

EUROJUST



&

HUMAN  
TRAFFICKING

## The State of Affairs

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This report does not necessarily reflect the opinion of the College of Eurojust or the Dutch National Member.



## EXECUTIVE SUMMARY

This report aims to assess the current role of Eurojust in the fight against human trafficking and come up with suggestions to further strengthen the support by Eurojust to the Member States.

Part One starts with an overview of the fight against human trafficking in the EU.

Statistics show that the level of activity against THB greatly differs between the Member States. The figures show relatively little activity in some of recently acceded Member States, while Austria and the Netherlands seem to be very active in terms of prosecutions.

However, the differences in definition of ‘a prosecution’, the enormous differences in substantive criminal law and use of these THB provisions, make that bare figures are to be handled with caution.

An overview of available figures on the level of organisation of the crime, gives the impression that the majority of THB is committed by relatively small OC groups. However, several experts warn of a possible consolidation of criminal organisations in this field in the forthcoming years.

Subsequently, Part One assesses the qualitative response of law enforcement authorities on the basis of interviews and case studies. While THB has a predominant international character, it is mostly combated from a local or national perspective. An integrated approach of the whole chain of criminal activities and aspects related to victims and proceeds of crime is thereby impeded.

Only few of the reasons for this problem are of a legal nature. As biggest obstacles appear are mentioned:

- restrictive prosecution policies: restrictions of different nature make that intelligence-led investigations and international cooperation are often not possible, Action Plans on THB have often only limited effect on law enforcement practice,
- negative structure of incentives to cooperate across the border: there are no personal benefits for an investigator or prosecutor to cooperate, on the contrary: cooperation with countries outside the Union is feared and there is often an attitude of unwillingness to share information, especially in an early stage of proceedings.
- organisational problems on national level: friction between authorities creates a situation in which investigations take place in isolation from each other and possibilities for special investigative techniques and international cooperation are not fully used.
- novelty of attention to the crime: the attention to THB and the criminal provisions are often of recent date, it will take time before all authorities are fully acquainted with it.

Part Two describes the current role of Eurojust in resolving the indicated problems.

The percentage THB cases of the total Eurojust caseload remains limited, the number of cases in which truly coordinated investigations take place is even smaller. The problems at national level make that Eurojust is not being used yet to the fullest extent possible. However, the mere existence of the organisation has already achieved that an integrated approach of THB is more easily possible. But even in Eurojust cases, the geographical scope of investigations (across EU borders) and the related issues like

Moreover, the first attempts of generation of investigations on European level are described. These form an alternative to the current bottom-up referral of cases to Eurojust. These investigations may follow a more integrated approach right from the start.

Part Three delivers input to the discussion on how the organisation can further develop its contribution to the fight against THB. It also lists some recommendations for Eurojust.



## RECOMMENDATIONS

These recommendations are taken from Part Three, the respective explanations and reasons can also be found there, from page 63 onwards.

### ***Recommendations in relation to the Quantitative aspects of the caseload:***

1. Broaden the geographical scope of referred cases.
2. Ensure Eurojust's involvement in projects where cases are generated on a European level, specifically COSPOL and the AWFs.
3. Promote the connection of national databases.
4. Enable Eurojust to initiate cases on request of non-EU Member States.
5. Receive and direct signals from other international organisations.
6. Further strengthen Eurojust's input on policies, and make it country/topic specific.
7. Explore the added value of collaboration with Eurostat in their criminal justice project.
8. Influence and use the OC Threat Assessments.
9. Explore the possibility and added value of an academic advisory board.
10. Stress the added value of early involvement of Eurojust.
11. Review the catchphrase 'European *judicial* cooperation unit'.
12. Seek possibilities to include Eurojust in THB trainings for practitioners.
13. Assess financial obstacles and stimulate positive appraisal.
14. Stress the good examples of cooperation with countries of origin.

### ***Recommendations in relation to the Qualitative aspects of the caseload:***

1. Broaden the referred cases, in terms of substantive issues, by *ex officio* advice.
2. Actively use the 2003 Guidelines to stimulate fair and effective distribution of cases.
3. Use the expertise of the THB Team in operational cases, when necessary.
4. Invest in operational cooperation with countries outside Europe.





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## ABBREVIATIONS

AWF	Analytical Work File
CCP	Code of Criminal Procedure
COSPOL	Comprehensive Operational Strategic Plan for Police
EPCTF	European Police Chiefs Task Force
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
ICMPD	International Centre for Migration Policy Development
IOM	International Organisation for Migration
JIT	Joint Investigation Team
MLA	Mutual Legal Assistance
OC	Organised Crime
OCTA	Organised Crime Threat Assessment
OSCE	Organisation for Security and Cooperation in Europe
PC	Penal Code
SECI	Southeast European Cooperation Initiative
SEEPAG	South East European Public Prosecutors Advisory Group
SHB	Smuggling of Human Beings
THB	Trafficking in Human Beings (including trafficking in organs and human tissue)
UNICRI	United Nations Interregional Crime and Justice Research Institute

### Some definitions:

#### 'the' Communication

The new Communication on THB of the Commission contains its reaction to the report and recommendations of the Experts Group. (Communication 2005(514))

#### Eurojust Decision

The Council Decision on 'setting up Eurojust with a view to reinforce the fight against serious crime'. (Decision 2002/187/JHA)

#### Experts Group

In March 2003 the European Commission decided to set up a consultative Experts Group on trafficking in human beings. This group published in December 2004 its first report with a big number of recommendations. (Decision 2003/209/EC)

#### 'the' Framework Decision

This Framework Decision of the Council established in 2002 minimum norms for the substantive (criminal) provisions of the Member States on trafficking in human beings. (Decision 2002/629/JHA)

#### Integrated case approach

This term is used in this report for a case strategy that attempts to cover all specific elements of a human trafficking case, even where these are not essential for ensuring a conviction. In this report it is focused upon the victim protection, location and compensation and financial investigations.

#### Integrated crime approach

This term is used for a case strategy that attempts to target the whole chain of related criminal activities. In relation to THB this chain exists primarily of recruitment, transport and exploitation. Intelligence-led investigations and international cooperation are the most relevant elements of this approach.

#### Strategic Meeting

These meetings are organised by Eurojust to provide a forum for practitioners in a specific field to discuss practical issues and problems and get to know each other.



## INTRODUCTION

### **Para (i) Aim**

The subject of this report is to analyse the supportive role of Eurojust in the fight against the crime of trafficking in human beings. It gives an overview of prosecutorial activity against human trafficking in the Member States. Subsequently it assesses the role that Eurojust has been playing in this field, and aims to give input to the discussion on how Eurojust might further develop its role.

The report focuses on the crime of trafficking in human beings (THB), because this crime is the subject of increased political attention, and it is one of the three law enforcement priorities of the European Union in the field of Justice and Home Affairs, together with terrorism and drugs trafficking.

The report is the result of on the one hand the study of 20 prosecution files, including 7 files in which Eurojust was involved, and on the other a series of interviews with National Members of the Eurojust College, practitioners and experts. The research project was conducted between March and September 2005.

Because of time constraints, use was made of some previous studies of the way prosecution services are handling human trafficking cases. Because the topic of human trafficking has attracted the ongoing attention of politicians and academics during the past few years, there are many up-to-date and detailed studies available on the subject in various countries.

### **Para (ii) Working method**

The initial research proposal planned for a detailed comparison of 15 Eurojust cases with 15 non-Eurojust cases, supplemented with interviews with the National Members. But it proved more difficult to obtain the files at Eurojust, while at the same time these did not always contain detailed information. Moreover, the more interesting question appeared to be the relative small number of THB cases at Eurojust, certainly the small number of coordination cases. Therefore, it was decided to broaden the working methods and collect information from more sources in order to find out the reasons for this lack of referrals.

Detailed country studies on law enforcement were available for Belgium, the Czech Republic, Finland, Germany, Hungary, Italy, the Netherlands, Poland, Spain and Sweden. In addition to this, 29 interviews were held with practitioners and experts. Further, the IOM was kind enough to give the transcripts of 40 in-depth interviews with prosecutors, police officers and judges from Germany, Poland, the Czech Republic, Bulgaria and Hungary, which were held in March of this year.

### **Para (iii) Version history**

First draft	– 18 September – not distributed
Second draft	– 30 September – for feedback from Mr. Manschot
Third draft	– 10 October – for further feedback from Mr. Manschot, proofreading, distributed to THB Team
Fourth draft	– 12 October – for further feedback from Mr. Manschot, Ms. Vlahovic
Final version	– 21 October – for publication

### **Para (iv) Preliminary remarks**

Anglo-Saxon lawyers in particular have the reputation to be sceptical of academic contributions, and handle their conclusions with extra care. It should be emphasised that this report is based on the idea to collect the experiences of practitioners together with concrete figures, and on the basis of that assess what is demanded from Eurojust in this area.

The scientific character of this study is limited, because the selection of cases was not random, and because for security reasons the access to documents within Eurojust was restricted.

The research project, from which this report is the result, was conducted under the auspices of the Dutch National Member at Eurojust between March and October 2005. Assistance from the THB Team of Eurojust was appreciated; the time and feedback from Ms. Vlahovic was of significant value.

This report is divided into three parts. Part One deals with the way prosecution services in Europe cope with the phenomenon of human trafficking. It begins with an overview of available statistics on the criminal response of states to the phenomenon, and secondly draws a picture of existing problems in the prosecution of THB, with a special accent on matters related to international cooperation.

Part Two describes in detail the activities of Eurojust in this field. Again, first statistics are provided on the deployed activities. Next, the current role of Eurojust is assessed via an overview of how Eurojust contributes to solutions for the problems described in Part One.

Part Three provides suggestions on how Eurojust can further develop its supportive and coordinating role in the 'European criminal chain', and can help to overcome for the difficulties which exist in the prosecution of THB cases.



# PART ONE

## General Situation

In this part an overview is given of prosecutorial activity in the Europe Union against THB. It will first start with some statistics; the so-called 'quantitative response'. This is meant to give both an impression of the state of play of law enforcement and draw attention to some remarkable differences. In the second chapter the focus will be more upon the way prosecutors are working; the term 'qualitative response' is used for that purpose.

These two parts together indicate some problems, and because of the aim of this report, the accent is on the international side of these problems.

## **Chapter I – Quantitative response by prosecution services**

This chapter brings together basic figures on THB. The quantitative data will show big differences in relation to the way statistics are compiled and how the applicable criminal provisions are used. One preliminary remark seems appropriate here.

Reliability and comprehensiveness are difficult to measure. Somewhat worrisome is that this is also the situation at the level of the European Commission. A structural data collection procedure is lacking, hence a strong foundation for making EU-wide policy is also missing. It is therefore a welcome development that Eurostat has recently started a project to build a European database of statistics on crime, victimisation and criminal justice. A tender was published last May<sup>1</sup>. Hopefully this project will improve the basis for future policies and new legal instruments.

### **Section 1 Statistics on prosecutions, convictions and sentencing**

In order to judge the value of the figures, on the one hand the source of the figures will be clarified and on the other the reasons for the big differences will be briefly explained.

This section is based on two sources, supplemented by additional materials.

The primary source of these figures is the information collected by 15 National members of Eurojust<sup>2</sup>, in reply to a questionnaire issued by the THB Team on 12 May 2005. Since the other national desks were not able to provide the team with precise data, the data on those states is taken from the US Trafficking in Persons (TIP) Report of 2004.

This report is published annually, and is based upon information collected by the US Embassies all over the world. It is criticised for its abolitionistic approach of prostitution and non-scientific interpretation of statistics. Because of the enormous gap in reliable data in this field, even the European Commission quotes the numbers from this report.

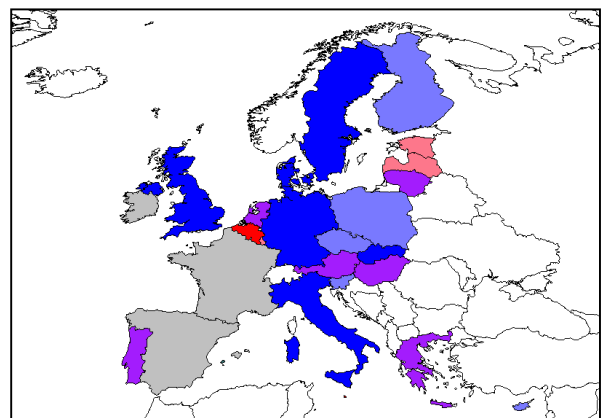
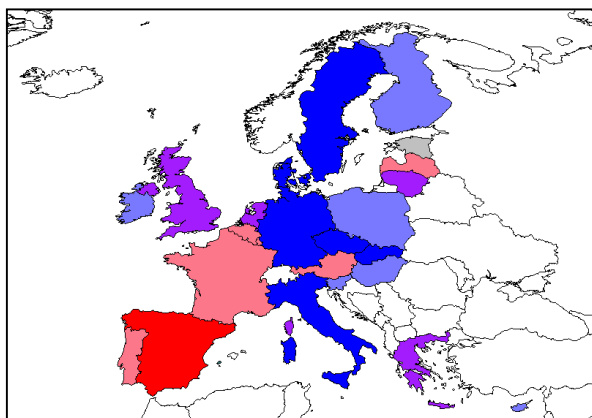
In order to judge the accuracy of its figures on prosecutions, the figures given in the report were compared with the outcome of the questionnaire, where possible.

- The Polish reply reported the same numbers as the US TIP Report (2005),
- the Slovak reply to the questionnaire reported 22 accused persons and 8 convictions; the US report speaks of 19 prosecutions and 6 convictions,
- the Lithuanian reply mentions 24 registered cases and 16 trials, the US report says there were 22 investigations and 16 trials.

Of course it is not surprising that these particular figures seem to be accurate, since the US Embassies first try to get the information from the respective Ministries of Justice. But for some countries they obtained statistics where, according to the replies to Eurojust, there is no central registration of cases. Germany is an example of this. The TIP Report mentions 145 convictions in 2003, while the German National Member replied that such information is not available. The American figures were confirmed by the German Federal Office for Statistics.

Prosecutions				Convictions					
Simple figures			Indexed	Simple figures			Indexed		
Population	Member State	Prosecutions	Member State	Ratio Prosecutions/ Million inhabitants	Population	Member State	Convictions	Member State	Ratio Convictions/ Million Inhabitants
42	ES	1978	ES	47.1	10	BE	170	MT	22.5
60	FR	709	MT	37.5	83	GE	145	BE	17.0
60	UK*	340	AT	27.1	58	IT	100	LU	12.5
58	IT	300	PT	24.8	60	UK*	98	LV	10.5
83	GE	289	LV	15.0	16	NL	83	EE	9.0
10	PT*	248	BE	12.6	11	EL	69	EL	6.3
8	AT	217	LU	12.5	10	PT*	40	NL	5.2
16	NL	127	FR	11.8	10	HU	39	LT	4.7
10	BE	126	EL	8.5	8	AT	27	PT*	4.0
11	EL	94	LT	8.0	2	LV	21	HU	3.9
38	PL	39	NL	7.9	9	SE	16	AT	3.4
2	LV	30	UK	5.7	3	LT	14	SK	2.8
3	LT	24	IT	5.2	5	SK	14	SE	1.8
9	SE	24	SK	4.6	10	CZ	12	GE	1.7
5	SK	23	GE	3.5	1	EE	9	IT	1.7
10	CZ	21	SE	2.7	0.4	MT	9	UK*	1.6
10	HU	19	DK	2.6	5	DK	8	DK	1.6
0.4	MT	15	CZ	2.1	38	PL	7	CZ	1.2
5	DK	13	HU	1.9	0.4	LU	5	SL	0.5
0.4	LU	5	PL	1.0	2	SL	1	PL	0.2
4	IE	1	SL	0.5	1	CY	0	CY	0.0
2	SL	1	IE	0.3	5	FI	0		
1	CY	0	CY	0.0					
5	FI	0	FI	0.0					

\* both human smuggling and trafficking



### **Para (i) Differences in the definitions**

The ambitious project ‘European Sourcebook of Crime and Criminal Justice Statistics’ showed in detail the differences of administration of prosecutions and convictions<sup>3</sup>. In several countries there was no central registration in the first place (Ireland, Luxembourg, Spain). Relevant for the figures that are displayed in this report are three definition problems:

- whether multiple suspects in one complex of facts are registered as one single case
  - o Denmark, the Netherlands and the UK are exceptions in this respect: in these countries each suspect is counted as a different case,
  - o Italy is the only country where multiple offences are counted separately,
- the proceedings included in the term ‘prosecution’
  - o Italy and Spain for example include preliminary proceedings in their definition of ‘a prosecution’,
- whether cases with unknown offenders be registered as ‘prosecutions’
  - o in the Czech Republic, Estonia, Hungary, Italy and Portugal proceedings against unknown offenders can be counted as prosecutions.

From this, it can be concluded that the bare statistics give a somewhat distorted picture of the situation. Especially the Spanish and Italian numbers of prosecutions, as shown in the table, cannot be compared with the other countries. The Italian number of convictions indicates that the level of criminal response is in fact much more comparable to other European countries than the number of prosecutions suggests.

The definition of a ‘final conviction’ differs as well, but to a lesser degree. For the limited purpose of this report no further details are necessary. Yet, when looking at the average sentences, two things should be kept in mind. The first is that the figures do not show the high percentage of convictions resulting in conditional sentences. Especially in the recently acceded Member States, a relatively small percentage of convicted persons actually serves a prison sentence. Secondly, the simple length of the sentence does not reveal the actual term in prison. The advanced release follows in the UK normally after half of the term, in the Netherlands after two-thirds of the term and some countries do not have such a regulation in the first place.

### **Para (ii) Differences between anti-trafficking legislations**

In 2002 the Council of the European Union adopted a Framework Decision which set minimum requirements to the criminal provisions on trafficking of human beings. The Europol compilation of legislations on THB<sup>4</sup> shows that the Framework Decision did have the effect that in most countries specific legislation is in place, and that in most Member States other forms of exploitation, other than sexual exploitation, are now outlawed.

The Framework Decision prescribed the criminalisation of all the different phases of THB: recruitment, transportation and exploitation. Some Member States have opted to follow the approach of the provision of the Framework Decision and create one article in which all the related acts, means and purposes are covered. But just as often, Member States choose for a more differentiated implementation.

Generally, there are three types of implementation.

The first is the ‘cover-all’ approach. Member States that utilise this approach have opted to follow the model of the Framework Decision:

- The Netherlands, Slovenia, the Czech Republic and Hungary have provisions which cover most of the possible occurrences of THB.
- In some states, there are somewhat forgotten ‘cover-all’ provisions: the slavery provisions. At least in Austria (104 PC), Spain (607bis PC), Portugal (159 PC),

Slovenia (387 PC) and the Netherlands (274 PC), there are special provisions on slavery.

Secondly there are states that have separate provisions for the different acts involved in the trafficking process. Hence recruitment, transport, *transfer* and/or exploitation are covered in separate articles.

