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NOTE

From: EUROJUST
To: Delegations
Subject: Strategic meeting on trafficking in human beings
- Outcome report

Delegations will find attached the outcome report of the Strategic meeting on trafficking in human beings, held at Eurojust on 16-17 April 2015.

Strategic meeting on trafficking in human beings

Eurojust, The Hague, 16-17 April 2015

OUTCOME REPORT

1. Introduction

The strategic meeting on trafficking in human beings (THB) was organised by Eurojust in The Hague on 16 and 17 April 2015 as part of Eurojust's strategic project on THB. Over the course of the two days, prosecutors, judges, law enforcement authorities and THB experts analysed the challenges posed by the investigation and prosecution of THB cases. The participants included practitioners from the Member States, Japan, Norway, Switzerland and the United States of America, as well as representatives of the European Commission, Europol, the Fundamental Rights Agency (FRA), the United Nations Office on Drugs and Crime (UNODC), the University of Cambridge, Western Union and Facebook.

The focus of the strategic meeting was how to strengthen and improve cooperation between national judicial authorities in the fight against THB. In particular, the meeting analysed challenges encountered in obtaining evidence from victims of THB and in prosecuting THB cases for the purpose of labour exploitation. It also examined judicial cooperation issues related to the use of JITs, the gathering and admissibility of e-evidence, the use of special investigative techniques, as well as financial investigations in THB cases. Last but not least, it analysed the value of Eurojust's involvement in THB cases and identified other areas where Eurojust could assist Member States.

Prior to the strategic meeting, Eurojust circulated two questionnaires on THB, one addressed to the judicial authorities in the Member States, Norway and Switzerland and a second addressed to the National Members at Eurojust. Based on the responses to the questionnaires, Eurojust carried out an analysis and prepared a report. The report summarised the preliminary findings of the analysis and was distributed to all participants to provide background information for the strategic meeting. The report, finalised after the meeting, is presented in the Annex.

The two-day strategic meeting consisted of plenary presentations and workshops that addressed specific aspects of THB. The following summary reflects participants' input and comments.

2. Opening session

Mr Francisco Jiménez-Villarejo, Vice-President of Eurojust and National Member for Spain welcomed the participants and highlighted the importance of addressing human trafficking, a crime that remains among the EU's priorities for the fight against organised crime between 2014 and 2017. He introduced the aim of the strategic meeting, inviting the participants to look in depth at the main difficulties encountered by the national authorities in investigating and prosecuting THB and to propose solutions to address them. Mr Jiménez-Villarejo presented the agenda and referred to the main topics addressed in the plenary presentations and in the workshops.

The topics of the meeting included relevant developments at EU level, updates on the implementation of Eurojust's Strategic Project against THB, challenges and best practice in identifying THB cases and THB victims, as well as national experience related to the investigation and prosecution of THB cases, with particular insight into difficulties in securing evidence from victims and in prosecuting cases of THB for the purpose of labour exploitation.

Ms Myria Vassiliadou, the EU Anti-Trafficking Coordinator (EU ATC), addressed the keynote speech of the meeting and highlighted the ever-evolving and transnational nature of THB, the global challenge that it presents, the huge profits it generates, the need for a common response and the importance of all concerned to work together. A comprehensive and coordinated approach is essential to ensuring that work is not carried out in parallel and that the focus is placed on all aspects of the fight against THB, including on the prosecution, the prevention of THB, as well as on the identification, protection and assistance of victims. The EU ATC referred to the large number of victims of THB - two-thirds of those registered being EU citizens - and highlighted the need to always focus on targeting all forms of exploitation.

Considering that conviction can also act as prevention, EU ATC stressed the importance of increasing the awareness of judges and prosecutors of the THB phenomenon. Ms Vassiliadou also highlighted the fact that, although the term ‘THB’ is sometimes used interchangeably with related crimes, it is essential to maintain a distinction between THB and these other crimes, including the smuggling of migrants and slavery. Addressing THB is important, because it is the only form of organised crime prohibited by the Charter of Fundamental Rights of the European Union in its Article 5, because it is among the areas of particularly serious crime with a cross-border dimension listed in Articles 79 and 83 of the Treaty on the Functioning of the European Union (TFEU), and because it has an important place in the European Agenda on Security and in the European Agenda on Migration.

Regarding the implementation of the THB Directive in the Member States, the EU ATC informed the participants that, thus far, 25 Member States have given notification of the transposition of this EU instrument at national level. The information provided is currently being analysed by the Commission in light of its 2016 report to the European Parliament and the Council of the EU on the compliance of the Member States with the implementation of the THB Directive. The EU ATC said that the Commission will not hesitate to take the necessary steps for the full implementation of the THB Directive in all Member States, and referred to the recent developments in the Commission’s main activities in addressing against THB. She highlighted the release in 2014 of a mid-term review report on the implementation of the EU Strategy towards the Eradication of THB, 2012-2016. The annex of this report describes the instrumental work of the JHA Agencies, including Eurojust, between 2012 and 2014. Other new developments included the setting up of a new civil society platform to deal with aspects related to the assistance and protection of victims, as well as numerous studies and guidelines issued by the Commission, including the upcoming publication of a study on case law on THB for labour exploitation to be published by the Commission in June 2015.

Regarding the future, Ms Vassiliadou informed the participants about the preparation of a new EU Strategy against THB post-2016, when the current strategy is completed. A study is being launched in this respect, alongside a policy review and the mapping of all conclusions of EU funded projects, to better choose the best focus for the future strategy. A report will also be issued by the Commission on the implementation of *Council Directive [2004/81/EC](#) on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities*. Unfortunately, this EU instrument is not applied fully in all Member States. Emphasising that external action is the key to addressing THB, the EU ATC also referred to the plans of the Commission to continue working with non-EU States and to the consideration given to re-thinking the list of priority third States when developing and funding new projects. Child trafficking will remain a priority in the new EU Strategy against THB, as the number of child victims remains very high and, despite numerous activities, including studies, handbooks, guidelines and the work of EMPACT in addressing child trafficking, there remains a lot more to be done.

The EU ATC addressed a key message to the participants: if one looks at THB crimes, one conclusion would be that there is always someone making or saving money from these crimes and that there is always someone making use of the services provided by victims. Therefore, to better tackle THB and disrupt trafficking chains, the EU ATC stressed the need to address both the money and the demand related to all forms of THB. With regard to money, financial investigations and confiscation procedures are crucial. The support of Eurojust in following the money trail is fundamental. With regard to demand, the EU ATC highlighted that traffickers would not exist if there were no more users, consumers, procurers, clients of services provided by victims. Article 18 of the THB Directive obliges Member States to take action to reduce the demand that fosters all forms of exploitation related to THB. It calls on Member States to at least give consideration to establishing as a criminal offence the use of services that are the object of exploitation, with the knowledge that the person is a victim of THB. Holding the private sector accountable for THB for the purpose of labour exploitation is also called for by the THB Directive. The EU ATC concluded her presentation by referring to the publication of a report assessing the impact of existing national law, establishing as a criminal offence the use of services that are the object of exploitation of THB, on the prevention of trafficking in human beings, and to be accompanied, if necessary, by adequate proposals regarding EU legislation.

3. Plenary session

3.1. *The mid-term findings of the implementation of the Eurojust action plan against trafficking in human beings (2012-2016)*

Mr Lukáš Starý, Eurojust National Member for the Czech Republic and Eurojust THB Contact Point presented the mid-term findings of the implementation of the Eurojust Action Plan against Trafficking in Human Beings. As background, he explained that the Eurojust THB Strategic Project started in 2012. Upon identification of the main difficulties in the investigation and prosecution of THB cases (evidentiary difficulties in THB cases, problems in the identification of THB cases and victims, problems related to the multilateral dimension of THB, lack of knowledge and experience in THB and challenges in asset recovery), a Eurojust Action Plan against THB covering the years 2012-2016 was drawn up with six areas in which Eurojust could be of assistance: enhancing information exchange, increasing the number of detections and joint investigations and prosecutions, training and expertise in THB, increased cooperation with third States, multidisciplinary approaches and financial investigations.

Mr Starý introduced the mid-term evaluation report which follows the six main priorities laid down in the Action Plan and for which 25 selected THB cases dealt with by Eurojust were analysed. He highlighted, particularly, Chapter 1 on the exchange of information and noted: (i) the small number of Article 13 notifications; (ii) the high number of Eurojust coordination meetings considering the small number of registered THB cases; and (iii) that 68% of coordination meetings were attended by Europol. With regard to Chapter 2 on investigation, prosecution and judicial cooperation in THB cases, the analysis showed that THB cases are often linked to illegal immigration, that the number of multilateral THB cases is lower than the number of bilateral cases, and that the number of JITs is increasing, also thanks to JITs funding provided by Eurojust. Mr Starý invited the participants to visit the THB section on Eurojust's website where all relevant THB information can be found and, in particular, to read Chapter 2.2 of the mid-term report on best practice and obstacles in judicial cooperation in THB cases. The problems identified by Eurojust's THB Project Team correspond with the problems reported in the responses to the THB questionnaire sent prior to the strategic meeting.

Mr Starý then outlined the main conclusions of the remaining chapters – training and expertise in THB; third States (small number of cases involving third States; Eurojust contact points and cooperation agreements); multidisciplinary approach (2012 Eurojust Strategic Seminar in Copenhagen; 2013 Putting Rantsev into practice); financial investigations (often discussed in coordination meetings) and other activities of Eurojust (EMPACT, Eurojust contact point on THB). The detailed conclusions and recommendations can be found in the mid-term report which is available on Eurojust's website.

3.2. *Challenges and best practice in the investigation and prosecution of a THB case*

Mr Warner ten Kate, National Public Prosecutor for human trafficking and people smuggling for the Netherlands, presented the challenges and best practice identified in the investigation and prosecution of two THB cases. Based on the Dutch experience, he highlighted the usefulness of having extensive legal provisions covering all forms of THB, combined with a ‘programmatic’ and ‘barrier’ approach, which ensures the involvement of all relevant actors (e.g. NGOs and private entities, such as employment agencies, housing companies, real estate agents and the tax administration). One case study touched upon the identification of the labour exploitation purpose, which was carried out by making reference to indicators developed in case law, such as long working hours, low wages, threats and the vulnerable position of the victims. Both case studies presented significant challenges linked to the hearing of victims, who did not see themselves as such, were afraid of reprisals and thus changed or withdrew their statements and were moved around often so that it was difficult to trace them.

These difficulties were addressed by employing qualified detectives and judicial staff, paying attention to the intake of the victim, especially minors, and even going abroad to hear witnesses. The courts acknowledged that victim statements may be inconsistent, but this does not mean that they are unreliable, but have to be considered carefully. In view of these challenges, investigations should not focus only on victim statements, but also on other aspects involved in criminal activity, including criminal profits and misuse of the internet. Thanks to good cooperation by Western Union and MoneyGram, Dutch investigators were successful in following the money trail, although huge sums were channelled via underground banking (‘hawala’) and criminals were resorting to the technique of ‘smurfing’ (i.e. breaking down the transaction values so that they are below the threshold of anti-money laundering reporting).

Parallel financial investigations were instrumental in taking away profits from criminals and in providing more solid evidence to the case and a possibility of compensation for the victim. Another challenge was the monitoring of social media (including Facebook) and the difficulties associated with the use of the dark net by criminals. The line between legal and illegal parts of a website is often blurred and searching the internet can be time consuming. However, in the case studies presented, the police proactively searched the web for suspicious advertisements and closed down websites suspected of assisting THB. Mr ten Kate concluded his presentation by remarking that international cooperation in these cases is essential, although it requires time and effort from each side to set up a good working relationship. In certain cases it might be advisable to jointly address a non-EU State, instead of sending many MLA requests from different countries. Joint investigation teams were highlighted as a very effective platform for international cooperation.

3.3. FRA's SELEX project on severe labour exploitation of migrant workers

Mr Albin Dearing, Programme Manager Research - Criminal Law and Criminal Justice, Freedoms and Justice Department of the FRA, presented the SELEX project, which analyses severe labour exploitation of migrant workers and covers both intra-EU migratory movements and migration of third State nationals to the EU. Mr Dearing explained that the project aims to identify the factors that place migrants at risk of severe labour exploitation as well as the institutional responses in terms of the prevention and monitoring of labour exploitation and mechanisms to facilitate victims' access to justice.

