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**The EU Policy Against Trafficking in Human**  
**Beings within its Borders**



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# **The EU policy against trafficking in human beings within its borders**

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**“I trade people for the simple reason that the goods are cheaper than a Kalashnikov or a kilo heroine, I am less at risk if I sell a person instead of drugs or weapons, and besides, these goods are self-propelled, you kick them and it continues!”<sup>1</sup>**

## **1. Introduction**

### **1.1. The importance of the phenomenon of THB and the EU Security Union**

October 18 and July 30, respectively, are the dates that Europe and the world have identified as the day when people need to be informed about a phenomenon that has long occurred but is still present: the trafficking<sup>2</sup> of human beings or the so-called by some people modern-day slavery. It is a phenomenon that constitutes a grave violation of human rights in that it treats people as a commodity that can be bought and sold, and puts them into all kinds of labour with little or no payment and poor working conditions. This also includes threats and close surveillance of the victims. It does not require movement, namely crossing national borders, but it does not exclude it either. It brings billions in profits for perpetrators who take advantage of the vulnerability of potential victims such as poverty, conflicts, lack of education and of strong family ties. Actually, in the reality of globalization, trafficking in human beings is valued as the

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<sup>1</sup> It is the terrifying confession of a human trafficker documented in the International Organisation for Migration when asked why he was trafficking people instead of weapons or drugs.

Κουταλιανού Ζώγια, Σε έξαρση το σύγχρονο δουλεμπόριο, εφ. Καθημερινή, 10/4/09. Available at: <https://www.kathimerini.gr/society/354889/se-exarsi-to-sygychno-doylemporio/> (Last accessed 1st April 2022).

<sup>2</sup> The term "trafficking" was first introduced as an Anglo-Saxon term in the 17th century to define the trafficking of illegal products.

third profit after the arms and drug trade.<sup>3</sup> Unfortunately, the fact is that people can change hands up to 15 times, unlike weapons, which can be sold two or three times and drugs only once.<sup>4</sup> But the most important fact is that this is not a static phenomenon as it is influenced by world politics and crises like the pandemic. It is also very complex because it pertains to a whole chain of actors. Indeed, it has to do with organized crime and affects not only the victims as individuals but also society and the economy in the long term.

Still, human trafficking is a global phenomenon. It happens in every country and in every region. It continues to occur in the European Union as well. We delve into the case of Europe because, as it includes some of the wealthiest countries in the world, it has been an important market for the exploitation of victims, particularly through sexual exploitation, forced labour, exploitation of criminal activity, begging and illegal adoption.<sup>5</sup> For this reason, the EU Security Union Strategy has set as a key action to fight organised crime and more particularly trafficking in human beings.<sup>6</sup> But unfortunately, despite the various preventive and punitive actions, human trafficking is still omnipresent in Europe. Actually, according to the study on the economic, social and human costs of trafficking in human beings within the EU, the total cost of trafficking for the EU-28 (including Great Britain) in 2016 is calculated at 3.7 billion EUR (2.7 billion EUR for the EU-27). The cost of trafficking over one victim's lifetime is 312.756 EUR in the EU-28 (337. 463 EUR in the EU-27).<sup>7</sup>

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<sup>3</sup> Κυριαζή Τένια, Εμπορία Ανθρώπων, Διεθνές και Ευρωπαϊκό Δίκαιο Προστασίας των Δικαιωμάτων του Ανθρώπου, Ίδρυμα Μαραγκοπούλου για τα δικαιώματα του ανθρώπου, Νομική Βιβλιοθήκη, σ.5.

<sup>4</sup> Papadimitrakopoulos George, Happy trafficking: how criminals profit from an iniquitous trade, University of Cambridge, Research. Available at: <https://www.cam.ac.uk/research/discussion/happy-trafficking-how-criminals-profit-from-an-iniquitous-trade> (Last accessed 1st April 2022).

<sup>5</sup> European Commission, Commission staff working document, accompanying the document Report from the Commission to the European Parliament and to the Council, Third report on the progress made in the fight against trafficking in human beings (2020) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, SWD (2020) 226 final, p.8 ref. 13.

<sup>6</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on the EU Security Union Strategy, COM (2020) 605 final, p.20.

<sup>7</sup> Three are the main costs of trafficking: 1. use of services (e.g. law enforcement, health services, social protection) 2. lost economic output 3. lost quality of life. See: European Commission, Study on the

## 1.2. Legal provisions and mechanisms to combat and report THB

At the international level, the most important instrument to fight trafficking is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women Children (known as the Palermo Protocol) from the United Nations accompanying the UN Convention against Transnational Organized Crime (UNTOC).<sup>8</sup> It was the first international legally binding instrument that introduced the definition of trafficking, which was adopted in 2000 but entered into force in 2003. While the Palermo Protocol is binding, its provisions do not actually obligate the state parties to take action against trafficking, but rather encourage them to implement some measures for this phenomenon.<sup>9</sup> The main change brought about by the Protocol was that the crime of human trafficking is henceforth recognized prior to the actual exploitation.<sup>10</sup> The Palermo protocol came after the Convention on the Rights of the Child (CRC),<sup>11</sup> which was adopted in 1989 and entered into force in 1990, in which Article 35 refers to child trafficking. In addition, there was the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),<sup>12</sup> which was passed in 1979 but came into force in 1981, Article 6 of which relates to trafficking in women. Of course, the very first time that the term "trafficking in persons" was introduced, was in 1949, in the preamble of the International Convention for the Suppression of the Traffic in Persons

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economic, social and human costs of trafficking in human beings within the EU, Publications Office of the European Union, 2020, p.20.

<sup>8</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Available at: <https://www.ohchr.org/sites/default/files/ProtocolonTrafficking.pdf> (Last accessed 1st April 2022).

<sup>9</sup> Κυριαζή Τένια, Εμπορία Ανθρώπων, Διεθνές και Ευρωπαϊκό Δίκαιο Προστασίας των Δικαιωμάτων του Ανθρώπου, Ίδρυμα Μαραγκοπούλου για τα δικαιώματα του ανθρώπου, Νομική Βιβλιοθήκη, σ.38.

<sup>10</sup> Europol, Situation report, Trafficking in human beings in the EU, The Hague, February 2016, Document ref. No 765175, p.5.

<sup>11</sup> Convention on the Rights of the Child. Available at:

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

<sup>12</sup> Convention on the Elimination of All Forms of Discrimination against Women. Available at: <https://www.ohchr.org/sites/default/files/cedaw.pdf> (Last accessed 1st April 2022).

and of the Exploitation of the Prostitution of Others.<sup>13</sup> And let us not forget the recent Council of Europe Convention against Trafficking in Human Organs,<sup>14</sup> which was signed in 2015 and entered into force in 2018.