- The Lithuanian code reflects this idea. In Article 147 the transfer of a person is criminalised, in Article 292 the illegal transportation of a person across the border is criminalised, and in Article 307 the sexual exploitation is prohibited. No 'cover all' provision exists.
- Often the last exploitation phase is separately covered (for example in Germany the exploitation phase is covered in Articles 232/233), comparable to the former distinction between slave trade and slavery in some states.

Thirdly there are states that differentiate according to the purpose of the trafficking. If organ trafficking is criminalised, this is often done as a separate offence.

- For example in Germany labour and sexual exploitation have separate articles. Organ trafficking falls in Germany under the separate Law on Transplantation (Articles 17/18 TPG).
- In the UK and Italy trafficking for the purpose of sexual exploitation is prohibited in separate acts on sexual offences (the Sexual Offences Act and the Merlin Law, respectively).

Finally, there are states with separate articles for child trafficking

- Examples are Ireland (Article 3 Child Trafficking Act 1998), Estonia (173 PC) and Slovakia (216b PC).

It is problematic that several states do not simply differentiate on the basis of either act or purpose, but have a mix of approaches. As a result, there are specific provisions for a distinct purpose (e.g., sexual exploitation) and a distinct act (e.g. recruitment), for example, so that recruiting for sexual purposes is a separate crime. This approach results not only in overlaps, but also numerous omissions. For example, in Lithuania, the act of recruiting persons for the purpose of exploitation is not covered by any criminal offence. Construction of criminal liability may be possible via participation in the main offence.

To make the picture even more blurred, the provisions strongly differ from one another on the point of the means that are used to pull and recruit a person in a situation of exploitation. Especially with regards to means other than coercion, the penal provisions differ greatly.

In some states, taking advantage of a situation of vulnerability, especially a 'helpless foreigner', constitutes cause for criminal liability (e.g., Latvia and Germany), while in others a higher degree of coercion is required (Estonia, Cyprus and Sweden).

### **Para (iii) Different ways of charging THB**

Framework Decisions on substantive law are not meant to harmonise the use of criminal provisions. Prosecutors still have alternative options for charging a suspect of human trafficking with another offence. Since trafficking in persons consists of a complex of criminal acts, parts of this behaviour can just as effectively be punished under statutes on immigration, labour, sexual or liberty offences. Even where similar criminal provisions exist, the application of the provisions may still differ.

For example, the report on THB by the Italian Justice Ministry of 2004 makes mention of 12 different offences under which trafficking charges are being brought. This is one of the reasons why statistics on this point should be treated with a certain suspicion. When the number of prosecutions for the specific trafficking offences is low, this does not automatically mean inactivity of prosecutors in this area.

In this respect, most of the replies to the Eurojust questionnaire did not cover THB prosecutions which were done under non-specific THB provisions. Illustrative here is the Swedish situation. The Swedish National Rapporteur on THB describes in the 2004 Report six convictions in typical THB cases. In only one case the suspects were indeed convicted under THB-statutes; the convictions in the other cases were for procuring. The Italian Ministry of Justice provides an example in its 2003 Report on THB: it describes how many typical THB

cases are dealt with via Article 3.6 of the Merlin Law of 1958 (recruiting persons outside Italy for sexual labour in Italy). For both the Swedish and Italian situations, the number of THB charges gives but a limited view on prosecutorial activity.

The interviews revealed that the Swedish and Italian situations are not exceptional.

- In the Netherlands, the Dutch National Rapporteur mentions especially human smuggling (197a PC) as an often-used provision when sufficient evidence for exploitation is lacking. Also, the provision on employing illegal immigrants (197b PC) may be used in this context. The interviewed prosecutors also mentioned the distribution of false travel documents (231 PC) as an alternative to THB provisions that are used when in a very early stage the police are forced to act.
- In Denmark, a similar downgrading takes place from trafficking (262a PC) to smuggling (125a PC) to pimping (228 PC).
- In Ireland, the specific THB provision can only be applied if the victim was a child. Therefore, regular THB cases are prosecuted per se as human smuggling (2 Illegal Immigrants Act 2000). But the Irish National Member recalls some cases in which illegal employment of aliens and even tax legislation was charged in clear THB cases instead of human smuggling provision.
- The Slovak National Member indicated that in contrast to the THB provision (246 PC), in most cases the illegal immigration provisions are used (171a-c PC).
- The Lithuanian National Member reported that in Lithuania the strict legality principle obliges a prosecutor to charge all the applicable crimes. In THB cases, therefore, THB (147 PC) is often found together with smuggling (292 PC) and pimping (307 PC).

One remark on the overlap of THB crimes and human smuggling crimes is appropriate here.

Recourse might be taken to human smuggling provisions if sufficient evidence for THB is lacking. But vice versa there is a crossover as well: THB provisions can be applied to situations that are on first sight pure immigration crimes. The convictions in the Dover case showed that where the circumstances in a human smuggling case are particularly degrading, there is an exploitation component and human trafficking provisions may be applied. In Belgium, this construction has been used several times, also in cases in which the victims did not die.

In the next chapter, it will be set out what the reasons are for charging an offence other than THB and what effect this practice may have on the quality of a case. Here it suffices to conclude that even after the Framework Decision, the application of anti-trafficking laws differs greatly in the Member States.

Where both the applicable law and the use of those laws remain different, the unqualified prosecution and conviction figures give at best an indication of the level of engagement in the fight against THB of the Member States.

## Section 2 Figures on cooperation

Where it is already difficult to obtain general figures on prosecutions and convictions, it appeared to be even more difficult to collect figures on international cooperation in THB proceedings. Only for a small number of countries are detailed studies on THB available which also looked into the cross-border activities of prosecutors.

- To start with the Dutch situation, the Dutch National Rapporteur just mentions that there is only very limited international cooperation at the level of prosecutors<sup>5</sup>.
- In Poland, of the 10 researched regional headquarters (there are 17 regions) only three regions (four cases) were found where there had been joint investigations with foreign police services<sup>6</sup>.
- The Transcrime Institute found in Italy that very little use was made of the possibilities for international cooperation<sup>7</sup>; even MLA requests were rarely made. To mention a few examples: the Brescia and Palermo prosecution services hardly ever used international cooperation, Brescia issued in five years' time (456 cases) only three

letters rogatory. In Arrezzo, it was preferred to lure the organisation into Italy. Gorizia preferred informal cooperation (mainly with Slovenia). Only the Milan and Turin offices were reported as having more positive experiences.

From the eight non-Eurojust cases studied from Sweden and Slovakia, it was clear that cooperation mainly takes place between border states (Sweden-Lithuania, Slovakia-Czech Republic). Whereas at least in four cases, the victims did not originate from those border states. In only one case did authorities clearly cooperate with a non-border state through Interpol (Slovakia-Germany).

### Section 3      Prospected growth theories

The UNODC calls trafficking in human beings the ‘fastest growing crime’ at this moment<sup>8</sup>. This is repeated by, for example, the International Organisation for Migration (IOM). On the other hand, there is growing criticism of the figures used, recently expressed for example by researcher Kelly. The estimations used by experts and activists are seen as ‘advocacy numbers’; new studies downscale the figures dramatically (the US estimation of victims in Europe dropped with 75% in three years’ time)<sup>9</sup>.

According to one of the officers of the THB Group of Europol, THB is a growing market for criminals. Together with several interviewed prosecutors and experts, they warn of the possibility that THB is in the same stage as drugs trafficking was 20 years ago. At the moment the market is still low-scaled and based upon dynamic social networks, but in the coming years it might undergo a process of growth and consolidation. The theory is that while demand for cheap labour, together with the market for sexual services in European countries, is increasing along with the increased standard of living in the Union, it does become more difficult to immigrate legally into the European Union. In this environment, the market for illegal immigration and the opportunities for exploitation are growing.

It has to be mentioned here that, although most experts do support the idea that the phenomenon is only starting to grow, there are at present no solid figures confirming this.

#### Para (i)      Available figures on level of organisation

As will be seen in Part Two on Eurojust, the number of THB cases at Eurojust remains relatively small. In order to place this lack of cases at Eurojust and the above-mentioned ‘growth theory’ into perspective, some currently available figures on the level of organisation of the crime at the moment are useful.

- In the Netherlands, the percentage of suspects that cooperated in ‘networks’ remained about 70% between 1998 and 2003. In the same period, however, the average number of suspects in cases of international THB dropped from 6,8 in 1998 to 3,6 in 2003. This is partially explained by police experts by the legalisation of prostitution, which created an illegal market of unknown size. The earlier mentioned prohibition of controlled deliveries does prevent the police from investigating the possible connections to networks in individual cases.
- Reports on Spain and Italy from 2002 showed that, whereas all cases were of a transnational nature, in 14% of the studied cases a complex international organised crime group was involved<sup>10</sup>.
- A similar series of case studies on Germany concluded in 2005 that the complexity level of the OC groups varies significantly: Small groups (30%) were found to work alongside very large and highly complex networks (9%)<sup>11</sup>.
- On the contrary, the Swedish National Rapporteur recorded that as a rule the networks were rather small<sup>12</sup>. Most of the studied cases from Sweden also consisted of suspects operating alone or with one or two others.

- In reports on Bulgaria, very few pyramidal organisations were identified, but mostly cell-like organised ‘rings’ which cooperate on an ad-hoc basis. The Romanians did detect a few larger organisations with a pyramidal structure<sup>13</sup>.

Another method to identify the scale of criminal organisations is the overview of money flows. The FATF reported this year that in the majority of international THB cases, the money remains in either the country of origin or the country of destination<sup>14</sup>. Compared with, for example, drugs crimes, this points out that relatively little use is made of sophisticated international money-laundering constructions to hide criminal origins of the money. The report also notes that there are no clear indications that proceeds from THB activities flow to other types of OC.

Although statistics on this topic were only available from seven countries, it does show that the situation may differ per country. In general, however, the reports mention few genuine highly complex networks. In Part Two, it will be discussed if a lower degree of organisation causes that THB is not a Eurojust-typical crime.

### **Para (ii) Relation with EU Enlargement**

The Experts Group concluded in 2004 that most of the newly acceded Member States have been and are affected by THB, some ‘to a considerable extent’ as countries of origin. Interpol warned in 2003 of an increase of THB after the enlargement of the EU.

The sparse hard figures on the origins of victims do not (yet) confirm an increase from the recently acceded states.

- Between 2002 and 2005, the percentage of victims recruited in one of the 10 accession states dropped from 20 to 6% in the Netherlands<sup>15</sup>. However, it is interesting to note that in the same period the percentage of registered victims of Romanian and Bulgarian background grew from 15 to 31%.
- The Austrian BKA also reported a sharp increase in victims and traffickers (40% up) from Romania until 2004, while from the recently acceded states the number of victims sharply decreased<sup>16</sup>.
- The Spanish National Member also points to a sharp increase of Bulgarian and Romanian victims in his country.

Almost all sources give the same picture: the role of recently acceded countries as source countries of victims already started to diminish before their accession, while Romania and Bulgaria are increasingly recorded as country of origin of victims.

## **Section 4 Particular occurrences of THB**

Media reports suggest from time to time that, for example, organ trafficking goes largely undetected by law enforcement. In order to have a complete picture of the development of THB as a crime, a closer look at a few particular occurrences and related phenomena will be taken in this section.

The Europol compilation of legislation shows that the Framework Decision on THB had as a result that the most common forms of human trafficking are punishable in all European states, however, the substantive legislation in the particular areas mentioned here may differ considerably and is sometimes not in place at all.

### **Para (i) Trade in minors**

The Framework Decision defines child trafficking as the trafficking of a person of under 18 years. In past years, there have been several reports in the media on child trafficking and the alleged scale of the phenomenon. Whereas the precise scale of child trafficking remains unclear, statistics on apprehended and assisted victims do give an indication:

- In the Nordic states, the Netherlands and Ireland, there are government reports on disappearing Unaccompanied Minors from asylum centres. The Dutch National



Rapporteur described in the 2004 report that between 10 and 25% of these disappearances in the Western countries are linked to THB.

In the Netherlands itself 8% of the assisted victims were underage.

- The Austrian BKA reports that approximately 25% of the apprehended victims were underage, of which 16% approximately below the age of 14.
- The Italian reply to the Eurojust questionnaire mentions 50% minors amongst the victims in Rome.
- Reports from the countries of origin differ greatly. A 2003 study of the Eastern European countries assessed the figures of assisted victims of the Regional Clearing Point of the Stability Pact<sup>17</sup>. It found that between 10 and 40% of the victims were underage. A notable exception was Albania, where 87% of the assisted victims (1200) were children, mostly in relation to labour exploitation.

Trafficking of children under the age of 14 is merely related to immigration and, according to the French police, to restrictive adoption laws in western Europe.

The scale of child trafficking is even harder to estimate, when accompanied minors are taken into account. A Portuguese case from 2002 shows this type of trafficking might be even harder to detect. In this case an Angolan-Portuguese citizen had accompanied over a 100 different children on flights to the UK by using false IDs for the children<sup>18</sup>. To what extent this was for family reunion or adoption purposes or if the children ended up in a situation of exploitation is unknown at present.

The SECI Centre set child trafficking as one of its priorities. At Eurojust at least seven THB cases concerned primarily minor victims.

### **Para (ii) Forced labour**

The Framework Decision had as an immediate result that in many countries the attention to labour exploitation increased. Hard figures on the scale of this phenomenon do not exist, but in this context it is relevant to notice the difference in attention to labour exploitation between the Member States. At least Spain and Belgium are actively investigating this form of THB.

- Belgium reports mentioned that 13% of the victims of THB are economically exploited.
- In Spain, there are two older provisions in the penal code (311 and 313 PC, violations against the rights of foreign workers) which allow more attention to and more experience with labour exploitation.
- In France and Ireland, cases are known of exploitation in the agricultural sector, and in Italy even in the fashion industry.
- Only one of the Czech interviewees recalled one case of labour exploitation.

But the general picture from the interviews is that only very few investigations into labour exploitation are started.

At Eurojust there has been at least one case of exploitation in the agricultural industry to date.

### **Para (iii) Trade in organs and human tissue**

Trafficking in human organs and tissue is not always covered by legislation in the Member States. Organ trafficking is included in the THB definition of the UN Protocol. The Europol definition of THB and the Framework Decision are silent on organ trade. However, in the Europol Convention it is separately included under the heading of crimes 'against life, limb or personal freedom'.

Greece launched a proposal for a Framework Decision on organ and tissue trafficking in 2003<sup>19</sup>. Many Member States, however, did not see a need for such a Framework Decision, mainly on the ground that the phenomenon is of a too small scale.

Following media attention, there are many examples of law enforcement in the EU acting upon allegations but not finding anything.

None of the interviewed practitioners recalled investigations into organ trafficking. Neither were there any cases reported by the Swedish or Dutch National Rapporteurs. A researcher

of the Finnish HEUNI Institute concluded in 2003 that organ trade is practically non-existent in Western Europe<sup>20</sup>.

Eurojust has had three cases of organ trade (two of which were linked with one another).

#### **Para (iv) Internet**

The Council of Europe and some scientists have warned of the opportunities that the internet offers to traffickers. None of the interviewed prosecutors recalled cases in which the internet was used as a means of recruitment. At the 2003 Strategic Meeting, Sweden mentioned one case of selling women via the internet.

In order to assess the specific consequences of the internet for THB, the Council of Europe had a study performed in 2002<sup>21</sup>. Amongst others, the researchers found several dozen internet websites of Russian marriage agencies where women were offered, alongside sexual services and erotic trips. In addition, Europol mentioned that with the increase of law enforcement in western European states, there are signals that the clients of traffickers travel to eastern states for the services. Specifically, the Baltic states are mentioned in this respect as destinations of these trips.

A similar remark was made by the Dutch police, who point at new alternative ways sought by traffickers to get in touch with their clients – especially now that a legal and controlled branch is created in the Netherlands by the lifting of the prostitution ban.

Of course internet and other modern means of communication create new difficulties in general for investigators, but there are some signals that this is specifically the case for THB. The Experts Group called for awareness on this point and cooperation with the private sector, as is already the case in relation to the fight against child pornography.

Illustrative in this context is what happened to the website of one of the IOM projects in the Baltic States. The project maintained the website [focus-on-trafficking.net](http://focus-on-trafficking.net) for the duration of their project. Currently the site is on sale again, and the owner of the address placed advertisements for mail order brides, escort services and sex trips to Thailand on the website.

#### **Para (v) THB in combination with other types of organised crime**

On the relationships between THB and other types of OC, it can be said that most reports point at a certain specialisation in THB of the OC groups. Very few cases can be mentioned in which the suspects were involved in other crimes on a large scale. The FATF report concluded that the money flows mainly take place between the cooperating suspects and profits are invested locally.

The German report found in 7 out of 25 cases (28%) that the group was also involved in drugs trafficking or human smuggling<sup>22</sup>. In the Netherlands, in 27% of all THB cases, there was also a suspicion of drugs trafficking<sup>23</sup>.

The Swedish National Rapporteur said that there had been a few cases in which the victims were used as carriers of drugs during the trip to Sweden.

At Eurojust there have been several cases of cross-over activities; one Turkish group was involved in both drugs trafficking on a large scale besides THB. And there have been two Italian cases in which an organised group was involved in drugs trafficking as well.

#### **Para (vi) Involvement of legal persons**

The Framework Decision prescribed that legal entities can be liable for THB offences. It did not prescribe that this liability should be of a criminal nature.

Criminal liability of legal entities, or more precisely, the lack thereof, is often mentioned as a problem in international criminal cooperation. Several states are to introduce criminal liability of legal entities (Portugal, Slovakia, Romania).

In general, the criminal liability of legal persons is not a real issue in THB cases in the destination countries. Where use is made of legal persons by perpetrators, this is mostly serving as fronts with no or few assets, according to the interviewed practitioners.

Reports on the countries of origin, however, make mention that modelling, travel and adoption agencies and (online) marriage brokers are repeatedly brought into connection with human trafficking. For example, in a Czech/Slovak case, the international modelling agency 'ELI' was involved.

With other types of OC legal entities are sometimes involved in the money laundering processes. In relation to THB, the FATF working group on money laundering found this is not often the case. The perpetrators often launder the money themselves, and no third parties or legal persons are involved. Their report mentions only one example in which successful cooperation with the Chinese authorities revealed the use of legal persons in China by a Snakehead organisation for laundering purposes.

## **Chapter II – Qualitative response by prosecution services**

For the purpose of this report the quality of the criminal response by authorities in a case is defined in terms of securing society, deterrence, and efficiency. The securing of society means that the roots of the crime are attacked and not just the symptoms of the crime and meanwhile offers protection to those in need of it. Deterrence can be achieved by both appropriate sanctions and a high detection rate of the crime. Efficiency seems a clear concept, which includes prevention of duplication of efforts.

Since the scope of this report is limited to the field in which Eurojust can assist, the expose of problems will be restricted to the aspect in which Eurojust can be of value, international cooperation. In order to do this in an accessible way two benchmarks are used. The first benchmark is the integrated approach of the crime – a focus upon the whole criminal chain, and the second one is the integrated approach of the case per se.