The project assessed four different categories of risk factors, notably: (i) related to migrants personally; (ii) derived from workplaces; (iii) connected to the legal and institutional framework; and (iv) created by employers. The project developed fieldwork research with representatives of professions including labour inspectors, police officers, staff of victim support services, judges and prosecutors. On the basis of the work carried out, Mr Dearing noted that work conditions cannot be left to globalised labour markets since poverty and declining prosperity – which will continue to be a reality – create a space for further criminal exploitation. Thus, a commitment to specialisation and cross-border cooperation in all areas of severe labour exploitation is crucial. By the same token, the legal framework on the rights

of migrant workers should be strengthened and victims ought to be encouraged to report abuses. Monitoring systems, workplace inspections and investigations should be incentivised. Altogether, one should strive to instil a climate of zero tolerance concerning severe labour exploitation in contemporary societies.

3.4. *The identification of THB cases based on suspicious money transfers*

Mr Ričardas Pocius, Director, Global Investigations, Western Union (WU), presented the current problems and challenges WU faces with THB. WU recognises that their system is abused by traffickers. There are concerns about this topic and anti-human trafficking initiatives are one of the main priorities of WU.

Transactions related to THB are extremely difficult to identify. WU's Financial Intelligence Unit (FIU) relies primarily on law enforcement intelligence to conduct analysis and investigations, and based on that information they can start to search the system. Mr Pocius said that prosecutors usually approach WU at a very late stage of criminal proceedings. Although information provided by WU is used as evidence, it is also a very good base for investigations; their findings can help identify criminal networks and save time.

In 2013, WU made a strategic decision to launch a major initiative to combat human trafficking by partnering with the U.S. Department of Homeland Security (DHS) and non-governmental organisations (NGOs) such as the Polaris Project. The initiative takes a proactive and comprehensive approach, using both public and private partnerships. It looks to train WU employees, agents and frontline associates to watch for and recognize THB 'red flags' and report suspicious activity to the WU compliance hotline; it intends to develop proactive and targeted business rules to intercept suspicious transactions and eventually drive human traffickers out of the WU network. One of the results of WU's anti-human trafficking initiative is a Memorandum of Understanding that was signed with DHS in 2013, making WU the first financial services company to join the DHS Blue Campaign.¹ WU also prepared a report to instruct financial institutions on how to recognise human trafficking-related transactions – this year they started the same initiative in Europe and created the Bank Association against human trafficking – to provide the same standards throughout Europe.

Mr Pocius concluded his presentation by stressing the importance of looking to the future. To target possible victims and traffickers, the WU FIU is building a Human Trafficking Consumer Risk Index (HTCRI) that will seek to risk-score transactions that may have a higher correlation of being related to THB.

¹ The Blue Campaign is the DHS' unified effort to combat human trafficking in collaboration with law enforcement, government, non-governmental and private organisations.

3.5. *The Facebook initiative to contribute to the detection and assistance of victims of human trafficking*

Mr Christian Perrella, Facebook, presented Facebook's approach as a private industry initiative to keep their social media platform a secure and safe place for people and to prevent criminal incidents on their site. Facebook's support for law enforcement agencies in the fight against THB is part of the company's mission to connect to the authorities for safety reasons and to bring perpetrators to justice. Every user is able to report potential fraudulent or abusive posts. More information on the Law Enforcement Online Request System can be found at www.facebook.com/records and www.fb.me/leguides. Requests and questions can be addressed to records@fb.com. There is a Facebook page called 'Stop trafficking now' and a transparency report was published by Facebook.

3.6. *The preliminary findings of the 2015 Eurojust questionnaires on THB*

Ioana van Nieuwkerk, Legal Officer, Eurojust, presented a summary of the preliminary findings of two questionnaires launched by Eurojust in March 2015 to prepare for the strategic meeting. The 'external questionnaire' was sent to national authorities to gather national experience in the investigation and prosecution of THB for the purpose of labour exploitation, in the hearing and protection of victims, in financial investigations in THB cases and in securing e-evidence in THB cases. The 'internal questionnaire' was addressed to Eurojust National Members and focused on the legal provisions of the Member States related to the hearing and protection of victims. The report on *The preliminary findings of the 2015 Eurojust questionnaires on THB* is contained in the annex.

4. Outcome of workshops

Three workshops were organised during on both days of the strategic meeting. The participants were divided into small groups and rotated, allowing each participant to attend all workshops. A hypothetical scenario involving a case of THB for the purpose of labour exploitation was considered by the participants of all three workshops. Various issues were addressed during the discussions, allowing the participants to compare their national approaches and laws and to identify challenges and possible solutions for the investigation and prosecution of THB cases. The main findings of the three workshops were reported to the plenary by the Chairs and co-Chairs.

4.1. *Workshop 1: Hearing and protection of victims/witnesses*

Chair: Ms Pam Bowen, Senior Policy Advisor, Operations Directorate, Crown Prosecution Service, the UK

Co-Chair: Mr Lukáš Starý, Eurojust National Member for Czech Republic and Eurojust THB Contact Point

Workshop 1 aimed to address challenges encountered by national authorities in judicial cooperation related to the hearing and protection of victims/witnesses in THB cases. Specifically, the workshop discussed: (i) differences in the legal requirements of Member States for the hearing of victims/witnesses; (ii) avenues for securing testimonial evidence at the pre-trial stage; (iii) the availability and use of protective measures during hearings, and (iv) victims who may have been threatened or are otherwise reluctant to cooperate with the authorities.

The workshop concluded that almost all participants were able to comply with different requirements for the hearing of victims/witnesses set out in a MLA request, if not contrary to the fundamental principles of the national legal system and if the requirements are clearly specified and understood. Conversely, it was pointed out that a request executed following the requirements of the executing authority should be *prima facie* admissible in the court of the requesting State as a logical derivation of the principle of mutual recognition.

Direct contact between requesting and executing authorities were deemed to be crucial to clarifying legal requirements for obtaining evidence and for the hearing of victims/witnesses in different States and to expedite the execution of related MLA requests. This approach will be completed with the transposition of the Directive on the European Investigation Order (EIO), whereby the executing authority must be notified to the requesting State and direct contact between it and the issuing authority are foreseen.² In addition, direct contact between national police forces should identify the competent authorities and Eurojust's coordination meetings will assist in clarifying national legal requirements. An alternative option to ensure that legal requirements for the hearing of victims/witnesses are complied with, is – where feasible – for foreign police and/or judicial authorities to interview victims and witnesses in their country of residence or to arrange for them to travel to the requesting State for the same purpose.

² See Article 7 (2), (5) and (6) of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

Most participants noted that pre-trial statements could be admissible as evidence in court, as an exception to providing oral evidence (with the possibility of cross-examination). However, the terms of such an exception vary considerably among Member States. In some countries, statements are (video)recorded as early as possible to be later played at trial. However, the value of a pre-recorded testimony may vary depending on the circumstances in which this is taken (e.g. presence of judge and/or defence lawyers, possibility of cross examination) and whether this is considered to be respectful of Article 6 ECHR. Some countries allow for a ‘mini-trial’ (confined to hearing evidence from witnesses who might not be available later), which reproduces all the guarantees reserved to the defendant in court sessions during the interviewing of the witness. A participant from a Member State referred to ‘fast-tracks’ to trial, allowing for the trial of a THB case within approximately two weeks, thus reducing the risk of victims/witnesses’ disappearance or intimidation. Several participants highlighted that, when a witness provides conflicting statements or decides to remain silent in court or there is reason to believe that the witness has been threatened, pre-trial statements may be read and freely assessed by the judge in accordance with the principle of free evaluation of evidence.

Most countries allow for the use of protective measures for the hearing of victims/witnesses: testimony behind a screen; voice distortion; and testimony from separate rooms. Anonymity is possible only in certain countries and only in specific situations (e.g. vulnerable witnesses, life-threatening situations), with the final decision being for the prosecutor or judge. It was emphasised that anonymity might not be possible in certain cases, as the victim and perpetrator often know each other very well. Some countries developed elaborate platforms of support for victims/witnesses that involve several stakeholders, notably NGOs, police and social workers. It was noted that accompanying lawyers might be close to the organised crime groups and, to minimise this risk, state aid might be useful. Participants highlighted the importance of international cooperation and close ties between NGOs and police of the countries concerned to facilitate the protection and reintegration of victims/witnesses when they relocate abroad.

Participants also noted that reluctant victims/witnesses are more common in THB for labour exploitation cases, within certain minorities and/or if the victim has been involved in criminal activities. In these cases, it might be useful to gather information, including reports on the working conditions in the countries of origin of victims as an additional tool in assessing a THB case for labour exploitation (especially the ‘vulnerability’ element). Several countries highlighted a number of support and assistance measures to address this challenge, e.g. reflection periods, residence permits and psychological assistance. At the same time, it was highlighted that measures should be taken to avoid the issue of ‘inducement of witnesses’ (e.g. testimony in exchange for residency permits, NGOs’ possible conflicts of interest). It was noted that the right to refuse to testify against a relative remains a major challenge in the prosecution of certain THB cases, for example in cases where child victims are ‘married’ – according to traditional rituals – to the perpetrator.

Participants drew the following main recommendations:

- (i) Direct contact between national authorities and clear communication about specific MLA requirements are key elements in addressing the challenges in judicial cooperation requests related to the hearing of THB victims/witnesses.
- (ii) The risk of re-victimisation should be reduced as far as possible in line with the THB Directive.³ For this reason, a case should not be built only on the testimony of victims, but other corroborative evidence should be sought (e.g. electronic interception, financial transactions).
- (iii) Investigating authorities need to engage with NGOs as soon as possible to ensure effective support and to assist in facilitating victim testimony.
- (iv) There is a need to ‘think outside the box’ and, therefore, if it is not feasible to prosecute for THB for labour exploitation, consider other disruptive measures, e.g. indict for breaches of health legislation, minimum wage regulations, tax evasion, fraud, money laundering and labour laws.

³ 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.

4.2. Workshop 2: Challenges in prosecuting THB for the purpose of labour exploitation

Chair: Mr Peter McCormick, Prosecutor, Directing Division, Office of the Director of Public Prosecutions, Dublin, Ireland

Co-Chair: Mr Thomas Ahlstrand, Deputy Chief Prosecutor, International Public Prosecution Office Göthenburg, Sweden

The goal of workshop 2 was to identify best practice in prosecuting THB cases for the purpose of labour exploitation. Firstly, participants discussed the different national approaches, as well as difficulties and good practice in establishing the labour exploitation element in a THB case, with particular reference to the existence or need for indicators related to this type of THB. Secondly, participants discussed best practice in investigating and prosecuting other offences in parallel with the THB offence. Thirdly, participants were invited to share best practice when it comes to multidisciplinary cooperation against THB for the purpose of labour exploitation and to indicate whether their judicial authorities involve other organisations when dealing with such cases. Last but not least, participants went further and addressed particular situations where victims of THB are forced to commit criminal activities, such as pickpocketing, assessing the conditions under which the victims will not be prosecuted.

The discussions revealed that the prosecution of THB for labour exploitation is very difficult. As a result, the number of convictions for this type of THB is very low. While some countries do not have any experience of investigating and prosecuting THB for labour exploitation, being countries of origin of victims, the vast majority of countries have dealt with this type of THB and have experienced, in many cases, difficulties in proving the labour exploitation purpose. These difficulties have sometimes occurred due to a lack of clear legislation, guidelines and/or insufficient case law providing for indicators for labour exploitation. On other occasions the difficulties were caused by a lack of clear definitions, particularly in relation to the interpretation and clarification of forced labour and labour (economic) exploitation. In some jurisdictions, this resulted in the prosecution and/or conviction for offences other than the THB offence, such as violation of labour

laws or exploitation of foreigners or fraud by abuse of authority. Consequently, in the absence of a conviction for a THB offence, lower sanctions had been imposed and the rights of victims for assistance, protection and compensation could not be considered. The consent of the victims to poor work conditions, very long working hours, very poor payment, improper housing, etc., led in some jurisdictions to the conclusion that there was no exploitation involved. For example, in one Member State, such consent associated with victims' freedom of movement determined an acquittal for the THB offence, as victims were considered as having the choice of not working for the defendants.

Participants discussed the problems encountered in obtaining victim statements, as such evidence is often relied upon to secure convictions. These problems occur as victims are often fearful of testifying or returning to their country of origin before the trial begins. The difficulty in obtaining statements from traumatised THB victims resembles what happens in cases of domestic violence; victims are reluctant to tell about their experience due to fear, shame or dependence on the perpetrator. The hearing of THB victims therefore calls for tactics and attitudes that are similar to those used in cases of domestic violence. The participants also discussed practice in the Member States and identified that other offences are investigated in parallel with the THB offence, such as tax fraud, fraud, usury, conspiracy, benefit offences or money laundering. However, in some countries, such parallel offences would be investigated by authorities other than those investigating the THB offence, meaning problems in communication and cooperation could arise. Last but not least, participants referred to situations where victims of THB are forced to commit offences as a result of trafficking. The discussions revealed that all countries provide for the principle of non-prosecution of victims, but the conditions differ between Member States. For instance, participants acknowledged that in some countries the victims shall still be prosecuted if they are forced to commit serious offences, such as drug trafficking, while in other countries the principle of non-prosecution is applied to both minor and serious offences. The principle of legality or opportunity of prosecution is also relevant and leads to different approaches in the Member States.