Of course, the UN Sustainable Development Goals from the 2030 Agenda,<sup>15</sup> which was signed in 2015 and came into force in 2016, should also be mentioned, more precisely the sub-goals 5§2, 8§7 and 16§2. We refer to goal 5§2, which mandates that we eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation. Also on goal 8§7, which states, inter alia, that we must take immediate and effective measures to eradicate forced labour, and end modern slavery and human trafficking. In addition to this goal, 16§2 points out that we must end abuse, exploitation, trafficking and all forms of violence against and torture of children.<sup>16</sup>

At the European level, on 5 April 2011, the European Parliament and the Council introduced Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA,<sup>17</sup> the so-called Anti-trafficking Directive.<sup>18</sup> This Directive, which was

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<sup>13</sup> Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. Available at: <https://www.ohchr.org/sites/default/files/trafficpersons.pdf> (Last accessed 1st April 2022).

<sup>14</sup> Council of Europe Convention against Trafficking in Human Organs. Available at: <https://rm.coe.int/16806dca3a> (Last accessed 1st April 2022).

<sup>15</sup> United Nations, Transforming our world: The 2030 agenda for sustainable development. Available at: <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Last accessed 1st April 2022).

<sup>16</sup> United Nations, Transforming our world: The 2030 agenda for sustainable development, pp. 22, 24, 30. Available at: <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> (Last accessed 1st April 2022).

<sup>17</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011L0036&from=EN> (Last accessed 1st April 2022).

<sup>18</sup> The Anti-trafficking Directive had to be transposed into national law by 6 April 2013. The first report on the adoption of the Directive by the contracting parties was prepared by the Commission on 6 April 2015. Subsequently, the Commission published periodic reports about the implementation of the Directive in 2016, 2018 and most recently in 2020.

the first<sup>19</sup> binding instrument to address specifically human trafficking at a European level, refers to a minimum definition of the criminal offences considered to be trafficking. In fact, the definition of trafficking in the Anti-trafficking Directive was based on the Palermo Protocol, although the latter has a narrower enumeration of the criminal activities that constitute trafficking. In particular, Article 2§3 of the Anti-trafficking Directive mentions prostitution and other forms of sexual exploitation, forced labour or services, including begging, slavery and practices such as these, the exploitation of criminal activities and the removal of organs. Additional to the above, in recital 11, illegal adoption and forced marriage are mentioned. As noted, these provisions do not contain an exhaustive list of the types of exploitation involved in trafficking. However, it represents the minimum, reflecting an awareness that other types may arise in the future. More precisely, Article 2§1 of the Directive contains the three constituent elements of the crime of trafficking in human beings, namely: 1. the act which is stipulated in the phrase "The recruitment ... over those persons" and pertains to the exercise of control over a person 2. the means which are specified in the phrase "by means ... over another person" and are referred to how control is obtained over a person 3. the purpose which is stipulated in the phrase "for the purpose of exploitation" and defines that the purpose of all the above is the exploitation of the trafficked person.<sup>20</sup> The Directive is based on the three-P paradigm: prosecution, protection and prevention, which is the policy used worldwide to fight human trafficking. The criminal offence of human trafficking at a European level is also enshrined in the Charter of Fundamental Rights of the European Union.<sup>21</sup> Specifically, it is prohibited in Article 5§3 as it constitutes a grave infringement of human dignity. Furthermore, it is also mentioned in Articles 79 and 83 of the Treaty on the Functioning

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<sup>19</sup> The very first attempt from the EU to tackle human trafficking was the 1997 Joint Action to Combat Trafficking in Human Beings and the Sexual Exploitation of Children. In this Joint Action, Member States defined trafficking only in terms of sexual exploitation. The provisions were all optional and had no legally binding effect.

<sup>20</sup> European Commission, Working together to address trafficking in human beings, Key concepts in a nutshell, 2018, p.2.

<sup>21</sup> Charter of Fundamental Rights of the European Union. Available at: [https://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](https://www.europarl.europa.eu/charter/pdf/text_en.pdf) (Last accessed 1st April 2022).



of the European Union (TFEU)<sup>22</sup> as a matter that must be regulated by the EU and the drafting of the Anti-trafficking Directive actually derives from these provisions. In addition, it is prohibited in Article 4 of the European Convention on Human Rights (ECHR).<sup>23</sup> Even though the article is entitled "prohibition of slavery and forced labour" and makes no explicit reference to human trafficking, it is in fact referring to it in a broader sense.

At this point, we must refer to the most important case of *Rantsev v. Cyprus and Russia* of the ECtHR.<sup>24</sup> The case concerns the applicant's daughter, Ms Rantseva, a Russian national, who came to work in Cyprus on a "cabaret-artiste" visa but abandoned her work. The manager of the cabaret took Ms Rantseva to the police station, where authorities instructed the manager to escort the woman to the immigration office. Instead, the manager confined her in a private apartment, where he stayed. The victim was later found dead. For the first time, the Court of Strasbourg found that trafficking in human beings engages the European Convention on Human Rights by violating the so-called "absolute" right to be free from slavery, servitude and forced labour that is stipulated in Article 4. So, human trafficking fell within the scope of this article, establishing specific positive obligations towards the Member States of the Council of Europe, namely the drafting of administrative measures and legal framework to dissuade this inhumane activity and the protection of victims of trafficking. This indicates that the offence of trafficking in human beings is a self-standing prohibition under Article 4, meaning that the person is protected by this provision even if the exploitation has not yet taken place. For the reason that it is intended, not actual exploitation.<sup>25</sup>

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<sup>22</sup> Treaty on the Functioning of the European Union. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF> (Last accessed 1st April 2022).

<sup>23</sup> European Convention on Human Rights. Available at: [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf) (Last accessed 1st April 2022).

<sup>24</sup> Case of *Rantsev v. Cyprus and Russia* of the ECtHR (Application No.25965/04). Available at: <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/RANTSEV%20v.%20CYPRUS%20AND%20RUSSIA.pdf> (Last accessed 1st April 2022).

<sup>25</sup> Jovanovic Marija, The principle of non-punishment of victims of trafficking in human beings: A quest for rationale and practical guidance, *Journal of trafficking and human exploitation*, Vol.1, Nr.1, 41-76, Paris legal publishers, 2017, pp.50,51.

To remain at the European level, another related to the topic document is the Council of Europe Convention on Action against Trafficking in Human Beings<sup>26</sup> (hereafter Anti-trafficking Convention), which came into force in 2008.<sup>27</sup> We could also mention the Council of Europe Convention on preventing and combating violence against women and domestic violence,<sup>28</sup> better known as the Istanbul Convention, which was adopted in May 2011 and which in Article 37 refers to forced marriage.

