

# Closing the implementation gap

**Criminal justice  
responses to illicit trade  
in South Eastern Europe  
and associated challenges**



THE  
SIRACUSA  
INTERNATIONAL  
INSTITUTE  
for criminal justice  
and human rights



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to illicit trade in South Eastern Europe  
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In this report, South Eastern Europe (**SEE**) is understood to include Albania, Bosnia and Herzegovina (**BiH**), Bulgaria, Croatia, Greece, Kosovo, Montenegro, North Macedonia, Romania, Serbia, Slovenia and Turkey. The Western Balkans (**WBs**) sub-region comprises Albania, BiH, Kosovo, Montenegro, North Macedonia and Serbia.

All references to Kosovo should be understood in the context of UN Security Council Resolution 1244 (1999) and the International Court of Justice Advisory Opinion on Kosovo's declaration of independence (2010).

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# The Siracusa Institute

**The Siracusa International Institute for Criminal Justice and Human Rights is an independent legal centre in Sicily, Italy. It has United Nations (UN) consultative status and serves as a member of the UN Crime Prevention and Criminal Justice Programme Network.**

Established in 1972, the Siracusa Institute's vision is two-fold: the protection of human rights through the rule of law, and ending impunity for serious crimes affecting peace and security. Drawing on international law, standards and good practices, the Institute is committed to building the resilience of criminal justice and law enforcement actors as they confront increasingly complex crime and security threats. Our core work is providing **technical assistance** to national criminal justice systems, delivering **training and education** to frontline practitioners as well as the next generation of legal scholars, and facilitating **strategic dialogue** across institutions, sectors and borders. The Institute also carries out cutting-edge **research and analysis** to address gaps and weaknesses in the global response to organized crime groups and networks.

In past years, the Institute has contributed, notably, to drafting and negotiating landmark international and European Union (EU) legal instruments relating to global and

transnational criminal justice. These include the International Criminal Court's founding statute, an early draft of which was elaborated in Siracusa, and the UN conventions against torture and transnational organized crime among others. More recently, assistance was rendered to countries of Francophone Africa in elaborating laws to tackle illicit trade in counterfeit medicines. We have trained commanders of the North Atlantic Treaty Organization (NATO) on the relationship between Sharia and international humanitarian law, supported UN and other formal investigations in connection to the former Yugoslavia, Libya and Afghanistan, and devised guidelines for both national and international investigations into atrocity crimes.<sup>1</sup> The Institute has also facilitated human rights dialogue between Italy and Iran, and contributed the leading texts on international criminal justice and human rights in the Arab world. Building on our experience in SEE, we are finalising international guidelines for governments and businesses against illicit trade.<sup>2</sup>

In nearly 50 years of operations, primarily in Europe and the Balkans, the Middle East and North Africa, the Siracusa Institute has established itself as a Mediterranean hub and trusted partner for governments, civil society and private sectors alike. The Institute's work against dynamic criminal networks continues: a forthcoming policy paper will consider the threat that organized crime poses to every nation's critical infrastructure.

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# Preface

**It is my honour to present, on behalf of the Siracusa International Institute for Criminal Justice and Human Rights, this contribution to the fight against illicit trade in South Eastern Europe (SEE). *Closing the Implementation Gap* grew out of a three-year project across the region: Strengthening the Fight Against Illicit Trade in SEE (*SEE:IMPACT*).**

Launching in September 2017, *SEE:IMPACT* has involved country-level research and regional analysis, the delivery of innovative training that built on our analytical findings, and engagement of more than 500 leaders, policymakers and practitioners over the course of consultations and strategic dialogues at the national and regional levels.

Our team in Siracusa, with the support of highly-motivated experts from the SEE region, has not shied away from asking questions to which there are no easy answers. They have thought creatively, and listened to and exchanged ideas and experiences with national institutional partners in a dozen jurisdictions, all driven by the same objective: to find new paths and solutions for overcoming some of the most critical challenges that criminal justice and law enforcement practitioners face in their daily and unenviable task of confronting illicit trade and related crimes.

Since 1999, the Siracusa Institute has designed and delivered several innovative, impactful technical assistance projects benefiting the criminal justice community at-large, with some of our earliest taking place in the WBs. In line with this tradition, *SEE:IMPACT* was ambitious, both in terms of its regional scale and subject-matter. In a sense, illicit trade is the eye of the storm, the place where crime and security threats converge. And the fight against illicit trade is the domain that best embodies the urgent need for countries to break-down silos and encourage bold new whole-Government approaches.

Illicit trade is a threat that extends far beyond the region. It is a threat to us all. This means that no single criminal justice body, Government or country can succeed alone. True achievements will only come through collective action by partners within the same region and their international allies. Because of this, *SEE:IMPACT* has seen experts from international

organizations, as well as governmental leaders and law enforcement and criminal justice officials from across SEE, all coming together around a unique and collaborative project that aims to make a difference.

This report reflects the Institute's commitment to SEE countries. It is also the first cross-sectoral study on illicit trade in the region, and the first to sketch a region-wide picture of criminal justice systems' strengths and weaknesses in tackling the phenomenon. Perhaps more importantly, the report suggests a way forward by unlocking the potential for more effective action and collaboration. *Closing the Implementation Gap* also reflects the Institute's commitment to an inclusive Europe that is capable of leading by example in the fight against international organized crime.

I thank our partner institutions in and outside the region for their steadfast support. In particular, I am grateful to the director of the Southeast European Law Enforcement Center (**SELEC**), Snezana Maleeva, ambassadors and staff of Organization for Security and Co-operation in Europe (**OSCE**) missions and EU delegations in SEE, and Europol's Alfredo Nunzi, Howard Pugh and Simone di Meo. I also extend thanks to the leadership of Interpol, the UN Office on Drugs and Crime (**UNODC**), Europol and SELEC, who contributed to the Institute's high-level regional dialogue in 2018.

On behalf of my team at the Siracusa Institute, I extend my deepest gratitude to Governments and public authorities in SEE, for their engagement and invaluable contributions to this project's success. The Institute stands ready to offer whatever support may be needed, in the months and years to come, to consolidate and leverage the incremental progress that has already been achieved, to close the implementation and enforcement gaps that remain, and forge a more unified path ahead as we confront this 21<sup>st</sup> century scourge together.

**Jean-François Thony**  
President, Siracusa Institute  
Siracusa/Rennes



# Acknowledgements

**This report was prepared by SEE:IMPACT's core team: Filippo Musca, Tobias Freeman, Stefano Betti, Ambassador Dr. Uglješa Zvekić, John M. Sellar OBE and Flavio Bellio. They were supported by other members of the Siracusa *squadra*, both past and present.**

Stefano Betti, legal/policy advisor, is thanked for his practical guidance throughout the project's implementation, and significant contribution to this report's preparation.

*Closing the Implementation Gap* is grounded in insights shared by the project's regional advisor, Ambassador Zvekić, one of SEE's foremost advocates against corruption and organized crime.

John M. Sellar, enforcement advisor, imbued our research and capacity-building efforts with perspectives from the field.

The Institute's cross-institutional strategic dialogues were given concrete form and substance by Neville Blackwood, Paula Lavric and Bernard Rabatel, training advisors.

In refining this report, the Institute also thanks Dr. Iole Fontana for her research assistance and Maurizio Salustro for insightful feedback on an earlier draft. Alberto Pasquero also contributed his regional experience and advice.

## National advisors

To grasp the regional dimensions of the fight against illicit trade, a textured understanding of the criminal justice response in individual jurisdictions was essential. The Institute thanks the project's national advisors: Dr. Evisa Kambellari and Dr. Brunilda Bara (Albania), Assistant Professor Almir Maljević (BiH), Assistant Professor Iva Pushkarova (Bulgaria), Associate Professor Anna-Maria Getoš Kalac (Croatia), Associate Professor Ioannis Androulakis (Greece), Arben Isufi and Assistant Professor Xhevdet Halili (Kosovo), Associate Professor Miloš Vukčević (Montenegro), Professor Miodrag Labović (North Macedonia), Associate Professor Andra-Roxana Trandafir (Romania), Professor Dragan Simeunović and Assistant Professor Ivana Damjanović (Serbia), Dr. Sandra Damijan (Slovenia), and Associate Professor Behsat Ekici (Turkey).