In response to these challenges, participants drew the following recommendations and best practice:

- (i) The need for clearer definitions, legislation and guidelines, as well as awareness, training and exchanges to assist law enforcement and judicial authorities in assessing and proving the labour exploitation purpose;
- (ii) The use of pre-trial statements of victims as evidence in court;
- (iii) It is important to focus on support and assistance for victims with a view to securing their testimonies. Good practice consists of avoiding interviewing victims immediately - when they are traumatised – but firstly offering them professional support and advice, including information on their rights;
- (iv) Victims are more likely to testify when interviewed by investigators and prosecutors that are specially trained in working with victims of serious crimes;
- (v) It is advisable to avoid relying only on victim statements for securing convictions and to use all possible circumstances and evidence available;
- (vi) Good practice consists in investigating and prosecuting other offences in parallel with the THB offence. Consideration could then be given to working in joint teams consisting of different authorities involved in the investigation of the parallel offences, being aware of the need to ensure that sufficient communication and cooperation exists;
- (vii) Identify additional measures to fight trafficking chains, such as sanctions for those who profit from the use of cheap labour (e.g. construction companies); financial investigations; administrative measures for violating health and safety regulations; labour, tax or immigration laws; and non-conviction based confiscation;
- (viii) Encourage multidisciplinary approaches to fight THB for labour exploitation by involving other authorities, such as labour inspectorates and immigration services;
- (ix) Non-prosecution of victims for offences committed by THB victims when they have acted through necessity (coercion or threat);
- (x) Assistance from Eurojust in organising coordination meetings and coordination centres and in setting up JITs.

4.3. *Workshop 3: Challenges in judicial cooperation in THB cases*

Chair: Mr Ulrich Nachtlberger, Judge, Regional Criminal Court of Vienna, Austria

Co-Chair: Ms Anki Maderud, Seconded National Expert for Sweden at Eurojust (Day 1) and Ms Petra Bakker, Police Commissioner EU for the Netherlands (Day 2)

The goal of workshop 3 was to address challenges encountered in judicial cooperation in THB cases, particularly in the conduct of investigations involving several States, to gather knowledge on how to resort to the Internet and other means of telecommunication, to identify challenges and best practice in financial investigations and to discuss special investigative techniques in relation to the recruitment of victims, their transport and exploitation.

The discussions showed that the main challenge would be to prove the entire chain of trafficking (recruitment, transportation and exploitation). Not only are there substantial differences in the respective legal systems, but traditional mutual legal assistance would be cumbersome and time-consuming. The need to establish a dialogue with the other involved States and to improve cooperation with third States was underlined.

Several solutions to enhance cooperation with third States were identified, including the investment of personal efforts (such as visiting the country of origin, offering training); proactive sharing of information to trigger a more open-minded approach of third States towards cooperation; and the involvement of third States from an early stage to have a common mind-set and to build trust. Multiple channels of cooperation were highlighted: Liaison Officers and Magistrates, IBERRED, embassies, Eurojust, Europol, Interpol and NAPTIP (Nigerian National Agency for the Prohibition of Trafficking in Persons). The EMPACT THB sub-projects ETUTU and Chinese THB were mentioned as projects aimed at creating channels of cooperation with Nigeria and China.

In addition, the advisory role of Eurojust in clarifying legal requirements and differences in the legal systems and the organisation of coordination meetings to discuss and agree on future joint actions and to decide where to prosecute (to avoid *ne bis in idem*) were underlined. With regard to Europol, analytical support and operational meetings were emphasised, together with the role of EMPACT THB to discuss cases, trends in *modi operandi* and to develop a common approach.

In the context of the case scenario, several participants suggested the setting up of a joint investigation team (JIT) as a cooperation tool to ensure the flow of information between all partners; to trigger involved States to initiate their own national proceedings; and to operate together and to tackle the entire THB business model. JITs funding, which is now also available for JITs set up with a third State, was regarded as particularly beneficial. The recommendation was given to include victim protection and shelter aspects in the JIT agreement. Another recommendation was to charge suspects with THB and membership of a criminal organisation.

Regarding the use of the Internet and other means of telecommunication, discussions showed that the main challenges faced are: (i) technical problems in intercepting Whatsapp, BlackBerry devices and Skype; (ii) the use of clouds, the dark net and bitcoins; (iii) time consuming mutual legal assistance, especially when providers are located abroad (for example in the US, which is the case for Facebook); (iv) a lack of legislation; and (v) short data retention periods. The participants suggested that the main focus should be on training, including training on the procedural and legal requirements of obtaining information from the USA, training delivered by private companies (e.g. Western Union, Google) to national authorities and training of police staff on the possibilities of proactively searching the Internet. Reference was also made to EMPACT THB that focuses, among other things, on training and awareness in the use of the Internet in THB.

The participants elaborated on financial investigations in the context of THB. Among the obstacles identified were: (i) difficulties of following the money trail since cash couriers (often victims) return the profits to the country of origin or criminals register assets under the names of other persons; (ii) experts in THB are often not experts in financial investigations; (iii) asset recovery is often done at a (too) late stage, when the money is no longer available; (iv) victims seldom ask for compensation; and (v) criminals use virtual money.

A number of recommendations were formulated:

- (i) THB crimes should be seen as economic crimes;
- (ii) FIU Network/AROs should be involved from the beginning of investigations to detect suspicious transactions and collect information on assets;
- (iii) Specialised Asset Recovery/Forfeiture Units should be set up at Public Prosecution Offices to run parallel investigations from the very beginning with a focus on asset seizure and confiscation;
- (iv) Consideration should be given to including a clause in JIT agreements regarding the conduct of financial investigations in THB cases;

- (v) Training and awareness on profits generated through THB are essential;
- (vi) Multidisciplinary, cross-border cooperation should be strengthened;
- (vii) It is important to inform victims of their right to compensation.

In connection with special investigative techniques, the participants agreed that a victim-centred approach on its own is not sufficient. To gather evidence on the recruitment, transportation and exploitation of victims, electronic interception, covert observation, undercover agents and the searching of premises were highlighted as applied investigative techniques, while a controlled delivery of persons was rejected due to legal and/or ethical reasons. It was also mentioned that, even though victims are often not aware of the final destination and the aim of trafficking, the information provided by them could clarify the *modus operandi* of recruitment.

5. Conclusions and closing remarks

Ms Michèle Coninx, President of Eurojust and National Member for Belgium, summarised the main ideas and conclusions of the strategic meeting. Trafficking in human beings is one of the most profitable crimes. Several challenges in the investigation and prosecution of THB cases were identified and need to be addressed, particularly the difficulties in obtaining evidence from victims, the challenges of establishing the labour exploitation purpose in a THB offence and of securing electronic evidence. Parallel financial investigations need to be conducted to seize and confiscate criminal assets. It is also essential to adopt a multidisciplinary approach to raise barriers to minimise opportunities in this field in an effort to counter THB. Several other instances of best practice were exchanged, including the unique role and added value of Eurojust in bringing together all relevant authorities in the fight against THB. The importance of assistance and protection of victims in the spirit of the THB Directive was underlined.

Eurojust is committed to following up on the main conclusions of this strategic meeting. The outcome report of the meeting will be distributed to all participants. Ms Coninx concluded the meeting by thanking the participants for their active participation.

FINDINGS

of the 2015 Eurojust questionnaires on Trafficking in Human Beings

Introduction

This paper was drafted in support of the discussions during the workshops of Eurojust's Strategic Meeting on Trafficking in Human Beings, 16 and 17 April 2015. It contains an analysis of the responses to a:

- *Eurojust questionnaire on trafficking in human beings (THB)* (external questionnaire) received from the judicial authorities of 27 Member States, Norway and Switzerland.
- *Eurojust questionnaire on legal standards for hearing and protection of victims and witnesses in THB cases* (internal questionnaire) received from 24 National Desks at Eurojust and from the Eurojust Liaison Prosecutors for Norway and Switzerland.

Eurojust is grateful for having received thorough and detailed responses to both questionnaires; they have undergone preliminary analysis and are summarised in this paper. As a follow up to the strategic meeting, Eurojust will finalise the analysis of responses to the questionnaires to include more detailed information received during the workshops and provided by the national authorities in their written input.

The paper is structured into the following chapters:

1. The Eurojust questionnaires on THB	23
2. The investigation and prosecution of THB for the purpose of labour exploitation	24
3. The hearing and protection of THB victims and witnesses	28
4. Financial investigations in THB cases	43
5. Internet and THB	45
6. Additional comments	48

1. The Eurojust questionnaires on THB

The external questionnaire consisted of five sections and six questions, namely:

Section A – The investigation and prosecution of THB for the purpose of labour exploitation, with a view to:

- Establishing whether countries have legislation, guidelines and/or case law determining the indicators for establishing the ‘labour exploitation’ purpose in a THB offence (*Question A.1*);
- Identifying lessons learned from cases in which prosecution was successful (or unsuccessful) in proving the labour exploitation purpose (*Question A.2*).

Section B – The hearing and protection of THB victims/witnesses, with a view to:

- Identifying the main difficulties encountered by national authorities in the hearing and protection of THB victims/witnesses and the solutions found to address them (*Question B.3*).

Section C - Financial investigations in THB cases, with a view to:

- Gathering the experience of national authorities in cooperating with MoneyGram and Western Union and collecting information in connection with the hawala banking system in THB cases (*Question C.4*).

Section D – Internet and THB, with a view to:

- Identifying the main challenges in securing electronic evidence in THB cases (*Question D.5*).

Section E – Further comments, with a view to:

- Gathering suggestions from the national authorities to ensure that investigations and prosecutions of human traffickers are more effective (*Question E.6*).

The internal questionnaire focused on the legal provisions of the Member States related to the hearing and protection of victims/witnesses and contained four questions, as described in sub-chapter 3.2. of this paper.

Eurojust has received:

- Twenty-nine responses to the external questionnaire from competent authorities from: AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, MT, NL, PL, PT, SE, SI, SK, RO, UK, Norway (NO) and Switzerland (CH).
- Twenty-six responses to the internal questionnaire from: AT, BG, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, MT, NL, PT, RO, SE, SI, SK, and the UK National Desks at Eurojust and from the Eurojust Liaison Prosecutors for NO and CH.

The main findings of the preliminary analysis of the responses to the external and internal questionnaires are reported below.

2. The investigation and prosecution of THB for the purpose of labour exploitation

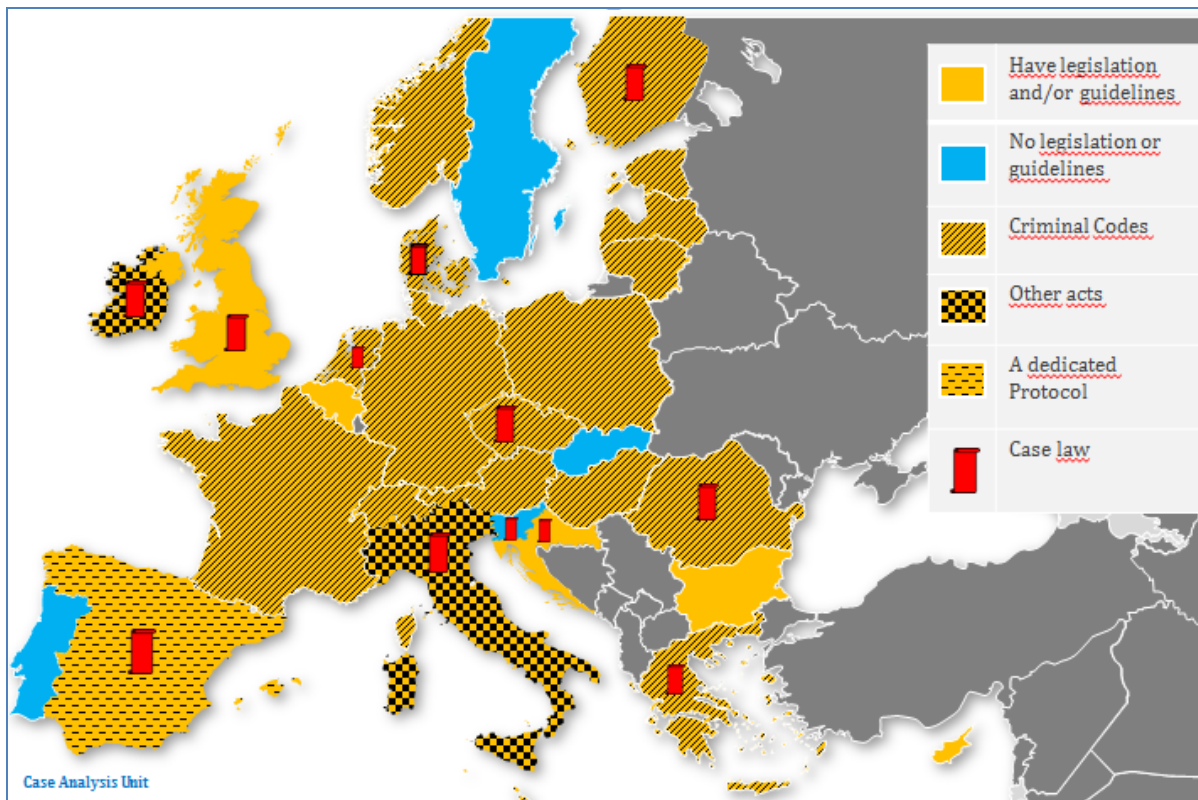
2.1. Indicators for establishing the labour exploitation purpose