In relation to Greece, Law 4198/2013<sup>29</sup> establishes the offence of trafficking in Article 323A of the Criminal Code. Additionally, Article 351 of the Criminal Code expressly penalizes trafficking for the purpose of sexual exploitation, but also the use of sexual services exacted from victims. That being said, Law 4554/2018,<sup>30</sup> which came into force in March 2020, is a step forward in protecting potential minor victims. Specifically, Articles 13-32 introduced the institution of guardianship for unaccompanied minors entering the European borders and the best interest of children.

All of this is not an exhaustive list of the international and European legislation addressing the trafficking phenomenon, but they are undoubtedly one of the most important and widely accepted tools to combat it.<sup>31</sup>

With regard to the actors fighting and reporting the problem of trafficking, at the international level, should be mentioned the Inter-Agency Coordination Group

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<sup>26</sup> Council of Europe Convention on Action against Trafficking in Human Beings. Available at: <https://rm.coe.int/168008371d> (Last accessed 1st April 2022).

<sup>27</sup> Also known as the Warsaw Convention.

<sup>28</sup> Council of Europe Convention on preventing and combating violence against women and domestic violence. Available at: <https://rm.coe.int/168008482e> (Last accessed 1st April 2022).

<sup>29</sup> Greece, Law 4198/2013, Article 323A and 351 of the Criminal Code. Available at: [https://eucpn-org.translate.google/document/greek-policy-on-trafficking-in-human-beings? x\\_tr\\_sl=en& x\\_tr\\_tl=el& x\\_tr\\_hl=el& x\\_tr\\_pto=op.sc](https://eucpn-org.translate.google/document/greek-policy-on-trafficking-in-human-beings? x_tr_sl=en& x_tr_tl=el& x_tr_hl=el& x_tr_pto=op.sc) (Last accessed 1st April 2022).

<sup>30</sup> Greece, Law No. 4554 of 18 July 2018 on the regulatory framework for the guardianship of unaccompanied minors. Available at: [https://ec.europa.eu/migrant-integration/library-document/greek-law-no-4554-18-july-2018-regulatory-framework-guardianship-unaccompanied\\_en](https://ec.europa.eu/migrant-integration/library-document/greek-law-no-4554-18-july-2018-regulatory-framework-guardianship-unaccompanied_en) (Last accessed 1st April 2022).

<sup>31</sup> The American Convention on Human Rights, which was adopted in 1969 and entered into force in 1978, in Article 6 refers only to trafficking in women, not to trafficking in children or men. Whereas Article 5 of the African Charter on Human and Peoples' Rights makes no explicit reference to human trafficking, instead prohibits all forms of exploitation.

against Trafficking in Persons (ICAT),<sup>32</sup> which is mandated by the UN General Assembly and brings together the most important organisations (ILO, IOM, UNICEF, UNIFEM, UNDAW, UNODOC).

At the European level, Article 19 of the Anti-trafficking Directive establishes the National Rapporteurs or Equivalent mechanisms (NREMS)<sup>33</sup> and determines that their purpose is to conduct assessments of trafficking trends, measure the results of anti-trafficking policies, including collecting statistics in close collaboration with relevant civil society organizations working in this field, and report. The establishment of NREMs is compulsory for the Member States. Additionally, Article 20 of the above Directive requires Member States to provide the Anti-Trafficking Coordinator (ATC)<sup>34</sup> with the information referred to in Article 19, on the basis of which the ATC contributes to the biennial report carried out by the Commission on the progress made in the fight against trafficking in human beings. The EU ATC is based in the European Commission. Ms Myria Vassiliadou was the first to be placed in that position from 2011 to the end of February 2020. Another agency contributing to the fight against trafficking is the EU Civil Society Platform and the complementary ePlatform.<sup>35</sup> This initiative, in turn, originates again from the Anti-trafficking Directive, which

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<sup>32</sup> The Inter-Agency Coordination Group against Trafficking in Persons, About us. Available at: <https://icat.un.org/about> (Last accessed 1st April 2022).

<sup>33</sup> European Commission, Together Against Trafficking in Human Beings, EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings. Available at: [https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/intensifying-coordinated-response\\_en#eu-network-of-national-rapporteurs-or-equivalent-mechanisms-on-trafficking-in-human-beings](https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/intensifying-coordinated-response_en#eu-network-of-national-rapporteurs-or-equivalent-mechanisms-on-trafficking-in-human-beings) (Last accessed 1st April 2022).

<sup>34</sup> This body was first introduced in the "Stockholm Programme" and described more extensively in the Anti-Trafficking Directive.

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

<sup>35</sup> European Commission, Together Against Trafficking in Human Beings, EU Civil Society Platform and ePlatform against trafficking in human beings. Available at [https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/intensifying-coordinated-response\\_en#eu-civil-society-platform-and-eplatform-against-trafficking-in-human-beings](https://ec.europa.eu/home-affairs/policies/internal-security/organised-crime-and-human-trafficking/together-against-trafficking-human-beings/intensifying-coordinated-response_en#eu-civil-society-platform-and-eplatform-against-trafficking-in-human-beings) (Last accessed 1st April 2022).

acknowledges the importance of civil society actors, including recognized non-governmental organizations working with trafficked persons. The Platform was set up in 2013 as a critical action of the EU Strategy towards the eradication of trafficking in human beings 2012-2016 (priority D, action 3)<sup>36</sup> and summons up over 100 participants from the European Union and beyond. The Platform meets regularly twice a year, including a joint session with the network of the National Rapporteurs or Equivalent Mechanisms, and is under the auspices of the Office of the EU Anti-Trafficking Coordinator. The online ePlatform was launched in 2014 in order to include more participants, advance the discussions held in Brussels and facilitate the exchange of information. Furthermore, there are ten EU agencies that cooperate with each other and more specifically on 13 June 2018 they signed a Joint Statement of Commitment intending to work together and address the phenomenon of human trafficking. These are the following: 1. the European Asylum Support Office (EASO) 2. the European Union Agency for Law Enforcement Cooperation (Europol) 3. the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-Lisa) 4. the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) 5. the European Union Agency for Criminal Justice Cooperation (Eurojust) 6. the European Institute for Gender Equality (EIGE) 7. the European Border and Coast Guard Agency (Frontex) 8. the EU Agency for Fundamental Rights (FRA) 9. the EU Agency for Law Enforcement Training (CEPOL) and 10. the European Foundation for the Improvement of Living and Working Conditions (Eurofound).<sup>37</sup> These agencies also contribute to the work of the Commission regarding the progress reports that the latter carries out. Furthermore, we have to say that the application of the provisions of the Anti-trafficking Convention is monitored by the Groups of Experts on Action against Trafficking in Human Beings

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<sup>36</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, the EU strategy towards the Eradication of Trafficking in Human Beings 2012-2016, COM(2012) 286 final, pp.11,12.