## Key institutional partners

Special thanks go to the Siracusa Institute's national partners, including key ministries, and criminal justice and law enforcement actors, without whose support a project on this scale would not have been possible.

## Funding

The Institute gratefully acknowledges PMI IMPACT, a global grant initiative of Philip Morris International that funds projects tackling illicit trade.

# Foreword

**Illicit trade is not new to SEE. Some forms, such as salt, tobacco and human smuggling, although manifesting differently and varying in intensity and magnitude, have been known for a long time when the geopolitical map of the region was quite different from the current one. Moreover, the phenomenon has never been the only and exclusive property of the criminal underworld. Indeed, it serves to highlight the complex interplay between business, political and criminal establishments.**

The Siracusa Institute has undertaken pioneering work in laying the foundations for a strategic approach to illicit trade in the SEE region. That is critical because, despite its pervasiveness, knowledge on the topic is scarce. Available analysis is often anecdotal, and data is limited and frequently unreliable. Improving this knowledge base can offer a more accurate picture of the situation in the region and at the national level. Better knowledge is also needed to understand the types and effectiveness of criminal justice responses to illicit trade with a view to illuminating the way forward.

This report focuses on the main manifestations of illicit trade occurring today in the region. At the same time, it recognises certain forms of illicit trade which are less known to members of the public, and less scrutinised by criminal justice actors.

The project underpinning this report, *SEE:IMPACT*, is also unique in terms of the 'experimental' methodology employed. Preliminary assessments by national and regional advisors were tested and refined through intensive national and regional dialogues. New information was made available through the dialogues and it was then used for the finalisation of this report. National dialogues also featured training sessions on specific topics (e.g. use of intelligence, covert and financial investigations, etc.) that go to the heart of practical challenges and obstacles for the criminal justice response to illicit trade, as described in this report. Participants described their experiences in a collaborative environment, and developed deeper insight into operational challenges and how to overcome them. Overall, the information-base generated through this project was rich and varied.

In addition, the project team participated in jointly-held conferences with UNODC and the Global Initiative against Transnational Organized Crime (**GITOC**), which, during the same period of time, worked on complementary organized crime and corruption-related projects in the region. This is a not-too-frequent example of cooperation and mutual support among international entities involved in connected projects in the same region.

SEE is a very dynamic and rich region: historically, economically, culturally, linguistically, religiously, politically, and also in terms of criminal dynamics. Historically, it was for a long time divided between the Austro-Hungarian and the Ottoman Empire. The trigger for the First World War was pulled in the region (the Sarajevo assassination of Prince Ferdinand and his wife) and it also proved to be an important battlefield during the World War II. For 45 years or so, 10 out of 12 countries participating in this project experimented with socialist economies and authoritarian political systems. Subsequently, Yugoslavia fell apart in the tragic conflict of the 90s, which brought to the surface the region's dark side and empowered forces of intolerance and oppression. In the aftermath of the fall of the Berlin Wall and socialist regimes in SEE, dynamic political and economic reforms took place. And yet, today, out of the 12 countries participating in the study, seven are still in the process of accession to the EU. Among those 'queuing', the path of Turkey, a candidate country for a quarter of a century, is almost at a halt, while most of the six WBs jurisdictions display a clear preference for EU membership.

Regional politics, particularly in the Western Balkan Six (including five jurisdictions from the former Yugoslavia plus Albania), is still complex, complicated and lacks a much-needed ingredient: mutual trust. Furthermore, the EU is not the only international player in the region. All but Kosovo are UN members, and all but BiH, Serbia and Kosovo are NATO members. All three 'big powers' (USA, Russia and increasingly, China) are present in the region, as are Gulf countries.

SEE is still at a crossroads between East and West. It is still the main transit zone for many goods and services which are illicitly-traded, although some are produced and many consumed in the region itself.

It is also true that much of illicit trade is the business of organized crime, often enabled by corruption. Its proceeds are invested and re-invested in the region but also outside. This paradigmatic constellation of crime phenomena (organized crime, corruption and money laundering, especially) is the trademark of illicit trade. Moreover, the



above-mentioned interplay between the underworld and political/business establishments, as well as other and opportunistic affiliations that may arise from time to time, is marked in the region. It is demonstrated by the presence of international OCGs in SEE, as well as the transnational operations of SEE crime groups worldwide. Criminal dynamics in connection to illicit trade in the region are illustrations par excellence of modern transnational crime involving a wide variety of criminal markets that often intersect with the legal economy. The present report tells this story clearly.

But it also clearly tells where potential future achievements, and limits, of criminal justice responses lie. Particularly in ex-socialist countries of the region, great efforts were made to reform and modernise criminal justice capacities. The role of donor countries was, and still is, critical in this respect. Clearly, donors' interest is driven by the goal to bring SEE candidate countries in line with the *acquis communautaire*, but also the fact that donor countries are among the main destination markets for illicit trade flows transiting through the SEE region. It is a mutually beneficial and essential relationship to continue fostering.

The report indicates that investments in criminal justice reform are not sufficient *per se* to bring illicit trade under control. The institutional and political context in which reforms are supposed to be implemented is also of crucial importance. As illicit trade trends are, to a large extent, driven by demand/supply economics and politics, so is the response to it. A conducive political and institutional configuration creates the conditions for the criminal justice system to respond strategically, and in a timely and efficient manner. Strategic leadership, professionalism and political independence are *conditio sine qua non* for an effective fight against illicit trade.

At the same time, it is important to understand not only the negative impacts of illicit trade, but also the circumstances that create incentives for illicit activity and a degree of legitimacy for criminal actors. Such actors provide protection as well as basic services. In this sense, prevention is an important part of the response. The role of civil society (non-governmental think-tanks, researchers and academia, investigative journalism, etc.) and of the private sector is of fundamental importance. Community resilience against illicit trade is crucial and needs to be further developed and cherished. Likewise, there is a need to develop and cherish a culture of resilience in criminal justice systems, one based on professionalism, integrity, lawfulness and independence.

The 'implementation gap' will remain open even in the best-equipped and trained criminal justice systems if they are divorced from crime prevention objectives and actions, and fail to engage proactively with civil society and private sector actors. Furthermore, the criminal justice response cannot hope to succeed unless a culture of resilience can be developed in communities of citizens and criminal justice actors. This is a strategic perspective which calls for further and increased attention. I hope the Siracusa Institute will continue to embrace this direction of work.

I feel honoured and privileged to have been associated with this project and the team supporting it, and the Siracusa Institute.

**Ambassador Uglješa Ugi Zvekić**

Regional Advisor  
Belgrade/Vienna



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# Executive summary and key recommendations

***Closing the Implementation Gap* explores the shortfall between existing legal, policy and institutional frameworks in South Eastern Europe (SEE) countries, and their practical application in the fight against illicit trade. It takes stock of important progress that has been achieved – nationally and at the regional level – while highlighting opportunities for a better coordinated, and more concerted, response to organized crime networks and corrupt actors.**

This report distils the main findings and recommendations that emerge from a three-year project. *Strengthening the Fight against Illicit Trade in SEE (SEE:IMPACT)* is a research and capacity-building project of the Siracusa International Institute for Criminal Justice and Human Rights.<sup>3</sup>

In its first phase, *SEE:IMPACT* mapped and assessed the implementation of criminal justice frameworks relating to the fight against illicit trade in 12 jurisdictions: Albania, Bosnia and Herzegovina (**BiH**), Bulgaria, Croatia, Greece, Kosovo,\* Montenegro, North Macedonia, Romania, Serbia, Slovenia and Turkey. The project's central purpose was to identify practical challenges and obstacles for the criminal justice response to illicit trade in SEE, both country-specific challenges and those common to most, if not all, in the region. The project's second phase was devoted to capacity-building for a broad spectrum of law enforcement, criminal justice and other relevant actors in select jurisdictions.<sup>4</sup>

As this report makes clear, SEE is not a homogeneous area that experiences illicit trade uniformly. Throughout the centuries, countries in the region have followed different and sometimes interlinked trajectories, and represent a textured mosaic of cultural, religious and linguistic identities. At the same time, there is more that binds SEE countries together, and to the European community, than divides them.

Certain SEE countries have been EU Member States since 2004, or 1981 in Greece's case. Others are advancing in the long journey towards EU accession (see annex 4). As Western Balkans (**WBs**) jurisdictions emerged from the devastating conflict that led to the disintegration of Yugoslavia in 1992, other regional partners underwent comparably profound economic and social changes following the demolition of the Iron Curtain. And yet, all share the same strategic position on the map as bridges between East and West.