The external questionnaire (*Question A.1*) asked the national authorities to indicate whether their respective countries have legislation, guidelines and/or case law determining the indicators for establishing the labour exploitation purpose in a THB offence. The responses show that:

- Twenty-five countries (AT, BE, BG, CY, CZ, DE, DK, EE, EL, ES, FI, FR, HR, HU, IE, IT, LT, LV, MT, NL, PL, RO, UK, NO and CH) **have legislation, guidelines and/or case law determining the indicators for establishing the labour exploitation purpose**. More specifically, the indicators are listed in:
 - Criminal Codes: AT, CH, CZ, DE, DK, EE, EL, FI, FR, HU, LT, LV, MT, NL, NO, PL and RO;
 - Other acts (e.g. Immigration Act, Human Trafficking Act): IE and IT;
 - A dedicated Protocol: ES (Protocol for Protection of Victims of Human Trafficking).
 - Guidelines provided either by the Prosecutor General's Office (PL and LT), Director of Public Prosecutions (DK), Department of Justice (UK - Northern Ireland), Home Office (UK), police (CY) or other national authorities (CZ, BE and NO).
- Four countries (PT, SE, SI and SK) indicated that they **do not have any such legislation or guidelines**, although PT mentioned that their courts use International Labour Organization (ILO) guidelines, while SI uses European Court of Human Rights (ECHR) case law for identification of the 'labour exploitation' purpose. SE and SK indicated that major difficulties arise when proving the 'unlawful, appalling' conditions, including inadequate salaries, social conditions, accommodation, etc.
- Five countries (CZ, EE, EL, HU and IE) mentioned THB Directive 2011/36/EU as a **source of indicators and guidance**. The following European and international legislative tools were also mentioned:
 - ILO Forced Labour Convention, 1930 (No. 29) mentioned by four countries (BG, CZ, DK and FI);
 - (Council of Europe) Convention on Action against Trafficking in Human Beings 2005 (CZ, EL and NO);
 - EU Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of nationals of third-States who reside illegally (PL);
 - United Nations Convention against Transnational Organized Crime and its Protocols 2000 (EL).

- IE mentioned the International Organisation for Migration, Frontex, the ILO and the UNODC as **sources of guidelines, best practice and training materials**.
- EL and ES mentioned the ISEC Eurotraffick Guide Project which was implemented during 2013 and 2014. This project aims to **define common indicators for THB** among the four countries involved (BE, EL, ES and RO).
- CY referred to the added value of a **manual containing indicators for the identification of THB cases, victims and traffickers**, which has been developed on the basis of suggested procedures of the International Centre for Migration Policy Development (ICMPD), INTERPOL, ILO and WHO.
- **Case law is used as an interpretation and clarification tool** in 11 countries (CZ, EL, DK, ES, FI, HR, IE, IT, NL, RO and UK). ECHR case law is also used as guidance in EL, DK and SI.
- LT highlighted ADSTRINGO Guidelines (*Addressing trafficking in human beings for labour exploitation through improved partnerships, enhanced diagnostics and intensified organizational approaches*, is a transnational project that focuses on trafficking for forced labour and labour exploitation in nine countries in the Baltic Sea region).
- EL mentioned International Organization for Migration and its manuals and handbooks, such as the *Handbook on Direct Assistance to Victims of Trafficking*, as helpful tools.

Chart 1. Presence of indicators for establishing the labour exploitation purpose



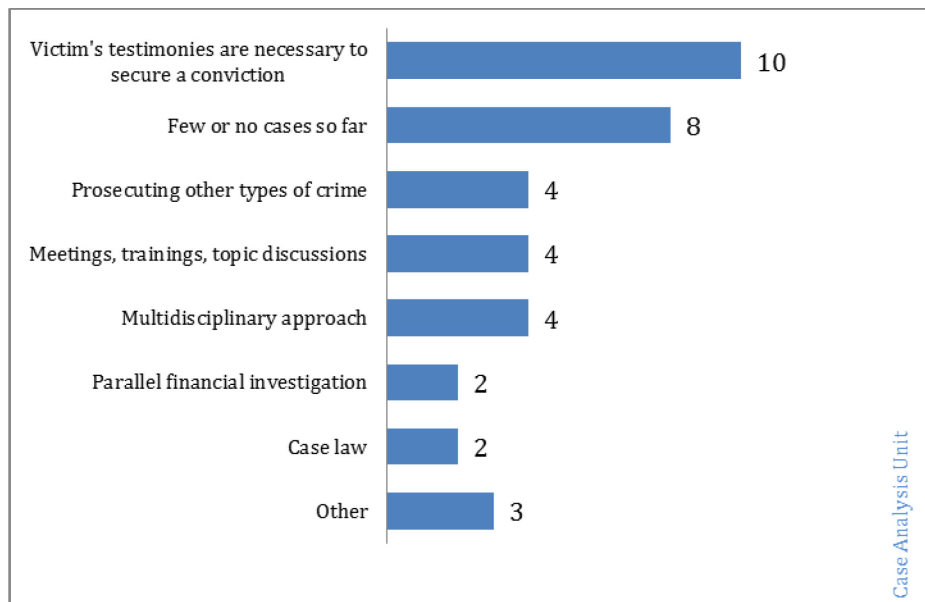
2.2. Lessons learned from cases of THB for the purpose of labour exploitation

The external questionnaire (*Question A.2*) asked the national authorities to describe lessons learned from cases in which prosecution was successful (or unsuccessful) in proving the labour exploitation purpose. The responses show that:

- Eight countries have **very few or no cases so far** (AT, CH, EE, IE, LV, MT, PL and SK) and seven countries (AT, DE, DK, EL, HR, SE and SI) indicated **difficulties in prosecuting labour exploitation cases**, particularly proving the labour exploitation purpose.
- Ten countries highlighted that **victim testimonies are necessary to secure a conviction**; securing testimonies for future use is crucial (CY, EL, ES, HR, HU, LT, NO, PT, RO and UK):
 - ES mentioned the importance of integrating the statement of the victim as a witness at court with other kinds of evidence (e.g. travel and money delivery documentation, expert reports with regard to ‘victim evolution’ and ‘emotional injuries’).
 - HR and LT stated difficulties when victims do not perceive themselves as victims.
 - EL mentioned difficulties when victims are not willing to testify against their exploiters, as the (female) victims are usually recruited by their partners, who falsely promise jobs as domestic workers or waitresses in EL.
 - EL, PT, RO and UK highlighted that ensuring support for victims is necessary, e.g. by use of protection programmes, reception centres, etc. and limiting the number of third-party contacts and interrogations.
 - CY mentioned a THB case for labour exploitation which ‘*started as best practice but ended as bad practice*’. The CY authorities succeeded in the identification of a large number of Romanian victims trafficked into CY and referred them for assistance. An operational meeting took place between the CY and RO authorities and, as a result, parallel investigations were initiated in RO. However, the criminal proceedings in CY had to be suspended, as the victims returned to RO before the trial took place.
- NL and RO indicated that **parallel financial investigations may be a powerful tool** in prosecuting THB cases.
- The UK, DE, FI and SI mentioned that, even if evidence does not support THB as such, **prosecuting other types of crime** (less serious crimes such as usury, fraud, money laundering, cheating the revenue, misuse of wages, etc.) **may be good practice**.

- EL, BG, NL and IE referred to a **multidisciplinary approach**: involvement of labour inspectorate, immigration and nationalisation services – NL; National Employment Rights Authority – IE; Ministry of Labour and Social Policy - BG; Non-Governmental Organisations (NGOs) such as Migrant Rights Centre of Ireland; and international cooperation particularly with countries of origin. EL highlighted the establishment and the role of the Office of the National Rapporteur (MFA), which coordinates all the competent state, NGO, private and cultural sector stakeholders. NL stressed the importance of **creating barriers to minimise the opportunities** in this field.
- IE highlighted a case with diplomats bringing in people and exploiting them in their domestic households. In collaboration with the Department of Foreign Affairs, new arrangements have been put in place where **Embassy Staff have now to be registered and vetted through the Department of Foreign Affairs**. A similar case was mentioned by AT, but this resulted in acquittal.
- RO also indicated using **electronic evidence and special investigative techniques, such as undercover agents**, as their best practice based on a large number of successful cases.
- EL, CZ, IE and LT referred to meetings, training and topic discussions.
- FI and CZ indicated case law as a source of lessons learned.

Chart 2. Best practice/lessons learned from THB cases



3. The hearing and protection of THB victims and witnesses

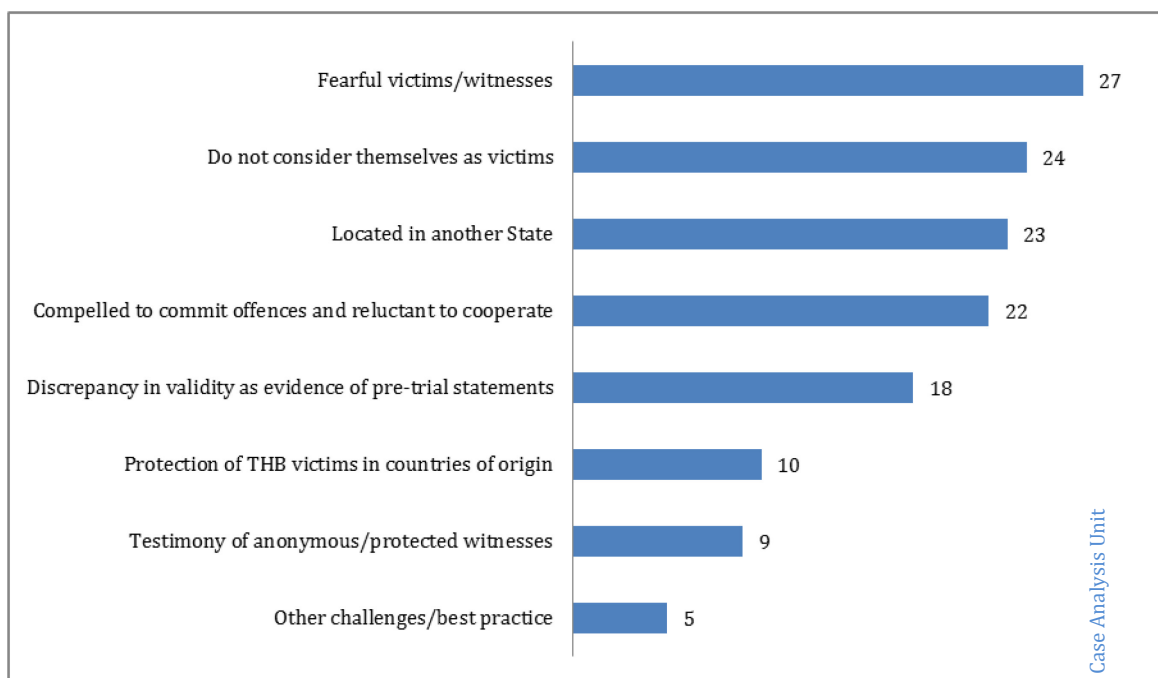
One of the main aims of the external questionnaire was to gather national experience in obtaining testimonies from victims of THB as essential evidence for bringing human traffickers to justice. For the sake of clarity, it should be noted that the victims of THB were referred to in the external questionnaire (and in this paper) as ‘victims/witnesses’, considering the fact that in some jurisdictions victims and witnesses have different procedural status, while in other jurisdictions no such distinction exists. Furthermore, the internal questionnaire gathered legal standards in the Member States in relation to the hearing and protection of victims/witnesses in THB cases. Therefore, this chapter looks also at whether differences in such legal standards in the Member States may cause problems in judicial cooperation.