<sup>37</sup> European Commission, SWD (2020) 226 final, p.6.

(GRETA)<sup>38</sup> according to Article 36. GRETA pays visits to the signatory countries and publishes activity reports.

For Greece, a National Rapporteur was appointed in 2013 under the Ministry of Foreign Affairs, namely Mr Heracles Moskof.<sup>39</sup>

## **2. Preventing THB by countering the culture of impunity**

### **2.1. The criminalisation of the use of services demanded by victims**

The first progress report of the European Commission has made it clear that human trafficking is a demand and profit-driven crime. A victim-centred approach must adequately and effectively address prevention and counteract the demand that fuels all forms of trafficking, as stated in the Anti-trafficking Directive. This implies that we need to tackle not only the root causes that make people more vulnerable to trafficking, such as poverty, gender inequality and irregular migration, but also bring to justice all who benefit from this crime and exploit the victims.<sup>40</sup> In other words, to prevent the phenomenon of human trafficking means it is necessary not only to take measures to raise awareness among the general public and potential victims, measures to train the appropriate professionals but also efforts to reduce the factors that generate victims' vulnerability. But it is not only the vulnerabilities themselves that suggest trafficking in human beings but also the vast profits that human exploiters acquire from these criminal activities. So, if we reduce the demand for trafficking, we would deprive traffickers of economic gain and reverse the motus that "crime pays".

According to Article 18§4 of the Anti-trafficking Directive, in order to reduce demand, the contracting parties must make amendments to their national legislation so that the use of services that constitute a form of exploitation is punishable, if it is known that the person offering that service is a victim of human trafficking. Depending to the

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<sup>38</sup> Council of Europe, Action against Trafficking in Human Beings, GRETA – the Group of Experts on Action against Trafficking in Human Beings. Available at: <https://www.coe.int/en/web/anti-human-trafficking/greta> (Last accessed 1st April 2022).

<sup>39</sup> Hellenic Republic, Ministry of Migration and Asylum, Heracles Moskof. Available at: <https://migration.gov.gr/en/leadership/eidikos-grammateas-prostasias-asynodeyton-anilikon/> (Last accessed 1st April 2022).

<sup>40</sup> European Commission, SWD (2020) 226 final, p.52.

Commission Report of 2016,<sup>41</sup> ten Member States established a criminal offence for all forms of exploitation (BG, EL, HR, CY, LT, MT, PT, RO, SI, UK).<sup>42</sup> For example, in the Bulgarian Criminal Code, an individual who uses the services of a person trafficked for all forms of exploitation is punished not only by deprivation of liberty of 3 to 10 years but also with a hefty fine. And it should be noted that in this provision, the consent of the victim is irrelevant.<sup>43</sup> Another similar example is Croatia, but it goes a little further as it imposes the same punishment on those who knowingly use the victim's services as those who are human traffickers.<sup>44</sup> The example of Lithuania is also of great importance, as not only natural but also legal persons are liable for the abovementioned acts.<sup>45</sup> Indeed, it is crucial to identify not only individuals as users of the victims' services but also businesses that may appear legitimate, such as labour-market agencies, transport enterprises and communication technology companies. Of course, users can also be consumers, who are individuals, as they buy products produced by victims of labour exploitation without looking for clear signs of exploitation such as low prices.

In addition, there are some parties to the Anti-trafficking Directive that have not issued explicit legal provisions criminalizing the use of services of trafficked people or have established a selective criminalization (e.g. AT, BE, CZ, DE, EE, ES, FR, HU, IT, LV, LU, NL, PL, SK).<sup>46</sup> Some of those countries, where this phenomenon is not explicitly regulated, resort to laws related to sexual offences or child sexual exploitation (e.g. IT, ES, NL, BE).<sup>47</sup> Furthermore, some Member States have only penalized particular forms of exploitation, for example, Finland and Ireland only penalised the use of the services of trafficked people for the purpose of sexual exploitation. Also, some Member States have incorporated Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of

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<sup>41</sup> European Commission, Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23(2) of the Directive 2011/36/EU, COM (2016) 719 final.

<sup>42</sup> European Commission, COM (2016) 719 final, p.3.

<sup>43</sup> Ibid.

<sup>44</sup> European Commission, COM (2016) 719 final, pp.3,4.

<sup>45</sup> European Commission, COM (2016) 719 final, p.4.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

illegally staying third-country nationals<sup>48</sup> into their legislation, which in Article 9 punishes illegal employment in all cases, containing the case where the employer knows that the employee is a victim of human trafficking. But even this legislation has minimal range because it only refers to labour exploitation and third-country nationals residing illegally in the EU, leaving aside the victims who are EU nationals and victims who are third-country nationals but are lawfully staying in the EU.

It should be noted at this point that there lies a difficulty. These Members States, which established the use of services of trafficked persons as a criminal offence and require the user's previous knowledge that the person's services they use is a trafficked person, have an issue with collecting evidence. Meaning that the burden of proof rests with the prosecutor, while the suspects are taking advantage of the presumption of innocence and are not obliged to prove their innocence. The only exception to this rule is Ireland, where the burden of proof is shifted to the defendant.<sup>49</sup> Another problem is the level of knowledge of the user. The definition of criminal liability, only in the case where the user has direct and actual knowledge that the person is indeed a victim of human trafficking, degrades the treatment of this issue.

As a conclusion driven by the abovementioned Commission Report of 2016<sup>50</sup> there is no coherent legislation in the EU that can curb the demand for services of trafficked victims.<sup>51</sup>

Well, according to another document, which is the statistics and research presented in the Third Progress Report of the European Commission,<sup>52</sup> few parties to the Anti-trafficking Directive have either enacted new laws or amended the existing ones in order to reduce demand. For example, in Cyprus on 27 July 2019, Anti-

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<sup>48</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0052-20090720&from=EN> (Last accessed 1st April 2022).

<sup>49</sup> European Commission, COM (2016) 719 final, p.7.

<sup>50</sup> See supra note 133.

<sup>51</sup> European Commission, COM (2016) 719 final, p.10.