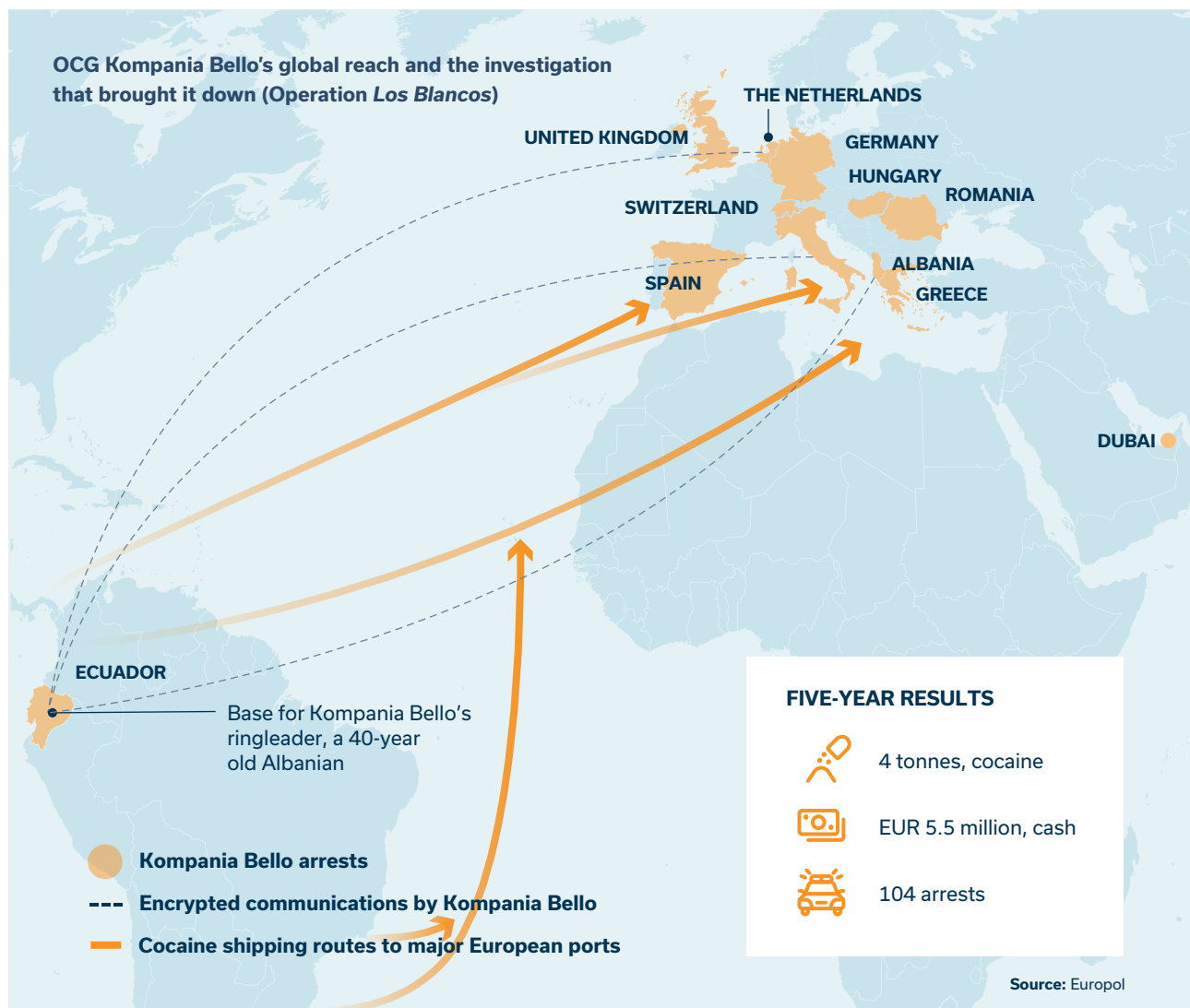
SEE's historic role as a transit corridor for people and goods has undoubtedly contributed to its rich cultural diversity. But these same geographical features are exploited by unscrupulous actors bent on abusing the region's infrastructure, fragile economies and institutions to engage in diverse forms of illicit trade.

## The changing face of SEE crime groups and networks

While SEE countries, themselves, may represent relatively small markets for illegal and illicitly-traded goods and services, organized crime groups (OCGs) with a foothold in the region are at the forefront of a new phase in the globalisation of crime. This is reflected by the growing influence of some Western Balkans OCGs internationally, especially in fuelling drug trafficking flows (see map below, and section 3.1.1 and annex 3.1) among other forms of illicit trade. In addition to reinforcing their presence in South Eastern Europe, these groups are active in countries with sizeable diaspora communities (e.g. The Netherlands, Italy, Turkey, South Africa, etc.).<sup>5</sup> Disparate 'cells' have proven their ability to cooperate with criminal counterparts in Latin America and other parts of the world, to coordinate operations abroad, as well as recruit new members in the context of socio-economic hardship and political circumstances in the SEE region.

Entrenched patronage networks and still-fragile criminal justice systems contribute to widespread impunity in SEE. Furthermore, with a foothold in SEE and diaspora countries too, some OCGs are consolidating transnational networks while expanding and diversifying their criminal portfolios. In other words, local groups are 'globalising' in order to integrate their supply chains in certain markets (e.g. illicit drugs) and realise ever-greater economies of scale and profits.<sup>6</sup>

For these reasons, one should not underplay the nature of the illicit trade threat or its ramifications for the SEE region and beyond. Now, more than ever, SEE crime groups are poised to continue expanding their role in complex, large-scale illicit trade schemes. As Italy's experience demonstrates, the emboldening of SEE OCGs abroad also presents heightened risks for SEE countries themselves through ever-greater infiltration of the legal economy. This trend is expected to accelerate as a result of COVID-19 lockdowns and the global recession in motion.



## Manifestations of illicit trade, old and new

Like others across the world, SEE countries are confronted with the multiheaded hydra that is illicit trade: a fluid and sometimes disruptive phenomenon that is causing devastating harm (see chapters 2.1 to 2.3). Among other consequences, illicit trade endangers the health and safety of citizens, saps Governmental revenues that could have otherwise been used to boost essential services, and stifles competition and entrepreneurship in the business realm.

SEE countries are immune from none of the six forms of illicit trade upon which this project has focused: illicit trade in drugs, small arms and light weapons, tobacco products, cultural property, human trafficking and migrant smuggling (see section 3.1.1 and annex 3). However, only one of these established markets accounts for the bulk of investigations and prosecutions in reality; criminal justice systems primarily invest their resources in responding to drug-related offences and, even in this context, drug possession is much more frequently charged than graver trafficking offences (see chapter 4.2, investigative priorities, neglected areas).

This contrasts with the generally much lower number of investigations and prosecutions against trafficking in human beings (**THB**), for example, even though most SEE countries are major origin, transit and destination countries for trafficked persons. One explanation may be that prosecutors in several countries display a tendency to mischaracterise human trafficking cases as prostitution or so-called ‘pandering’ offences that are easier to prove but do not reflect the exploitation that lies at the centre of THB practices.

As to the scale of illicit trade in tobacco products in the region, the ‘dark number’ (or the level at which this form goes undetected) may be very high. Tobacco smuggling shows a marked division of stages and labour in its perpetration, with organized crime involved in international smuggling into and from SEE. Small groups, families and individuals, including in diaspora communities, also play a part in distribution throughout destination markets.

Other forms of illicit trade (e.g. cultural property, counterfeiting practices, alcohol, stolen vehicles, crude oil and petroleum products, waste trafficking and other types of environmental crime, etc.) are present in the region but appear to be neglected by law enforcement agencies (see section 3.1.2). A combination of factors likely explains this, including the possibility that certain types of illicit trade are perpetrated less frequently than others. However, the Institute’s consultations have emphasised that higher political priority is traditionally assigned to some crime types and not others. Consequently, investigators may not have adequate tools, skills or expertise to detect egregious manifestations of illicit trade that simply flow ‘under the radar’. This is the case for

the illicit trade of medical products, which represents a growth industry for OCGs worldwide (see section 3.1.3). The possibility of instances of local collusion between organized criminal syndicates and public officials cannot be excluded either, hampering detection efforts at their root or otherwise obstructing the criminal justice path (see section 3.1.4, a deeper dive on illicit trade in timber).