The main findings resulting from the analysis of responses to *Question B.3* of the external questionnaire and to the internal questionnaire are summarised in sub-chapters 3.1. and 3.2.

3.1. Main challenges and solutions in securing evidence from victims/witnesses

The external questionnaire (*Question B.3*) contained a list of eight relevant challenges in securing evidence from victims/witnesses in THB cases. These challenges have been identified in Eurojust’s casework and/or in the framework of the strategic project on Eurojust’s action against THB. National authorities were asked to specify and describe whether one or more of the listed challenges has been encountered in their daily work and eventually resolved. At the same time, the national authorities were invited to add and describe, according to their experience, any other practical or legal obstacle that was not included among those listed. The findings of the external questionnaire show that all respondents have encountered difficulties in the hearing and/or protection of victims/witnesses in THB cases. These difficulties are presented below together with solutions identified, where appropriate.

Chart 3. Main challenges in securing evidence from victims/witnesses



3.1.1. Twenty-seven countries indicated that, in many THB cases, *victims/witnesses are fearful and refuse to testify/change their testimony/withdraw their testimony.*

This **difficulty** was described in greater detail by the national authorities:

- **A variety of factors** contribute to this problem, including economic, social and cultural differences; fear of reprisals from traffickers; fear of not getting paid or losing their job; the use of Voodoo and Juju on Nigerian victims; dependence or subjugation to the traffickers; family ties between victims and traffickers; intellectual disabilities; traumatic experiences; the passage of time; drug and alcohol abuse; threats to victims' families; and the return of victims to their home country prior to the case proceeding.
- Furthermore, victims/witnesses often **mistrust police and judicial authorities** in Member States, as many come from countries affected by war, terrorism, corruption or persecution.
- HU encountered situations where **THB investigations were terminated** due to refusal of victims/witnesses to testify or due to withdrawal of their testimonies. For example, in the absence of a statement from victims/witnesses admitting that they were forced to work, it was concluded that the conduct of suspects did not constitute a criminal offence.
- SE indicated that Swedish law **does not allow for withdrawal of a statement** given to the police in a criminal investigation.
- MT indicated cases where **victims/witnesses opted to remain confidential**, and therefore prosecution could not be successful.

Solutions found to address this difficulty include:

- Most respondents indicated a number of instances of **best practice to build trust and increase the cooperation of victims/witnesses**, including: (i) informing victims of the criminal procedure and their role in it; (ii) communicating and explaining the victims' rights (e.g. the right of assistance during proceedings, the right to interpretation and translation, the right to seek compensation for material and moral damage, reflection and recovery period, the possibility for nationals of third-States to ask for a residence permit, housing in special shelters, etc.); (iii) cooperation with government agencies, NGOs, support groups, and countries of origin to ensure assistance, protection and safe return of victims; (iv) witness protection programmes; and (v) knowledge that other victims have received assistance and protection and that traffickers could be convicted for long sentences.
- CY, EE, EL, LV, PT, IE and UK indicated that the **anonymity of victims** and obtaining evidence from victims/witnesses through **video links** proved useful. CY referred to **victims testifying behind a partition** as a measure that allowed for relevant evidence to be obtained.
- To secure evidence and protect victims/witnesses, EE law provides for the possibility of a preliminary investigating judge to **hear the victim/witness in the pre-trial phase** if circumstances arise to conclude that the hearing in court may later be impossible or the victim/witness may be influenced to provide false testimony. PL allows for the hearing of the victim/witnesses by a prosecutor or judge during the investigation phase while requiring a detailed testimony. IT law provides for an immediate hearing during the preliminary investigations (*incidente probatorio*) in the case of vulnerable victims, to avoid a scenario where victims attend the court and testify again. Moreover, the UK referred to a case where UK investigators travelled to the home countries of victims to take statements from victims regarding their fear and the reasons for such fear. These statements were to be used as evidence to support an application in UK (Northern Ireland) to admit the victims' original statements as evidence at trial without the victims having to attend the court. Prior to a decision on the admissibility of such statements, the defendant entered a guilty plea.
- The UK also referred to cases where **authorities travelled to the victim's home country** to ensure that authorities there provide protection for the family and reassure victims who later provide evidence in the UK. **Pre-trial interviews** with witnesses, **video evidence** and regular contact with victims prior to trial were also indicated as best practice. IE mentioned the possibility of the **video recording of children** admitted as evidence at trial. FI referred to cases where **contact with family members in the countries of origin** has proved useful in building the confidence of victims.
- NL referred to situations where **inconsistencies in statements** occur. A Dutch court held that the mere fact that a witness provided inconsistent declarations was not sufficient to exclude the testimony from evidence. A judge can use a changed testimony, but with prudence, and supporting evidence is essential in this respect.
- RO indicated the use of **special interviewing methods by specialised police officers**.
- CY noted that victim testimonies are corroborated by the **testimony of experts**, such as clinical psychologists and experts in identification.
- IE indicated that in a THB case, two suspects were arrested for alleged **intimidation of witnesses**; the case is on-going.
- CH noted that, to make potential victims feel more at ease, they should be approached by specialised teams that are not part of law enforcement.

- FR referred to the assistance and support provided by the newly established services within the Department of Justice for ‘Reassuring and Greeting’ (*Ac.sé*) the victims. The willingness of the victim to cooperate with law enforcement and judicial authorities is not a pre-condition for benefiting from such services. Nevertheless, the establishment of *Ac.sé* led to a significant increase in the number of statements from victims.
- BE highlighted that reliance on victim testimony could be avoided by focusing the investigation on **finding other types of evidence**, such as **telephone intercepts** and **financial flows**, thus avoiding exposing the victim to unnecessary risks and assisting in building a strong case.

3.1.2. Twenty-four countries encountered situations in which *victims/witnesses were not willing to testify as they did not consider themselves victims*.

This **difficulty** was described in greater detail by the national authorities:

- This situation occurs mainly in cases where the exploitation of the victim takes place without threat, violence or coercion, but taking advantage of the **vulnerability and state of need of the victim**.
- BE, BG, CZ, DE, IT, LT, NL, SI, UK and NO encountered such problems in cases of THB for labour exploitation, when victims are **paid considerably less than the minimum wage** in the countries they are exploited, but they still earn more than they would in their home countries. DE went further and explained that victims consider themselves as such only in cases where they do not receive any payment at all. BG indicated that the voluntary agreement of the victim often determines a lack of fear from traffickers.
- The UK (Northern Ireland) indicated a case of THB for sexual exploitation in which victims travelled willingly to Northern Ireland (travel arranged by the trafficker) knowing they would be working in prostitution. Victims were exploited in that they **paid inflated rental money to the trafficker** for use of apartments for the periods they were in the UK (Northern Ireland). This case was technically THB for sexual exploitation, but the victims did not see themselves as victims. BG, BE and CH also indicated cases of THB for sexual exploitation in which **victims become engaged (in a love or business relationship)** with their traffickers and therefore do not see themselves as victims, being allowed to keep a (small) part of their earnings or hoping for the situation to improve.
- HU referred to a case of THB for sham marriages where two of the three **victims did not suffer any financial loss** and therefore did not appear before the court and did not consider themselves to be victims.
- IE indicated that the **use of Voodoo and Juju on Nigerian victims** proved difficult in engaging with victims and gaining their trust.
- PL encountered such situation rarely. Usually victims identify themselves as such, but feel **ashamed about their situation** and lack interest in testifying. LT, MT and LV explained that victims tend to blame themselves and not those exploiting them.
- BG and RO indicated that **victims sometimes do not understand or do not accept their status**.
- SE mentioned that, according to national law, anyone who has information about a crime shall be subject to a police interview to provide a statement. Therefore, situations where victims refuse to testify are not problematic. DK also indicated that victims are **obliged by law to testify** in court.

Solutions found to address this difficulty include:

- EE, HR, IT and SK mentioned the raising of the **awareness of victims regarding their rights and their legal status**, in particular the possibilities for assistance and protection and the right to compensation. CZ and RO indicated the importance of qualified, **trained prosecutors and police officers** to carefully explain to victims their rights and status.
- BG and LT indicated that **specially trained social workers** provide victims with detailed explanations as to why work and housing conditions are not appropriate and why the victims are being exploited.
- The UK mentioned the importance of **providing support to victims**; however, if the victims are still unable to work as a result of temporary leave to remain through the National Referral Mechanism, they are unlikely to engage. BG, CZ, IT, LV and PL indicated the need for **assistance from specialised NGOs**, as well as providing psychological assistance to victims. MT referred to the two-month **reflection period** established by Maltese law; during this period, on-going support from social workers help victims to gain confidence and testify.
- NL referred to a THB case of labour exploitation where the statements of victims/witnesses showed that the victims did not recognise that they were exploited. However, the court thoroughly examined **all other evidence** in the case when deciding.
- IT and BE suggested the use of **other means of proof**, such as electronic interception or financial flows. BG referred to the need to collect as much circumstantial and documentary evidence as possible on the circumstances of the exploitation, to follow the cash flow, to use special investigative techniques and increase international cooperation in THB cases.
- SI law offers a solution to the problem, as it provides that a **crime of THB has been committed regardless of the consent of the victim**; this enables the prosecution of such cases even when victims refuse to testify because they do not consider themselves victims.
- IE addresses the problem of **cooperating with Nigerian victims** by assigning experts in the victims' religion to explain how to overcome their beliefs to gain independence and make decisions in a safe and supportive environment.
- CH highlighted that authorities should be prepared at all times to respond to a victim's call for help.

3.1.3. Twenty-two countries have encountered situations where *victims/witnesses were compelled to commit offences (e.g. cannabis cultivation, pickpocketing, etc.) as a result of trafficking⁴ and were reluctant to cooperate with the authorities. This results in situations where it is difficult to distinguish whether they are in fact victims of THB.*

This **difficulty** was described in greater detail by the national authorities:

- Many respondents referred to cases encountered where victims (sometimes children) were forced into **pickpocketing, theft, organised shoplifting, robbery, fraud, begging or transportation of drugs** as result of exploitation or debt bondage. DE highlighted problems in investigations because victims commit crimes in one city only for a few days and then they are moved to another city to commit further crimes. SK indicated that victims are usually afraid of being punished for their criminal activity and **refuse to testify**. LT indicated that almost half of its pre-trial investigations in 2014 were related to the exploitation of victims recruited for the purpose of committing criminal activities. EL reported cases of THB for forced begging in which the majority of perpetrators and victims were EU citizens of Roma origin. Potential victims, especially those with physical and mental disabilities were approached, transferred to EL and forced to beg in public spaces.
- IT mentioned that in a case involving ransoms of EUR 10 000-20 000 in respect of Chinese victims of THB (kept in inhumane living conditions), the **victims accepted becoming part of the criminal organisation** to escape from severe exploitation. The victims ended up being involved in **extortion, kidnapping, organised gambling, prostitution or counterfeiting of trademarks**. The UK also referred to cases of THB for sexual exploitation where female victims became traffickers and exploiters of other girls.
- CZ and the UK mentioned cases where Vietnamese workers were locked inside **cannabis cultivation** facilities without the possibility to leave. NL also experienced cases of forced cannabis cultivation. IE indicated that persons found in cannabis grow houses are ostensibly caught committing very serious drug trafficking offences. However, there may also be indicators of human trafficking present. Invariably, when interviewed, these people provide little or no detail as to what has happened to them, making it very difficult for the authorities to distinguish whether they are in fact victims of THB or whether they are drug traffickers.
- CY referred to cases where EU citizens have been **trafficked for the purpose of forced marriage** with third-country nationals in CY. Forcing someone to marry against their will has recently become a criminal offence in CY.
- DK indicated cases where THB victims violated the Danish Aliens Act for **not having residence permits** for their stay in DK. In NO, young asylum seekers are exploited and forced to commit drug-related crime.
- DE mentioned that in many THB cases victims committed offences on their own, e.g. **unauthorised entry** and **falsification of documents**. They have the right to not testify and sometimes refuse to do so, being afraid of losing their residence permits.

⁴ Article 8 of THB Directive 2011/36/EU requires Member States to allow for non-prosecution of victims if the alleged offence was committed as a direct result of THB.

