive in Article 18 calls for the criminalization of the knowing use of services exacted from victims of trafficking, the ultimate decision rests with the Member States, creating a diverse legal landscape. Therefore, the Commission will undertake an assessment on the possibility of having minimum EU requirements that criminalise the use of services.²⁶¹ On this matter, however, there is another approach to the problem. In particular, the criminalisation of buyers of sexual services is said to be at odds with victims' rights. In countries where such laws were enacted and where prostitution fell under an area of illegality, trafficked victims were stigmatised and marginalised, making them even more dependent on their exploiters.²⁶² The only thing that is certain is that the policies chosen by EU countries must be

²⁵⁹ Συμεωνίδου-Καστανίδου Ε., Η Οδηγία 2011/36/ΕΕ για την αντιμετώπιση της εμπορίας ανθρώπων: Θεμελιώδεις επιλογές και προβλήματα εφαρμογής, Νομική Σχολή Πανεπιστημίου Αθηνών, Τμητικός Τόμος Νικολάου Κ.Κλαμαρή, τόμ.1, 2016, at para III. 1.3 §1154.

²⁶⁰ Giammarinaro Maria Grazia, Revising EU Directive on human trafficking? For bad or good reasons?, 7 Nov 2021, at para 3.

²⁶¹ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy on combatting trafficking in human beings 2021-2025, p.6.

²⁶² Giammarinaro Maria Grazia, Revising EU Directive on human trafficking? For bad or good reasons?, 7 Nov 2021.

common to all and that research needs to be carried out to assess the impact of these initiatives.

In order to stay with Article 18, specifically paragraph 2, the European Union delegates preventive measures in principle to the Member States. The result is that these actions are not carried out by the state, but to a large extent by NGOs. Therefore, it is easy to understand that these actions can only last for a limited time.²⁶³ So, if the EU wants to invest in prevention, it should link the application of the Anti-trafficking Directive to specific measures, binding for all Member States and based on best practices recorded by all countries. This is the only way prevention can have a long-term effect.

At this point, one might notice that the Directive draftsman is less concerned with prevention than with the other areas since he only addresses this issue in Article 18.

Then, it should be stressed that many Member States have not yet established independent National Rapporteurs, as required by the Anti-trafficking Directive (Article 19 of the Directive), but have instead designated governmental bodies as equivalent mechanisms.²⁶⁴ The result, of course, is ineffective anti-trafficking systems due to their lack of autonomy.²⁶⁵ Therefore, the Directive should oblige the Member States to ensure that these equivalent mechanisms are fully independent.

Apart from that, the Directive does not contain an explicit provision imposing an obligation on the authorities to inform victims of their rights, as in the case of Directive 2012/29/EU on victims' rights (Article 4). There is, of course, a manual published by the European Commission on victims' rights, but it is not certain that this information is received from victims.

²⁶³ European Commission, Study on prevention initiatives on trafficking in human beings, Publications Office of the European Union, 2015, p.46.

²⁶⁴ Although there are Member States that have appointed independent National Rapporteurs, like Belgium.

See: Myria, Federal Migration Centre. Available at: <https://www.myria.be/en> (Last accessed 1st April 2022).

²⁶⁵ Population Europe, 10 years after the Directive 2011/36/EU, Lights and shadows in addressing the vulnerability of trafficked and exploited migrants, Population and Policy, No 33, February 2022, at para "Lack of Resources and Political Commitment". See also: European Commission, SWD (2020) 226 final, p.14.

Concerning the application of the Dublin III Regulation, it was found that in practice is not adequately commensurate with the protection of victims of trafficking. That is why in the summer of 2020, GRETA published a guide on the rights of exploited victims as applicants for international protection. GRETA reiterated the obvious that victims of trafficking could be re-victimised if they are forced to return, under Dublin III rules, to the EU country where they first sought asylum if that is the country where the trafficking took place.²⁶⁶ The removal of a person to an area where there is a risk of being trafficked again (or even becoming a victim of trafficking for the first time) would constitute a breach of the positive obligations that each Member State of the Council of Europe has under Article 4 of the European Convention on Human Rights. Therefore, it would be better if a pushback of a victim of human trafficking is assessed on an individual basis. Fortunately, some Member States (FI, FR) have taken action and no pushback is organised if there is a reasonable suspicion that a victim will not enjoy adequate protection in the country of arrival. Or other Member States (BE, MT, SE) report that the Dublin procedure has been suspended while awaiting guidance on trafficking cases.²⁶⁷ All of this is, of course, a positive development, but not enough if not all countries follow it and asylum policy, in general, is not reformed.

Additionally to the above, although the European Commission has published guidelines for officials on how to identify victims among those applying for international protection,²⁶⁸ which, of course, can add to their difficult work, it remains a problem when officers fail at all to identify them.