<sup>52</sup> European Commission, SWD (2020) 226 final.

trafficking Law 60(I)2014<sup>53</sup> was amended by a new law 117(I)/2019<sup>54</sup>. Current Article 17A penalizes the act of any person demanding or receiving or using any work or services from a victim of human trafficking for the purpose of sexual exploitation, with the aggravating circumstance of the victim being a child. Moreover, Article 2 defines demand as not only when a client buys the services of a trafficked person or an exploiter recruits and exploits the victims of trafficking, but also when an employer hires a trafficked person or a club owner employs victims of human trafficking and even everyone else implicated in the trafficking chain. Additionally, it is immaterial that the person who used the victim's services was not aware of the disadvantageous status of the latter. Also in another country, Sweden, a new law based on voluntary participation in a sexual act was passed in 2018 (chapter 6 section 1a of the Criminal Code),<sup>55</sup> which indirectly affected the phenomenon of human trafficking. To be specific, the law introduced a new offence of "grossly negligent rape", according to which a perpetrator who engages in a sexual act with a person who is under threat or physical pressure or in a vulnerable position can be sentenced to rape because of grossly negligent of this crime. The prerequisite is that the perpetrator knew or was grossly negligent whether the other person participated in sexual intercourse voluntarily. This broader criminal liability can be used in the event of human trafficking for the purpose of sexual exploitation, provided that taking part in a sexual act voluntarily can only take place if the persons can express their own will. And being in a vulnerable position as being trafficked to join prostitution invalidates the ability of voluntary participation. In Luxemburg, too, the Law of 28 February 2018 does not accuse victims of sexual exploitation of soliciting. On the contrary, clients who consciously use the services of a child or a trafficked person are being prosecuted.<sup>56</sup>

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<sup>53</sup> Cyprus, Anti-trafficking Law 60(I)2014. Available at:

[http://www.cylaw.org/nomoi/arith/2014\\_1\\_060.pdf](http://www.cylaw.org/nomoi/arith/2014_1_060.pdf) (Last accessed 1st April 2022).

<sup>54</sup> Cyprus, Law 117(I)2019. Available at: [http://www.cylaw.org/nomoi/arith/2019\\_1\\_117.pdf](http://www.cylaw.org/nomoi/arith/2019_1_117.pdf) (Last accessed 1st April 2022).

<sup>55</sup> Sweden, Criminal Code. Available at:

[https://www.legislationline.org/download/id/8662/file/Sweden\\_criminal\\_code\\_am2020\\_en.pdf](https://www.legislationline.org/download/id/8662/file/Sweden_criminal_code_am2020_en.pdf), p.47 (Last accessed 1st April 2022).

<sup>56</sup> European Commission, Together against trafficking in human beings, Luxemburg, at para 2. Available at: [https://ec.europa.eu/anti-trafficking/member-states/luxembourg\\_en](https://ec.europa.eu/anti-trafficking/member-states/luxembourg_en) (Last accessed 1st April 2022).



Aside from the above, some Member States such as Latvia, Hungary and Spain started to discuss criminalizing the use of services of trafficked persons.<sup>57</sup> However, when criminalizing the users of services of trafficked persons some practical issues arise, which some Member States have already pointed out. For example, it can be challenging to prove the perpetrator's intention. Also, when knowledge of a lower degree of the perpetrator is required, then that can lead to punishing people, for example, just for buying cheap products. Additionally, existing national laws can make it difficult to enter private homes in order to control whether sexual exploitation is taking place. Ultimately, there are also doubts as to whether a particular legal act can reduce demand.

## **2.2. Corporate liability**

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

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

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<sup>57</sup> European Commission, SWD (2020) 226 final, p.57.

The "Transposition report" of the European Commission indicated that all Member States have complied with the Directive in a broader sense, namely introducing criminal or administrative liability of legal persons for the different types of capacities or positions of the offenders.<sup>58</sup> Of course, the penalties for these actions differ from one Member State to another and some of them have also imposed other optional penalties. The ultimate goal is to break the trafficking chain by discouraging demand. More precisely, the aim is that the supply and value chains proceed with due diligence so as not to exploit human beings and mainly in the clothing sector, which is the greatest challenge. But the trafficking chain is multi-layered and is characterized by various financial exchanges. It implicates recruitment agencies, labour market intermediaries, travel agencies (bus, truck, taxi drivers) and visa services. Indeed, the contemporary production form of the companies is the cascade subcontracting where they share responsibilities with a whole range of entities, making the work of labour inspectors more difficult.

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

As an example of efforts in this area, we can mention Ireland, which carried out the National Plan on Business and Human Rights 2017-2020.<sup>59</sup> Its goal is to materialize the UN Guiding Principles on Business and Human Rights.<sup>60</sup> And the most important action is to share best practices on human rights due diligence and establish supply chain controls. Austria has also launched a program in order to investigate how quality seals can be used to tackle labour exploitation in the international supply industry.<sup>61</sup> Furthermore, the UK has adopted the Modern Slavery Act 2015, which, inter alia,

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<sup>58</sup> European Commission, Report from the Commission to the European Parliament and the Council, assessing the extent to which Member States have taken the necessary measures in order to comply with Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in accordance with Article 23(1), COM (2016) 722, final, p.5 at para 2.1.4.

<sup>59</sup> European Commission, SWD (2020) 226 final, p.61.

<sup>60</sup> UN Guiding Principles on Business and Human Rights. Available at: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf) (Last accessed 1st April 2022).

<sup>61</sup> European Commission, SWD (2020) 226 final, p.61.

requires companies to make a human trafficking statement (section 54).<sup>62</sup> The latter describes the steps companies have taken to eradicate human trafficking from their supply chains. The first conviction of a company director for trafficking for forced labour under the Modern Slavery Act 2015 was in February 2016. The manager of two bed-making factories was sentenced to imprisonment because he knew or should have known that his employees were victims of trafficking.<sup>63</sup>

### **3. Increasing results through investigations, databases and training**

#### **3.1. Cross-border cooperation and joint investigations**

The cooperation between EU actors, but also internationally, is an imperative as crime is increasing due to globalization. The exchange of data and information between the Member States, participation in joint investigation teams (JITs), contacts with liaison officers and police-judiciary meetings organized by Europol and Eurojust are becoming more and more urgent. The authorities also use instruments such as the European Investigation Order<sup>64</sup> and the European Arrest Warrant (EAW)<sup>65</sup>. And it is very often to extradite persons and another country to undertake the legal process. In addition, Member States are reporting cases to Eurojust for assistance, and this number has grown over the period 2018-2019 compared to previous years. Specifically, they reported 150 human trafficking cases in 2018 and 183 in 2019 for assistance. The number of coordination meetings organized by Eurojust also increased to 43 in 2018 and 53 in 2019.<sup>66</sup> Moreover, Eurojust helps Member States with the concentration and admissibility of evidence, such as testimonies from victims and witnesses, provides

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<sup>62</sup> UK, Modern Slavery Act 2015. Available at:

<https://www.legislation.gov.uk/ukpga/2015/30/section/54> (Last accessed 1st April 2022).