Exact data on international cooperation, apart from cooperation through Eurojust, is sparse. Solid statistics on cooperation or a lack thereof can hardly be given here. The sum of individual experiences of practitioners and the review of cases are useful indications, which point out the obstacles that prevent an integrated approach of the crime/case.

### **Section 1 Integrated crime approach**

The term 'integrated crime approach' will be used here in relation to the law enforcement strategy that is taken against THB. The term 'integrated crime approach' is used in this report for an approach which is both intelligence-led and internationally oriented.

Since THB is almost inherently a cross-border activity (if one ignores the lover-boy cases) involving a source, transit and destination country. It can also be regarded as a market, with several players that are mostly cooperating in horizontal relations and rather loose structures of small OC groups. The question is how authorities are dealing with this type of transnational OC.

#### **Para (i) Current situation**

The current approach towards THB in investigations and prosecutions is often described as being aimed at the symptoms rather than targeting the whole crime. Most prosecutions only concern the part of the criminal chain which happened to be present in the jurisdiction of the prosecuting authority. Allegedly, there is a strong 'local focus' or at best a 'national focus', which also prevents in instances of cross-border crime that investigations trace the roots of the crime. In THB cases that means that only a limited part of the market, the most visible part, is counteracted. In the THB 'market', there are perpetrators that have specialised themselves in recruitment of victims. In general, authorities all over Europe differentiate amongst the persons that specialise in the different stages of THB (recruitment, transport and exploitation), also financiers, facilitators like passport counterfeiters, 'organisers' and sometimes the clients. When a strong integrated crime approach is missing, these perpetrators involved in other stages that take place outside the investigating jurisdiction go undetected or unpunished.

The authorities concentrate on the part of the crime that was in their jurisdiction, and assistance from other jurisdictions is therefore not necessary. If assistance is required at a certain point, this happens mostly in simple 'one way traffic': an MLA request is done for the simple purpose of sustaining their own case.

In 2004, the Chiefs of Police Task Force concluded that police cooperation in Europe still happens from a purely national perspective. Also at the Eurojust Strategic Meeting of 2002 it was concluded that prosecution services still work with a limited focus on their own case.

An integrated approach of THB means that there is a genuine effort to take out the whole chain of cooperating perpetrators. Resources, investigation methods and instruments for cooperation are used in accordance with that aim. Currently, this is not the case. A locally-oriented approach has as a result that there are not many transnational investigations and therefore the number of referrals to Eurojust remains limited as well. The consequences for the Eurojust caseload will be assessed separately in Part Two. Here, first, the reasons for the lack of such a strategy as most often mentioned by the interviewed actors will be elaborated upon.

### **1- Relevance of intelligence-led investigations**

Most times the plea for more intelligence work and follow-up is heard in relation to the current dependency of victim testimonies and success in individual cases. But if placed in the light of an integrated crime approach, there is yet a bigger impact. Proactive and intelligence-led investigations give the opportunity to reveal whether suspects are cooperating in a network. And because THB is often linked to illegal immigration, thorough intelligence operations will demonstrate that international cooperation is required in an early stage. If successful, the intelligence may show not just the connections within one organised group, but also possible links to other groups – in THB cases, e.g., when victims are sold to another exploiter. This is especially relevant where larger structured organised crime groups are lacking.

In several countries the proactive intelligence-led approach is already more common; at least the United Kingdom and Spain can be mentioned here. According to the Spanish National Member, this is in Spain primarily because of immigration concerns. Spain has been relatively successful in bringing down the flow of victims from South America. Both intelligence-led investigations and international cooperation with the countries of origin were important ingredients.

Often the intelligence-led investigations are linked to the use of special investigative methods, but especially with victim-crimes like THB, human intelligence is of importance as well. Victims apprehended in an early stage or immigrants may provide useful information.

The FATF uses intelligence-led approaches also in relation with financial investigations. In the 2005 report, an example is given of strategically placed random checks at borders, by which money flows were discovered that were linked to THB. The Belgium FIU reported successful detection of several THB groups on the basis of intelligence on deviant bank transactions.

A good example is taken from practice in the United Kingdom. The successful story was presented at the IAP and describes Operation ‘Zephaniah’<sup>24</sup>. The UK National Crime Squad operated two undercover agents in close cooperation with the German police and partly in their jurisdiction, and the Germans provided the British with results of wire-tapping. Both the British and German parts of the network were taken down as a result. The whole idea of the operation was not just to take out the UK-based facilitator, but his German associates as well. It was not clear from the available information whether the whole organisation had been targeted (the immigrants were from Asia), which would have truly been an integrated approach.

The possibilities for proactive and intelligence-led investigations depend on the policies in place, the allocated resources and the incentives given.

#### **Para (ii) Particular difficulties with special investigative methods**

Inherently linked to an intelligence-led approach are special investigative methods such as the use of undercover agents and controlled deliveries.

Since this report concentrates upon THB, special attention is paid to the use of a covert investigative method with particular complications in THB cases: controlled deliveries.

### **1- Prohibition on controlled deliveries of human beings**

The UNICRI study on THB prosecutions in Germany and Romania showed a difference in the length of investigations in more complex cases (>1 year) and more simple cases (<6 months)<sup>25</sup>. In the Netherlands, THB investigations have a short average investigation period (6 months). Further, it can be noted in the statistics that both Austria and the Netherlands have relatively high numbers of prosecutions. A possible explanation is given by the THB Experts Centre in the Netherlands. Because of the prohibition on controlled deliveries, police authorities are compelled to act at an early stage. If not done, there is a chance that the defence pleas annulment in court.

In Austria, the prohibition is implicitly laid down in Art 71 EU-JZG. In the Netherlands, the Minister of Justice has promised the Dutch parliament not to allow controlled deliveries of persons.

It was mentioned at a Strategic Meeting that also the UK has become more cautious with controlled deliveries of human beings after the Dover case.

Especially in countries with a legality principle, problems can arise, depending of course on the exact national legislation. The Lithuanian National Member recognises more or less the same problem as the Austrians. In Lithuania, there exists a relatively strict obligation to arrest the suspect as soon as a certain amount of evidence is gathered. This may cause an incomplete investigation; this is especially the case with financial investigations.

These types of investigative methods, and especially the controlled delivery, require agreements between the investigating authorities on precisely how to execute the operation. Experience from the SECI practice shows that the success of such agreements may depend very much on individuals and their willingness to stick to the agreements. In a certain case, the SECI Centre coordinated a controlled delivery between three Balkan states and an EU Member State. The operation went perfectly, until the EU border was crossed and the operation was stopped by the direct arrest of the victims in breach of earlier agreements.

### **2- Involvement of OC groups from outside the EU**

The fact that a considerable part of THB is committed by groups of non-EU ethnic origin, causes investigators of THB to often experience problems with the language used amongst the suspects. From Germany, problems have been experienced with the use of wire-tapping of Chinese groups. But in the Netherlands, there were also problems with other languages such as Romanian, and African dialects<sup>26</sup>.

A creative solution was invented by American prosecutors who experienced similar problems in the US in investigations of Albanian groups. They used their seconded prosecutors at the SECI Centre to cut a successful deal with the Albanian police department. Albanian police officers received training in the United States, and at the same time assisted in the investigations of the Albanian rings in the United States.

### **Para (iii) Restrictive prosecution policies**

This paragraph assesses the reasons for (not) having an integrated approach of THB, first in light of official law enforcement and prosecution policies, which determine the priorities and give the practitioner guidance in the choices that need to be made and the instruments to be used.

Thereafter, more will be said about the personal considerations of a police officer or prosecutor in charge of a case in relation to the strategy he follows.

#### **1- National legal framework: Legality and opportunity principles**

The legal obligations to investigate are the primary elements of the framework in which practitioners take their decisions. Therefore, it will first be assessed how legal obligations to investigate and restrictions work upon the possibility to investigate and determine the international dimension of an investigation. Thereafter, will be focused upon policy documents on the national level.

Whether there is legality or opportunity principle applies in a certain jurisdiction, there is always some discretion for the 'local' investigator or prosecutor in determining the scope of the investigation. All states with an opportunity principle have guidelines on how prosecutors should use their discretion. In the states with a legality principle there are legal arrangements to drop (parts of) proceedings.

Whereas the legality principle is based in the obligation to investigate and prosecute all criminal behaviour for which criminal liability can be assumed, there are mitigating provisions which have as result that if a considerable part of the crime was committed abroad, the investigations are discontinued.

- In Germany, for example, the authorities always have jurisdiction over THB crimes (universal jurisdiction under Article 6.4 PC). But under the mitigating provision of 153c CCP authorities may dispense of their case when the crime was largely committed abroad. According to the German National Member, this provision is regularly used to dispense with cases which lack national priority.
- In Slovakia, article 172.1b CCP is used for a similar purpose: to halt investigations if the crime is primarily committed abroad and there are no reasons for transfer of the case.
- A similar mitigating attitude towards cross-border particularities can be seen in Spain. In Spain, the prosecutor is obliged by law to demand compensation for the victims (108 CCP), unless the victim explicitly asks not to do so (112 CCP). The police are obliged to inform the prosecutor of the damages that victims suffered, but, in practice, attention is paid only to these claims if the victim is on Spanish territory, according to the Spanish National Member.

In most countries with an opportunity principle, there is an official document that determines the priorities of prosecutors for the whole country. In Estonia, for example, there are short guidelines on how to interpret the yardstick 'public interest' (201 CCP) and in Belgium there are circular letters of the prosecutor-general on the policy grounds for dismissal. In the United Kingdom, the Code for Crown Prosecutors sets out besides the evidence test also a public interest test, which does not so much set priorities but does give general guidance in the application of the opportunity principle.

In the next section it will be shown that in all these countries THB is set as a priority, either explicitly mentioned or through the policy documents that control those priority lists.

In direct relation to international cooperation, complaints were heard from countries with a legality principle on the scope of investigations in countries with an opportunity principle. A German police officer described cases in which he passed information on to his Dutch colleagues about possible large THB cases, but he was answered that THB in that region had no priority at that moment. Another German police officer had similar experiences and also the Spanish National Member had experiences in this area.

A remarkable point that the Germans brought up was that in their experience, they had been able to be more flexible with their list of priorities than their Dutch counterparts, whereas the applicable prosecution principles in the countries suggest that the Dutch authorities would be more flexible.

In a wider context, the Spanish National Member and others warned of the consequences of the opportunity principle if economic considerations are included in prosecution policy. Whether it happens in practice in countries with an opportunity principle that investigations are limited in respect to their scope cannot be concluded on the simple basis of the applicable principle.

It seems that both in countries with a legality principle as well as countries with an opportunity principle, choices on the scope of investigations are made at a local level. The genuine influence on the strategy of a prosecutor is to be expected from the documents which elaborate upon these principles: the policy documents on national and local level. In the countries with an opportunity principle these documents that give guidance for that discretion may be more readily and publicly available, but can have a more restrictive effect as well.

## 2- **National policies and National Action Plans**

This paragraph will now take a closer look at the national policies that determine the strategy of investigators and prosecutors. It focuses on the impact that the priority setting on national level has to the possibility for genuine coordinated and intelligence-led investigations, as is promoted by the Council.

The Brussels Declaration of 2002 called for the development of Action Plans<sup>27</sup>. Many Member States did develop National Action Plans to combat THB. On the point of law enforcement they differ a lot. Some really show an attempt to have a multi-disciplinary approach to the crime by several cooperating ministries. Others hardly mention law enforcement and prosecution.

- In particular, the 2004 Action Plans of Lithuania and the Netherlands contain detailed measures in the field of criminal law, in order to enable international cooperation and intelligence-led approaches. For example, the latest version of the Lithuanian Action Plan sets out for measures to improve the cooperation with Interpol and Europol.  
The Dutch Action Plan contains very detailed provisions on international cooperation and how to improve it in THB cases. It also contains an explicit key which determines the level of priority of a case. The key consists of a list of 'damage terms' which together comprise to what extent resources and personnel are allocated and urgency is given. Bigger cases are forwarded to the National Criminal Investigation Department.
- In Poland, the National Program for Combating and Preventing THB contains methodological directives for all Polish prosecutors.
- The Finnish and Danish Action Plans hardly mention on the strategy to be followed by prosecutors.

There is no apparent difference in terms of attention to police and prosecution between the action plans of countries with a legality (Lithuania, Poland, Finland) or opportunity (Netherlands and Denmark) principle.

It should be noted that most Action Plans were issued quite recently. In particular most of the recently acceded Member States created their Action Plans recently. The plans in Estonia and Poland, for example, were issued this year.

The organisational issues at national level will be elaborated upon below, but in relation to the National Action Plans it should be mentioned here that in a number of countries there are now specialised units established in some countries there are even designated prosecutors (e.g., Belgium, the Netherlands, Luxembourg and Spain).

Professor Klip is sceptical about the priority setting that flows from these National Action Plans and the appointment of specialists. In his opinion, prioritising THB for law enforcement and prosecution only makes sense if it is combined with the allocation of the necessary resources and if appointed specialists have a certain expertise and status.

Whereas National Action Plans set out the generic lines, for practitioners other guidelines that work out in detail the opportunity or legality principle might be of much more direct interest.

Instructions to prosecutors are arranged in a layered structure, sometimes with a National Action Plan on top and at the bottom the local agreements between the partners in the law enforcement chain. Examples of this were given by the German police officers, as well as by the Dutch prosecutors. Particularly, locally agreed time frames for investigations may exclude the possibility of making MLA requests.

Unfortunately, because of time constraints it was not possible to inspect any written instructions to prosecutors in this field, which have the most substantial impact on the approach of an individual case by investigators and prosecutors. It did, however, become clear though that these internal policy documents are in the last place determining how a case is approached. Even where on a national level, e.g., in a National Action Plan, THB is set as a priority, the scope of individual investigations is determined by the most local policy.



It is interesting to note, for example, the policy that the special THB prosecutor from the Netherlands described, but which cannot be found in the official policy documents. He stated that the most common strategy in the Netherlands aims at the ‘quick hit’. Besides the obviously involved perpetrators, investigations aim mostly at the facilitators, much more than other parts of the criminal chain. The idea is that facilitators, like passport counterfeiters, can work for more than one organisation but have a crucial role. Below, more will be said on the relationship between this policy of the ‘quick hit’ and the prohibition on controlled deliveries of human beings in the Netherlands and Austria.

Some National Members, e.g., the Irish and the Portuguese National Members, explicitly pointed out that law enforcement has a strict nationally oriented priority list, which does at the very least not stimulate investigators to go down the chain or track down other parties. The Portuguese National Member added, that even though THB might be more horizontally, market-wise structured at the moment, this should not mean that policy is developed only in reaction to the development of crime. The risk is then that policies would only enable international cooperation if networks have already consolidated.

A somewhat different picture in this respect came from Lithuania. Because Lithuania is still largely a country of origin of the victims, the strategy there is to prevent victims from leaving the country. The Lithuanian National Member explained that thereby the policy in THB cases is always one of the ‘quick hit’. Here this strategy is not related to a ban on controlled deliveries, but the investigators are often compelled to act at an early stage. Hence, in-depth investigations into the roots of the case, let alone into foreign connections of the suspects, are rarely possible.

A few years ago, a new type of policy document on a national level arose in several countries, the threat assessment. The development of this instrument is linked to the establishment of centrally organised crime departments. These assessments determine priorities on a regular basis, and influence the decision on which organisational level a case should be investigated (by national or local authorities).

In the UK, the Crown Prosecution Service works on a three-tier system. The classification has more or less the same result as the priority key in the National Action Plan in the Netherlands and is (likewise) the key to a national investigation service, the National Crime Squad (NCS). Thereafter the tier placement also determines the level of international cooperation, since the NCS is specialised in international investigations and has the appropriate time and resources. The distribution of cases between national and local level will be elaborated in Para (v) .

Again, unfortunately, it was not possible to compare the instructions to ‘local’ prosecutors in more detail. Still, there are many indications that there are discouraging elements that prevent a more integrated approach to a case. National Action Plans may offer good solutions, but in the end it will often be the ‘local’ policy that has the biggest influence on the strategic choices, even in cross-border cases.

#### **Para (iv) Negative structure of incentives in relation to international cooperation**

The second reason for a lack of an integrated crime approach is the so-called ‘negative structure of incentives’, as it is effectively labelled by the Danish National Member.

This negative structure has several components. Where time and resources are sparse, a choice for international cooperation is only taken if strictly necessary for resolving the particular case. International cooperation takes time and resources, especially if one thinks about, in addition to just sending MLA requests, the genuine exchange of information and even coordination of activities. In the current situation, cooperation with foreign authorities is either on a more informal level, or takes the form of simple MLA requests; ‘one way traffic’ of information.

In relation to the resources it is surely of relevance that very few of the instruments on international cooperation contain a paragraph on the division of costs. As a result, it can

happen that the costs of international cooperation are carried by the executing authority, whereas the benefit of the cooperation is in another jurisdiction.

Besides the limited time and resources, another thing is mentioned by several interviewees, which can be best described as a complex of negative rewards. The Danish National Member describes the factors that influence the decision to work intensely across borders. From a personal point of view, factors such as promotion chances, salary, positive appraisal and attention from colleagues are strong incentives. International cooperation is according to some not sufficiently rewarded via either one of these incentives. Targets of prosecutors for example may be set in a purely numerical way, which has the side effect that time-consuming acts and delaying cooperation are avoided.

The Lithuanian National Member had a similar experience in that respect in his country, and recalls that international cooperation which has success abroad is not shown in statistics. Neither is it a convincing argument to politicians or the public in discussions over the budget.

The establishment of national prosecution services and OC departments do resolve a part of these problems. See paragraph Para (v) for more on the organisation of prosecution services.

### **1- Cooperation based on personal contacts**

The aforementioned 'negative incentives' contribute to an inherent particularity of working across borders. International cooperation remains largely based upon personal relations with counterparts. Networks like EJM and organisations like Eurojust, Europol and SECI are an attempt to bypass that, but most practitioners interviewed point rightly to the cardinal importance of their 'address book'. Europol mentioned that police officers readily call a colleague abroad for information when he is an acquaintance, but there is a logical obstacle when the person is unknown.

Not surprising is that, for example, German police officers and prosecutors stationed in border regions all have a good cooperation with their counterparts across that border. Three of the interviewed German officers explicitly mentioned that if they dealt with their foreign counterpart before, a second time the contact is made much faster. The so-called 'polizeilichen Nachrichtaustausch' then applies then (exchange of intelligence between police colleagues). The interviews with prosecutors showed this pattern in most countries: cooperation works perfectly as long as it is on an informal level with neighbouring countries.

The practical problem of language determines often with which countries there are strong personal contacts. A Dutch prosecutor from the south of the Netherlands told that he cooperates on a daily basis with his German colleagues, but he did not know his colleagues from the French-speaking part of Belgium.

But especially with illegal immigration crimes like THB, the cross-border aspect less concerns the direct neighbouring jurisdictions and much more countries that are located on a greater physical and psychological distance.

### **2- Cooperation with countries of origin**

In a strong integrated crime approach, connections to transit countries or countries of origin might be detected. To cover the whole criminal chain, cooperation with those countries is likely to be necessary. Where there are already psychological obstacles to cooperate between Member States, cooperation with countries outside the EU is avoided even more.