Then, it is very common for the process of formally recognising the victims of trafficking, to be delayed. Even when victims inform the authorities about their situation, the conferral of victim status is usually slow.

²⁶⁶ Council of Europe, GRETA, Guidance Note on the entitlement of victims of trafficking, and persons at risk of being trafficked, to international protection, p.10 at para 32.

²⁶⁷ European Parliamentary Research Service, Implementation of Directive 2011/36/EU: Migration and gender issues, European implementation assessment, September 2020, p.114.

²⁶⁸ European Commission, Reference document, Guidelines for the identification of victims of trafficking in human beings, Especially for Consular Services and Border Guards.

At this point, we could mention the case of *L. E. v. Greece* of the ECtHR.²⁶⁹ The applicant was a Nigerian national, who was brought to Greece by a trafficker in order to work in nightclubs. Upon her arrival in Greece, the trafficker confiscated her passport and forced her into prostitution. Eventually, the victim was arrested due to her irregular status in Greece and then, around November 18, 2006, she claimed to have been a victim of human trafficking. Despite this, it was not until August 21, 2007, that she was officially recognized as a victim. The Court of Strasbourg found, *inter alia*, that there had been a violation of Article 4 of the European Convention on Human Rights due to a nine-month delay between the date on which the victim informed the authorities about her situation and the granting of victim status.

Difficulties also arise in identifying underage victims, who represent the most vulnerable category. Unfortunately, there is no consensus on how to assess child exploitation, especially when children themselves often cannot view the exploitative act as violent or abusive, or when none of the means set out in Article 2§1 of the Anti-trafficking Directive has been used. Even further, a separate victim database should be set up for them.²⁷⁰

Moreover, in cross-border cases where victims are returned from the country where the exploitation took place to their country of origin, cooperation between the relevant actors must be ensured so that the victims have access to their rights. This means that transnational referral mechanisms must take action and facilitate the implementation of the victims' rights. Obviously, there are still no appropriate mechanisms for the early identification and assistance to victims, the so-called national referral mechanisms, as Article 11§4 of the Anti-trafficking Directive mandates, let alone transnational.

Furthermore, the states must take measures for the rehabilitation of victims so that they can have a better life. The European Parliament stresses that the Member

²⁶⁹ Case of *L. E. v. Greece* of the ECtHR (Application No. 71545/12). Available at: <https://www.asylumlawdatabase.eu/en/content/ecthr-%E2%80%93-l-e-v-greece-application-no-7154512-21-january-2016> (Last accessed 1st April 2022).

²⁷⁰ Europol, Situation report, Trafficking in human beings in the EU, The Hague, February 2016, Document ref. No 765175, p.6.

States must guarantee victims unconditional and individualised protection, taking into account their dependants.²⁷¹

Besides that, due to the link between the trafficking phenomenon and smuggling, Member States need to develop more effective policies on migratory flows. In this direction, the European Parliament urges the Member States to provide safer migration routes, such as humanitarian visas to prevent people from being exploited.²⁷²

Also, concerning the gender aspect of trafficking in persons, namely trafficking for sexual exploitation, which is the most prevalent form of this phenomenon and is mainly recruited by women and girls, Member States need to pay more attention to the EIGE. In a report, it stated that it is crucial to distinguish victims of trafficking for the purpose of sexual exploitation from victims of other forms, such as forced labour, in order to contextualise the first as victims of violence against women.²⁷³ This distinction will help stakeholders to better understand how female victims are involved and trapped in specific situations of exploitation and will also contribute to a better victim identification. Especially, victims of this type of exploitation often do not disclose their situation while undergoing the identification process. Some of the biggest obstacles include victim-blaming attitudes and the stigma associated with sex work. Thus, when policymakers understand the specificities of these victims, they will respond more effectively to their needs.

Now with regard to labour exploitation, which affects at least 20% of all trafficked victims in the European Union and which continues to go undetected,²⁷⁴ the

²⁷¹ European Parliament, Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI)), at para 10.

²⁷² European Parliament, Report on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (2020/2029(INI)), at para 41.

²⁷³ European Parliament, European Parliamentary Research Service, Understanding EU action against human trafficking, p.5. Available at:

[https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690616/EPRS_BRI\(2021\)690616_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690616/EPRS_BRI(2021)690616_EN.pdf) (Last accessed 1st April 2022).