Solutions found to address these situations include:

- HR, LT and CH indicated that THB **victims are not prosecuted** for the offences committed, as national legislation provides that their conduct does not represent an offence when they have acted under necessity (coercion or threat). CZ, EL, NL, PL, RO, SE and SK mentioned that the principle of non-prosecution and non-punishment of victims is taken into consideration and the judicial authorities can decide to suspend or terminate the proceedings, not to impose a penalty at all or to apply a lower penalty. The rights of the victims need to be carefully explained to them.
- The UK (Northern Ireland) indicated that prosecutors will apply the **public interest test** to determine whether prosecution is in the public interest. New legislation in the UK (Northern Ireland) has also introduced **statutory defence for victims** of THB to certain offences. However, a number of offences are exempt from the defence, resulting in an anticipated difficult clause to operate. Guidelines for prosecutors are in place on how to deal with the circumstances of each such case.
- BG mentioned that social workers and police officers held a discussion with child victims immediately after their arrest. This allowed the **identification of traffickers** who controlled the children or received the proceeds of child-pickpocketing.
- DK indicated that according to the THB guidelines from the Director of Public Prosecutions in DK, a THB **victim shall not be charged** with petty offences related to the trafficking, *inter alia*, document fraud, illegal stay or work, pickpocketing, theft, burglary, begging and petty drug dealing.
- DE mentioned that it is very important to let the victims know that the **authorities are mainly interested in the people organising THB** and that the victims face a much lower fine if they cooperate. Many victims request asylum so their cases are closed immediately. Gaining the confidence of the victims is fundamental to obtaining reasonable information on the persons behind them. Furthermore, the victims' testimony has to be secured by repeating it before an examining magistrate. If the victim is no longer available, their testimony can be used in court by hearing the examining magistrate.
- IE referred to the growing number of High Court cases addressing persons who have been charged with the cultivation of cannabis in cannabis grow houses and claimed they were victims of THB. In a High Court case (Win Lin and Governor of Cloverhill Prison [2014] IEHC 214) examining a complaint for unlawful prosecution (and detention awaiting trial), a Chinese man found in a cannabis grow house was **deemed not to be a victim of THB**. At the time of writing, there were approximately 40 persons in custody in IE awaiting trial for cultivation of cannabis cases. Around 30 are of either Vietnamese or Chinese origin.
- IT referred to the importance of considering that **the state of necessity of victims may determine them to commit crimes**. Therefore, the victims should not be indicted and their cooperation should be sought through protective measures.
- CY referred to its legislation criminalising forced marriages and mentioned that **THB for the purpose of forced marriage** is prosecuted as trafficking for the purpose of committing criminal activities.
- EL specified that, according to Article 187A of the Greek Criminal Code, if a victim/witness who resides illegally in Greece testifies against the OCG of the traffickers, he/she can be granted the right to obtain a **residence permit** as long as the Court procedure against the traffickers is ongoing.

3.1.4. Twenty-three countries referred to situations involving *victims/witnesses located in another Member State (or third State) and to difficulties and solutions in obtaining and/or using their statements in court.*

These **difficulties** were described in greater detail by the national authorities:

- Many respondents referred to difficulties caused when the **residence of the victim is not known** or the person has received **protection in another country** and security measures hamper or delay receipt of the statement. In particular, CZ reported problems in locating victims of THB for labour exploitation as they tend to move to countries other than the one of origin after being exploited in CZ, in their search for new job opportunities. IT and CY mentioned that the return of victims to their countries of origin creates problems in ensuring their presence at trial in IT, especially, as IT indicated, when victims require a visa and money to travel to a Member State.
- Many respondents also indicated **(long) delays or severe difficulties** in obtaining victim/witness testimonies from other countries (in particular non-EU countries) on the basis of letters of request.
- RO referred to difficulties encountered due to differences in the legislation in the Member States on whether a THB victim is considered a **‘witness’ or a ‘victim’** in criminal proceedings.
- DE highlighted difficulties encountered because **German law requires victims/witnesses to testify in court** and, in some cases, victims left DE during the proceedings and could not be convinced to return and provide statements in court. CZ and LT indicated that the defendant is entitled to ask questions to victims. If this is not done in the pre-trial phase, the victim/witness must testify in court.
- CZ went further and highlighted that difficulties may also arise in **ensuring the protection of a (secret) victim/witness in another country.**
- CH pointed out that difficulties occur due to **data protection issues** and sometimes due to perceived lack of clarity regarding the **role of law enforcement agencies and prosecution services; bureaucracy** further hinders the process. Other problems are the **lack of financial resources** and lack of **manpower**.

Solutions found to address these difficulties include:

- Timely and proper **use of instruments of judicial cooperation**, of the police to police channel through **INTERPOL** and the use of police attaches to successfully transfer evidence and testimony from one country to another.
- **Assistance from the EJM or Eurojust** in facilitating the execution of MLA requests.
- Reading out in court the **testimony obtained from victims/witnesses located abroad.**
- Use of **videoconferencing for hearing** victims/witnesses.
- Organising the **hearing of victims/witnesses at pre-trial phase** when there is a risk that they will not be likely to testify later in court. In this respect, the legal standards of the country where the pre-trial testimony will be used as evidence in court must be respected. To this end, LT indicated that their MLA request for a pre-trial hearing specifies that the victim/witness must be heard before a judge whereas the defence lawyer is informed in advance about the planned hearing and must be entitled to present questions in writing. These questions are sent together with the MLA request.

- Use of joint investigation teams (**JITs**).
- Convincing **victims to travel** abroad and testify in court, with the prosecuting State covering all related expenses.
- **Cooperation with administrative authorities** to overcome difficulties encountered by victims in obtaining visas for travelling to a Member State to testify.
- Efforts made to overcome difficulties related to the **financing of travel of victims to a Member State to testify** (e.g. cooperation with embassies), because in some Member States the restitution of travel expenses of victims/witnesses is possible only after the testimony is provided in court.
- Good knowledge of the legislation of the Member States and direct contacts.

3.1.5. Eighteen countries pointed to difficulties/solutions addressing the fact that *pre-trial statements of victims/witnesses are deemed to be valid evidence in some countries, while in others the law requires the testimony to be delivered in court.*

This **difficulty** was described in greater detail by the national authorities:

- BG, CZ, HR and PT encountered obstacles in the admissibility of evidence gathered abroad due to differences in the Member States in **legal standards for the hearing of victims/witnesses**. This happens whenever Member States execute letters of request (LoRs) for the hearing of victims/witnesses in the pre-trial phase without fulfilling the legal requirements of the requesting Member State expressly indicated in the letter.
- The UK (Northern Ireland) referred to a case where statements of victims taken in another Member State were not in the form acceptable to a court in the UK (Northern Ireland), being provided for **compensation purposes only**. This required UK (Northern Ireland) police to travel abroad and re-take the statements.
- CY noted that the **victim's testimony in court is necessary** for the conviction of the accused. In many cases, victims that had already left the country refused to return to CY to testify, which led to the acquittal of the accused.
- EL noted that testimony of victims obtained in the preliminary investigation **cannot be read in court if the defendant objects**.

Solutions found to address this difficulty include:

- The requested Member State complies with the formalities and procedures expressly indicated by the requesting Member State, provided that such formalities and procedures are **not contrary to the fundamental principles of law in the requested Member State** (in accordance with Article 4 of the 2000 MLA Convention).
- Some Member States suggested the **harmonisation** of criminal procedural laws in the Member States.
- The UK (England and Wales) are currently piloting (in limited types of cases) the use of **pre-recorded victims' cross-examination by the defence lawyer in the early stages of the case**. The statements of victims of THB are video-recorded and, on application, may be played as evidence.

CY and EL explained that, in cases in which the victim is willing to travel to either country to testify in court, **all expenses and transportation arrangements** to the court will be covered by the State. Assistance services are also available for witnesses.

3.1.6. Nine countries indicated *difficulties/best practice in cross-border judicial cooperation related to obtaining and/or using the testimony of anonymous/protected witnesses in THB cases in court.*

This **difficulty** was described in greater detail by the national authorities:

- In a number of Member States, the rights of the accused require the **disclosure of the identity of the victim**, which creates problems in ensuring the anonymity of the victim during the criminal proceedings.
- PT indicated that although its laws allow for the non-disclosure of the identity of witnesses and their testimony under image concealment or voice distortion, such testimony **cannot be admissible as evidence** unless the measure is ordered by the Portuguese authorities, regardless of the fact that a similar protection measure was ordered in another Member State in respect of the same witness in a case showing connections with the Portuguese case.
- The use of **anonymous witness testimony is not permitted** in a number of Member States (including IT and SE).
- LV and SK referred to **long delays** in obtaining testimonies from other countries.

Solutions found to address this difficulty include:

- ES referred to a successful case where the RO authorities ensured the protection of a THB victim, including by **refusing** the application of the defendant for a **face to face confrontation with the victim** in court.
- HU mentioned that victims/witnesses are entitled to request the **confidentiality of their personal data** which should then be guaranteed for the entire duration of the criminal proceedings.
- **Judicial cooperation** between Member States must include the clarification of possibilities to obtain and use in court the testimony of anonymous witnesses.

3.1.7. Ten countries indicated *difficulties/best practice in cooperating with countries of origin of victims when requesting the protection of THB victims and/or victims' families.*

This **difficulty** was described in greater detail by the national authorities:

- Few respondents indicated that the **protection of victims, particularly in countries of origin outside the EU**, constitutes a constant challenge for judicial authorities.
- ES referred, in particular, to **Nigerian victims** that lack protection and assistance for themselves and their families when returning home.
- PT indicated that difficulties, even within the EU, may arise due to a **lack of legal framework** in this area and to related **costs**, especially when there is no parallel investigation in the country of origin of victims.
- CY referred to difficulties encountered due to the lack of bilateral agreements with third States, delays in the execution of MLA requests and **delays in cooperation through INTERPOL**.

Solutions found to address this difficulty include:

- Increased **judicial cooperation** with the countries of origin of victims, and the use of **liaison officers** posted in these countries.
- DK and the UK mentioned good practice in **travelling to different countries of origin of the victims to ensure that relevant protection of THB victims** and/or their families is put in place. Cooperation with the Immigration Service and with IOM is also considered essential by DK to ensure the assistance and protection of victims of THB in the countries of origin.

- **Cooperation with NGOs** in countries of origin of victims.
- CZ referred to its *Programme to support and protect victims of THB* based on an **individual risk assessment**. This Programme also protects potential victims of THB who act as witnesses in trials and cooperate with law enforcement authorities. Twenty-three potential victims of THB (mostly in cases of THB for the purpose of forced labour or labour exploitation) were included in the Programme in 2013. The victims came from different Member States and from Vietnam. Since 2003, 143 victims benefited from this Programme.
- CY proposed building up personal networks, especially through **EMPACT** (European Multidisciplinary Platform against Criminal Threats), as a mechanism for improving cooperation.

3.1.8. Five countries (EE, EL, IE, LT and PL) indicated *other challenges/best practice* in securing evidence from victims/witnesses in THB cases, including:

Challenges:

- **Translation and interpretation** problems.
- Some **victims are irregular immigrants and are sent to their country of origin**.
- LT indicated that foreign countries sometimes fail to inform the Lithuanian authorities of THB cases involving victims from LT. This means that **recruitment** in LT is **not investigated**.
- To **identify more victims of THB**, especially minors (which is a challenge since most of the identification tools have been constructed for adults).

Best practice:

- The participation of countries in the **EMPACT** in the EU crime priority THB.
- **Joint operations** with other countries, including those organised by Eurojust, Europol and Frontex.
- **Training of police officers and judiciary** in the area of THB.
- A **multi-disciplinary approach**: Engaging actors working in the field of THB (public and private authorities, civil society organisations, researchers and others) in order to take adequate policy measures.

3.2. Legal standards for hearing and protection of victims/witnesses in the Member States

3.2.1. The distinction between victims and witnesses in THB cases

The internal questionnaire (*Question 1*) aimed to establish whether national laws differentiate between the status of victims and witnesses and, if so, what the consequences were on hearing and on applying protective measures in respect to victims/witnesses. The responses show that:

- Nine countries (AT, BG, EE, EL, FI, FR, HU, RO and SE) answered that **a differentiation in the procedural status of victims and witnesses exists**. However,
 - EE, HU and SE stated that despite the different procedural status of victims and witnesses, the evidentiary value of their statements is the same, while EE also declared that no distinction in terms of protective measures derives therefrom.