With the countries of origin east of the EU borders, the experiences differ.

Prosecutors and police in the recently acceded EU Member States have most times good contacts with their counterparts in the Ukraine. In general, cooperation with Romania is well appreciated. Liaison officers at the SECI Centre, the Ukraine and other states are highly appreciated. The Nordic states have good experiences with their shared liaisons, and are moving them now to the Ukraine and Albania. The Italians have good contacts with the Albanian authorities.

However, in general it can be said that cooperation with these countries is avoided, unless there exists a personal contact or the state has a liaison officer who can establish the contact

with a reliable colleague. To a certain degree it seems that this is shivers on the brink, but of course the above-mentioned ‘negative structure of incentives’ applies even more here.

Once contact is established, few anticipated reliability problems are experienced. It should be noted, however, that there are hardly any cases in which cooperation resulted in parallel proceedings in the country of origin. It is also the case that most cooperation takes place on a police level in an informal way, while judicial cooperation seems to remain limited.

Cooperation with the African and Asian states is most times non-existent. There are examples of collaboration with China. The Chinese authorities are said to have increased their attention to THB and human smuggling, since the Snakehead organisations are active in China itself as well. The Dutch authorities experienced effective cooperation in tracing proceeds to China in a Snakehead case.

While there are no reports of effective operational cooperation with Sub-Saharan African states, it must be noted that in some countries a change in attitude might be prospected. Several countries have adopted Action Plans, as well as the ECOWAS (West Africa) for the whole region<sup>28</sup>. In Nigeria, a government body was recently established for the fight against THB. In addition, the European Union is assisting some countries in drafting and implementing these documents. The few police liaisons from Europe, however, are not used for operational issues.

### **3- Unwillingness to cooperate**

Some of the interviewees held an alternative opinion on this ‘negative structure of incentives’, concentrating more on the alleged unwillingness of the police and judicial authorities to cooperate. The opinion was expressed by some that the police services are closely connected to their cases and have the attitude ‘to make the bust themselves’. There is a fear of losing control to another authority. All this is even more obvious in the intelligence phase, before a concrete investigation into specific persons is started. How circumstances are created to stimulate the sharing of intelligence from an early phase will be shown below.

Examples from Spain pointed out that this may lead to unwillingness to cooperate internally, within the national jurisdiction. To take the case to the investigative judge (with more powers in the areas of international cooperation and investigative methods) is postponed as long as possible. Also there were interviewees that pointed to the difference between police and judicial authorities in this respect. Judicial authorities would be more inclined to take into account the bigger picture.

It has to be said that the opinions of the interviewees varied considerably on this point. The situation may differ per country. The Irish National Member was one of the several National Members, together with Europol and some interviewed prosecutors, who said that, generally speaking, the police have a much better functioning, informal network across borders on which they can rely. Still, there seems to be a difference in the sense that formal requests are avoided, as were mentioned several times by police authorities.

An example of unwillingness to share information is provided by the failed JIT on THB. In the case of the JIT, some participating police officers made clear from the beginning that they intended not to put all their cards on the table.

Professor Klip points out that a more narrow focus of police officers might be one of the reasons for the enormous difference in operational caseload between Europol and Eurojust. The ‘clients’ of Eurojust, judicial authorities, would be more inclined to take an international approach in cases.

#### **Para (v) Organisational issues on national level**

Recently in most countries there has been a strong development of OC departments within police and prosecution services. Den Boer concluded in 2001 that there is a strong convergence in the Member States of the organisation of law enforcement<sup>29</sup>. Recent examples are the establishment of the Parquet Federal in Belgium, Slovak plans for reorganising its prosecution service and the scheduled formation of a Serious Organised Crime Agency (SOCA) in the UK.

Besides the OC units, there are in several countries special police units for THB, in some even at prosecutorial level. The questionnaire of the Eurojust THB Team showed the existence of specialised prosecutors in Belgium, Finland, Luxembourg, Spain and Sweden. The Netherlands even have in their National Prosecution Service a prosecutor who is working fulltime on human trafficking and human smuggling. Most other Member States reported that THB falls within the general competence of the organised crime units.

The idea behind this movement is clear: specialists and the allocation of resources to those specialists can give an impulse to broad investigations and know-how in relation to particular THB difficulties. The German and Czech National Members gave examples of the problems that still exist in their countries because of the lack of a national prosecution service for OC. The special assignment to OC or even THB may create better conditions that facilitate an integrated crime approach. It is remarkable, however, that for the moment the countries with specialised prosecutors do not have a significantly higher number of prosecutions for THB.

A negative side effect of the establishment of OC units can be the watershed that is created between organised and non-organised crime. This is especially the case with a type of crime that is organised in a more horizontal way with loose structures, cooperating with others on an ad-hoc basis.

Therefore, the referral mechanism is of importance. In the United Kingdom, for example, the placement of a case in the highest tier causes that the case is to be referred to the National Crime Squad and is thereby also linked to the possibilities of international cooperation. In Sweden, THB can be dealt with by the one of the six international divisions of the regional prosecution offices. But the key to this international division is applied in a broad sense, so that initial cases of gross procuring may be referred as well.

A Dutch police officer of the National Investigations Department stresses that especially with THB it is difficult to correctly estimate the international dimension of a case in the beginning. Especially where investigations are initiated on a reactive basis, the scale of the involved criminal network may easily be underestimated – and therefore not referred to a higher level.

An item that showed up in several interviews was about the problems on a national level with the relations between and the distribution of competences between the police and prosecution authorities. The Spanish National Member points at the competition between Spanish police and examining judges, which make the police only go in a very late phase to the judge for the use of certain coercive investigation measures.

In the Danish system the prosecution authorities are only involved in investigations in special circumstances (e.g. specific costly means of investigation). As a result the international cooperation takes place mainly at police level and not so much at prosecutorial level.

Another example of a distribution of competences that influences the possibility for a 'birds eye view' is described by the Czech National Member. In the Czech Republic there is a national criminal investigation department, with nation-wide competence. But there is no national prosecution service and prosecutors are only competent for their own region. If the national police service wants to exercise coercive measures in more than one region, each respective prosecutor will have to give permission. A similar picture was given on the German situation by the German National Member. Because the decentralization in Länder, it occurs on a regular basis that local prosecutors do not see the bigger picture. The need for investigations into the roots of the crime and international components of a network is hence not often acknowledged.

One amusing reply from a police officer symbolizes nicely the friction between authorities that may exist. In response to the question of what he regarded as the biggest obstacles for successfully combating THB, he simply answered, 'the attitude of the prosecutor'.

Again, the problems at national level, and the solutions invented there, can provide ideas for solutions at a European level.

The German situation provides an example of an information system which bypasses the local focus of prosecutors. In a single digital system called 'Central Prosecutorial Proceedings

Register' (ZStV<sup>\*</sup>) all pending cases of the prosecution in Germany are registered. In this way, authorities learn about cases related to their own case in another jurisdiction and the possibility of coordination between them is created. Since the criminal activities may easily occur in different jurisdictions, this system creates the possibility to target a bigger part of the criminal chain.

Moreover, institutional changes, like the establishment of special units with broad geographic competences, can solve problems with decentralization. In Belgium for example the new Parquet Federal has competence over the whole nation. In Germany a board of prosecutors without any individual powers, may advise in cases of jurisdictional conflicts within the Federal Republic.

More on these solutions and similar initiatives on a European level will follow in Part Three.

### **Para (vi) Novelty of phenomenon for authorities**

Although THB might have been on the European political agenda for some time now, in most countries projects to train the members of the judiciary and prosecution services have started only recently. As described above, some countries issued their first National Action Plans, which often initiated a training scheme as well. As was concluded in Chapter I, new legislation and the training in this respect influence the use of the trafficking provisions. On the European level, an Action Plan is currently being drafted by the Council and the Presidency.

Another aspect of the increased attention to the crime is that most of the special units for THB are of recent date. In the Netherlands there has operated since May 2005 an Experts Centre on THB. Somewhat older is the British Task Force Reflex, which was established in 2000 in response to the Dover case. The task force has already achieved a significant improvement in contacts with countries of origin.

Because of the recent political attention to the crime, the specialised institutions and related instruments are fairly new; many of the mentioned problems will hopefully be resolved in the coming years. Knowledge about the crime and the awareness of the need for intelligence-led strategies will certainly improve.

### **1- Training**

In relation to an integrated crime approach it is of relevance that the amount of training in this field for practitioners has increased enormously. On an international level, the ICMPD, IOM, UNDP and CEPOL are active, while in almost every country training programs have recently started. For example, in Poland 1200 police officers received additional training last year and prosecutors are currently receiving special training.

Interesting to note is the attention that the two elements of an integrated crime approach receive in these courses. The importance of intelligence-led investigations does receive attention in most trainings. In international training methods, international cooperation is a standard topic of the course. But on a national level, however, most of the trainings focus more on the consciousness raising of the police and judiciary of the particular problems that arise in a concrete case.

In the Netherlands, for example, the courses provided by the Judicial Training School do not go into judicial cooperation at all. The conviction in most countries is that the primary aim should be to raise awareness of practitioners on the particular THB-related problems, like the victims.

According to Europol, the effects of large-scale training of practitioners can be seen in the eastern European non-Member States. The IOM in particular has been conducting training there for years, and both intelligence-led investigations and international cooperation are now more frequently used.

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<sup>\*</sup> Das Zentrale Staatsanwaltschaftliche Verfahrensregister, [www.bundeszentralregister.de](http://www.bundeszentralregister.de).

A lighter note in this context is the Lithuanian intention that even a certain portion of the staff of the fire departments must be trained on THB.

### **Para (vii) JITs**

So far, there has been one attempt to set up a Joint Investigation Team on THB under the new Framework Decision<sup>30</sup>. Because all the general problems described above are reflected in the failure of the establishment of the first JIT, attention will be paid briefly to the history of it. In Parts Two and Three concerning Eurojust, there will be a specific focus on the (potential) role of Eurojust in the use of this instrument.

The attempt started by two separate initiatives to form a JIT on human trafficking, one from the Dutch Presidency and the other from the Police Chiefs Task Force. In a later phase, the initiatives were brought together. Both initiatives can be characterised as having a top-down approach.

As with the THB Framework Decision, the Framework Decision on JITs is implemented in rather diverse ways. Some of the participating Member States took the initial stance that no implementation legislation was needed in their jurisdictions. However, this non-implementation appeared to be one of the crucial factors for the failure in the end.

The involved police agencies brought together intelligence on human trafficking from Bulgaria, so that a case could be singled out for further investigation by a JIT. The data provided a general picture of trafficking from Bulgaria. However, no up-to-date intelligence was provided on a regular basis. Therefore, no single case could be selected in which it was clear that a concrete network of criminals was actually operating. The earlier mentioned unwillingness to cooperate was one of the reasons for the lacking transmission of live data.

From an organisational point of view, the heavy structure surrounding the set-up might have had a negative effect. The top-down nature of the initiative has been mentioned as contributing to that unwillingness. It has also been mentioned that the almost 'institutional character' of the attempt made the holders of concrete and actual less inclined to share their sources. However, while the Steering Group consisted of relatively heavy delegations, this was not the case with the Joint Intelligence Group.

A positive point was that cooperation with a country of origin, Bulgaria, was initiated right from the start.

## **Section 2 Integrated case approach**

Where the previous section focused on the ability of investigators and prosecutors to attack the whole criminal chain and generate cases, in this section the focus is on more intrinsic elements within a case. Under the term 'integrated case approach', a variety of problems is understood that are recognised by experts as the most problematic aspects of THB cases. In a good qualitative response, attention is paid to the interests of the victims, possibilities for confiscation and an attempt is made to get a conviction that reflects the seriousness of the committed crime; in the words of the President of the College of Eurojust, a 'whole case approach'<sup>31</sup>.

Specifically, these issues receive a great deal of attention in the ongoing training programmes for practitioners. Again, this part of the report is meant to give an impression of the problems to which Eurojust might become part of the solution. Therefore, the international aspects of the difficulties related to victims, proceeds of crime matters and charges will be elaborated upon in this section.

### **Para (i) Victim issues**

The new 2005 convention on THB of the Council of Europe<sup>32</sup> promotes a so-called 'human rights approach' in THB proceedings. In Articles 11 and 28.1, for example, parties undertake to protect the life of victims. Not only this new convention, which has not been ratified to date,

but also the Framework Decision on Standing of Victims in Criminal Proceedings of 2001<sup>33</sup> promote these human rights in the criminal procedure.

This paragraph goes first into the international aspects of the relocation of victims. It will focus on two of these rights (protection and compensation) and their respective international dimension. The interesting questions, of course, are the prescribed (and actual) role of law enforcement authorities in the protection of these two human rights and how the international dimension affects this role.

### **1- Location**

Although most human rights instruments do not create a right of victims to (temporarily) stay in the country where they are found, this issue is of great relevance for successful prosecution. The problems with expulsion or voluntary departure of possible victims are well-known. As early as 1986, the European Parliament focussed attention on the lack of testimonies because of the expulsion of victims<sup>34</sup>. The arrangements for 'reflection delays', as prescribed by the Framework Decision on this topic, have not yet been implemented everywhere (e.g., Denmark and Poland).

The role of the International Organisation for Migration should be mentioned in this context. It is surprising that victims that depart with the assistance of the IOM cannot be traced. This international organisation arranges the return trip, offers reintegration programs and operates shelters. However, it does not keep a record of the (new) addresses of the assisted victims or assist prosecuting authorities in contacting these victims.

If a victim gives a statement to the police, in some countries this cannot contribute to the evidence unless testimony is given before a judge (e.g. Germany). In some countries this situation is resolved by depository statements before an investigating judge (e.g., Denmark, Italy and Poland) or written testimonies (e.g., Belgium).

Especially when the defence in a trial demands a victim to be heard (again), the deposition statements are of little value. In Germany, Sweden, the Netherlands and the Czech Republic, examples were recorded of judges travelling abroad together with a prosecutor and a defence lawyer, to interview a victim.

Of interest here is the role of the SECI Centre. The German government has paid for the purchase of equipment for video hearings. This has already been successfully used. In individual cases the centre financed the travel of victims to foreign courts.

### **2- Witness/Victim protection**

The Framework Decision on the rights of victims prescribes in Article 8 the right to protection of the victim and, where appropriate, his or her family. In Article 12, the Member States are obliged to 'improve cooperation to facilitate' the rights of the victim.

In most countries the obligation exists for law enforcement authorities to explain to the victim his or her right to protection and assistance. Subsequently, the victim will have to ask for protection. In practice, protection is only provided if the victim cooperates in the criminal proceeding.

From each country, problems were mentioned by the interviewees with the lack of protection for either the victim/witness abroad or his or her family. Problems exist in this respect with countries like China or Nigeria, and problematic cases were also described with threatened victims in Romania and the Baltic states.

The international dimension of witness protection is two-fold. On the one hand, countries may cooperate in individual cases to protect persons; on the other, authorities in an individual state may decide that the safety of the witness is better served in their own jurisdiction.

Genuine international cooperation in the protection of witnesses in THB cases hardly ever occurs; no examples were mentioned. Between the Baltic states, for example, there is an agreement on assistance in the protection of witnesses. However, whereas most of the national witness protection programs are already too expensive, rigid and intense, this

apparently applies even more to international arrangements. The Baltic program has never been used for THB witnesses.

The Lithuanian National Member mentioned that if victims that return from the destination countries where they were found and the Lithuanian police check the story, often they change their statement and there appears to be no need for further investigation or protection. Returned victims readily admit that they exaggerated their statement before the ‘western’ police officers, in the hope that they could stay. Romanian prosecutors had similar experiences.

Nevertheless, the lack of trust in local police and threats are alternative explanations for the change of statements. Rijken noted in her study negative experiences from Dutch prosecutors in this respect. When the victim had returned, the testimony was withdrawn due to pressure from the perpetrators or their associates and distrust of local authorities.

Due to the lack of protection of families in the country of origin, family proves to be an effective means of pressure on the victims by the suspects. German prosecutors mentioned several examples from their practice in which threats to the family had barred the victim from further cooperation. In cases of bonded labour with Chinese victims, threats to family in China by members of the same Snakehead organisation are often mentioned.

Europol does not run international witness protection programs. Eurojust assisted in coordinating witness protection in at least one THB case. The SECI Centre does have a witness protection program and the SEEPAG has a working group on witness protection.

### **3- Compensation**

The Framework Decision on the rights of victims prescribes in Article 9 the right to compensation for victims of criminal offences. The victim must be able to exercise this right in the criminal proceeding, unless the compensation is awarded in another way.

In the context of the departure/expulsion of victims, it is interesting that this right is not limited to victims that are present in the prosecuting Member States. The cooperation obligation for the Member States of Article 12 also applies to this compensation right.

Moreover, the Experts Group was right in pointing to the 1983 Convention on Compensation of Victims of Violent Offences which covers the same issue, but has a broader geographical scope (including, e.g., Albania and Bosnia). This Convention has been ratified by more than half of the Member States of the Union.

In practice, the attention paid to compensation in criminal proceedings for victims present in the prosecuting jurisdiction is already difficult, and by many regarded a ‘paper priority’. The formal tasks of the prosecution service may differ in this respect:

- In some countries, the role of the prosecution is limited to explaining to the victim the possibility to join the criminal trial with a claim (e.g., Lithuania, Netherlands), while in others this claim will be investigated and prepared by the prosecution, if the victim so wishes (e.g., Sweden).
- In Spain, the Code on Criminal Procedure obliges a prosecutor to ask for compensation ex officio (Article 112 PC). According to the Spanish National Member, this is indeed practice, as long as victims are present within the Spanish borders.
- In the common law countries, the victim cannot join the criminal trial with a claim, but in UK the prosecution may demand compensation in the trial.

It appears that where the prosecution services have the possibility or the obligation to seek compensation for victims, this is only done for victims present in the country during the trial. Generally, it seems that prosecution services interpret their respective tasks in relation to compensation as not extending to victims abroad. No indications were found that prosecution services make efforts to find victims abroad, or claim compensation for victims abroad.

#### **Para (ii) Financial investigations**

In 2005 the FATF published a report on financial investigations in THB cases<sup>35</sup>. The report states that illegal immigration and THB together are thought to be among the most lucrative of



world-wide activities. Various manuals and instructions, as well as Europol, point to the possibility to use financial investigations to identify the roots of an organisation and cut down on the profitability of the crime. This two-fold aim of financial investigations is also reflected in the dual nature of evidence: on the one hand, it delivers evidence of the predicate offence (THB) and on the other of the separate money laundering offence. In the third place, financial investigations may sustain a claim for reward of damages by the victim, e.g., for unpaid wages.

Attention to the financial side of OC has increased in recent years. In many countries, Financial Intelligence Units (FIUs) have been set up to foster this type of intelligence work. The Belgian authorities in particular have had positive experiences with their FIU in the detection of THB. Recently, the CARIN Network officially commenced operations. It connects Financial Intelligence Units and is located at Europol.