## Assessing criminal justice-related challenges

As SEE countries begin to appreciate the urgent need to confront illicit trade more holistically, as the product of often-converging polycriminal networks (see section 2.3.3, cultivating cross-sectoral perspectives), they can rely on updated legal frameworks that are generally fit for purpose (see chapter 4.1). To a large extent, relevant international treaties have been ratified and transposed into domestic law, although certain gaps and inconsistencies are detected in relation to THB offences among others (see chapter 4.2).

Undoubtedly, the EU integration process and, in particular, candidate countries’ incorporation of the EU’s *acquis communautaire* into their respective legal systems (see chapter 2.4, linking EU accession to the fight against illicit trade), have provided impetus, incentives and a guiding framework to update obsolete legislation and introduce new institutions and mechanisms. But the frenzy to accommodate outside requests for modernisation has been criticised as sometimes leading to confusing and partially-contradictory outcomes. In turn, lack of familiarity with new procedures may induce practitioners to apply them less enthusiastically or systematically than needed.

On top of this, the process of cultural and practical adaptation to relatively recent (and sometimes seismic) changes to criminal justice systems, including the trend towards more accusatorial systems, is not yet complete (see chapter 4.4, investigative and prosecutorial challenges). The concept of prosecution-led investigations, notably, has not always been absorbed and still has the potential to cause friction between police and prosecutors. While the situation has generally improved in recent years, in some countries it appears that ministries and the prosecution are engaged in a tussle over who should have control over criminal investigations, especially those into serious and organized crime and corruption.

Occasional tensions between police and prosecutors are part of broader investigative challenges rooted in institutional cultures and settings. These tend to privilege single agencies’ perception of self-sufficiency and competition over public budgets and visibility, rather than systematic collaboration between partners in the same criminal justice ‘network’ (see chapter 4.5, inter-agency coordination). Such entrenched, die-hard attitudes are untenable if Governments are to



confront illicit trade head-on and leverage all resources at their disposal. They also point to the need for a paradigm shift in how law enforcement and criminal justice systems measure and assess 'success' in the fight against transnational organized crime (see Recommendation 5 and section 2.3.4).

In SEE and elsewhere, countries do not generally have a lead authority on illicit trade matters. Rather, mandates and responsibilities to detect and counter illicit trade are diffused among multiple entities at the national level. Accordingly, each link of the criminal justice chain may have knowledge about specific aspects of an illegal scheme, while none has the overall picture. For investigators to unveil the full depth and extent of criminal plans, many SEE countries will need to improve the ways in which intelligence and information is collected, shared and analysed. Genuine efforts, albeit still not widespread, are underway in SEE to promote better and more systematic information-exchange. Examples of recently created joint task forces and similar mechanisms can be found in all jurisdictions. Most interviewed experts from the law enforcement community, in particular, consider that their experience of 'working under the same roof' with counterparts from other agencies has led to better outcomes, and express hope that these arrangements become more widely used.

Along similar lines, the recognised need to 'connect the dots' and capture the underlying dynamics of criminal organizations beyond the specific offences or contraband that might be detected, has prompted the establishment of specialised law enforcement and/or prosecutorial departments against organized crime (see chapter 4.4). Provided that they are sufficiently funded and trained, and there is a clear division of labour between them and the 'generalist' police and prosecutorial services of the same country, which currently is not always the case, these entities may establish themselves as vital for disrupting the most serious manifestations of illicit trade. More broadly, SEE countries – like others around the world – ought to reflect on whether they are giving sufficient priority to the fight against transnational organized crime, and investing enough human and other resources into the disruption and dismantlement of OCGs and networks (see section 4.4.2).

Despite their inherently cross-sectoral (and increasingly security-oriented) mandates, and an established presence at borders, ports and other hotspots for organized crime, the Institute has found that customs' contribution to the fight against illicit trade is underestimated. The current report addresses this concern from five angles: first, while public-private cooperation on illicit trade is generally limited in SEE, customs has already proven to be a key enabler and one uniquely placed to draw even further on the private sectors (see chapter 4.6); secondly, customs agencies are critical for confronting the e-commerce phenomenon and rampant abuse of small shipments for illicit trade purposes (see case study in section 4.4.2); thirdly, customs is a driving force

behind the digital trade facilitation agenda, which promotes the modernisation of customs agencies and processes, and has promise for enhancing the prevention, detection and investigation of illicit trade (see Recommendation 13 and side note in section 4.4.2); fourthly, customs oversight and enforcement in free trade zones (**FTZs**) should be an essential component of any national response to illicit trade (see chapter 3.2); and finally, in light of the above, the report reflects on whether customs should be given stronger powers to investigate illicit trade and related crimes (see Recommendation 20 and section 4.4.1).

For most countries, another crucial challenge emerges in relation to the direction and coordination of illicit trade investigations and prosecutions, and associated information flows. On the one hand, SEE countries have relatively well-established institutional settings for combating organized crime: the prosecution leads investigations, which rely on a variety of law enforcement agencies (i.e. criminal investigators within police and border police departments, the customs administration, financial crime specialists, etc.) and other national entities. Tactical leadership and operational coordination are therefore important aspects of the prosecution's function.

On the other hand, prosecution-led investigative systems are bound to fail unless all available and relevant intelligence and evidentiary material is centralised in the prosecution. In reality, however, while prosecution offices may indeed lead investigations, many are not adequately delivering on key aspects of this centralising function. A few factors help to explain why:

- In several countries, the prosecution-led investigation model has not fully taken root (or flight). National entities continue to guard their institutional turf, preferring to remain goal-scorers rather than become assistance providers. Mistrust between certain agencies is a common stumbling block. Formalism and bureaucratic institutional cultures, which are widespread across SEE, may also serve to mask other underlying obstacles for inter-agency cooperation, or 'pass the buck'.
- Relatedly, information tends to flow reactively, not proactively. Certain enforcement/intelligence agencies, moreover, actively seek to obstruct the flow of information and intelligence to prosecutors in-charge.
- In different settings, police officers may disclose to their chain of command (which normally leads to the Minister of Interior) what should remain confidential. This is sometimes the result of ambiguity and/or inconsistencies across key legal frameworks (e.g. criminal procedure codes and police laws) that do not fully integrate the prosecutor-led investigation model. Ideally, from an operational perspective, law enforcement officers in prosecution-led investigation systems should report exclusively to the prosecution.

- Not all prosecution authorities are specialised, or yet adequately experienced, in combating organized crime. In some instances, this can put prosecutors at a disadvantage when leading the investigative work of specialised enforcement agencies.
- Most prosecution offices themselves do not have capacity to carry out criminal intelligence and strategic analysis, which severely limits the extent to which they can 'get ahead' of new or emerging trends and threats. In turn, national leaders and policymakers in relevant countries do not have the benefit of insights and analysis by each country's *de facto* central authority on organized crime (i.e. the prosecution).
- In any event, the prosecution, alone, cannot rectify fragmented institutional settings, which sometimes exist by design. Political leadership and courage are needed to remove these unnecessary obstacles and contribute to fostering a unity of purpose across law enforcement and criminal justice actors.

These challenges and related ones could be addressed, at least in part, by reinforcing the central and centralising role of the prosecution (see Recommendation 7).

From another angle, specialised law enforcement and prosecutorial departments will also have the task of tapping the under-exploited potential of public-private collaboration in the context of illicit trade investigations (see chapter 4.6). Many illicit trade routes and dynamics, particularly those affecting markets in which traffickers unfairly compete with legitimate companies (e.g. in the alcohol, tobacco and medical industries as well as others vulnerable to counterfeiting), could hardly be revealed without the investigative resources autonomously mobilised by the private sector. Most SEE practitioners and policymakers recognise the critical role that public-private partnerships (**PPPs**) could play in facilitating the exchange of information with law enforcement actors (e.g. provision of intelligence as leads for investigations, support to customs in distinguishing original and fake products, etc.), the contribution of forensic expertise and material equipment, as well as development of track and trace technologies. However, the under-utilisation of private sector resources is often explained by an ingrained mistrust with which public officials still tend to view the business sector, and a corresponding tendency of companies to 'keep a low profile'.