<sup>63</sup> Council of Europe, GRETA, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by the United Kingdom, GRETA (2016)21, p.71 at para 283. Available at: <https://rm.coe.int/16806abcdc> (Last accessed 1st April 2022).

<sup>64</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02014L0041-20220313&from=EN> (Last accessed 1st April 2022).

<sup>65</sup> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ( 2002/584/JHA). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02002F0584-20090328&from=EN> (Last accessed 1st April 2022).

<sup>66</sup> European Commission, SWD (2020) 226 final, p.71.

financial information and carries out arrests. Also, in many cases where there is a conflict of jurisdiction and a possible violation of the *ne bis in idem* principle, Eurojust suggests the best country for jurisdiction to prosecute the human exploiters, mainly taking into account the nationality of the victims. A fact that proves the international aspect of the trafficking phenomenon and that action is already being carried out in a broader context. An example of cooperation between countries is the following, officials from Greece and Bulgaria held meetings in 2019, with the support of Europol, to combat illegal adoptions and sexual exploitation.<sup>67</sup> Furthermore, best practices can be exchanged through multilateral visits, as was the case between Greece, Albania and North Macedonia.<sup>68</sup> However, it is also important that Member States work with non-EU countries to provide legal assistance or investigate cases of human trafficking, as did Slovenia, which collaborated with China to dislocate organised criminal groups using people for illegal activities.<sup>69</sup>

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

Of much importance also are the joint investigation teams, which are supported by Eurojust. The number of joint investigation teams conducted by Eurojust has increased compared to previous years, to 118 in the period 2018-2019.<sup>70</sup> In this action, Eurojust carries out the investigation, provides information about the admissibility of

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<sup>67</sup> European Commission, SWD (2020) 226 final, p.72.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> European Commission, SWD (2020) 226 final, p.76.

the evidence, gives funding for travel and translation expenses, and provides suitable equipment. Many Member States have taken part in these teams, such as Romania.<sup>71</sup> In this way, it is possible to disband the whole organized crime group and not just individual members.

EMPACT also runs Joint Action Days (JADs) to fight cross-border crime. Many EU agencies such as Europol, Eurojust and Frontex take part in this action. Many Member States (e.g. BE, DE, IE, EL, FI, HR, LT, PT, SE, SK) participated in Joint Action Days and conducted investigations in venues, arrests of suspects and all targeting sexual and labour exploitation as well as child trafficking.<sup>72</sup> As another example of JADs, we can mention an EU-wide action week that was organized in 2018 aiming at child trafficking. The result was the identification of 51 children and 72 adults as victims who were used for labour, sexual exploitation and forced begging.<sup>73</sup> Another example of Joint Action Days was in 2019 when Europol was responsible for this action and 22 Member States and Switzerland participated. In the end, 476 victims of human trafficking were identified<sup>74</sup>.

### **3.2. Using large databases to detect THB ensuring security**

For the first time in 2011, the EU set up an agency, eu-LISA,<sup>75</sup> which uses the existing large-scale information technology (IT) systems to ensure the security of Member States. So in this way, it contributes to the fight against human trafficking. The large-scale IT systems operating under the auspices of eu-LISA are the already existing Schengen Information System II, the Visa Information System and Eurodac.<sup>76</sup> With the help of the three tools mentioned above, it is possible to identify and recognize people involved in human trafficking, i.e. victims, traffickers and witnesses, but also objects, such as boats, vehicles, containers and travel documents. Eu-LISA is constantly evolving to develop a new information system for border management and internal

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<sup>71</sup> Ibid.

<sup>72</sup> European Commission, SWD (2020) 226 final, pp.77,78.

<sup>73</sup> European Commission, SWD (2020) 226 final, p.78.

<sup>74</sup> Ibid.

<sup>75</sup> The European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice. Available at: <https://www.eulisa.europa.eu/About-Us/Who-We-Are> (Last accessed 1st April 2022).

<sup>76</sup> European Commission, SWD (2020) 226 final, p. 80.

security (interoperability) aimed at the collaboration between current and future IT systems. This latest move will create better tools to prevent the crime of human trafficking by detecting criminals hiding behind fake identities. More specifically, we refer to the Common Identity Repository (CIR) and the Multiple Identity Detector (MID), which enable better identification of persons, who could be perpetrators or victims of trafficking by double-checking the information in the large-scale IT databases.<sup>77</sup>

The Schengen Information System (SIS II) provides access to alerts from the competent authorities of the Member States, in particular, to identify women and children who are victims of human trafficking. The number of alerts in 2019 was 91 million.<sup>78</sup> SIS II is now introducing a new type of alert, known as preventive alerts, in accordance with Article 32§1d(i) and 32§1e of Regulation (EU) 2018/1862<sup>79</sup>. It is about potential victims, children and adults, to prevent them from travelling when they are at risk of being trafficked. The victims and traffickers are identified using biometric data used by several Member States. EU-LISA compiles statistics on these types of alerts in order to provide a better plan in deciding how to prevent this phenomenon.

The Visa Information System (VIS) is vital in combating visa-shopping and irregular migration by enabling cooperation between consulates and border crossing points. The demanding role played by the VIS is demonstrated, for example, by the visa applications submitted in just one year, in 2019 it was 77 million.<sup>80</sup> Ultimately, the VIS guarantees the application of the EU's Common Visa Policy in the Schengen area.

The European Asylum Dactyloscopy Database (Eurodac) contributes to the process of asylum applications by third-country nationals with its extensive database of

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<sup>77</sup> European Commission, SWD (2020) 226 final, p. 81.

<sup>78</sup> European Commission, SWD (2020) 226 final, p.80.

<sup>79</sup> The Regulation entered into force in December 2019 and will be fully implemented from December 2021. Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02018R1862-20210803&from=EN> (Last accessed 1st April 2022).