Although the interviewed practitioners recognise financial investigations as a priority, it appears to be difficult to get these investigations off the ground. The report by the FATF found that money flows exist between the country of origin and the destination country. Relatively little use is made of 'safe' countries for laundering purposes as is the case with other types of OC. However, the conclusion was that international cooperation will often be necessary. This international aspect is one of the particular obstacles in the investigations.

In 30 German cases with Romania as country of origin, only in five cases were profits confiscated<sup>36</sup>. In the Netherlands, financial investigations are started in about 40% of the cases, resulting in 25% separate confiscation procedures<sup>37</sup>.

The Dutch and German prosecutors mention lack of expertise and difficulties in obtaining information from abroad as reasons for the limited number of confiscations. German practitioners mention explicitly the impossibility of obtaining financial information from Russia. Another reason is mentioned in the report of the Dutch National Rapporteur and Czech investigators: the costs outweigh the expected results of financial investigations.

The FATF pointed at the cell-like horizontal level of organisation of crime, in which most of the laundering (and transmission) of the money is done by the suspects themselves. But as stated already: the purpose of financial investigations is broader than targeting profitability. Even where suspected proceeds are relatively small, financial investigations do not lose their value as an indication of trafficking relations between different networks.

When the focus of an investigation is purely on the cell that operates in a certain jurisdiction, the benefits of financial investigations in THB cases will often not measure up to the costs, especially not when a cross-border element is introduced. However, a chance to uncover the relations between the different actors in the trafficking process might then be lost.

### **Para (iii) Charging**

The definition of a good qualitative proceeding in this report includes charges and sentencing in accordance with the seriousness of the crime. In the first chapter on quantitative aspects of prosecutorial activities, it was concluded that there are many alternatives to the specific THB provisions and the interviewed practitioners stated that in practice recourse is often taken to these alternatives.

In the new Communication<sup>38</sup>, the Commission calls upon the states to ensure that charges and convictions reflect the seriousness of the committed offence. The considerable consequences for the length of the sentence and the related deterrence effect were particular reasons for the Commission to urge the Member States to make more use of THB provisions. In addition, the acknowledgement of the crime as THB may affect the geographical scope of the jurisdiction and the right for assistance and residence of the victim.

In the following paragraph the reasons for choosing alternative provisions are clarified.

### 1- **Limited use of specific THB provisions**

There appear to be three principal reasons why prosecutors do not use this specific trafficking legislation.

The first reason is the fact that the legislation is very new. In some countries, the legislation on this topic has been changed very recently and sometimes several times in a short period. Training is underway in many countries to make prosecutors acquainted with this new legislation. Every new piece of legislation requires some time before it is appreciated as a new useful instrument.

In Germany, for example, the offence has moved in 2005 to another chapter and new provisions were introduced on forced labour. But in the last two years alone, criminal legislation on this issue changed substantially in the Netherlands, the UK, Germany, and several countries are to amend their legislations in the coming years (e.g., Poland, the Czech Republic).

In some countries, there are specific reasons why the new trafficking provisions are not yet successful. For example, in Sweden, the provision received such a restrictive interpretation by the courts that the provisions can only be used in cases of minors as victims. THB cases are dealt with as 'gross procuring' primarily. The government is now reviewing the provision.

The second reason consists of more substantive considerations. The interviews reveal that lack of evidence for specific elements of the THB provision make that often is chosen to charge related offence with a lower burden of proof.

The OSCE noticed that the most problematic elements to prove are the transnational character of trafficking and the pressure that was exercised upon the victim<sup>39</sup>. This is illustrated with one of the studied cases from Sweden in which the prosecution did not succeed in proving that the victims were forced to go to Sweden. The Dutch National Rapporteur mentions the problems of proving the force imposed on the victim. In particular, the lack of evidence for forcing a victim into a situation of exploitation means that recourse is taken to illegal employment or prostitution provisions.

In recent reports on the Czech Republic, prosecutors admit that they rarely use the human trafficking provision, and most times take recourse to the procurement provision (204 PC).

Lack of evidence is partially the result of the lack of an integrated crime approach as described in the previous section. Where too few intelligence-led investigations and international cooperation take place, evidence is only delivered on the symptoms of THB: illegal entry, illegal residence and prostitution.

Thirdly, some questions have been raised on undesired side-effects of the Framework Decision. Some academics and practitioners have also expressed concerns that the crime became more difficult to prove. The Meijers Committee\* expressed its concerns in 2002 over the very precise description of the criminal conduct in the new provisions<sup>40</sup>. The Committee warned of a higher burden of prove, where the comprehensive and precise definition in the Framework Decision is used as a criminal provision. The very precise definition of all actions related to the phenomenon and the adoption of circumstances like 'the vulnerable position of the victim' as an element make the THB provisions difficult to handle. As a result, the path chosen is more often to charge related offences.

It is well imaginable that in certain clear cases of forced exploitation, recourse will be taken again to the 'dusty' criminal provisions on slavery and slave trade. In the Netherlands, there is the provision from 1886 on slave trade (274 PC), to which the new instruction on THB for prosecutors will again refer. Thus, cases of genuine physical limitation of self-determination will probably be prosecuted under the 'ancient' slavery article.

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\* The Meijers Committee is the short name for 'The Standing Committee of Experts on International Immigration, Refugee and Criminal Law', an independent international advisory body of experts.

One lighter note: The Irish legislator did not transpose the Framework Decision into specific anti-trafficking provisions, nor are there old statutes on slavery as in the Netherlands. But there is one Order from 1976 which deserves some special attention. The Order regulates the import tariffs of the Dublin harbour, and put in place a 12,15% tax on every imported slave. This creates the impression that the Irish government perhaps wants to combat human trafficking with administrative fines<sup>41</sup>.  
Later it was confirmed that one letter was wrongly scanned on digitalisation of the Order.

## **2- Effects of the THB Framework Decision**

The European Commission is obliged to monitor the implementation of the Framework Decision. Because of limited resources, this exercise is limited to a simple comparison of the implementation legislation with the prescribed minimum requirements. The Commission does not in any way monitor the result of Framework Decisions in practice.

From the statistical survey and explanatory sections above flow a few conclusions on the effects of the Framework Decision in practice.

The Framework Decision obliges the legislator in all Member States to revise and update the legislation on the issue. In most states, this means that completely new legislation was or is being introduced. This legislative activity certainly contributed to the renewed attention to the phenomenon amongst practitioners.

The Framework Decision also took away problems with double criminality. Only with respect to specific occurrences of THB, labour exploitation, organ trade and the involvement of legal entities may questions arise as to double criminality.

A negative effect has been that the newly introduced criminal provisions often follow legislative technique of the Framework Decision. The new national penal provisions are phrased in a long and complicated way, making the provisions unnecessarily difficult to apply.

## **Section 3 Political will**

The qualitative analysis of the response of prosecution services offers some explanation for the indicated lack of prosecution of THB throughout the EU.

The lack of intelligence-led strategies and international cooperation result in a symptomatic approach of the crime of THB. Apart from the legal impediments, the reasons for this lie mostly in the fact that in the end local policies and the national interest place restrictions upon investigations and generate negative incentives to cooperate. As a result, investigations take place in isolation in the respective jurisdictions, charges are down-scaled and the interests of victims are not fully served.

Positive developments are the reorganisation of national authorities into OC units and ongoing training programs which increase awareness on particular aspects of THB cases and how they should be investigated. But especially with a horizontally organised crime like THB, changes at the national level are no guarantee that THB will be combated better structurally on a more regional level.

Whereas THB has been prioritised in most of the Member States at a national level, it appears that Action Plans have little or no effect if these are not transposed to the instruments that ultimately determine the available capacity and resources in concrete cases. The establishment of OC units results in no positive effect if the threshold appears to be too high for THB cases. Training of officials is useless if special investigation techniques and international cooperation cannot be deployed because the local priority list does not allow more than three months to be spent on a case. The creation of a legal framework to cooperate internationally does not contribute to an integrated approach to crime if a negative structure of incentives pushes for quick results to be shown in statistics.

At the European political level, the Member States can create a legal framework for cooperation. The Member States may also agree on common policies and priorities. However, the distribution of resources and the organisation of the involved authorities remain strict national competences.

Within the Union, the different financial programs in the criminal law area (Daphne for THB) only indirectly influence the primary actors, for instance via trainings.

The Experts Group advised the European Commission to create financial incentives for international cooperation in operational cases, for example through a European budget line. The Commission responded to this advice in the Communication by a call for 'appropriate allocation of resources'.

The role of the EU in the eastern non-Member States is interesting. Some of the interviewed experts hold the opinion that regional policies work much better in those countries. Over there, the EU has the combined power to influence both policy and the distribution of resources, hence the effects of policies in those regions is much greater. Best examples of this are the police missions to Bosnia and the Former Yugoslav Republic of Macedonia (FYROM), where the agreed anti-trafficking policies are combined with monitoring in the field and financial assistance. Within the Union itself, monitoring of implementation of the Action Plans and Framework Decisions is either non-existent or limited to a pure formal exercise.

The fact that the IOM training programs now focus on the practitioners within the Union, in addition to the countries of origin, is noteworthy in this respect.

In the neighbourhood policy of the Union, human trafficking appears often on the agenda. In the dialogues with the Western Balkans, Moldova, the Ukraine, Russia and the African Union, the subject is regularly on the agenda, and support is given on a policy level (drafting of Action Plans) as well as through the financing of capacity-building programs<sup>42</sup>.

All interviewed practitioners and experts agree that the legal possibilities are not the biggest bottleneck for cooperation; the general ability of national authorities to take an integrated crime approach is confirmed also by the positive results in a few concrete cases like Operation Sunflower and several cases at Eurojust. However, in general, the national border remains a high threshold.

It seems that the enhancement of judicial cooperation, the flexible information exchange between local authorities and the full use of the European institutions, as was repeatedly agreed upon since the 1997 Hague Ministerial Declaration and Joint Action on THB, has not yet reached the operational level. Realising a genuine integrated approach of crime and case requires that priorities on European and national level are followed by according priorities and appropriate (financial) incentives at the bottom of the organisation.

# PART TWO

## Use of Eurojust

In Part Two the current role of Eurojust in the fight against THB is assessed. To clarify the objective of the organisation, first its mission and competence will be briefly set out. Then some statistics on activities at Eurojust in relation to THB will follow ('Quantitative features') with comments on the amount of cases that are dealt with via Eurojust. Under the heading of 'Quality of Eurojust's cases', the possible effects of Eurojust involvement on an integrated crime and case approach will be assessed.

## **Chapter III – Mission and Competence of Eurojust**

### **Section 1 In general**

The objective of Eurojust is to stimulate and improve coordination of investigations and prosecutions, on the basis of a request of a competent authority. In addition, Eurojust's objective is to improve cooperation between the competent authorities and support their investigations and prosecutions in other ways. Eurojust itself often uses the words 'judicial cooperation unit' to describe its role. Below it will be discussed whether this interpretation of its objective is too limited.

The objectives of Eurojust, laid down in Article 3.1, apply in the first place to cooperation between EU Member States. However, paragraph 2 broadens the geographical scope in individual cases at the request of a Member State.

The crime of human trafficking is within the general competence of Eurojust on the basis of Article 4, where there are indications that an organised criminal structure is involved and two or more states are affected. Interesting is that the Annex of the Europol Convention, which directly influences the competence of Eurojust, has its own definition of 'traffic in human beings', as was also noticed by the Experts Group<sup>43</sup>.

"traffic in human beings" means subjection of a person to the real and illegal sway of other persons by using violence or menaces or by abuse of authority or intrigue with a view to the exploitation of prostitution, forms of sexual exploitation and assault of minors or trade in abandoned children;

This has as a consequence that Eurojust's own competence under Article 4.1(a) does not cover the whole THB area, as is defined in the Framework Decision. The Experts Group already called for a change of this provision to make it conform with the definition of the Framework Decision. Until that moment, competence for labour exploitation and organ trade is provided by Article 4.2, which creates ad-hoc competence for any crime if a Member State requests assistance.

### **Section 2 Special tasks conferred upon Eurojust**

#### **Para (i) In relation to THB**

Since Eurojust is one of the new instruments offered to Member States to 'reinforce' the fight against organised crime, it is not surprising that it is mentioned in numerous instruments on organised crime in general.

Specifically in relation to THB, Eurojust is mentioned in policy documents several times. The Council called in June 2002 on Eurojust to focus more actively on illegal immigration<sup>44</sup>. In addition the Economic and Social Committee called for re-enforcing the role of Eurojust in the field of illegal immigration in the same year<sup>45</sup>.

The thorough report of the Experts Group, mentions Eurojust only twice, simply concluding that THB is within Eurojust's competence. Their report does press for increased cooperation through the European institutions. In reaction to the report of the Experts Group, the 2005 Communication of the Commission only calls upon the Member States to cooperate more actively through the European institutions on an operational level. The Action Plan of the Council, which is currently being drafted, may contain more detailed action points on Eurojust involvement

In the Eurojust Annual Report of 2002, Eurojust itself takes over the suggested prioritising of THB<sup>46</sup>, and concludes that it should push for more cases. Apparently, THB is still a priority in 2005, as it was mentioned as one of the 'key cross-border criminal conducts' that have the focus<sup>47</sup>.

### **Para (ii) In relation to cooperation with countries of origin**

In Part One of this report reference was made to the difficulties in cooperation with non-EU Member States in THB investigations and prosecutions. It is relevant therefore to have a clear picture of the general competence and objective of Eurojust in this field.

The Eurojust Decision arranges for cooperation with non-EU Member States in Article 3.2, referring to the conditions which are laid down in Article 27. On the basis of agreements with non-EU Member States, exchange of personal information and secondment of liaison magistrates to Eurojust may take place. The condition is an adequate level of data protection, preferably by way of being party to the 1981 Convention. In case of emergency, the National Members may exchange information acting in their respective national capacity.

A few examples from the European Neighbourhood Policy are useful to mention here, to give an impression of what the Council expects or at least promotes in relation to Eurojust activity in this field<sup>48</sup>:

- The JHA Ministers met in 2003 with their counterparts from the Balkan states and concluded that law enforcement and judicial cooperation should be improved within and with the region. Eurojust was called upon to consider 'gradual development' of its cooperation with the region. In a broader perspective, the strengthening of operational capacity of the authorities was promoted, so as to improve operational cooperation with the European institutions.
- Cooperation with Eurojust is also promoted in relation to the Common Strategy on the Ukraine. In 2003, the Greek Presidency proposed to 'launch' the cooperation between the Ukraine and Eurojust.
- In 2003, in the EU/Moldova Action Plan, it is said that the possibilities for cooperation with Eurojust 'should be explored'.
- Again in 2003, in response to a speech by the President of the College of Eurojust, the JHA ministers of the states that participate in the South East European Cooperation Process (part of the Stability Pact) called for enhancement of the cooperation from the region with Eurojust by nominating contact points.

It is noteworthy that every time reference is made to Eurojust in these documents, in the same document THB is mentioned as one of the issues that should be emphasised in the cooperation with these countries.

A special case is the cooperation with the countries that are to accede the Union. The negotiations with the accession States Romania and Bulgaria also cover the integration in the field of Justice and Home Affairs. In anticipation to the accession, Romania has recently signed an agreement with Eurojust on the secondment of a magistrate to Eurojust.

## Chapter IV – Quantitative features of Eurojust’s caseload

### Section 1 Case statistics

The overview of Eurojust activity in this chapter is mainly based upon the information contained in the Case Management System (CMS). Unfortunately, this information is not always updated, correct and complete. It is, for example, not possible at the moment to see in the CMS the number of coordination meetings, since the field is not regularly filled out.

With regards to the figures it should also be mentioned that the different desks have sometimes different policies on the registration of cases. The Danish National Member points at the over-representation of Denmark in 2003 as initiator of cases, whereas the cases were often brought to Eurojust by a different state.

NB: the figures for 2005 cover only the cases which were registered until the end of August. The phrase ‘participating countries’ includes the initiating Member State as well. Unless specified, the figures cover both human trafficking (THB) and human smuggling (SHB). This is because it was noted that several cases registered as SHB, were in fact THB.

#### Para (i) Percentage of total caseload

Human trafficking remained over the years only a small percentage of Eurojust’s caseload, steadily just below 5 percent. It is impossible to say whether this is ‘enough’. But in light of 5000 prosecutions annually in the Member States (Part One, Chapter I – Section 1), an even bigger number of investigations annually, the cross-border nature of the crime and the earlier mentioned opinion of the Council, it seems a relatively small percentage.

	Total caseload #	THB		SHB		Total of THB-related crimes	
		#	%	#	%	#	%
2005	320	13	4.1	3	0.9	16	5.0
2004	381	19	5.0	10	2.6	25	6.6
2003	303	12	4.0	1	0.3	14	4.6
2002	202	8	4.0	3	1.5	11	5.4
2001	192	8	4.2	2	1.0	11	5.7
Average	1398	60	4.3	19	1.4	77	5.5

\* Five cases were registered as concerning both THB and SHB; the total number of ‘THB-related crimes’ consists of THB, SHB and related offences like trafficking in stolen passports and money laundering (where related to THB).

#### Para (ii) Which states do what

Most of the cases are initiated by the larger European Member States, especially the UK, France and Italy. Germany did participate in the highest number of cases, but delivered few cases (5). The same applies to Spain, which initiated only 3 cases, but participated in 17.

The Baltic States are relatively active in this field (participated together in 14 cases since May), especially compared to the other recently acceded Member States.



Remarkable are Latvia and Portugal. The four Latvian cases are not interrelated, but separate cases, all initiated at the beginning of 2005. The relatively high number of Portuguese cases can partially be explained by the three cases related to the UEFA Football Championship and the World Expo. These events triggered investigations into forced labour from Eastern Europe, and Eurojust was used to detect similar investigations in other Member States,

Remarkably few cases are delivered by the two states with high numbers of THB prosecutions: Austria and the Netherlands.

2001-2005	AT	BE	CY	CZ	DK	EE	FI	FR	GE	EL	HU	IE	IT	LV	LT	LU	MT	NL	PL	PT	SK	SL	ES	SE	UK	BU	RO	Tot
Participation in cases	7	13	1	1	6	2	1	26	26	12	2	3	27	5	7	2	-	14	4	10	-	1	17	3	24	5	4	223
Cases initiated	1	2	-	1	3	-	-	13	5	1	1	1	12	4	1	1	-	3	1	7	-	-	3	2	15			77

With regard to cooperation with states outside the Union, in 18 of the 77 cases cooperation was sought with non-Member States, 8 times in coordination cases. Especially with Bulgaria (5), Romania (4) and Turkey (4), cases were done, but also with Moldova and the Ukraine. The few cases with the latter two concerned mostly MLA facilitation, while with former countries investigations were coordinated also.

**Para (iii) Pivot table of participation**

In the following table, the cooperation between regions is displayed. This division by region is chosen to protect details on ongoing cases at Eurojust, especially for countries where the number of cases is already small.