The few positive experiences of public-private cooperation reported in the region, including between the business/shipping sector and customs in connection to risk management and detecting illicit trade (see section 4.6.3), are a tentative sign that the situation may be changing slowly. The enactment of legal frameworks enabling the creation of synergies in the criminal justice domain could provide both incentives and necessary safeguards to ensure that any

voluntary contributions by the private sector (beyond what is already legislatively mandated in, for e.g., anti-money laundering statutes) remain targeted, transparent and respectful of the independence and impartiality underpinning criminal proceedings. Subject to these limits, SEE countries should take note of an emerging good practice that encourages a degree of two-way communication between the public and private sectors in the context of illicit trade investigations and other enforcement actions (see section 4.6.3).

Efforts to set up PPPs, and promote sustained levels of inter-agency coordination, will not yield results unless adjudication processes are broadly perceived as balanced and offering adequate levels of deterrence. Here, *SEE:IMPACT* has highlighted challenges such as: the frequent application of too-lenient penalties by judges (notably for drug trafficking offences); inconsistent application of penalties for criminal conduct of similar gravity, which is partly attributed to the general lack of sentencing guidelines; and widespread use of plea bargaining whereby offenders are punished well below the minimum thresholds set in law in an effort to secure convictions (see chapter 4.7, adjudicating illicit trade offences). While plea bargaining was expected to increase the level at which criminal assets are confiscated, still-poor confiscation results raise questions as to whether this practice is working as intended and in the interests of justice. Apart from this, criminal justice officials, and especially prosecutors and judges, would likely benefit from further training on the rationale of plea bargaining and agreements (see Recommendation 22).

When it comes to highly-lucrative illicit trade schemes, criminal sentences can only achieve their full deterrent effect when supported by determined action to confiscate instrumentalities and proceeds of crime (see chapter 5). This is probably the area where one observes the widest gap between the letter of the law and its practical application. Overall, SEE countries have in place most of the legal mechanisms and modern enhancements to make the recovery of tainted assets less procedurally onerous, such as non-conviction-based (**NCB**) confiscation and extended confiscation models, and reversed burdens of proof. Money laundering statutes generally recognise a wide range of illicit trade-related conduct as predicate offences. But even with the adoption of robust legal instruments, their implementation can be problematic: prosecutors and judges often interpret legal provisions in different and contradictory ways; and the difference between basic notions, such as direct and extended confiscation, is sometimes not clearly understood.

While some precedents can be found in SEE, most countries have an opportunity to establish frameworks that allow for confiscated assets to be reinvested into governmental services – including transnational policing – and other social programs. This could provide additional incentives to ramp-up asset recovery efforts (see Recommendation 27

and case study in chapter 5.1), and fund research and community-based assistance that aim to address the root causes and drivers of illicit trade.

Moreover, what is lacking in many cases is the sufficient allocation of material and financial resources to manage seized and confiscated assets, as well as capacity to engage in what are often complex and time-consuming financial investigations. A common concern in the region is that these investigations are not systematically launched in parallel to investigations into the underlying offences. This is not to suggest that action to 'follow the money' would necessarily, or readily, lead to sudden spikes in the value of recovered assets. In this regard, SEE countries face the same overarching difficulties faced by all countries, in piercing corporate veils in non-cooperative jurisdictions or tracking illicit trade transactions through informal mechanisms such as *Hawala*.<sup>7</sup>

Similarly, SEE countries are not alone in observing that traditional investigative techniques are not enough to overcome the exponentially growing use of encrypted communication, including by criminal organizations in the trafficking business (see chapter 4.3, investigation strategies). Traditional methods also struggle to adapt to the e-commerce phenomenon and associated growth in small consignments, which threaten to overwhelm customs agencies and others (see chapter 4.4 and case study at 4.4.2).

Interlinked with these trends is the overarching threat of cyber-enabled illicit trade, in respect of which SEE countries appear to be generally underprepared. While national partners and the project's advisors consistently pointed to the apparent scaling-up of illicit trade operations on the Darknet, the precise scope of the problem in SEE remains unclear. This report has therefore sought to offer some guidance to law- and policymakers, in particular, who have important work to do in reviewing and updating regulatory frameworks so that online intermediaries, and the latest technologies and analytical tools, can be leveraged by enforcement authorities and others (see case study at section 4.4.1).

These challenges should not be underestimated, but they also cannot hide the presence of longer-standing, structural obstacles such as corruption. Experts in various countries noted instances of collusion between OCGs and politically-exposed people as creating significant impediments to investigations into illicit trade. Persistent threats to the integrity of law enforcement communities and the judiciary are equally of concern (see chapter 4.4). While a few countries have introduced corrective and preventive measures, such as whistleblower protection laws and vetting procedures, implementation gaps and resource-related challenges persist.

The drivers of illicit trade are often found in divergent tax and regulatory regimes, and levels of Governmental subsidies, across jurisdictions. OCGs also take advantage of porous borders, extensive coastlines and frequently opaque legal spaces such as FTZs (see chapter 3.2). Logistics chains for trafficking operations often span different countries, rely on multiple means of transport, and involve criminally-motivated actors of different nationalities acting in concert. For all these reasons, illicit trade schemes have an inherent international dimension that no country can hope to properly tackle in an isolated fashion.

SEE countries are active parties to an array of bilateral, regional and international cooperation arrangements, but the nature and intensity of cooperation flows are uneven (see chapter 6). Countries rely on international enforcement and criminal justice bodies to different extents as a result of a patchwork of cooperation agreements. For example, while crucial support is delivered to non-EU countries of the region through Europol, Eurojust and Frontex, the scope and breadth of this assistance depends on agreements specifically negotiated with each jurisdiction. Some arrangements are lagging in implementation while others are yet to be concretised as a result of political inertia. International exchanges also tend to follow the same patterns of domestic investigations and prosecutions, focusing more intensively on drug trafficking and, to a lesser extent, migrant smuggling and THB offences. Relatedly, there appears to be scope for Europol and the Southeast European Law Enforcement Center (**SELEC**) to work more closely together, including in assessing Europe-wide organized crime threats.

While the regional landscape is somewhat fragmented, countries are increasingly experimenting with a variety of international cooperation tools and initiatives in the form of joint investigations (notably, facilitated by SELEC), joint patrols, deployments of liaison officers, and peer-to-peer platforms (see chapter 6.2). Discussions with national advisors brought to light several instances of cross-border operational arrangements that – despite their resource-intensive nature and reliance on external support – cry out for wider and more systematic application.

Overall, this report highlights that there are well-established judicial and police channels through which much essential information can be shared to 'oil the wheels' of formal mutual legal assistance (**MLA**) procedures. Only a few specific problems are detected in the way that MLA regimes operate. Lack of translators and the presence of multiple MLA central authorities, for example, may create uncertainties and unnecessary bureaucratic delays in processing requests when time is of the essence.

Recent national efforts, particularly those made by WBs countries in aligning with the European *acquis*, have closed some of the most glaring legal and institutional disparities between EU members and others. From here, political leaders and senior criminal justice officials are called on to close the still-wide gap between legal and regulatory frameworks, and their practical implementation and enforcement. This next phase promises to be uniquely challenging and a test of countries' maturity and preparedness.

From a socio-economic and political perspective, the COVID-19 pandemic and its aftermath will likely place unprecedented strain on Government resources. The fight against transnational criminal networks may not be a top priority in the face of increasing unemployment, stretched public health services and the persistent flight of the region's youth. But it is also true that SEE countries may observe a surge of people turning to illicit trade as a way to meet their essential needs. A rise in illegal migration, from which criminal networks benefit greatly, is already evident.

Much is at stake. Nationalistic winds are sweeping through the region and, in some cases, further polarising communities. Relatively newly-forged countries continue to establish the rule of law in the midst of political deadlocks, ethnic tensions and institutional quasi-paralysis more than two decades after the collapse of Yugoslavia. These factors point to deep, underlying challenges that will need to be addressed in the process of consolidating modern, dynamic and proactive criminal justice systems. It remains to be seen how these systems will respond to the overwhelming growth of organized criminal syndicates that exploit the region's multiple fragilities. In this context, the EU's new enlargement strategy (see chapter 2.4 and annex 4.1) will need to re-energise an accession process that has, over the years, lost some of its sheen and momentum.