²⁷⁴ Even now, human trafficking for labour exploitation goes undetected because workers are either unaware of the exploitative nature of their jobs or are reluctant to contact law enforcement due to their illegal or undocumented status. Or more often, they are afraid of losing even the meagre wages they get.

criminal response should be stepped up according to the EU Strategy 2021-2025.²⁷⁵ In this context, Member States should strengthen cooperation with EU agencies such as Europol and the European Labour Authority to better identify victims and traffickers. Collaboration within the framework of the European Platform tackling undeclared work will also help build knowledge of the problem and introduce transferable practices. The forthcoming legislative initiative of the Commission on sustainable corporate governance also provides for companies to be obliged to exercise due diligence to promote the recognition of human rights.²⁷⁶

And let us not forget what many civil society organisations underline that some forms of human trafficking are less in the spotlight than others, such as trafficking for forced marriage and exploitation in the area of the domicile. Therefore, these types of exploitation must be central to the political framework of all the European countries.

Added to this, it is important to note that Member States must take into account the fact that the COVID-19 pandemic has hindered victims' access to justice and legal assistance, hampered the criminal justice response to the crime and made it more difficult for law enforcement and the judiciary to respond. So now they must accelerate their anti-trafficking efforts to help the victims rebuild their lives.

It should also be mentioned that technology has to play a more far-reaching role in the prevention and detection of human trafficking and of course also in the criminal prosecution of the perpetrators, as the use of digital media is increasing nowadays, even if the collection of digital evidence is a challenge due to its low online availability. Indeed, law enforcement needs more capacity, tools and collaboration to tackle the exploiters' digital modus operandi. Besides that, another crucial step for preventing the further traumatization of the victims is the use of technology and the reliance on digital evidence. For example, if other types of evidence were utilized, the judiciary would rely less on victims' testimony and victims would avoid facing their exploiters in court.

²⁷⁵ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy on combatting trafficking in human beings 2021-2025.

²⁷⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy on combatting trafficking in human beings 2021-2025, p.7.

Additionally to that, countries need to step up data collection at the European level, including information on migratory flows and the pandemic crisis to enable better policy direction and information. It should also include other information such as criminal activity related to trafficking and information about trafficking routes.

But the most important step in deterring this phenomenon is to ensure the accountability and prosecution of the perpetrators through adequate and up-to-date laws and through the thorough work of the police during the evidence phase.

In addition, European countries must also seek to strengthen their cooperation with non-EU governments by financing measures to tackle the inequalities that favour human trafficking but also the trafficking phenomenon itself. European Union funds should be made available to address the situation in the countries of origin and transit to Europe and beyond, paying particular attention to the gender dimension of the phenomenon and supporting local organisations, civil society actors and activists.²⁷⁷

Finally, my own conclusion is that the approach of the law regarding the rights of trafficked victims is perplexed, but mainly inapplicable in practice. This indicates that the greatest difficulty lies not in passing new laws, but enforcing them through the authorities, i.e. the executive and the judiciary. Furthermore, the problem of women trafficked for sexual exploitation, who accounts for the majority of victims, is very difficult to solve as there are different opinions when trying to criminalise the use of sexual services exacted from victims. Additionally, the most vulnerable group of victims, namely children, are the least visible victims because they are not even able to understand that they are being exploited, let alone reveal the exploitation to someone who is a stranger to them. It is also evident that the conviction of legal entities, which are largely responsible for human trafficking for the purpose of labour exploitation, cannot be achieved since the economic system is capitalism and there are interwoven interests between governments and corporations, in other words, corruption. And the most important conclusion from this tragic situation is that poverty drives people to become victims to ruthless exploiters, so the problem lies in the unequal distribution of wealth. Ultimately, what we call trafficking in human beings is just the tip of the iceberg.

²⁷⁷ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU strategy on combatting trafficking in human beings 2021-2025, p.5.

8. Concluding remarks

There is no doubt that trafficking in human beings is a serious and multifaceted criminal phenomenon that has very clear repercussions in several areas such as security, migration, anti-discrimination, fundamental rights, employment, justice, humanitarian aid and the EU's internal and external relations.²⁷⁸ It destroys the life of the individual by robbing people of their dignity, freedom and basic rights, actually turning them into "res". It has profound implications for the fabric of society, the rule of law and the sustainable development in the EU Member States.²⁷⁹ So it is a phenomenon that cannot do justice to a democratic society and European values. It is for this reason that all Member States need to address this problem by adopting other more modern approaches in addition to the traditional criminal justice-based approach in order to transform trafficking from low-risk, high-return crime to high-risk and low-return crime. Of course, they need to take a more coherent multi-disciplinary perspective for this task. And it is not an exaggeration to say that action to combat trafficking is more important than ever in the face of the pandemic and the resulting economic disparities.