At first sight, there seems to be relatively little cooperation with the eastern and northern part of the Union, but this is easily explained by the fact that the figures cover the caseload since 2001, while most of these states only acceded in May 2005. However, cooperation with non-EU Member States is possible. In 17 cases, mostly multilateral, there was cooperation with the countries across the eastern border of Union. In four cases of these cases, a non-Member State also participated in coordination meetings.

	E	S	W	N	Tot%
E	5	34	48	13	100
S	12	42	32	14	100
W	10	39	35	16	100
N	11	30	21	38	100
Tot%	7	41	40	12	100

In this table, the cooperation between regions is divided per country:

	E							S							W							N							
	SL	PL	SK	CZ	HU	RO	BU	MT	CY	EL	IT	ES	PT	FR	LU	BE	UK	IE	NL	GE	AT	DK	SE	NO	EE	LV	LT	FI	
E	13	8				9				10	11	12	13	15	10	7	13	11	11	21	13	19	15			12	20		E
S	33	46			40	52	36			40	41	44	50	37	50	35	38	38	33	46	37	29	33	31	30	22	28	33	S
W	20	25		100	60	17	64			30	34	32	24	40		42	34	38	44	42	42	25	22	19	15	22	28	20	W
N	33	21				22				20	14	12	13	8	50	12	21	13	11	2		33	44	31	40	56	32	27	N
	100	100	-	100	100	100	100	-	-	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	
	7							41							40							12							

**Para (iv) Services provided by Eurojust**

Both the percentage of cases in which Eurojust provided coordination support and the number of coordination meetings ('Level III meetings') increased over time. Compared to the general caseload of Eurojust, it seems that in THB cases frequent use was made of coordination meetings.

Not specified in the following table are the cases linked to activities by Europol. So far, there have been four cases directly linked to Europol. One was linked to the Italian Operation 'Sunflower' in which Europol assisted and the three others were based upon AWFs. One of these three was linked to the failed establishment of a JIT.

	THB / SHB cases		Activities unknown		Coordination		Level III meetings		Overall at Eurojust		Facilitation		Extradition facilitation		Information exchange	
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
2005	17	1	9	50	5	31	-	10	63	0	0	0	0	0	0	0
2004	25	8	8	47	6	35	13	14	82	3	18	2	12	2	12	12
2003	14	2	3	25	3	25	9	12	100	1	8	1	8	1	8	8
2002	11	1	3	30	1	10	13	7	70	1	10	1	10	1	10	10
2001	11	1	6	60	1	10	-	4	40	2	20	0	0	0	0	0
	78	13	29	43	16	25	-	47	72	7	11	4	6	4	6	6

\* For eight cases in 2004 the activities of Eurojust were not examined. The cases in which the activities by Eurojust are not known are not included in the statistics.

**Para (v) Multilaterism**

The European Council concluded in 2004 that Eurojust should concentrate on multilateral cases, cases in which more than two countries participate. The College of Eurojust adopted this in its objectives for 2004 and 2005.

Although the average number of participants dropped in 2005, the THB cases dealt with at Eurojust are significantly more often of a multilateral nature than with other types of crime. Of the multilateral cases, France (24%) and Italy (21%) initiated the majority, followed by the UK and Portugal (both with 8%).

However, the percentage of multilateral cases in 2005 approximates the overall Eurojust figure.

In facilitation cases an average of 2.9 countries participated, for the coordination cases, this number is slightly higher: 3.4 countries.

Year	Average # participating countries	Participating # countries	Cases #	Bi-/ Multilateral %	Eurojust caseload overall (2004) %
2005*	2.7	2	43	56	73
2004	3.0	3	14	18	12
2003	3.1	4	6	26	15
2002	3.2	5	9		
2001	2.9	6	2		
		7	1		
		8	1		
		17	1		

\*Case 314 of 2004 is not included in these tables (17 participating countries).

**Para (vi) In sum**

Although the number of THB cases dealt with via Eurojust remains very limited, the level of cooperation in THB cases via Eurojust is more intense than with other types of crime. The percentages of multilateral cases, coordination meetings and coordination cases are all substantially higher than the average.

However, in connection with thousand prosecutions in 2004, only in 25 instances have authorities called upon Eurojust for assistance, and in barely over a handful of cases have authorities sat together to coordinate their actions (under Article 3.1(a) of the Decision). Even with respect to THB, Eurojust acts mostly as problem-solver while the coordination function is less often used.

Cooperation via Eurojust with countries outside the Union happens sporadically, whereas cases with Bulgaria show the potential for cooperation with non-Member States. There have been no cases in particular to date in which Eurojust provided support for cooperation with a country outside the European continent.

**Section 2 Limited use of Eurojust for coordination purposes**

In this section, the reasons for the limited use of Eurojust as a platform to coordinate cases are assessed. Here, the focus will be on the reasons for the small number of cases of this kind that are referred to Eurojust. In the next chapter, qualitative features of the cases that were delivered will be assessed.

**Para (i) Current generation of cases**

This paragraph describes briefly where the Eurojust cases have their roots.

The operational tasks of Eurojust can be summarised as problem-solving on the one hand and coordinating on the other. There have been 49 THB cases in which Eurojust mainly functioned as problem-solver in the execution of MLA requests or extraditions. Here, the focus will be on the coordination cases, because it is both the most innovative task and the problems with regards to cooperation are most obvious in that area.

The phrase ‘generation of a case’ is used here for the moment that a decision is taken to start concrete investigations in an individual case against a certain OC group, in this context most times based on intelligence. The word ‘referral’ is used for the movement of a case to another organisation. This can be from local to national level or from national to European level. ‘A

case on a European level’ means that investigations in multiple countries are somehow coordinated, potentially by combining investigations in a JIT.

**1- Generation at national level, bottom-up referral**

Currently, virtually all cases in which Eurojust is involved are generated on a national level. Only two cases were clearly generated on the European level. Regardless of the phase in which Eurojust gets involved, most times the investigation started off on the national level based on intelligence or a complaint.

Criminal intelligence is gathered on a national level, as are decisions to investigate; and national authorities make the decision whether or not to cooperate.

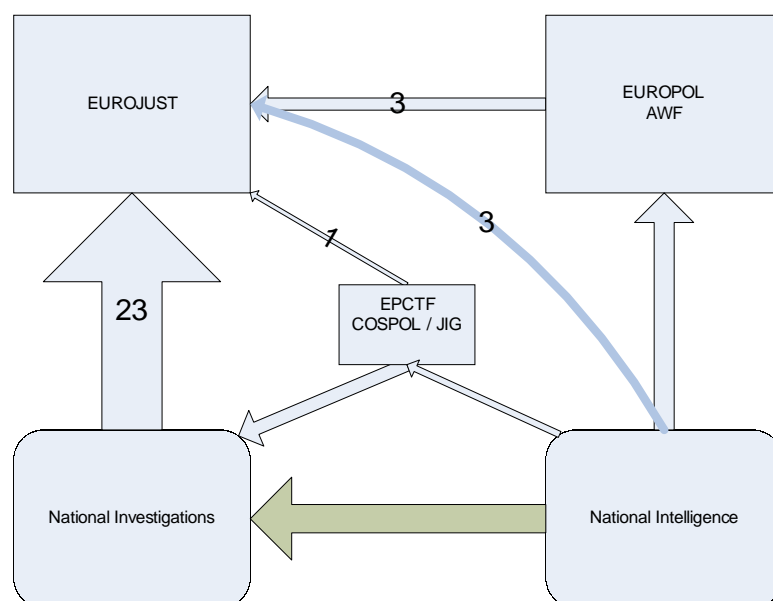
The European institutions do not collect criminal intelligence unless there is a specific request from a Member State. This is one of the intergovernmental characteristics of the Third Pillar instruments. Coordinated investigations on a European level almost exclusively start on the initiative of national authorities.

If a case is referred to Eurojust for coordination purposes, most often in one or more Member States investigations are already well underway. Until the moment of referral, the national interest determines the scope of the investigation, and the referral is most often based on a problem that cannot be solved by the investigating authorities.

Clearly, the national authorities are the holders of the intelligence or information and they decide whether or not a coordinated investigation in cooperation with other countries is undertaken. In Part One, the difficulties for national authorities were described as not having a ‘bird’s eye view’ and dealing with THB in accordance with its international character, if necessary. As a result, the number of coordination cases at Eurojust, generated via the bottom-up referral remains limited.

Of the 29 THB cases in which Eurojust provided coordination, 23 cases originated from an investigation on the national level. The majority of cases are therefore based on bottom-up generation. Whereas a coordination meeting is not the only instrument to coordinate investigations, it is the most particular and intense instrument which best enables national authorities to genuinely coordinate their actions. In 29 coordination cases, this instrument was used 16 times.

Both the generation of a case from intelligence or coordinated investigations at a later stage may result in the establishment of a JIT, but this is not necessary. A JIT is in this context nothing more than one of the more intense forms of coordinated investigations.



## 2- Existing alternatives to bottom-up referral

There exist a few alternative methods of generation of a case on the European level. Of the 29 coordination cases related to THB, six can be regarded as having been generated on the European level.

- Whereas the Eurojust Decision speaks primarily of assistance in investigations and prosecutions, it also provides the basis for involvement by Eurojust in the generation of cases on the basis of Europol's AWFs. Two cases were generated from AWFs at Europol.
- One case was initiated by the Police Chiefs Task Force/Netherlands Presidency to start a JIT into women trafficking from Bulgaria.
- In 3 Portuguese cases, Eurojust was used to disseminate intelligence, and initiate (unsuccessful) investigations in other states.
- Another opportunity is if Eurojust uses its powers to broaden the geographical scope of an investigation, and initiate parallel investigations in other states. However, it could not be established that in any case the powers for such an action (under Articles 6 and 7 of the Decision) have been used.

The primary instrument for the generation of a case on the European level is the AWF at Europol, in which intelligence on a specific topic can be brought together by Member States. In the AWF, cross-references may be detected between the data from different states; subsequently, coordinated investigation(s) can be initiated.

In contrast, where there is cooperation in an early phase of proceedings, and where intelligence is brought together and analysed on a European level at an early stage, there is an opportunity to initiate a case directly from the start with an international perspective.

The generated investigation on a European level may lead to the establishment of a JIT. So, with the current bottom-up generation of cases on the European level, JITs are most likely established at Europol or Eurojust, where intelligence or information is connected.

However, the first attempt to establish a JIT (on THB) was a top-down initiative by the Chiefs of Police Task Force and the Dutch EU Presidency. The failure of the attempt shows that any top-down initiative is still vulnerable for described flaws and difficulties at local level, including unwillingness to share intelligence and the negative incentive structure.

Before the JIT was established, both a Joint Intelligence Group and an AWF were established to select a specific case to be investigated by the JIT. Therefore, start-up of the first JIT, which targeted THB, depended on intelligence that had to be provided by the participating Member States to the Joint Intelligence Group or the AWF for analysis. Therefore, the flow of intelligence could be characterised as bottom-up.

The successful second attempt was based upon a bottom-up approach, in which the involved police authorities initiated the JIT themselves.

Whereas the generation of an investigation would take place on a European level, such a generation could not take place without the intelligence provided by the Member States.

Coordinated investigations may take the form of a JIT in which several national authorities cooperate. The failure of the establishment of the first JIT showed that the JIT depends on the generation of a case from shared intelligence. Where no actual up-to-date intelligence is shared by the Member States through an AWF or otherwise, investigations are not generated on a European level.

In the context of generation of cases on a European level, the instrument of the JITs must be mentioned as well. A successful JIT leads to proper coordination in the investigation phase and later during the prosecution. A JIT can be generated on a European level where the necessary intelligence or information is linked.

## Para (ii) Reasons for lack of cases

The instrument of the AWF is rarely used. Only two AWFs related to THB are currently opened. At Eurojust, the number of coordination cases is considerably higher (eight in the first half of 2005) and growing, but still not very large compared to the total number of prosecutions and the international character of the crime. In the following paragraph the reasons for this lack of cases will be set out.

### 1- *Obstacles on the national level*

In Part One, the structural problems of national authorities were described in taking an integrated approach to THB. Where no attempt is made to combat the roots of the crime in another jurisdiction, there is no need to use Eurojust for coordination purposes. Where no attempts are made to sustain the case with testimonies from foreign witnesses or trace criminal proceeds abroad, there will not arise a need for assistance from Eurojust with MLA requests.

One of the most progressive cases at Eurojust is an ongoing case from France. In this case, an investigative judge decided to take the initiative to involve Europol and Eurojust in the case, even though a direct, short-term interest for his jurisdiction was not obviously present. The early stage of referral offers possibilities to uncover the links to other jurisdictions. While this case will hopefully show all the benefits of an international approach of the case, it remains somewhat awkward that such a referral depends on 'courage' (in the words of the French Deputy) of the investigating authority.

A few of the indicated reasons for problems described in Part One demand additional comment in the specific context of Eurojust.

Firstly, it has been noted that other than the general limitations set to investigations by policies, no specific formal obstacles were found. Other than is the case with the establishment of JITs, which is surrounded by relatively heavy procedures in some countries, there seem to be no special thresholds to bring a case to the respective National Member.

Secondly, as regards the negative structure of incentives, one factor that was included, was that international cooperation is mainly based on personal relations. At Eurojust, this has a very positive dimension in relation to the Member States that seconded senior members of their judiciary to The Hague. The large network of these National Members assures that Eurojust is well-rooted in the national systems. However, where the National Members lack such a network, national authorities might be less inclined to refer cases to Eurojust.

The described negative structure of incentives has a particular effect on the willingness to transfer cases to another jurisdiction. On the one hand, there may be pressure to achieve a certain number of convictions or within a certain time frame, and an attitude to see concrete results of the investigative efforts in the own jurisdiction. On the other hand, an already heavy pressure of pending cases leads to little enthusiasm to take over a case from another jurisdiction or start (additional) investigations. As a result, few cases are transferred to other jurisdictions, and the 1972 Convention on this topic is not often used. The chance that a case is simply closed or charges are downscaled on the basis of lack of gathered evidence or lack of interest for the respective jurisdiction is several times bigger than that a case may be transferred to a jurisdiction with a higher chance of success.

Eurojust has a specific task in the proper distribution of cases. Authorities may ask Eurojust for advice when a jurisdictional conflict arises, but the task of the organisation goes beyond instances of conflict.

In 2003, a Strategic Meeting was held on this topic and a document was produced with guidelines for deciding which jurisdiction is in the best position to prosecute<sup>49</sup>. For THB, this is of special relevance, since the document mentions almost every specific THB problem as the deciding factor on where to prosecute: 'evidential problems', 'attendance of witnesses', 'protection of witnesses', 'interests of victims' and 'proceeds of crime'.

However, the interest in transfer of cases remains low and little use is made of Eurojust as intermediary for a proper distribution of cases. The interviewed practitioners vaguely recalled

the document, but explained that whereas the factors ‘live in their minds’ they hardly play any role in practice.

Of course, it is the case with THB that a transfer of proceedings to certain countries of origin will serve neither the interests of the victim nor the quality of proceedings.

Lastly, the described problems of an organisational nature on the national level have an impact on the referral of cases to Eurojust. Eurojust presents itself as the *judicial* cooperation unit; whether this title covers the objectives effectively will be discussed below. In any case, currently all the Member States are represented by a prosecutor. In light of the previously described friction that exists between police and prosecutorial authorities on a national level, this can have a negative impact on the referred cases.

The National Members of Spain, Denmark and Portugal described how in their Member States police authorities are operating relatively independent from the prosecution service. While the Eurojust Decision explicitly refers to involvement in investigations and leaves open the possibility that a Member State is represented by a police officer, the prosecutorial character may result in police authorities that are less inclined to refer cases. This risk is even greater when police authorities are more independent from the prosecution service.

## **2- Obstacles on a European level**

As the generation of cases on a European level is still in an early phase, it is not possible yet to elaborate in depth on obstacles for this type of generation. However, a few matters can be noted in this respect.

As stated earlier in this report, Eurojust promotes itself as the judicial cooperation unit of the European Union. In the agreement with Europol it is said that Eurojust will promote coordination between judicial authorities<sup>50</sup>. However, the Eurojust Decision sets a much wider objective by speaking of the stimulating coordination of investigations and prosecutions between ‘the competent authorities’.

This might be one of the reasons why the coordination task remains limited to date and very few cases are referred in an early stage to Eurojust. Where the promotion focuses solely on the supportive role in the execution of MLA requests, it is a logical consequence that most cases reach Eurojust only in a later phase of proceedings.

In the coordination meetings that covered the investigation phase, police officers of the participating Member States were involved.

The generation of cases on a European level takes place at:

- Europol, when coordinated investigations are undertaken on the basis of the AWFs initiated by Member States or Eurojust. However, for several reasons the number of AWFs remains very limited.
- EPCTF, when coordinated investigations are undertaken on the basis of COSPOL and Action Plans, possibly with the help of an AWF. The COSPOL and respective Action Plans came only recently into existence.
- Eurojust, when the geographical scope of a case is broadened and new investigations are started in other countries on the basis of cases referred by Member States. In the studied cases, this was never done. Some National Members expressed that this oversteps the supportive role of the organization, and it would be premature for such an attitude.
- Eurojust, when National Members make a request *ex officio* on the basis of information provided by national authorities, other EU bodies, third parties or other sources. The relations with third states and parties are in the stage of development.

## **3- Novelty of the instrument Eurojust**

As was concluded in the newly introduced THB legislation in several Member States, the instrument Eurojust is also new. It will take time before all stakeholders are fully acquainted with its function and discover the benefits of the organisation. Two of the interviewed prosecutors indicated that the step to go to Eurojust is still too big.

The National Members invest a great deal of time in getting out the word and marketing Eurojust.

As with the new THB-laws, it remains therefore to be seen how the organisation positions itself.

### **Training**

In Part One, the amount of ongoing trainings for practitioners was already mentioned. Eurojust receives some attention in most trainings given by international organisations.

The general 'Anti-Trafficking Training Manual' of the ICMPD is the most comprehensive on the potential role that Eurojust plays in THB proceedings. The MARE guidelines of the EPCTF treat the role of Eurojust quite extensively and advise engagement with Eurojust in an early stage of investigations. In the recently started training project by the IOM the practitioners will be pointed at potential benefits from cooperation through Eurojust.

In the start-up phase of the ICMPD project, input on Eurojust was provided by the German Deputy at Eurojust. The Polish National Member contributed to the IOM project.

For THB trainings on the national level, the same conclusion follows as in Part One: while most trainings (e.g., in Poland and the Netherlands) merely aim at raising awareness and intelligence-led investigations, little attention is paid to international cooperation, let alone the potential benefits of cooperation through Eurojust. The Lithuanian THB training program, however, plans to make authorities aware of the European law enforcement organisations, Europol and Eurojust.

### **4- Horizontally organised crime**

As was mentioned before, the level of organisation of THB varies between highly complex international OC groups, small OC groups that might work together on an ad-hoc basis and individuals. In Part One it was demonstrated that THB is mainly committed by relatively small OC groups. Exact figures on the average number of suspects in Eurojust cases are not available. However, from the studied cases it appears that in the Eurojust caseload, all types of OC groups are represented, while most coordination cases concern larger numbers of suspects.