But it is also important to put the challenges of today (and tomorrow) into perspective. Taking a broader view of the region's history, and the incremental progress that has been achieved over recent decades, one cannot ignore the fact that SEE is now more prepared to confront illicit trade than at the turn of the century. In the intervening period, too, vibrant civil societies have emerged as a necessary conduit between citizens and the governments that service, and are ultimately accountable to, them.

While not a primary focus for *SEE:IMPACT*, civil society organizations (**CSOs**) and their contributions to transparency in EU accession negotiations, uncovering illicit trade and related criminal schemes, and holding governments to their commitments, have never been more vital. Indeed, investigative reporting and independent analysis by civil society actors in the region are key sources for this report. Relatedly, the Institute believes that new bridges will need to be constructed between CSOs, and the everyday citizens who

have a growing sense that even hard-hitting investigations and exposés fail to result in meaningful change. This only reinforces the need for SEE citizens to be better informed and empowered to exercise their democratic rights in free and fair elections.

During these past three years, intensive discussions were held with enthusiastic, highly competent and motivated professionals from customs and police agencies, prosecution offices, financial intelligence units (**FIUs**), anti-corruption bodies and ministry officials in charge of justice, interior, finance and European/international cooperation. With adequate political backing and support, these officials are charged with responsibility to make their countries and the region less vulnerable, better prepared and more confident to rise to the challenge of one of the 21<sup>st</sup> century's scourges. It is thanks to them that the Siracusa Institute has refined the following 39 recommendations.





National dialogue in Skopje,  
North Macedonia



Left clockwise: Regional dialogue in  
Siracusa; Skanderbeg Square in  
Tirana, Albania; Bucharest, Romania  
(credit: John M. Sellar)

## Recommendations

SEE countries are encouraged to take the following steps in order to strengthen the fight against illicit trade:

### Strategic and policy matters

1. For policy development and law enforcement purposes, recognise the importance of combating illicit trade as a cross-sectoral phenomenon, as described in this report, in complement to existing sectoral (or commodity-based) approaches.
2. Conduct a whole-Government review of existing national strategies, action plans, etc. in respect of specific illicit trade sectors, organized crime, corruption and illicit financial flows (IFFs). The purposes of this review should be to identify gaps and opportunities to better connect and streamline existing strategic documents, and develop more robust mechanisms for monitoring and evaluating their implementation.
3. Establish a monitoring mechanism tasked with quantifying the yearly economic losses, both private and public, stemming from illicit trade.
4. Consider devising a dedicated national strategy for combating illicit trade across sectors. Crime prevention should be a key objective for such a strategy-setting process. In this document, moreover, neglected forms of illicit trade (e.g. cultural property, excise goods including alcohol, tobacco and petroleum, counterfeit medical products, illegally-logged timber, etc.) should be scrutinised in order to establish their presence and dimensions in the country.
5. Consider new approaches for measuring progress and success in the fight against illicit trade, including through the adoption of non-traditional indicators that better reward proactive, inter-agency cooperation, and better recognise both the direct and indirect contributions that various agencies make to investigative and other enforcement actions.

6. Protect the freedom and independence of civil society organizations, research institutes and investigative journalists working to uncover and report on illicit trade and related crimes without intimidation or other harm, and systematically investigate and punish crimes perpetrated against them.

### Institutional direction and coordination

7. Designate an appropriate, adequately funded and well-functioning entity to serve as the Central Authority (CA) on organized crime and illicit trade matters. In line with the prosecutor-led investigation model, the Authority should be, in most cases, the country's highest-level prosecution office. If this is not appropriate in any given context, a state-level law enforcement agency could alternatively be designated.

The CA should be vested with the executive functions and powers necessary to exercise tactical, operational and analytical leadership of the fight against illicit trade.

The Authority should be empowered to centralise and direct flows of vital intelligence and evidentiary material among relevant entities (including information from private sector sources),<sup>8</sup> to impose coordination at lower levels, and take-over cases in appropriate circumstances. These prerogatives are intended to assist law enforcement and criminal justice officials to focus on the main criminal actors – especially OCGs and networks – underlying cross-border illicit trade schemes. For the avoidance of doubt, this recommendation does not entail the creation of new institutions.

Given its core, centralising function, the CA should also be empowered to regularly report on the nature, scope and scale of the illicit trade threat at the national (and regional) levels, based on reliable, accurate information and intelligence collected and disseminated at the CA's direction, and investigative and judicial outcomes. Such reports should inform policy analysis and development, the implementation, evaluation and updating of national strategic documents, and sharing of good practices and lessons learned in relevant international forums.

## Treaty actions and legislation

8. Prioritise adherence to, and implementation of, the UN Convention against Transnational Organized Crime and its supplementary Protocols (**UNTOC**), the UN Convention against Corruption (**UNCAC**), and other international treaties related to illicit trade (see annex 2).
9. Review and update legislation to ensure that, at a minimum, illicit trade-related offences involving OCGs, or which otherwise present a substantial risk to public health or the environment, are subject to severe minimum penalties including imprisonment terms.
10. Introduce adequate penalties against legal persons involved in illicit trade.
11. In relation to non-EU members, align national legal frameworks with the Naples II Convention on Mutual Assistance and Cooperation between Customs Administrations (**Naples II Convention**), including its provisions on special forms of cooperation. In relation to EU members, review existing reservations to the Convention. For all SEE countries, review any other limitations on customs officers' use of special forms of cooperation.
12. Ratify and implement the International Convention on the Simplification and Harmonisation of Customs Procedures (**Revised Kyoto Convention**) including Specific Annex D, and implement the OECD Recommendation on FTZs and its Code of Conduct.
13. Mitigate illicit trade and corruption risks in customs and border management processes by stepping-up implementation of trade facilitation measures under the World Trade Organization Trade Facilitation Agreement, and other relevant international agreements and standards.

## Investigating, prosecuting and adjudicating illicit trade cases

14. Ensure that the quick, real-time sharing of intelligence, information and evidence between relevant national entities is possible by establishing a centralised electronic database, or agency-specific databases that are interoperable with others.
15. Promote, adequately resource and train enforcement agencies to pursue proactive and intelligence-led investigations.
16. Empower and properly resource customs, border police and other enforcement agencies with a presence at borders, ports and airports, to cooperate in carrying out intelligence analysis, risk assessment and targeting, and investigations, including through joint access to relevant databases.
17. Ensure that competent investigators are empowered to use the full range of special investigative techniques (**SITs**) in tackling all forms of illicit trade and uncovering broader criminal networks. In particular, countries should empower use of covert investigations in appropriate circumstances and with judicial oversight, and provide advanced training including in the use of informants.
18. Empower undercover agents to effectively infiltrate OCGs, including by making any necessary changes to their legal status and prerogatives.
19. Enhance law enforcement's capacity and resources to systematically conduct financial and money laundering investigations in parallel to investigations into the underlying criminal offences involved in illicit trade schemes. Further specific training should be provided to this end.
20. Consider empowering customs with stronger powers to carry out criminal investigations into illicit trade and related IFFs including trade-based money laundering (**TBML**). In any case, ensure that customs agencies work closely with other enforcement actors, and the private sector, towards the common objective of unveiling illicit trade schemes and perpetrators.

21. In countries that mandate different entities to handle organized crime/corruption and less serious crimes, consider elaborating guidelines for the smooth transfer of cases from generalist to specialised entities (or *vice versa*) to prevent their being unduly delayed or compromised.
22. Foster a clear understanding of the rationale of plea agreements, which: i) do not aim to replace insufficient or faulty investigations; ii) should be subject to judicial oversight to prevent any instances of abuse, arbitrariness or corruption; and iii) offer an accused, for whom a conviction is virtually unavoidable, an opportunity to obtain limited benefits in exchange for speedy resolution of the proceedings, thereby allowing the criminal justice system to save precious material and human resources.
23. Consider introducing clear sentencing guidelines, including in the illicit trade domain, that reinforce the need for effective deterrents against the most serious manifestations of illicit trade and mitigate the risk that legislatively prescribed penalties are unevenly applied.
24. Organize further training for prosecutors and criminal investigators on key concepts of THB, with a focus on the element of exploitation.
25. Consider and, where necessary, define the notion of minimum quantities of illicit drugs necessary to be qualified as trafficking.

### Criminal asset recovery

26. Establish and adequately resource an Asset Recovery Office (**ARO**) to facilitate the identification and tracing of proceeds and instruments of crime that might be subject to freezing, seizure or confiscation orders.
27. Consider allocating a proportion of confiscated criminal assets to support the work of criminal justice and law enforcement actors against transnational organized crime, and building resilience in the communities most affected by illicit trade at the national level.