First of all, we need to fathom that "modern slavery" is a "silent" crime that is very difficult to identify. People are afraid to reveal the reality of their situation because of the obstacles they might face in a foreign country or in relation to the police. So, if we want the voices of the suffering victims to be heard, we must try harder. In this direction, it is important to be able to see that human trafficking is a transnational crime as at least half of the victims come from non-EU countries. Hence, efforts and reforms in policies and legislation must have a far-reaching view and involve cooperation with non-EU countries. But we also have to take into account that about three-quarters of the human exploiters are European citizens. This data is at odds with the racialisation

²⁷⁸ From a legal point of view, the areas for analysing this phenomenon could be narrowed down to five: migration, work inclination, outlawing slavery, criminal justice and criminal law, and human rights. See: Villacampa Estiarte Carolina, *The European Directive on Preventing and Combating Trafficking in Human Beings and the Victim-Centric Treatment of this Criminal Phenomenon*, *European Criminal Law Review*, 2012, vol. 2, núm. 3, p.292.

²⁷⁹ In particular, human trafficking affects the ability to achieve Sustainable Development Goals 5 (gender equality), 8 (decent work and economic growth), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals).

of the perpetrators, who have been described by some groups primarily as foreign criminals from non-EU countries, helping to stoke xenophobic and anti-immigrant sentiments. According to the data at the European level, we also need to highlight the gender dimension of this criminal activity, that is the fact that women and girls are more vulnerable to exploitation and that many factors contribute to it, such as gender inequality, social exclusion, ethnicity, discrimination and above all poverty. And also, that children in migration and especially unaccompanied migrant children can become the prey of human exploiters. All of these facts will help to find a more concrete answer to this problem.

Overall, legislation is one of the most powerful tools at our disposal as it enables us to define crime, set sanctions and set common goals for prosecuting criminals and protecting victims. As can be seen from the above, the European Anti-trafficking Directive was the cornerstone in the fight against human trafficking and the European Commission has monitored the transposition and implementation of the Directive in the Member States that are bound by it. In fact, when drafting the Directive, the expectation was to adopt an integrated, holistic and human rights approach to combating this appalling crime, as set out in recital 7.

On the one hand, it is clear that the Member States are looking for solutions that represent a broader approach to the problem of trafficking and for this they deserve praise, not criticism.

On the other hand, we cannot overlook the fact that the EU strategy is lacking in both areas of prosecution, protection and prevention. Not to forget that crime is constantly evolving and finding new ways to spread. Therefore, European policy stakeholders should consider taking better early detection measures to protect the victims. Obviously, the involvement of border guards, police officers and social workers plays an important role, so the Member States should invest in their training. Furthermore, it is evident that the Member States should improve law enforcement capacities and judicial cooperation between countries in order to dismantle trafficking. Indeed, promoting international cooperation and partnerships is fundamental to the EU policy and this is supported by a wide range of European foreign policy instruments. The European Commission supports the Member States in implementing international anti-trafficking documents, such as the United Nations Convention against

Transnational Organised Crime²⁸⁰ and the Palermo Protocol. Also, of great importance is not to penalize the crimes that the victims were compelled to commit during their exploitation. Member States should treat victims as right-holders and offer them opportunities to rebuild their lives. Therefore, the EU states should work harder in this direction, avoiding revictimization and offering rehabilitation. It is also clear that today, given the tragic situation of the COVID-19 pandemic, technology must be used by the Member States more than ever in the fight against organised crime and consequently against human trafficking. Whether through the more extensive use of large databases to detect trafficked people or the perpetrators, or through more thorough financial investigations, or, beyond that, by tracking down internet victims. Ultimately, it goes without saying that the EU policy should concentrate its efforts on getting to the root of the problem, i.e. reducing demand and removing incentives for human trafficking. In any case, this is a legal obligation stemming from the Anti-trafficking Directive, as the European Commission admitted.²⁸¹

Finally, it is obvious that despite the progress made by the European Member States in strengthening the Union's action against trafficking in human beings, the risk of being trafficked still remains high. For this reason, with the new Strategy 2021-2025 the Commission urges for a more effective application of the relevant legislation on the identification and rights of the victims and calls on the Member States to reinforce their policy framework in order to protect vulnerable people from the threat of human exploitation and also adopt robust measures to ensure that perpetrators are brought to justice, thereby protecting society and the economy. It now remains to be seen whether these commitments will be put into practice. One thing is certain, this phenomenon is not a problem that needs to be resolved only by politicians or official stakeholders but requires the engagement of all. Each individual has an obligation to take action before other people's exploitation because it is about fundamental human rights, that is life and human dignity. All must understand that there is an important role to play in the fight

²⁸⁰ The United Nations Convention against Transnational Organised Crime, while not mentioning human trafficking, makes reference to migrant smuggling, a phenomenon we have seen is linked to trafficking.

²⁸¹ European Commission, Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23(2) of the Directive 2011/36/EU, COM (2016) 719 final, p.9.

against trafficking in persons and all can together guarantee that trading in people's dignity and freedom is no longer a worthwhile and profitable business.

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