<sup>80</sup> European Commission, SWD (2020) 226 final, p.80.

fingerprints of asylum seekers and irregular migrants and can thus identify persons suspected of a crime. In 2019 Eurodac stored 5,7 million sets of fingerprints.<sup>81</sup>

### 3.3. Training of officials

The training of relevant officials on the multi-dimensional phenomenon of trafficking in human beings is essential, which is why it is required by Article 18 of the Anti-trafficking Directive. In September 2018, CEPOL, with the participation of the European Commission, ran a training course entitled "Trafficking in human beings for labour exploitation-Understanding the EU legal and policy framework" for police officers, border guards and prosecutors from the Member States.<sup>82</sup> Another EU agency, EIGE, organized a webinar with CEPOL in June 2020 with the aim of "Gender-specific measures in anti-trafficking actions" with the contribution of the European Commission.<sup>83</sup> In addition, the European Judicial Training Network (EJTN) has organized many seminars for prosecutors and judges in the Member States (e.g. BE, FR, FI, RO) in order to inform them about specific subjects in the trafficking phenomenon, such as the non-prosecution of victims principle, the right of victims to legal assistance and compensation.<sup>84</sup> Furthermore, the EU Fundamental Rights Agency organized five trainings with the Greek National Centre for Social Solidarity, the Norwegian Refugee Council and the Office of the National Rapporteur on Trafficking with the main purpose of informing officials in the hotspots about the implementation of the National Referral Mechanisms and training them to better identify victims of human trafficking in hotspots.<sup>85</sup> Another action taken by Frontex was the following, it published handbooks called VEGA for the Frontex instructors for fundamental rights, focused on protecting the vulnerable children at airports.<sup>86</sup>

Many Member States are investing in the development and training of professionals involved in the asylum procedure. A good example of this would be

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<sup>81</sup> Ibid.

<sup>82</sup> European Commission, SWD (2020) 226 final, p.85.

<sup>83</sup> European Commission, SWD (2020) 226 final, p.84.

<sup>84</sup> European Commission, SWD (2020) 226 final, p.82.

<sup>85</sup> European Commission, SWD (2020) 226 final, p.85.

<sup>86</sup> Frontex publishes VEGA Handbook: Children at airports. Available at:

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

Cyprus, which has trained the psychologists who manned the mental health services at the hotspots to better identify the victims of trafficking. The psychologists also learned how to get victims to report their victimization to the police.<sup>87</sup> In 2019, the Greek National Referral Mechanisms (NRM) organised seven 3-day training courses for first-line professionals, such as police officers and coast guards, in the Aegean islands as well as on the mainland.<sup>88</sup> In particular, they focused on the gender dimension of this phenomenon, which is the disproportionate trafficking of women and girls for the purpose of sexual exploitation. Also, the Swedish Migration Agency published a guide on the best interest of the child in international protection procedures in 2019. This handbook helped caseworkers to have effective contact with child victims, as they are more vulnerable than adults and do not speak easily about their experiences of human trafficking.<sup>89</sup>

As already mentioned, new information technology has emerged, which makes the work of officials more difficult. For this reason, some Member States have included the use of the internet in their training. For instance, in Slovakia, a training programme was carried out with cybercrime police officers that focused on trafficking and the darknet. Webinars on the internet as an intermediary in human trafficking have also been organised in Greece.<sup>90</sup>

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

#### **4. Impact of the COVID-19 pandemic on THB**

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

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<sup>87</sup> European Commission, SWD (2020) 226 final, p.87.

<sup>88</sup> European Commission, SWD (2020) 226 final, p.90.

<sup>89</sup> European Commission, SWD (2020) 226 final, p.89.

<sup>90</sup> European Commission, SWD (2020) 226 final, p.84.



More precisely, the financial crisis we are experiencing has raised unemployment rates mainly in the poorest countries. This means that poverty in origin countries has increased, so people are more vulnerable to being prey to ruthless exploiters. Therefore, they are willing to undertake a risky journey to another affluent country, many times to another continent, in search of a better life and work. So the first and more significant impact of the pandemic on human trafficking is that its numbers are going to augment.

Also, due to restricted mobility, it is now more challenging than usual to identify the victims. In Spain, for example, perpetrators began to use digital platforms, such as Airbnb, instead of brothels, in order to rent apartments for sexual exploitation, a fact that inevitably hinders police efforts to find victims.<sup>91</sup> Also, in many cases, these lockdown measures led to a shift from street prostitution to online prostitution. For instance, in Germany, brothels and similar establishments were temporarily closed and, as a result, hidden prostitution increased.<sup>92</sup> In addition, there have been reports of an increase in grooming children online and sexual exploitation of them on the internet. In general, technology enables more criminal activity due to COVID-19. Another impact of the pandemic is the fact that many NGOs have suspended their field offices and shelters or have switched their services to the internet. Without access to safe accommodation, legal and psychological assistance victims of trafficking are therefore vulnerable to revictimization. And in any case, it is difficult for victims such as foreigners and poor people to have access to computers. Immigration centres have also been closed in some countries, such as Malta, preventing UNHCR and NGOs from offering help and legal information to potential victims of human trafficking.<sup>93</sup>

Furthermore, many criminal justice processes and activities, as well as victims' rights to request compensation, have been postponed. In fact, Eurojust reported that COVID- 19 has resulted in difficulties in the execution of arrest warrants, investigation orders and joint investigation teams. Of course, the health of victims of trafficking becomes more precarious due to the pandemic because they are more likely to contract

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<sup>91</sup> Council of Europe, 10th General report on GRETA's activities, covering the period from 1 January to 31 December 2020, p.31 at para 60.

<sup>92</sup> Ibid.

<sup>93</sup> Ibid.

the disease as their living and working conditions are far too hazardous. Moreover, the repatriation of the victims to their country of origin is delayed.

However, as the pandemic spread, some countries did not ease their effort in support of the most vulnerable parts of the community. For example, the Ministry of Equality in Spain has introduced a Contingency Plan against gender-based violence, which is exacerbated by COVID-19, with a special focus on protecting the rights of victims of human trafficking for the purpose of sexual exploitation. It provides for a minimum subsidy for victims and a living alternative to hotels.<sup>94</sup> In Portugal, the Observatory on Trafficking in Human beings researched how the pandemic aggravated the inequalities that enable exploitation. They used the results in order to organize training seminars and awareness campaigns.<sup>95</sup> In Italy, the Department for Equal Opportunities did not request any new project proposals for victim assistance but extended the existing ones until the end of 2020. But the European instruments also reacted accordingly to this pandemic with regard to the security and rights of non-privileged foreign workers, who can also be trafficked. For example, on 19 June 2020, the European Parliament adopted the Resolution on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis.<sup>96</sup> This text urges the European Commission and the Member States to provide equal treatment to third-country nationals as they do to EU citizens. That is equal access to health care, public services and trade union support. In the same vein, in July 2020 the European Commission adopted the Guidelines on seasonal workers in the EU in connection with the COVID-19 outbreak.<sup>97</sup> This document ensures the rights of workers regardless of whether they are EU citizens or not. It protects the health, safety and other rights of

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<sup>94</sup> Council of Europe, 10th General report on GRETA's activities, covering the period from 1 January to 31 December 2020, p.32 at para 65.

<sup>95</sup> Council of Europe, 10th General report on GRETA's activities, covering the period from 1 January to 31 December 2020, p.34 at para 75.