### Inter-agency and international cooperation

28. Increase opportunities for regular inter-agency dialogue between key prosecution offices, police, customs and related enforcement agencies, the FIU and other entities with expertise in financial investigations, as well as relevant inspection/regulatory agencies.
29. Increase opportunities for inter-institutional training especially for prosecutors, police and customs officers, financial analysts and investigators, and tax authorities.
30. Utilise the UNODC-World Customs Organization (**WCO**) Container Control Programme and similar to foster inter-agency cooperation in detecting illicit trade.
31. Strengthen operational, analytical and training cooperation with SELEC, Europol, Eurojust and Interpol among other international organizations, including on joint investigations into illicit trade.
32. Invest in regular strategic dialogues at the regional level, which should bring together senior officials of specialised organized crime and corruption departments, as well as policymakers and criminal intelligence analysts.

### Public-private partnerships

33. Recognise the greater role that can be played by businesses and other private sector actors in supporting investigations into illicit trade, with appropriate checks and balances to ensure the integrity of investigations and criminal proceedings. The CA should contribute to developing channels and procedures for involving, and regularly consulting, the private sector.
34. Review legal and regulatory frameworks to ensure that investigators are empowered to cooperate with businesses and other private sector actors, when appropriate, in the course of illicit trade investigations.



### Region-wide initiatives and areas for further research and investigation

35. Conduct further research and investigations into the scale, prevalence and drivers of IFFs, including TBML, in SEE.
  36. Conduct further research and investigations into illicit trade-related risks in SEE FTZs, and the extent to which enforcement and criminal justice officials exercise their lawful powers in connection to such zones.
  37. Consider entering into arrangements for the deployment of liaison prosecutors to other SEE countries, to EU members in or outside the region, or to other countries that present particularly acute challenges from an illicit trade perspective. Such liaisons should be embedded within the CA.
  38. Enhance educational, awareness-raising, and professional training and capacity-building opportunities for criminal justice and law enforcement officials on the illicit trade phenomenon and its cross-sectoral dimensions.
  39. Consider supporting new mechanisms for bilateral, multilateral and/or regional strategy-setting on illicit trade responses.
- 

Top clockwise: National strategic dialogues in Novi Sad, Serbia; Podgorica, Montenegro; and Pristina, Kosovo.



The Institute's Director addressing the strategic dialogue in Sarajevo, BiH.





The Institute's headquarters in Siracusa.

The Institute's President addressing dignitaries at the regional dialogue in Siracusa.



Left to right: A bird's-eye view of the high-level regional dialogue in Siracusa; intensive discussion during Albania's dialogue in Tirana.

MAP 1.

South Eastern Europe

# SEE at a glance





# Acronyms and abbreviations

<b>ARO</b>	Asset recovery office
<b>AA</b>	Association agreement
<b>BAMIN</b>	Balkan Asset Management Interagency Network
<b>BiH</b>	Bosnia and Herzegovina
<b>CVM</b>	Cooperation and Verification Mechanism
<b>DIICOT</b>	Directorate for the Investigation of Organized Crime and Terrorism (Romania)
<b>DNA</b>	Anti-Corruption Directorate (Romania)
<b>EMCDDA</b>	European Monitoring Centre for Drugs and Drug Addiction
<b>EMPACT</b>	European Multidisciplinary Platform against Criminal Threats
<b>EPZ</b>	Export Processing Zone
<b>ERM</b>	Exchange Rate Mechanism
<b>EU</b>	European Union
<b>EUIPO</b>	European Union Intellectual Property Office
<b>EULEX</b>	European Union Rule of Law Mission in Kosovo
<b>Eurojust</b>	EU Agency for Criminal Justice Cooperation
<b>Europol</b>	EU Agency for Law Enforcement Cooperation
<b>FIU</b>	Financial Intelligence Unit
<b>Frontex</b>	European Border and Coast Guard Agency
<b>FTZ</b>	Free Trade Zone
<b>GDP</b>	Gross Domestic Product
<b>GFI</b>	Global Financial Integrity
<b>GITOC</b>	Global Initiative against Transnational Organized Crime
<b>GPS</b>	Global Positioning System
<b>IFFs</b>	Illicit financial flows
<b>ILECU</b>	International Law Enforcement Coordination Unit
<b>Interpol</b>	International Criminal Police Organization
<b>IP</b>	Intellectual property
<b>ITA</b>	Indirect Taxation Authority (BiH)
<b>IUU fishing</b>	Illegal, unreported, unregulated fishing
<b>JITs</b>	Joint investigation teams
<b>Medicrime Convention</b>	Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health
<b>MLA</b>	Mutual legal assistance
<b>NATO</b>	North Atlantic Treaty Organization

<b>NCB confiscation</b>	Non-conviction-based confiscation
<b>OCGs</b>	Organized crime groups (and networks)
<b>OECD</b>	Organization for Economic Co-operation and Development
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>PPP</b>	Public-private partnership
<b>PSI</b>	Pharmaceutical Security Institute
<b>Revised Kyoto Convention</b>	International Convention on the Simplification and Harmonisation of Customs Procedures
<b>SAA</b>	Stability and Association Agreement
<b>SALW</b>	Small arms and light weapons
<b>SAP</b>	Stabilisation and Accession Process
<b>SEE</b>	South Eastern Europe
<b>SEE:IMPACT</b>	<i>Strengthening the Fight Against Illicit Trade in South Eastern Europe</i> (a project of the Siracusa Institute)
<b>SEEPAG</b>	South East European Prosecutor Advisory Group
<b>SELEC</b>	Southeast Law Enforcement Center
<b>SEPICA</b>	South East Europe Police Chiefs' Association
<b>SIPA</b>	State Investigation and Protection Agency (BiH)
<b>SITs</b>	Special Investigative Techniques
<b>SOCTA</b>	Serious and Organized Crime Threat Assessment
<b>SPO</b>	Special Prosecutor's Office
<b>TBML</b>	Trade-based money laundering
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>THB</b>	Trafficking in human beings (or human trafficking)
<b>UN</b>	United Nations
<b>UNCAC</b>	UN Convention against Corruption
<b>UNMIK</b>	UN Interim Administration Mission in Kosovo
<b>UNODC</b>	UN Office on Drugs and Crime
<b>UNTOC</b>	UN Convention against Transnational Organized Crime
<b>USKOK</b>	State Attorney's Office for the Suppression of Organized Crime and Corruption (Croatia)
<b>WBPN</b>	Western Balkans Prosecutors Network
<b>WB-RAN</b>	Western Balkans Risk Analysis Network
<b>WBs</b>	Western Balkans
<b>WCO</b>	World Customs Organization
<b>WFZO</b>	World Free Zones Organization
<b>WHO</b>	World Health Organization

# Background and objectives

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# Background and objectives

## 1.1. Purpose of this report

**This report is intended to inform strategic analysis, law reform and policymaking processes in connection to the fight against illicit trade in SEE. Through an innovative approach to research and analysis – grounded in interviews and strategic dialogues with frontline practitioners – the Institute hopes to offer fresh insight and perspectives to those charged with confronting illicit trade in increasingly volatile, resource-stretched environments.**

*Closing the Implementation Gap* relies on open sources, official data, semi-structured interviews with national practitioners and policymakers, and the insights of some 24 national, regional and international advisors to the project. Its preparation has not been a predominately data-driven exercise; there is a general paucity of quantitative data and statistics relevant to organized crime, both in SEE and worldwide. UNODC has found, for example, that most Western Balkans (WBs) countries do not have statistical systems in place to record organized crime.<sup>9</sup> Rather, the present report should serve as a practical resource for law enforcement and criminal justice officers, including those with an eye on the 'big picture'.

The big picture comprises the national and regional dimensions of combating illicit trade. As global institutions and multilateralism come under strain, the ability of national leaders to forge a common path with their neighbours is more vital than ever. In this context, the report also speaks to a broader European audience and, specifically, the European Commission and Europol, Frontex and Eurojust among other EU agencies invested in the region's stability and future prosperity.

It is hoped that this report will also feed into broader conversations at the national and intergovernmental levels about how to confront persistent structural weaknesses and related challenges that

impede the work of criminal justice actors as they respond to illicit trade and connected crimes.