- HU noted that if victims are heard as witnesses the same rules apply and BG clarified that often the same person combines the status of victim and witness.
- FI and SE noted that victims will not be heard under oath, which might influence the evidentiary value of statements.
- RO clarified that a victim must renounce the status of victim and civil party so as not to be heard as a witness.
- BG and FR explained that foreign THB victims have the possibility of relocating internally as well as to protective measures. In BG, the protection of witnesses may occur via physical guard or keeping his or her identity secret. In FR, the hearing of a witness may be conducted with voice and or face distortion and the case file may be masked so as to ensure the secrecy of their identity.
- Fourteen countries (CZ, DE, DK, ES, HR, IE, LT, MT, NL, PT, SI, SK, UK and CH) replied that **no differentiation exists in the procedural status of victims and witnesses**. Notably,
 - HR mentioned that victims/witnesses of THB are entitled to be questioned at home or in other premises as well as by audio and video device. They may also be questioned in a room separate from the parties.
 - LT noted that only if the victim does not take the position of ‘damaged/aggravated party’, he or she will be considered a witness. Damaged parties may be heard according to the rules applicable to witnesses. Both are entitled to inclusion in witness protection programmes, partial or complete anonymity, questioning via videoconference and without the presence of the accused.
 - MT stated that threatened victims/witnesses may be relocated abroad, whereby the Ministry responsible for the police will engage in the necessary agreements with the foreign government, although it will still be the responsibility of the Commissioner of Police to afford the necessary protection following relocation.
 - NL noted that victims/witnesses of THB may stay in NL legally until the perpetrators are prosecuted. Victims benefit from a reflection period of three months, after which – if they do not cooperate with the authorities - there will be no allowance for temporary residence permits. Witnesses are not entitled to a reflection period.
 - PT stated that if a victim takes the status of assistant private prosecutor, he or she can no longer be questioned as a witness and, thus, will not be heard under oath. Protective measures for witnesses include concealment of identity, change of identity and physical appearance and temporary subsistence allowance. Notably, a conviction cannot be decisively based on the testimony of a witness whose identity was not revealed.
 - IE clarified that victims of crimes are entitled to specific measures, such as victim impact statements, undue leniency appeals, compensation, and separate legal representation in cases of sexual assault and rape. Witnesses may in certain circumstances give evidence by way of video link in relation to sexual and violent offences.
- The responses of three countries (IT, LV and NO) were not conclusive regarding the existence of a differentiation in the procedural status of witnesses and victims. However, IT noted that victims of THB may request a closed hearing. Both victims and witnesses of THB may benefit from a legal institute (called ‘*incidente probatorio*’), which allows for the anticipated gathering of evidence. NO specified that a victim is regarded as a witness and has the same rights and obligations in criminal proceedings. Both may be heard under anonymity.
- Respondents pointed out a number of special evidentiary and protection rules applicable to minors (see sub-chapter 3.2.4 below).

3.2.2. Securing the testimony of victims in THB cases

The internal questionnaire (*Question 2*) aimed to establish whether a victim's statement provided during the pre-trial investigation could be used as evidence even if not repeated during the trial. The responses show that:

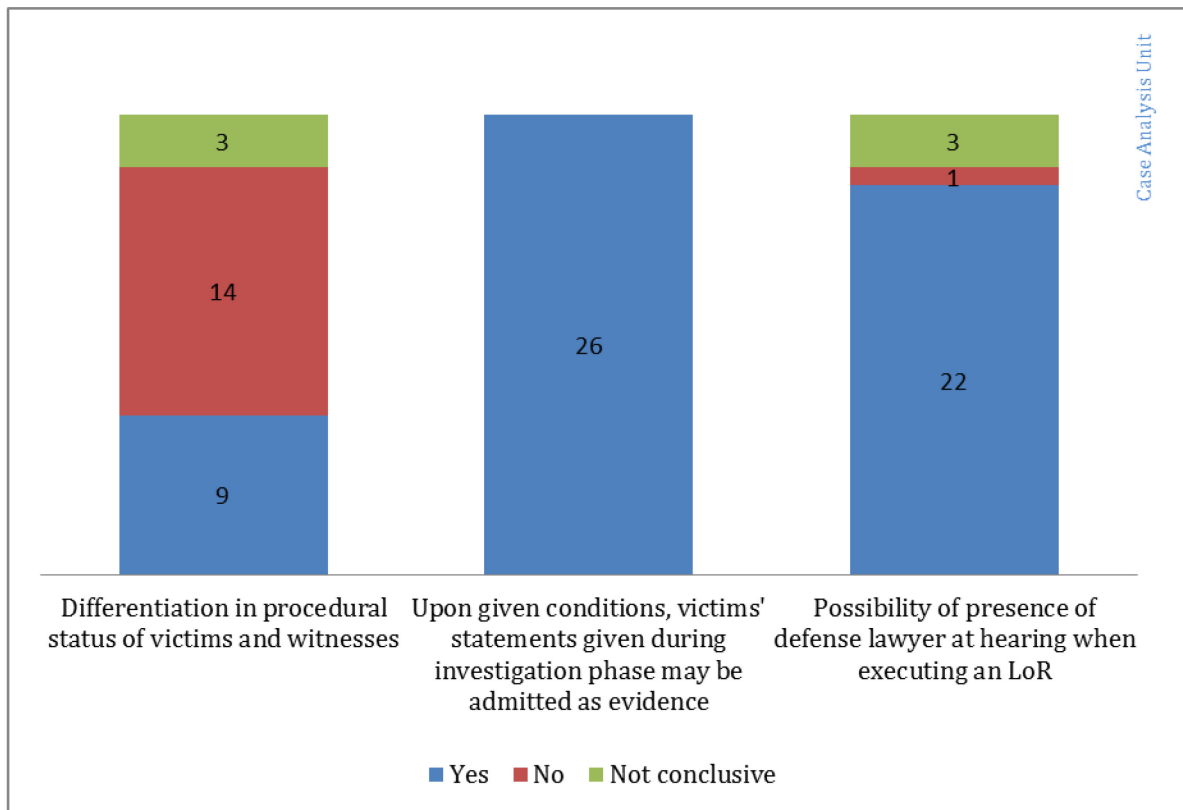
- All respondents (26 countries) indicated that **victims' statements given during the investigation phase may be admitted as evidence**, though the conditions to that effect vary. Notably:
 - AT, BG, CZ, DE, DK, ES, HR, HU, IT, LV, MT, NL, PT, RO, SE, SK and UK indicated statements given in the investigative phase may be admitted as evidence in trial if: i) the victim died, is seriously ill, or otherwise cannot be expected that he or she will be present at trial, and or ii) further examination is likely to risk the well-being of the victim. In addition:
 - SE clarified that in exceptional circumstances such statements can be admitted in court; it is further necessary that they do not constitute the main evidence.
 - AT, BG, CZ, DE, DK, FI, HU, IE, LV and SK declared that unjustified refusal to testify in court might lead to the admissibility of previous statements as evidence.
 - AT, BG, CZ, DE and SK stated that if the prosecution and defence agree such statements may be accepted as evidence.
 - BG, ES, FR, HR, IT, LT, MT, NL, PT and RO indicated that only statements made in the presence of the investigative judge will be accepted as evidence. In FR and NL, statements taken by a police officer may be admitted as evidence at trial.
 - CZ, ES, HR, HU, IT, MT, PT, RO, SK and UK allow for the admissibility as evidence of such statements if the parties, notably the defence, were also given the opportunity to participate or object (UK).
 - BG, CH, DE, FI, HR, IE, LT, UK and NO will admit statements given in the pre-trial phase as evidence in court if the victim/witness is a minor (*see* sub-chapter 3.2.4 below).
 - EL specified that electronic projection of the victim's hearing replaces its physical presence during the next stages of the procedure and the written statement is always read in trial. If the judge considers that additional questions shall be posed, an investigative officer will proceed to do so in the place of residence of the victim.
 - In IT, the legal institute '*incidente probatorio* may apply in THB cases (*see* sub-chapter 3.2.1 above), allowing for the anticipated hearing of victims/witnesses in the presence of the interested parties, their lawyer, the prosecutor and the judge.
 - BG, CZ, DE, ES, FI, IE, LV, MT and NO stated that previous declarations of victims/witnesses may be admitted when there are contradictions with subsequent statements. CZ specified such statements cannot be a basis for conviction even if conjugated with other evidence. ES pointed out that the lack of contradictory evidence will affect the evidentiary assessment made by the judge. In MT, such statements will be used to assess the credibility of the witness. In relation to the remaining Member States, the evidentiary value of such statements is not conclusive.
 - BG, DE and NO declared that previous statements may be admitted to refresh the memory of witnesses. It is not conclusive what the evidentiary value of such statements is.
 - EE indicated that only statements repeated in the trial will be accepted as evidence.

3.2.3. Presence at the hearing of victims/witnesses in THB cases

The internal questionnaire (*Question 3*) aimed to establish whether national laws allow the presence of a defence lawyer (or other persons, e.g. experts) when executing an LoR for the hearing of a victim/witness if required under the law of the requesting State. The responses show that:

- In the execution of an LoR for the hearing of a victim/witness, **the presence of the defence lawyer is possible** in 22 countries (AT, BG, CZ, DE, DK, EL, ES, FI, FR, HR, HU, IT, LT, LV, MT, NL, SE, SI, SK, UK, NO and CH). Specifically,
 - CZ, FR, IT and LV clarified that the presence of the defence lawyer (or expert) must be specifically requested in the LoR. IT specified that all necessary arrangements, such as the ones for translation and videoconferencing, must be organised by the requesting State.
 - HU, LV and MT noted that this possibility only exists if the basic principles of the national legal system are not undermined. FI will allow the presence of a defence lawyer if it does not undermine the integrity and secrecy of the investigation.
 - DK, LT and SI admit this possibility in examinations conducted by a judge.
 - EL indicated such possibility exists for States that have ratified the Schengen Agreement, and if authorised by the Prosecutor of the Court of Appeals. In SK it must be previously authorised by the prosecutor or court.
- In one country (EE) **the presence of the defence lawyer (or other person, e.g. expert) will not be possible** in the execution of an LoR for the hearing of a victim/witness.
- Two countries (PT and RO) stated that the execution of an LoR shall be done in line with the national laws of the requested State, without making reference to the possibility of the defence lawyer attending the hearing of a victim/witness.
- IE noted that the domestic legislation on MLA makes no reference to providing for the presence of a defence lawyer or other person - if demanded under the law of the requesting Member State - when executing an MLA request for the hearing of a victim/witness.

Chart 4. Legal standards for hearing/protection of victims/witnesses



3.2.4. The child witness in THB cases

The internal questionnaire (*Question 4*) gathered the specific national legal requirements for a child to testify as a witness. The responses show that:

- Eighteen countries (DE, DK, EE, EL, ES, FI, FR, HR, HU, IT, LT, LV, MT, NL, SE, SK, UK and NO) provide that the **hearing of minors shall be carried out via audio and visual recording**. IT specified that **viva voce testimony in court shall take place via video conference**. IE specified that, in cases of sexual violence, children are **permitted** to give evidence by **television link or video recording** if he or she is available for cross-examination and the court is satisfied that such procedure will not result in unfairness for the accused. Nine countries (BG, CH, DE, FI, HR, IT, LT, UK and NO) allow pre-trial statements of minors as evidence in court to prevent further damage to the child.
- Twelve countries (DE, EL, HR, HU, IT, LT, LV, MT, NL, SE, UK and NO) indicated that **the hearing of children shall be carried out in special/separate rooms**. In IE, the court **may exclude persons from the room** while the child is testifying.
- Fifteen countries (AT, CZ, BG, EE, EL, ES, FR, HR, LT, LV, MT, PT, RO, SK and NO) envisage the **presence of an expert for specialised assistance** (e.g. psychologist, psychiatrist, representative of child protection services).
- Eleven countries (BG, CZ, ES, FI, HR, HU, LT, LV, NL, RO and SI) provide that **parents, guardians or a person of trust may be present at the hearings**.
- Two countries (LT and CH) foresee a **maximum of two hearings throughout the entire criminal proceedings**.

3.2.5. The rights and obligations of victims/witnesses in THB cases

The internal questionnaire (*Question 5*) established whether national legislation requires that victims/witnesses be provided with a list of rights and or obligations as a necessary pre-condition for the admissibility of their statements in court. All respondents confirmed that victims/witnesses are to be advised on their rights and obligations. The responses show at the same time:

- Fourteen countries (AT, DK, EL, FI, HR, HU, LT, MT, PT, SE, SI, SK, NO and CH) indicated that **failure to advise victims/witnesses on their rights and obligations does not necessarily make their statements inadmissible in court**. Specifically:
 - AT, HR, HU, SI and SK noted that failure to advise on the grounds and right to refuse to testify may lead to inadmissibility.
 - In CH, failure to inform the witness at the beginning of the hearing with regard to the obligation to testify and tell the truth, as well as on the penalties for perjury, leads to the invalidity of the hearing.
 - FI and PT clarified that fair trial principles may lead to inadmissibility.
 - RO explained that failure to advise victims/witnesses on their rights amounts to relative nullity, which will be assessed by the judge.
- Twelve countries (BG, DE, EE, ES, FR, IE, IT, LV, NL, UK, CZ and NO) provided **examples** of rights and obligations on which victims/witnesses must be advised, but did not reply to the question on possible inadmissibility of statements if such advice is not delivered. IE has no **specific legislative requirement** that the Irish authorities provide victims/witness with a list of rights and obligations.