Some interviewed experts raised the question of whether if smaller groups cannot effectively be dealt with via EJM or bilaterally. Whereas Eurojust announced in its Annual Report 2003 its intention to focus on multilateral cases, recent experiences show that coordination by Eurojust can have a considerable added value in bilateral cases as well. The Portuguese National Member stresses that where crime is less densely organised, the need for attention to cross-border elements is not diminished. In addition, THB investigations on a more limited scale may take place in a international dimension in terms of location of witnesses, proceeds, multiple loci delicti and ad-hoc cooperation with other traffickers.

The recently arrived National Members interviewed mentioned moreover that successfully handling smaller cases has a marketing function for Eurojust in their countries.



## **Chapter V – Qualitative features of Eurojust’s cases**

This chapter will provide an assessment of how Eurojust fulfils its objectives in individual cases.

In Part One, the problems in relation to an integrated crime/case approach were described, with an accent on the international side of these problems. In this chapter, the current solutions offered by Eurojust are assessed. This will be done by matching the problem and objectives of Eurojust in relation to the existing problem, and subsequently to see whether the objective is achieved on the basis of the interviews and file inspection.

As stated before, since the total number of THB cases at Eurojust was limited, as were the possibilities to inspect closed files, this chapter can only provide suggestions for improvement.

### **Section 1 Integrated crime approach**

#### **Para (i) Special investigative techniques**

In relation to THB there is often a call to improve intelligence-led investigations and the use of special investigation techniques. Eurojust has the objective to stimulate and improve coordination and cooperation in investigations. Eurojust has provided coordination support for controlled deliveries in a growing number of transnational drugs cases. The German police, for instance, describe very positive experiences with Eurojust, whereas earlier attempts for controlled deliveries in their case failed<sup>51</sup>.

However, there are no examples known of Eurojust’s support for controlled deliveries of human beings. A questionnaire amongst the National Members in 2004 provided an overview of legal possibilities for controlled deliveries in the Member States (see p30 for results).

#### **Para (ii) Restrictive prosecution policies**

As stated above, Eurojust functions on the one hand as problem-solver and on the other as coordinator in investigations and prosecutions. The very referral of a case for coordination purposes to Eurojust is in itself an indication that authorities are willing and have the capacity to take the cross-border element into account. The majority of coordination cases involved European destination and source states of trafficking, sometimes along with transit states.

However, where this is not the situation (primarily in facilitation cases), Eurojust may stimulate authorities to approach the case from an international perspective, and in coordination cases Eurojust can actively promote the involvement of transit or source countries.

The UK-Lithuania cases showed the development of cooperation to a more and more intense level. More cross-references were found, more suspects were apprehended and prosecutions took place in the jurisdiction that was in the best position to do so. The Eurojust and the use of the European Arrest Warrant were crucial for these more intense forms of cooperation.

Eurojust has the operational objectives and tasks that are capable of bypassing the restrictions that flow from (local) policies. In practice, it appears that Article 7(a)(i) and (ii) has not yet been utilised, either within or outside the context the THB context. None of the interviewed National Members used Article 6(a)(i) and (ii) formally. The Danish, Czech and Swedish National Members noted that the Article is only used informally, mostly as a threat or option of last resort.

Eurojust has the general objective to improve cooperation. The general objective to improve cooperation has been developed in the Annual Report of 2004, with amongst others the objective to become proactive in influencing EU criminal justice policymakers. In the new organisational structure, there is one team dedicated to this task. The Finnish National Member has a position in both the THB and the ‘Brussels’ Team. Some of the National

Members already exercise this role by advising their respective governments on issues within their competence via their annual activity reports.

None of the interviewed National Members could say that involvement by Eurojust had resulted in a decision on which jurisdiction should prosecute. As stated above, advice in this field is not necessarily linked to conflicts of jurisdiction but can be used in an instrumental way as well, in accordance with the 2003 guidelines.

### **Para (iii) Negative structure of incentives**

Obviously, Eurojust has the objective to stimulate cooperation and coordination. The generation of positive incentives consists mainly of the marketing activities and the reporting of positive results from cases in the Annual Reports.

The proposal from the Experts Group on a European budget line for cooperation through Eurojust and Europol was not taken forward by the Commission. The costs of bringing a case to Eurojust may still constitute a burden. To suppress the costs of cooperation and for practical purposes, coordination meetings are regularly organised outside The Netherlands at a shorter distance to participating authorities.

As a result of negative incentives and unwillingness, the existence of one-way MLA traffic ended. Eurojust may play a role in this respect by actively advising on broadening the geographical scope of existing investigations, the number of participating countries in a case or the establishment of a JIT. However, the interviewed National Members differed in opinion as to what extent changing facilitation cases into coordination cases is possible and desirable.

#### **1- Cooperation based on personal contacts**

The simple fact of existence of a fixed organisation and the function of National Members at Eurojust means de facto a depersonalisation of international cooperation. At least on the prosecutorial level a permanent contact point is given for relations with foreign authorities. In a couple of THB cases, the National Members simply intervened in the establishment of direct contacts between authorities; the Latvian cases provide clear examples of this type of service. In the UK-Lithuania cases, personal contacts were established, but the development and broadening of the investigations demanded ongoing involvement of Eurojust.

At least in one case the National Member referred a case to the EJM. The Spanish National Member expressed his wish that most of the facilitation cases should go through EJM instead of creating a Eurojust case.

Within Eurojust itself, the issue of personal contacts is also present. The National Members are not part of a hierarchical European organisation, but are in the service of their national authorities. In the evaluation of its performance, Eurojust already mentioned that sometimes the differing powers of the National Members is an obstacle. But apart from the issue of powers, some interviewed National Members also mention the lack of an active working attitude with their colleagues or insufficient independence from national hierarchy as problems. While this issue was not identified as an actual problem by all interviewed National Members, it does show that even where the National Members together may act as an international body, the organisation depends in the first place on the willingness and capacity of the National Members. The relevance of this point is even more obvious if taking into account the fact that the organisation has acted until now only through the National Members in operational cases, and not yet as a College under Article 7.

In addition, the relatively limited size of some delegations, combined with the fact that National Members are often on mission, may result in communication delays and delays for level II or III meetings, as was mentioned by the German National Member.

Of the studied cases, only one case with extreme delays might have been directly linked to problems with the dependence on personal relations at Eurojust.

#### **2- Cooperation with countries of origin**

Eurojust has a team on the relations with Third States, and also a specific one for the relations with the Western Balkan States. One of the members of the THB Team (the British Deputy) also holds a position in the Western Balkans Team.

The organisation works in two directions with regards to the Third States. On the one hand, it is extending its network of contact points in Third States. Since good relations with the Balkan states are regarded as a 'key success factor' for its future development by Eurojust, the creation of a network of contact points in the Balkans was a priority. As mentioned above, the JHA Ministers of the EU and the Balkan States supported the call of the Eurojust President for the appointment of contact points in the Balkan States. Subsequently all states did indeed appoint contact points. And again, in the 2004 Annual Report this is placed in the context of trafficking in persons (and prohibited goods).

On the other hand, Eurojust is working hard to conclude more formal agreements with Third States, which give way to exchange of personal data. The Third States Team works on the basis of a priority list of states. After concluding agreements with Norway and Romania, the Iceland, United States and the Ukraine appear on that list. Apart from the formal agreements, there is a network of contact points, which covers all European source countries of THB victims.

In actual THB cases, the use of contacts outside the Union has proved its value only in relation to a few countries, especially Bulgaria. While the conclusion of an agreement with Romania shows that cooperation is becoming a reality, only one case with Romania concerned THB. The success in the case with Albania and Macedonia shows the potential that lies in the network of contact points, even where no formal agreements are in place.

#### **Para (iv) Organisational issues**

In relation to the lack of clarity regarding the position of Eurojust towards police authorities and in the investigation phase, the previous chapter cited remarks about the influence Eurojust has on the process of referral of cases.

In none of the studied cases did specific problems appear in relation to the national distribution of powers between local and national level. The fact that the National Members know their respective criminal systems well makes certain that the relevant authorities – whether police, prosecution or both – are seated around the table. However, two of the interviewed prosecutors recalled from personal experience that oversized delegations from some countries to coordination meetings, due to the number of involved authorities, put extra weight on those meetings.

The Lithuanian National Member mentioned, as a positive result of UK cases brought to Lithuanian authorities by Eurojust, that national authorities started to work together in a more harmonious way. As a result, collaboration between national authorities themselves and with Europol was strengthened.

#### **Para (v) Novelty of the phenomenon THB**

While the overwhelming majority of National Members have had a long career in their national prosecution service, the experience of most National Members with THB is limited. The Danish, Swedish and Irish National Members were able to recall cases from their own experience, but others had no specific experience with THB at all. While on the one hand, there is enough in-house expertise available, especially in the person of the British Deputy and member of the THB Team, on the other there is a risk that in operational cases the opportunity for input from Eurojust is missed. Especially on particular THB issues like witness location and protection and the cooperation with non-Member States, the studied cases showed no specific input from Eurojust's side. Novelty of the phenomenon for National Members might be one of the reasons for this.

In the new organisational structure of Eurojust, there is one team specifically concentrating on the crime of THB. It is one of the 21 teams in which National Members, their Deputies and their Assistants are members. The purpose of these teams is primarily to formulate strategy and policy, rather than structural involvement in operational cases.

The THB Team organises the so-called annual strategic meeting on THB, which has the dual aim of providing a forum for practitioners to get to know each other and discuss solutions to practical problems amongst each other, and at the same time to organise tactical meetings for ongoing cases.

While the team structure serves, according to the Annual Report, the purposes of “giving initial reactions, consider material and issues, make recommendations and prepare briefings for meetings of the College”, the pressure of the caseload and marketing activities leaves little room for activities other than the organisation of the strategic meeting. Besides the organisation of strategic meetings, the Team is also actively involved in the creation of a Resource Manual by the IOM and a Training Manual by the ICMPD.

### **Para (vi) JITs**

In relation to the JIT, it may be said that the role of Eurojust in the establishment of the failed THB JIT was very limited. Eurojust participated in the steering group and the judicial working group (in name) and awaited the generation of a concrete investigation. When unwillingness to share intelligence emerged, the involvement of Eurojust did not appear to be a solution.

This specific JIT initiative was based on a top-down approach, and, according to an involved police officer, pressure from above might have made the JIT work.

The role of the Police Chiefs Task Force is interesting to compare with Eurojust’s College. Both bodies exist of well-experienced practitioners, who are still in the service of their national authority. Without using formal powers, red-tape can be avoided and incentives can be given within the own organisation to cooperate. In Part Three, more will be said on the potential role of Eurojust in the COSPOL projects of the EPCTF, which formed the basis for the first attempt of establishing a THB JIT.

## **Section 2 Integrated case approach**

In Part One, a few of the particular problems in THB cases were described, brought together under the heading of ‘integrated case approach’. One of the objectives of Eurojust as formulated in Article 3(1)(c) of the Eurojust Decision is to support ‘otherwise’ the Member States to render their investigations and prosecutions more effectively. Here it will be assessed how and to what extent Eurojust fulfils this general supportive role in relation to an integrated case approach.

### **Para (i) Victim issues**

From the available cases and interviews it appears that in only one case did Eurojust play a significant role in relation to victim issues. This Spanish/French/Romanian case is often used for marketing purposes by Eurojust. Whereas in the case coordination through Eurojust of protection and (video) hearing of witnesses was very successful, the use of Eurojust for these purposes seems to be an exception. At least in one case from 2002 Eurojust assisted in the hearing of witnesses in a THB case as well, but no country of origin was involved in that case.

In general, the requested assistance from Eurojust rarely concerns victim issues. Most cases concern the exchange of evidence or information or the use of covert means of investigation. In the studied cases, it was not clear whether attention should have been paid to the interests of victims in terms of protection and compensation. However, it is clear from the interviews that such considerations have never been part of the decision to choose another jurisdiction to prosecute.

Other than the SECI Centre, Eurojust does not have a victim protection program. Nor are there specific arrangements in place for long-distance witness hearings on distance by means of electronic equipment.

### **Para (ii) Financial investigations**

In the new organisational structure at Eurojust there is a special team dedicated to money laundering. The National Member of Luxembourg is in both in the THB and the Money Laundering Teams.

At least three Eurojust cases were related to money laundering as well as THB. As with the victim issues, there are no indications that Eurojust puts an issue like financial investigations on the agenda ex officio. In the three cases Eurojust merely facilitated MLA requests. In one case it became clear that the assets of the convicted trafficker were already confiscated.



# PART THREE

## Strategic Outlook

In this final part, expected developments as well as additional suggestions are presented for further enhancement of the contribution of Eurojust to the fight against human trafficking. The same approach of the first two parts will be followed here, by first going into the quantitative aspects of the caseload and thereafter the qualitative features of Eurojust's involvement.

The actual casework at Eurojust has priority for all National Members. Some of the suggestions set out below touch upon policy issues and require activity of, for example, the THB Team. Those suggestions are only feasible if the pressure of the caseload decreases through enlargement of the national desks or if additional support to the teams is developed by Eurojust.

## Chapter VI – Quantitative aspects

### Section 1 Generation of cases

It appeared that an integrated crime approach, especially investigation from recruitment to exploitation, is difficult to achieve on a national level. International cooperation is remains largely based on the idea of requests and focuses on problems in each jurisdiction. Alternative generation of investigations on a European level can create investigations with a wider geographical view and thereby a more comprehensive action against a chain of criminal activities.

Eurojust can contribute to this in various ways. The suggestions here focus in part upon further enhancement of the current activities, but also on the idea of proactive involvement – as was already expressed by the former Greek National Member<sup>52</sup> – as applied to THB. Where Eurojust has been involved in an early stage, the organisation can avail itself of the power of recommendation under Article 7(a) if a Member State does not give the appropriate follow-up.

#### Para (i) Broaden the scope of referred cases

Firstly, the National Members may in concrete cases advise those already involved to broaden the scope of investigations. This can result in the development of a facilitation case into a coordination case, but also from a coordination case between a limited number of states to a coordination case in which source, transit and destination countries tune or trigger their respective investigations.

For THB cases, it is most relevant to trace the root of the exploitation in the country of origin, if applicable. Rather than the quantity, the strength of contacts with countries of origin is important for the success of engagement of non-EU Member States, where Eurojust may be expected to find reliable counterparts for the authorities. The high priority that the conclusion of agreements with Third States has will contribute to the framework, but the existence of such an agreement is not a guarantee of utilisation of the possibilities. Some successful coordination cases were with non-Member States without an agreement, while vice versa the close contacts with Romania (mentioned as an important source and transit country of THB) have until now only been fully used in a few cases.

*In summation:*

1. *Broaden the geographical scope of referred cases.*

#### Para (ii) Early stage involvement

Secondly, while Eurojust has no task in the analysis of intelligence as such, the direct involvement of the organisation can assure a coordinated follow-up of AWFs and COSPOL projects of the EPCTF. Where problems arise as to the flow of information to such projects, the National Members may be able to remove obstacles in their respective countries, depending on their national capacities. Besides the national capacity, the powers from the Eurojust Decision are at least as important for that purpose. The involvement in this early stage of proceedings can therefore be limited to back-up support with possible extension in a later phase, or be intensified where problems arise. In the context of the JITs, the same idea is behind the obligation in Belgium to inform the National Member whenever a JIT is established.

*In summation:*

2. *Ensure Eurojust's involvement in projects where cases are generated on a European level, specifically COSPOL and the AWFs.*



### **Para (iii) Database initiatives**

Thirdly, the databases at Europol and Eurojust currently in development offer the possibility to stimulate an integrated approach from an early stage. As soon as the systems detect cross references between investigations in Member States, they give a signal to the holder of the registered case. The difference with the current situation is that international cooperation is not solely request-based anymore; information is disseminated independently. A decision to act upon the signal or even to coordinate investigations is still up to the national authority.

The success of the connection of jurisdictions in this way was already shown in the German situation (the ZStV-system which connects the Länder) and in Italy (SIDDA that functions between the regions).

Referral of cases on a European level will still be based bottom-up, but the deciding national authority is increasingly made aware that cooperation is not solely necessitated by the interest of a conviction in its own jurisdiction but that the crime complex as such must and can be countered.

*In summation:*

3. *Promote the connection of national databases.*

### **Para (iv) Strengthen network of all actors**

In the long run, another possibility to generate cases might be feasible. At this moment, Eurojust can bring together the authorities of the Member States that are involved on an operational basis in counter-trafficking activities. However, there are more actors involved in this field that are closely connected to the operational processes.

Primarily, non-EU Member States should be able to approach Eurojust. As was mentioned earlier, there are experts of the opinion that in some countries of origin, investigations are currently of a more developed level than within the EU. Where their investigations lead to multiple Member States, there seems to be a convincing argument for non-Member States to ask for Eurojust's support. The idea of Eurojust as a one-stop shop for multilateral cases from and to the Union deserves attention, bearing in mind Henry Kissinger's famous cry: 'Who to call if I call Europe?'

In connection with this, but perhaps more feasible in the short term, the other international organisations involved in operational work should be mentioned. These are primarily the EU Police Missions, the recently established European border agency, FRONTEX, the Immigration Liaison Officers Network and the organisations of the Stability Pact (SECI and SEEPAG). All these entities may at a certain point in time have information on THB which they deem worth a coordinated effort of Member States. Because Eurojust has the broad objective of improving and coordinating investigations, signals from these non-state actors could be transmitted via the Eurojust channel, with referral to Europol as one of the possibilities.

The Experts Group proposed the establishment of an Anti-Trafficking Network which was supposed to facilitate the exchange of information between authorities and other organisations on an international level. Whereas this idea has not been taken forward by the Commission, the THB Team of Eurojust could in the future further develop its network to ensure cooperation between Member States, non-Member States and international organisations in operational matters.

Whether Europol or Eurojust is in a better position to function as a general focal point to pick up other signals than requests from Member States remains an item for discussion. However, the broader mandate of Eurojust in terms of coordination and support of investigations and prosecutions and its own powers of recommendation towards Member States suggests that Eurojust would be capable of functioning as such a focal point.

*In summation:*

4. *Enable Eurojust to initiate cases on request of non-EU Member States.*
5. *Receive and direct signals from other international organisations.*

## Section 2 Foster discussion over policies

If one compares the Annual Report Eurojust in 2002 with the 2004 Annual Report, the enormous growth in operational activity is crystal-clear. With an ever-growing record of THB cases, Eurojust is the only organisation on a European level where the weakness in European criminal policy can directly and constantly be measured. Not even at Europol is such a pool of information available. This offers a unique opportunity to give input to policy-making beyond conclusions of a general nature on the state of affairs, as was recognised in the Annual Report of 2004. In Part One of this report, it was shown that the legal and policy framework that is created on a European level will have only limited effect if not effectuated in the policy documents that ultimately determine the strategy.

Especially when the THB caseload increases, indications can be given of problems on specific countries and THB-related issues. This requires analysis and evaluation of cases on a more detailed level than is currently possible.

In the short term, input to the discussion is possible by giving attention to failed cases, as was already suggested by the Portuguese National Member. Both the overall Eurojust Annual Report and the reports by the respective National Members to their national authorities can include the description of failed cases as feedback.