<sup>96</sup> European Parliament resolution of 19 June 2020 on European protection of cross-border and seasonal workers in the context of the COVID-19 crisis. Available at: [https://www.europarl.europa.eu/doceo/document/TA-9-2020-0176\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2020-0176_EN.html) (Last accessed 1st April 2022).

<sup>97</sup> European Commission, Communication from the Commission, Guidelines on seasonal workers in the EU in the context of the COVID-19 outbreak, 2020. Available at: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0717\(04\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020XC0717(04)&from=EN) (Last accessed 1st April 2022).

workers and, above all, invites the Member States to conduct regular labour inspections with the support of the European Labour Authority (ELA). In addition to the above measures, in July 2020 the Council of Europe's Anti-Trafficking Division took action by calling on NGOs to develop proposals aimed at preventing trafficking and assisting trafficked people during the time of the COVID-19 pandemic.<sup>98</sup>

## ***5. Concluding remarks***

There is no doubt that trafficking in human beings is a serious and multifaceted criminal phenomenon that has very clear repercussions in several areas such as security, migration, anti-discrimination, fundamental rights, employment, justice, humanitarian aid and the EU's internal and external relations.<sup>99</sup> It destroys the life of the individual by robbing people of their dignity, freedom and basic rights, actually turning them into "res". It has profound implications for the fabric of society, the rule of law and the sustainable development in the EU Member States.<sup>100</sup> So it is a phenomenon that cannot do justice to a democratic society and European values. It is for this reason that all Member States need to address this problem by adopting other more modern approaches in addition to the traditional criminal justice-based approach in order to transform trafficking from low-risk, high-return crime to high-risk and low-return crime. Of course, they need to take a more coherent multi-disciplinary perspective for this task. And it is not an exaggeration to say that action to combat trafficking is more important than ever in the face of the pandemic and the resulting economic disparities.

First of all, we need to fathom that "modern slavery" is a "silent" crime that is very difficult to identify. People are afraid to reveal the reality of their situation because

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<sup>98</sup> Council of Europe, 10th General report on GRETA's activities, covering the period from 1 January to 31 December 2020, p.34 at para 76.

<sup>99</sup> From a legal point of view, the areas for analysing this phenomenon could be narrowed down to five: migration, work inclination, outlawing slavery, criminal justice and criminal law, and human rights. See: Villacampa Estiarte Carolina, The European Directive on Preventing and Combating Trafficking in Human Beings and the Victim-Centric Treatment of this Criminal Phenomenon, *European Criminal Law Review*, 2012, vol. 2, núm. 3, p.292.

<sup>100</sup> In particular, human trafficking affects the ability to achieve Sustainable Development Goals 5 (gender equality), 8 (decent work and economic growth), 16 (peace, justice and strong institutions) and 17 (partnerships for the goals).

of the obstacles they might face in a foreign country or in relation to the police. So, if we want the voices of the suffering victims to be heard, we must try harder. In this direction, it is important to be able to see that human trafficking is a transnational crime as at least half of the victims come from non-EU countries. Hence, efforts and reforms in policies and legislation must have a far-reaching view and involve cooperation with non-EU countries. But we also have to take into account that about three-quarters of the human exploiters are European citizens. This data is at odds with the racialisation of the perpetrators, who have been described by some groups primarily as foreign criminals from non-EU countries, helping to stoke xenophobic and anti-immigrant sentiments. According to the data at the European level, we also need to highlight the gender dimension of this criminal activity, that is the fact that women and girls are more vulnerable to exploitation and that many factors contribute to it, such as gender inequality, social exclusion, ethnicity, discrimination and above all poverty. And also, that children in migration and especially unaccompanied migrant children can become the prey of human exploiters. All of these facts will help to find a more concrete answer to this problem.

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

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

On the other hand, we cannot overlook the fact that the EU strategy is lacking in both areas of prosecution, protection and prevention. Not to forget that crime is constantly evolving and finding new ways to spread. Therefore, European policy stakeholders should consider taking better early detection measures to protect the victims. Obviously, the involvement of border guards, police officers and social workers plays an important role, so the Member States should invest in their training. Furthermore, it is evident that the Member States should improve law enforcement

capacities and judicial cooperation between countries in order to dismantle trafficking. Indeed, promoting international cooperation and partnerships is fundamental to the EU policy and this is supported by a wide range of European foreign policy instruments. The European Commission supports the Member States in implementing international anti-trafficking documents, such as the United Nations Convention against Transnational Organised Crime<sup>101</sup> and the Palermo Protocol. Also, of great importance is not to penalize the crimes that the victims were compelled to commit during their exploitation. Member States should treat victims as right-holders and offer them opportunities to rebuild their lives. Therefore, the EU states should work harder in this direction, avoiding revictimization and offering rehabilitation. It is also clear that today, given the tragic situation of the COVID-19 pandemic, technology must be used by the Member States more than ever in the fight against organised crime and consequently against human trafficking. Whether through the more extensive use of large databases to detect trafficked people or the perpetrators, or through more thorough financial investigations, or, beyond that, by tracking down internet victims. Ultimately, it goes without saying that the EU policy should concentrate its efforts on getting to the root of the problem, i.e. reducing demand and removing incentives for human trafficking. In any case, this is a legal obligation stemming from the Anti-trafficking Directive, as the European Commission admitted.<sup>102</sup>

Finally, it is obvious that despite the progress made by the European Member States in strengthening the Union's action against trafficking in human beings, the risk of being trafficked still remains high. For this reason, with the new Strategy 2021-2025 the Commission urges for a more effective application of the relevant legislation on the identification and rights of the victims and calls on the Member States to reinforce their policy framework in order to protect vulnerable people from the threat of human exploitation and also adopt robust measures to ensure that perpetrators are brought to justice, thereby protecting society and the economy. It now remains to be seen whether these commitments will be put into practice. One thing is certain, this phenomenon is

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<sup>101</sup> The United Nations Convention against Transnational Organised Crime, while not mentioning human trafficking, makes reference to migrant smuggling, a phenomenon we have seen is linked to trafficking.

<sup>102</sup> European Commission, Report from the Commission to the European Parliament and the Council assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, in accordance with Article 23(2) of the Directive 2011/36/EU, COM (2016) 719 final, p.9.

not a problem that needs to be resolved only by politicians or official stakeholders but requires the engagement of all. Each individual has an obligation to take action before other people's exploitation because it is about fundamental human rights, that is life and human dignity. All must understand that there is an important role to play in the fight against trafficking in persons and all can together guarantee that trading in people's dignity and freedom is no longer a worthwhile and profitable business.

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