4. Financial investigations in THB cases

The external questionnaire (*Question 4*) asked the national authorities for their experience in cooperating with MoneyGram and Western Union and gathering information in connection with the hawala banking system in THB cases. The responses show that:

- Twenty-three countries (AT, BE, BG, CZ, DK, EL, ES, FR, FI, HU, IE, IT, LV, MT, NL, PT, RO, SE, SI, SK, UK, NO and CH) reported good cooperation with **Western Union**. Highlights include:
 - IT explained that the **request** is made in the same manner as with telephone records requests. If information on the recipient of the money is required, there is a need to switch from the ‘national channel’ to the ‘international channel’ of MoneyGram or Western Union.
 - PT stated that information on financial transactions would allow a **relational analysis to be performed and individuals to be detected who have a more predominant role** in the transactions. It would also enable the **knowledge of transfer locations and routes** used by criminal organisations.

- The UK specified that evidence of transfer can be obtained from money transfer agencies through **service of production orders** in the UK; however, when located outside the UK, LoRs are required to obtain evidence abroad. In terms of **restraining/freezing orders**, for them to cooperate, they will need to be aware before the transfer is made. The only occasion when money can be restrained is when it has not been picked up at the other end. Restraint orders issued by the courts in the UK are not recognised by the money institutions in the receiving country until registered in that country. The UK therefore raised the question of whether there are opportunities to support **mutual recognition of restraint orders** without waiting for them to be registered.
- With regard to cooperation with **MoneyGram**, seven countries (AT, BG, EL, ES, NL, PT and UK) stated that cooperation with MoneyGram can be described as ‘good’. Two countries (HU and CH) reported no experience with MoneyGram in THB cases. Three countries (DK, LV and FI) indicated difficulties.
 - DK indicated that cooperation is not as close as with Western Union, because lately a change had occurred in the structure of MoneyGram.
 - LV highlighted challenges arising from the fact that MoneyGram has a significant number of local operators.
- One country (DE) stated that Western Union/MoneyGram requests would not be very helpful for two main reasons: i) receiving an answer could take up to two months and ii) Western Union and MoneyGram provide the opportunity to transfer money by leaving a code number or an identity that may be fake. Therefore, the testimony of a witness and receipts that are issued would be the only way to prove the criminal proceeds of human traffickers. DE also noted that the tracing of assets would be very difficult because human traffickers try to avoid visible assets. Furthermore, the investigations also have to be carried out by other States. Freezing and confiscation in other States would be very time-consuming and laborious.
- One country (ES) mentioned that a national court rendered a successful judgment in a THB and money laundering case involving the **hawala banking system**; all other responding countries had no experience with the hawala banking system. However, three countries (FR, IE and PT) noted that they are aware of the use of hawala as a mechanism for transferring funds and laundering money. In particular, PT mentioned that the hawala banking system is attractive to members of criminal organisations because it provides a fast and convenient transfer of funds, usually with a far lower rate of commission than that charged by banks. Its advantages are most pronounced when the receiving country applies unprofitable exchange rate regulations or when the banking system in the receiving country is less complex. That seems to be the case of many of the countries of origin of THB, but there was no experience in PT.
- Four countries (CY, EE, LT and PL) replied that they have **no experience of cooperation with Western Union and MoneyGram in THB cases**. AT indicated that it had no experience in cooperating with Western Union and MoneyGram in THB cases, but noted good cooperation with Western Union and MoneyGram in general. One country (HR) provided no response to *Question 4*.

- Two countries (IE and NL) provided **additional information** on the **importance of financial investigations** and the structure of **Asset Recovery** in their country:
 - IE indicated that the Criminal Assets Bureau Act 1996 established an asset recovery agency named the Criminal Assets Bureau (CAB) within *An Garda Síochána*. The CAB fully implements a **multi-agency approach** to deny the proceeds of their crimes to persons engaged in criminal activity. The CAB targets **suspected proceeds** of many types of criminal activity, including drug trafficking, corruption, living off immoral earnings, money laundering and cross-border and international criminal activity.
 - NL highlighted that when opening a THB investigation, a **financial investigation** would also open. This is because of the high proceeds that are an important motive for (potential) offenders of THB. The financial investigation serves two **purposes**: 1) the confiscation procedure, and 2) the information gathered in the financial investigation may be relevant considering the evidence of THB itself. This financial information can also be useful in determining financial compensation for the victim.

5. Internet and THB

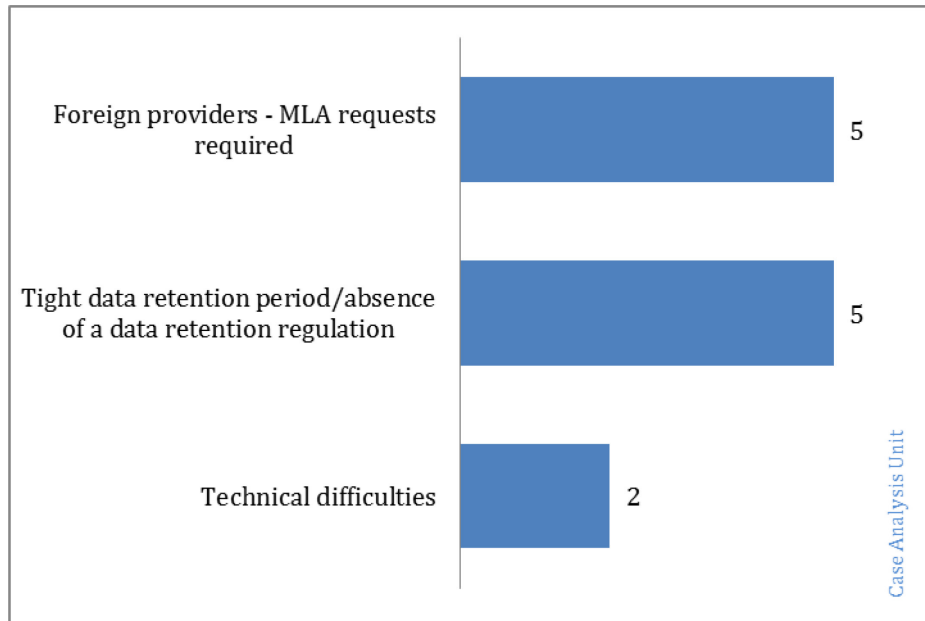
The external questionnaire (*Question 5*) asked the national authorities whether challenges have been encountered in securing electronic evidence in THB cases for evidentiary purposes (e.g. from Internet Service Providers, Facebook, Skype, etc.). The responses show that:

- Twelve countries (AT, BG, DE, FI, IE, IT, LV, NL, PL, PT, SK and SE) reported that they have encountered **challenges in securing electronic evidence** in THB cases for evidentiary purposes.
- Five countries (AT, BG, DE, PT and SK) replied that these challenges are mainly linked to tight **data retention periods** resulting in the deletion of data before the request could be submitted or executed and the absence of a data retention regulation.⁵
- Five countries (IT, LV, PL, PT and SE) indicated that cooperation with national providers would be easier than with foreign providers or Facebook and Skype, for which **MLA requests are required** to obtain information.
 - PT highlighted that traditional forms of judicial cooperation (with the USA) would take too long when dealing with an investigation of complex organised crime.
 - SE indicated challenges because many websites are on servers located in jurisdictions with lax or non-existent legislation, and perpetrators might consciously decide to act in those countries to avoid interference.
- Two countries (FI and NL) indicated **technical difficulties** such as securing electronic evidence from Skype, FaceTime, WhatsApp, BlackBerry devices (NL) and conducting electronic interception of some Internet Service Providers (FI).

⁵ Particularly in light of the judgement of 8 April 2014 of the Court of Justice of the European Union, which declares the Data Retention Directive 2006/24/EC to be invalid.

- CY indicated that the main challenge in this regard relates to the **constitutional right of respect and secrecy of communications** which poses obstacles to the examination of the content of any private conversation.
- EL reported that while for now they have not experienced any particular difficulties in cooperation with internet providers, they encountered challenges in the identification and detection of the administrators of the sites, as fake identities are being used.
- Five countries (DE, IE, NL, PT and CH) reported on **best practice** and provided **additional information**:
 - With regard to **Facebook**, DE indicated that analysing Facebook together with the witnesses has proved to be very successful; NL noted that in Dutch THB cases, a significant amount of information is extracted from Facebook for the purpose of the investigation. PT mentioned that Facebook has had a cooperative, though non-binding, position, i.e. it provides data voluntarily and on an informal basis. If Facebook decides not to collaborate, there is no alternative method of obtaining the information sought.
 - IE stated that **liaison meetings and information training sessions** have been held **with Internet Service Providers** to develop links with them. *An Garda Síochána* has a formal procedure on how to look for information from various Internet Service Providers. As part of **EMPACT THB**, Ireland is participating in an action targeting the use of the Internet in THB cases.
 - BG organises regular **training sessions for practitioners** on the steps they have to follow in the process of the investigation, including the role of electronic evidence (to promptly establish the availability of evidence on the Internet to track data traffic successfully as well as to seize and examine electronic evidence effectively).
 - CH provided information on the project *Traces: Trafficking and smuggling of human beings through the Internet*, a joint project among the Cybercrime Coordination Unit (CYCO), the Unit of trafficking and smuggling of human beings and the Federal Office of Police. The focus was placed on the sex industry, prostitution, illegal adoption, arranged marriages and sex tourism. Eight countries (BG, CZ, HU, RO, Ukraine, Brazil, Thailand and Cameroon) have been analysed to illustrate the role of the Internet in the recruitment of potential victims, to detect criminal actions, and to identify patterns of persons, organisations, and *modi operandi*. Detailed information on the different phases of the project was provided in German with a summary in English.
- Five countries (CZ, EE, ES, FR and MT) replied that no information is available in their country on this issue. Two countries (HR and LT) did not provide an answer to *Question 5*.
- Seven countries (BE, DK, HU, RO, SI, UK and NO) reported that no challenges in securing electronic evidence were encountered in the context of THB cases.

Chart 5. Main challenges in securing electronic evidence in THB cases



6. Additional comments

The final question of the external questionnaire (*Question 6*) asked the national authorities to provide additional comments and suggestions to improve the investigation and prosecution of human traffickers. The responses show that:

- Thirteen countries suggested participation in **training sessions, periodic workshops and seminars** and other educational programmes for all representatives of police and judicial bodies (BG, CH, CY, EL, ES, FI, LT, MT, NL, NO, PL, RO and SK).
- Nine countries suggested continuous **exchange of intelligence, information and best practice** among law enforcement authorities and countries (BG, DE, EL, LT, NL, PL, RO, SK and UK).
- Eight countries (AT, BG, EE, EL, HU, SE, SI and UK) highlighted **support to victims**, as they see victims (and their testimonies) as a crucial point in investigating and prosecuting THB cases; many possible methods were mentioned – reintegration (BG, SI), raise the awareness of their situation and their rights (EE), improve communication (HU), a better coordinated care programme across Member States for the repatriation of victims (UK).
- CY proposed the enhancement of **witness protection and support programmes** between Member States.
- Nine countries identically referred to the need for intensive **international cooperation** (BG, CY, DE, EL, IE, LT, MT, NO and UK). DE specifically suggested cooperation with southern European countries that struggle with floods of refugees, exchange relevant information and assist with their investigations. EL suggested consulting with Eurojust and Europol.
- The **unification of EU law and definitions of THB** was suggested by BG, CY, CZ and RO. Extended powers for the European Public Prosecutor's Office (EPPO) was mentioned as an interesting idea by BE, DE, RO and SE. NL suggested reporting all THB investigations to Europol/EMPACT.
- AT and MT highlighted the need for a **variety of investigative methods** (reactive, proactive and disruptive) while investigating THB cases and the need to use evidence separately from the victim's testimony.
- AT, BG and EL also suggested focusing on the **economic** aspects of the crime and confiscation of the perpetrators' assets.
- EL and UK suggested a greater use of **JITs** and enabling the cross-border transfer of law enforcement (without a JIT) to tackle THB.
- CY suggested the creation by Eurojust of a **database of best and bad practice** in respect of the prosecution and trial of THB cases.
- CZ recommended creating **groups of specialists** such as investigators, prosecutors, labour inspectors, social workers and other professionals, all participating in detecting, discovering, investigating and prosecuting THB cases.