Collaboration with Eurostat might be of mutual interest in this respect. Eurostat is in the development stage of a structural database on crime, victimisation and criminal justice. This project was initiated by the Commission to provide future European policies with a firmer foundation. The data can be a tool for Eurojust to place its caseload in context and for Eurostat the expertise, wishes and statistics of Eurojust may contribute to the quality of their project.

As was mentioned before, the recent movement for the establishment of national OC units at police and prosecution services and the OC Threat Assessments offer possibilities to foster an integrated approach of THB. The existence of these units and assessments will better enable national authorities to take an integrated approach to crime.

The OCTAs will on the one hand probably give an impulse to the referral of cases for coordination to Eurojust. On the other hand, Eurojust may compare the OCTAs with the level of participation by a Member State, in order to use the OCTAs as a commitment of a Member State and detect obstacles to cooperate in the execution of this commitment.

Other international organisations do sometimes have an academic advisory board consisting of independent experts. While such a board brings relatively little cost along with it, the potential benefits are great. The experience with scientific guidance of the first JIT was already positively regarded by involved persons. The establishment of such an organ would offer Eurojust possibilities to strengthen its role in policy-making and continuous monitoring of its internal and external functioning without putting more pressure on its primary operational tasks. Alternatively, it is possible to seek cooperation with an existing institute like the German BKAs relationship with the Max Planck Institute and the Italian Ministry of Justices relationship with the Transcrime Institute.

*In summation:*

6. *Further strengthen Eurojust's input on policies, and make it country/topic specific.*
7. *Explore the added value of collaboration with Eurostat in their criminal justice project.*
8. *Influence and use the OC Threat Assessments.*
9. *Explore the possibility and added value of an academic advisory board.*

### Section 3 Marketing

The investments in marketing by Eurojust so far have been successful, if one measures the growth in the number of cases and the level of involvement. However, to see the cooperation in the investigation phase grow, the role of Eurojust other than in problem-solving can be stressed. The Belgium National Member reports that feedback to Belgian authorities on the stage of referral has a positive result, and cases are now referred to Eurojust in an earlier stage so that better coordination can take place.

It is suggested here to review whether the image that comes from the words ‘judicial cooperation unit’ is the best way of making its objectives clear.

The current attention to THB and the amount of ongoing training offers the possibility to promote Eurojust amongst the practitioners that deal with THB and include the organisation in courses. Here is also a chance to market Eurojust not only for cases with highly complex international OC networks involved, but also for the relatively small cases with difficult international dimensions, as is often the case with THB. The threshold to refer a case to Eurojust, as was mentioned by the interviewed practitioners, can be lowered in this way.

*In summation:*

10. *Stress the added value of early involvement of Eurojust.*
11. *Review the catchphrase ‘European judicial cooperation unit’.*
12. *Seek possibilities to include Eurojust in THB trainings for practitioners.*

### Section 4 Incentives

In the non-hierarchical European structure, cooperation with Eurojust cannot be enforced but will largely remain dependent of personal considerations of practitioners. The method of appraisal and positive attention given to authorities that referred cases differs from country to country. However, the Experts Group already pointed out that financial incentives are generally applicable. The possibility for distribution of costs in cases or other financial incentives was not studied in depth in this report, but it certainly appeared to be an issue.

As was explained before, many practitioners within the EU are suspicious of cooperation with the states across the eastern border of the Union. Increased positive attention to successful cooperation with those countries may stimulate cooperation in THB cases with the countries of origin in that region. In actual referred cases concerning trafficking from those countries, the National Members may point to previous positive experiences to convince authorities of the added value of including countries of origin.

*In summation:*

13. *Assess financial obstacles and stimulate positive appraisal.*
14. *Stress the good examples of cooperation with countries of origin.*

## Chapter VII – Qualitative aspects

There are a few ways in which Eurojust can further its contribution to an integrated crime and case approach in THB cases.

### Section 1 Ex officio advice in referred cases

In the previous chapter, it was pointed out that Eurojust may ex officio advise the authorities that approach the organisation on broadening the geographical scope of cooperation or the level of cooperation (primarily from facilitation to coordination). With respect to the intrinsic elements of a case, there can also be an advisory role for National Members, even when this is not directly part of the request of an authority.

The two points that were found to be especially problematic in THB cases can be addressed by Eurojust ex officio in referred cases. The referring national authorities then point to the possibility for help in relation to victim issues and criminal proceeds as a standard procedure. While most often the case will initially be referred to Eurojust because of primary aspects of proceedings (such as obtaining evidence and getting hold of a suspect), Eurojust can offer help in related issues such as getting in touch with the victim, arranging protection, compensation and recovery of criminal proceeds.

While the suggested ex officio advice does not in any way affect control over proceedings by the national authority, it may nevertheless be useful to stimulate cooperation in relation to these items. In one case, Eurojust proved to be of added value in the arrangement of victim protection for THB proceedings. The SECI Centre reported positive experiences in this field. Where the primary request does not concern these matters, Eurojust can inquire ex officio whether assistance in these matters would be appreciated.

Ex officio advice will sometimes be little more than pointing at other instruments of international cooperation, like the CARIN Network, in relation to proceeds of crime.

*In summation:*

1. *Broaden the referred cases, in terms of substantive issues, by ex officio advice.*

### Section 2 Active use of 2003 Guidelines on jurisdiction

Another way of promoting quality of proceedings and where Eurojust has a more primary task is the fair and effective allocation of cases. The word ‘allocation’ is expressly used here, since this should be seen as an ex officio check which is actively performed. The policy instrument in this area is the document with the 2003 Guidelines on the best place to prosecute<sup>53</sup>.

As mentioned before, the Guidelines are not limited to jurisdictional conflicts. They can be used for an ex officio test of whether a referred case is being dealt with in the most appropriate jurisdiction.

The deciding factors are of great relevance to the crime of THB, not only because of the difficulties related to its international dimension, but also because of the fact that many countries with extra-territorial jurisdiction will often make transfer of a case possible. And even where no extra-territorial clause is in place, the 1972 Convention may facilitate this process.

The Guidelines contain 14 deciding factors. Of special importance for THB:

- dividing the prosecution into cases in two or more jurisdictions; because of the division of tasks that is found in some cases the best place to prosecute a ‘recruiter’ might be another one than for the ‘exploiter’,
- attendance of witnesses, bearing in mind that the victims of international THB are coming from other states and may have returned or been expelled,
- protection of witnesses, because there are great differences between countries regarding protection arrangements for THB victims,
- interests of victims, since arrangements for compensation, residence and assistance differ greatly between states,

- evidential problems; in Part One of this report, the differences between the required evidence were already shown, especially with regard to the transnational and force elements,
- sentencing powers; the differences in sentencing within the EU are enormous, especially when the percentage of conditional sentences is taken into account,
- proceeds of crime; as previously stated, these will often be located in either the source or destination state.

When contacts with the source countries are further improved in the near future, the question as to which state is in the best position to prosecute should be more often raised. However, the distribution of costs and ability to show success of law enforcement to the public in the transferring state are two issues which require a solution.

*In summation:*

2. *Actively use the 2003 Guidelines to stimulate fair and effective distribution of cases.*

### **Section 3 Use in-house expertise**

The interviews revealed that many National Members have little or no experience with THB and its particular difficulties. Whereas on the one hand these particularities are themselves not different from any difficulties that arise with other types of international crime, on the other hand the complex of facts may make it desirable that additional support is given by the THB Team in concrete cases. Continuation and enhancement of the internal support role of the THB Team in operational cases will contribute to the high quality of Eurojust's assistance to national authorities.

*In summation:*

3. *Use the expertise of the THB Team in operational cases, when necessary.*

### **Section 4 Cooperation with countries of origin outside Europe**

In the previous chapter, the potential role of Eurojust in involving countries of origin has already been mentioned. One related suggestion should be added here. It appeared that when cooperation with countries east of the EU border is already difficult, cooperation with countries outside Europe is practically non-existent. Some individual Member States have good relations with their former colonies, but these are exceptions. Nigeria and other West African states, but increasingly also Asian states function as countries of origin for the criminal chain of activities related to THB.

International human trafficking is increasingly recognised as a problem in those countries. As was described in Part Two, there are positive signals that even source countries in Africa are planning to take more law enforcement action in this area. Combating THB is also promoted in relation to African countries as part of EU foreign policy.

Because establishing contacts with those countries will be costly and time-consuming undertakings, Eurojust might consider investment in this issue in the long run. With additional funding, a regional liaison office could be set up to foster network building. Where police cooperation on an operational level may be too sensitive to start with, judicial cooperation might be feasible more readily.

*In summation:*

4. *Invest in operational cooperation with countries outside Europe.*

## NOTES

- <sup>1</sup> Tender by European Commission / Eurostat on the development of a system of statistics on crime, victimisation, and criminal justice, published 11 May 2005 under no. 2005/S 90-087125.
- <sup>2</sup> Austria, Cyprus, the Czech Republic, Denmark, Finland, Hungary, Ireland, Italy, Luxembourg, Malta, the Netherlands, Poland, Slovakia, Slovenia, Sweden.
- <sup>3</sup> WODC (2003).
- <sup>4</sup> Regularly updated compilations of legislation on THB, SHB and Child Pornography can be found on the Europol website: [www.europol.eu.int](http://www.europol.eu.int), under 'Publications'.
- <sup>5</sup> Dutch National Rapporteur THB (2004), p228 (p145 UK-version).
- <sup>6</sup> Izdebski and Dec (2005), p48.
- <sup>7</sup> Transcrime/DNA (2003), p236.
- <sup>8</sup> UNODC: [www.unodc.org/unodc/en/trafficking\\_human\\_beings.html](http://www.unodc.org/unodc/en/trafficking_human_beings.html) (visited October 2005).
- <sup>9</sup> Kelly (2005), p239.
- <sup>10</sup> Transcrime (2002), p110 and p183.
- <sup>11</sup> UNICRI (2005), p69.
- <sup>12</sup> National Criminal Intelligence Service Sweden (2004), p31.
- <sup>13</sup> UNICRI (2005), p70.
- <sup>14</sup> FATF/ Council of Europe MONEYVAL (2005), p13.
- <sup>15</sup> Dutch National Rapporteur THB (2005), p26.
- <sup>16</sup> Bundeskriminalamt Österreich (2005), p20.
- <sup>17</sup> Save the Children Romania (2004), p11.
- <sup>18</sup> Taylor (2003), p66.
- <sup>19</sup> OJ C 2003/100, p.27.
- <sup>20</sup> Lehti (2003).
- <sup>21</sup> Council of Europe (2003-2).
- <sup>22</sup> UNICRI (2005), p72.
- <sup>23</sup> Dutch National Rapporteur THB (2004), p175.
- <sup>24</sup> [www.iap.nl.com/speeches2/trafficking.html](http://www.iap.nl.com/speeches2/trafficking.html)
- <sup>25</sup> UNICRI (2005), p76.
- <sup>26</sup> Rijken (2003), p226.
- <sup>27</sup> OJ C 2003/137/3.
- <sup>28</sup> ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003).
- <sup>29</sup> WODC (2001), p36.
- <sup>30</sup> OC L 2002/162/1, 2002/465/JHA.
- <sup>31</sup> President of the College of Eurojust in 2004, [www.cicerofoundation.org/pdf/presentation\\_kennedy\\_part2.ppt](http://www.cicerofoundation.org/pdf/presentation_kennedy_part2.ppt)
- <sup>32</sup> ETS 197, CM(2005)32 Addendum 1 final, 3 May 2005.
- <sup>33</sup> OC L 2001/81/1, 2001/220/JHA.
- <sup>34</sup> OJ C 176/86.
- <sup>35</sup> FATF/ Council of Europe MONEYVAL (2005).
- <sup>36</sup> UNICRI (2005), p75.
- <sup>37</sup> Dutch National Rapporteur THB (2004), p184 (p119 UK-version).
- <sup>38</sup> COM2005 (514) Final, Communication from the Commission to the European Parliament and the Council on Fighting trafficking in human beings - an integrated approach and proposals for an action plan.
- <sup>39</sup> Reply of Mrs. Ganterer of the ODHR, 30 June 2005.
- <sup>40</sup> Opinion expressed by Meijers Committee in a letter of 30 September 2002, see: [ww.commissie-meijers.nl](http://ww.commissie-meijers.nl).
- <sup>41</sup> S.I. No. 6/1976: Harbour Rates (Harbour of Dublin, Skerries and Balbriggan) Order, 1976.
- <sup>42</sup> Some examples: COM(2004) 787 of 28 November 2002 on the EU/Moldova Action Plan, 13091/03 of 7 October 2003 on the EU/Ukraine Summit, SN 3559/1/03 of 28 November 2003 on the EU/Western Balkans Forum, 15197/02 of 4 December 2004 on the Africa/EU Ministerial Meeting, and 8799/05 of 11 May 2005 on the 15<sup>th</sup> EU/Russia Summit.
- <sup>43</sup> Experts Group (2004), p124.
- <sup>44</sup> OJ C 2002/142 of 14 June 2002, p.23.
- <sup>45</sup> OJ C 2002/149/79 Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council and the European Parliament on a common policy on illegal immigration' (COM(2001) 672 Final), p83
- <sup>46</sup> Eurojust Annual Report 2002, p12.
- <sup>47</sup> President of the College of Eurojust in 2004, [www.cicerofoundation.org/pdf/presentation\\_kennedy\\_part1.ppt](http://www.cicerofoundation.org/pdf/presentation_kennedy_part1.ppt)
- <sup>48</sup> Op. cit. n42.
- <sup>49</sup> These 'Guidelines for Deciding "Which Jurisdiction should Prosecute"' are annexed to the 2003 Annual Report of Eurojust, p60.
- <sup>50</sup> Article 4.1 of the Agreement between Eurojust and Europol, as can be found on [www.europol.eu.int](http://www.europol.eu.int).
- <sup>51</sup> Mohr (2005). Internationale polizeiliche Zusammenarbeit – „Gemeinsamer Ermittlungsgruppen“ – Quo vadis? *Die Kriminalpolizei*, June 2005.
- <sup>52</sup> Moore (ed.), Chiavario et al. (2004). p129.
- <sup>53</sup> Op. cit. 49.

# APPENDICES

## Appendix I – Sources

### List of interviewed persons

At Eurojust, interviews were held with the National Members of:

Spain	Mr. Jimenez-Fernandez
Lithuania	Mr. Tilindis
Ireland	Mr. Spellman
Sweden	Mrs. Wollstad
Slovakia	Mr. Paluda
Czech Republic	Mr. Zeman
Denmark	Mr. Reimann
Germany	Mr. von Langsdorff
Poland	Mr. Iwanicki
Belgium	Mrs. Coninx
Portugal	Mr. Lopes da Mota
the deputy of France	Mr. Bohnert

and, in their capacity as members of the THB Team:

Finland	Ms. Loimukoski
the deputy of UK	Ms. Vlahovic

Outside Eurojust, there were interviews with:

the Eurojust contact point in Romania	Mrs. Nicolae
an officer of the THB-Unit of Europol	Mr. Harvey
the THB expert of the European Commission	Mr. Merz
a seconded American prosecutor at the SECI Centre	Mr. Corn
the IOM project manager of the AGIS-funded THB project	Mrs. Carpier

In the Netherlands with:

the specialised THB prosecutor	Mr. van Tooren
one national prosecutor	Mrs. Verwiel
a police officer of the National Investigation Department	Mr. Barendrecht
one officer of the THB-expert centre	Mr. Werzel
the legal officer of the National Rapporteur on THB	Mr. Koster

In Macedonia with:

the THB-project leader of the EU Police Mission PROXIMA	Mr. Ballesteros
two rule of law officers of the OSCE Mission	Mr. Lackner and Mr. Manton
and the President of the Tetovo Basic Court	Mr. Arifi

In the academic world, there were discussions with:

Dr. Rijken of Tilburg University  
Professors van der Wilt and Sutorius of the University of Amsterdam  
Professor Vermeulen of the University of Ghent  
Professor Klip of the Maastricht University

Mr. Waage, vice-president of Cap Gemini, gave guidance on managerial and institutional aspects.

Furthermore, the IOM was kind enough to provide me with the transcripts of 40 in-depth interviews with prosecutors, police officers and judges from Germany, Poland, the Czech Republic, Bulgaria and Hungary, which were held in March 2005.



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## **Appendix II – Examples of THB cases from the Annual Reports**

### **a) 2001**

In December 2001, a serious incident of human trafficking resulted in the death of eight people whose remains were discovered, along with survivors, in a container in Wexford in Ireland. This was not the first such incident within the EU. The wide ranging investigation which followed involved several Member States with Ireland and Belgium having the central role.

Initially the national members of Eurojust were involved in facilitating the execution of requests for mutual assistance. They also had input in resolving issues relating to prosecution venue and finally, they were instrumental in facilitating the application of Article 21 of the 1959 European Convention on Mutual Assistance whereby conduct of the prosecution was handed over to competent authorities in Belgium by the competent authorities in Ireland.

### **b) 2002**

This case concerns trafficking in human beings where girls coming from Romania were recruited with the offer of good employment in Spain. In fact they were to work as prostitutes for a criminal network operating in France and Spain. The girls were sold to procurers to exploit them as prostitutes and they were also subjected to serious sexual assaults and other violence.

Initially the competent judge sent one of the minors back home but once in Romania she was subjected to threats for co-operating with the authorities and Eurojust was requested to organise a program of witness protection. One of the procurers had been arrested in France and a co-ordination meeting between competent authorities in France, Spain and Romania was held in February 2003. At the meeting an action plan was agreed:

- Spain should transmit to Romania all the information it had discovered about the organization that was recruiting girls in Romania and transporting them to Europe.
- As the procurer arrested in France was also suspected of murder, and was to be tried there, some coordination was required of the prosecutions in France and Spain to deal with the non bis in idem principle.
- Measures to facilitate on going and future mutual legal assistance between Spain and France, and between France and Romania, allowing the French magistrate to be present in Romania when evidence was gathered.
- Action to set up a witness protection program was to be coordinated between Spain and Romania.

All the measures agreed have been implemented and additionally new contacts have been appointed between the French Ministry of Justice and the Romanian judicial authorities to deal with this case and similar problems should they arise in the future.

### **c) 2002**

In the summer 2002, competent judicial and police authorities from Italy, The Netherlands, Turkey, Germany and Austria participated in a co-ordination meeting organized by Eurojust. This took place at the request of the prosecution authorities in Berlin after co-ordination at police level failed in a case concerning trafficking of large quantities of heroin from Turkey to countries in Western Europe. The case also involved cocaine trafficking from South America, as well as trafficking in human beings and prostitution.

This meeting led to better coordinated execution of coercive measures which culminated in the arrest of the three main suspects in The Netherlands and the safeguarding of a quantity of evidence in December 2002. A follow-up of this meeting has already taken place in Berlin. Judicial and police co-operation in this case have been continuing through direct contacts after Eurojust had paved the way by initiating contacts between competent authorities in the Member States involved.





UNIVERSITY OF AMSTERDAM

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