There is a related question on which this report cannot dwell, namely: what mechanisms does the international community have at its disposal, or still need to develop, to address impunity in countries that prove unable or unwilling to confront transnational crime networks and their complex interplay with corruption and IFFs? Indeed, the 'toolbox' for responding in these situations is dramatically under-developed in comparison to the UN's machinery for investigating and reporting on serious international crimes (e.g. war crimes, crimes against humanity, etc.) that similarly threaten regional and international peace and security, or for imposing sanctions on the perpetrators of atrocity crimes and terrorism.

## 1.2 Project aim and scope

*Closing the Implementation Gap* distils the core findings and recommendations of a three-year regional project.<sup>10</sup> *SEE:IMPACT*'s overarching aim has been to contribute to strengthening the criminal justice response to illicit trade across the region. To this end, the Institute has combined new research and policy analysis with capacity-building innovatively delivered at the national level.



The Institute's project, and this report, have covered considerable ground. Accordingly, a broad brush is applied in setting out and describing criminal justice-related challenges across 12 jurisdictions, namely Albania, BiH, Bulgaria, Croatia, Greece, Kosovo, Montenegro, North Macedonia, Romania, Serbia, Slovenia and Turkey.<sup>11</sup>

**SEE:IMPACT's objectives are four-fold:**

- i. To identify practical challenges and obstacles affecting the criminal justice response to illicit trade at the national level.
- ii. To develop recommendations for enhancing the region's overall response to illicit trade including through intensified cooperation between SEE countries and their EU counterparts.
- iii. To build capacity among national law enforcement and criminal justice actors to tackle illicit trade as a cross-sectoral phenomenon.
- iv. To consolidate any lessons learned and good practices that have come to light in the fight against transnational crime networks in SEE.

To our knowledge, *SEE:IMPACT* is the first project in the region to tackle illicit trade as a cross-sectoral phenomenon, in complement to existing commodity-based approaches. This novel perspective has sought to put a spotlight on the many common features shared by different forms of illicit trade, and the similar practical challenges that they present for policymaking and enforcement. In the Institute's view, cultivating cross-sectoral perspectives is the antidote to today's fragmented, siloed approaches to illicit trade. It also offers the greatest promise for better inter-agency collaboration, and closer cooperation between the public and private sectors, in SEE and beyond.

Fighting illicit trade, in the broad sense of a coordinated response to a phenomenon with multiple manifestations, is not currently a primary target for any of the jurisdictions under consideration. Generally, the cross-sectoral concept of illicit trade is neither referenced nor taken into consideration in national legislation. Nevertheless, from a criminological perspective, the Siracusa Institute's project has endeavoured to assess the overall situation in SEE, to encourage states to recognise illicit trade *per se* as a serious threat to their interests, to identify major gaps in today's largely *ad hoc* approach to some but not all serious manifestations of the phenomenon, and to discern what concrete measures could be taken by countries to boost their effectiveness.

It was beyond *SEE:IMPACT*'s scope to quantify the scope and scale of illicit markets, or map OCGs, in the region. Wherever appropriate, therefore, this report draws on complementary research by UNODC, the European Commission, GITOC and other key players that have looked at specific aspects of the problem. These sources help to contextualise the Institute's primary analysis, which concerns challenges affecting the criminal justice response to illicit trade.

With these points in mind, the project aimed to innovate and inject fresh perspectives by:

- **Encouraging the identification of new and emerging forms of illicit trade:** Past projects and initiatives in the region have generally focused on measuring and assessing the same forms of illicit trade (typically illicit drugs, weapons and human trafficking/smuggling). Through its country-level research, consultations and cross-institutional dialogues, the Institute encouraged officials to identify even less conspicuous forms of illicit trade.
- **Taking a broader view of illicit trade in the region:** *SEE:IMPACT* sought to understand to what extent the criminal justice response to illicit trade in WBs countries encounters similar challenges to EU members in the region as well as Turkey.
- **Making customs and regulatory/inspection agencies part of the conversation:** The contributions of customs administrations and regulatory/inspection agencies are often sidelined in projects about organized crime, which rather focus on more 'traditional' criminal justice actors such as prosecutors and police. They were front and centre of *SEE:IMPACT*, in recognition of their crucial role in detecting illicit trade at the frontlines.
- **Creating new opportunities for cross-institutional dialogue and capacity-building:** SEE countries and their international partners offer a wide range of training and educational opportunities for judges, prosecutors and police, in particular. However, several challenges have emerged in relation to past initiatives: from an illicit trade perspective, training is typically *ad hoc*, sector-specific and poorly followed-up with refresher or more advanced courses; training is not currently offered on several forms of illicit trade present in the region (e.g. cultural property, wildlife and forest crime, and counterfeit medical products); in some countries, the impact of specialised training has been limited where the 'fundamentals' in terms of professional skills, techniques, etc., are not firmly in place; high turnover in enforcement agencies and some judicial institutions can undermine the effectiveness of training efforts; and there are generally no training or other forums bringing together all of the main actors responsible for the national response to illicit trade – financial intelligence analysts, customs officers, prosecutors and border police,

judges, health and environmental inspection agencies, financial regulators, etc. The Institute took account of these challenges in designing its strategic, cross-institutional dialogues.

- **Raising cross-institutional awareness about resources and networks made available by international agencies:**

While police may be generally aware of the support that Interpol and Europol provide to national law enforcement, awareness among customs officers or prosecutors appears limited. Similarly, the WCO's expertise and support is relatively unknown among police and prosecutors. The Institute saw the need to promote cross-institutional awareness about the range of resources, databases, networks, etc. that intergovernmental bodies offer to actors in the criminal justice chain. These opportunities were actively grasped during *SEE:IMPACT*'s strategic dialogues.

Dignitaries at the regional dialogue  
in Siracusa, December 2018







# Introduction: illicit trade in context

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# Introduction: illicit trade in context

## 2.1. Tackling a 21<sup>st</sup> century scourge

### 2.1.1. Framing the phenomenon

In one form or another, illicit trade practices have existed for as long as *Homo sapiens* has sought to regulate trade and commerce. Today, illicit trade is described as the ‘dark side’ of the international trade and financial systems. Whatever the characterisation, this phenomenon is causing increasing concern among policymakers and law enforcement agencies, the private sector and civil society groups worldwide. The recent surge of interest stems from the realisation that the illegal trade of goods and services has reached alarming levels. In a global environment that prioritises the free flow of goods and money, illicit trade is amplified by information and communication technology, and modern transport and logistics networks, that remove friction between interconnected markets.

The global illicit economy is experiencing considerable growth in a wide range of underground flows. Indeed, many illicit markets now generate billions of dollars for organized crime actors. Whether in the form of counterfeit medicines, tobacco smuggling, cross-border trafficking of protected wildlife, cultural artefacts and timber, or other contraband, illicit trade is depriving governments of precious financial resources, causing severe losses to legitimate businesses, threatening consumers’ health and damaging the environment on an unprecedented scale.

Some estimates put the share of these illicit flows at 8 to 15% of global GDP. Significantly higher percentages are likely in developing countries.

**TABLE 1**  
**Estimated retail value of transnational crime, 2017**

Transnational crime	Estimated annual value, USD
Drug trafficking	426 billion to 652 billion
Small arms & light weapons trafficking	1.7 billion to 3.5 billion
Human trafficking	150.2 billion
Organ trafficking	840 million to 1.7 billion
Trafficking in cultural property	1.2 billion to 1.6 billion
Counterfeiting	923 billion to 1.13 trillion
Illegal wildlife trade	5 billion to 23 billion
IUU fishing	15.5 billion to 36.4 billion
Illegal logging	52 billion to 157 billion
Illegal mining	12 billion to 48 billion
Crude oil theft	5.2 billion to 11.9 billion
<b>Total</b>	<b>1.6 trillion to 2.2 trillion</b>

**Source:** Global Financial Integrity (GFI), *Transnational Crime and the Developing World*

Illicit trade has not been authoritatively defined as a cross-sectoral concept.<sup>12</sup> That said, the lack of an internationally-agreed definition has not held back efforts to grapple with and respond to the phenomenon. The term itself is relatively new and already gaining traction in global policy debates on criminal justice, the rule of law and human rights, security and sustainable development. Indeed, illicit trade and related financial flows are a thread common to each domain. Holistic responses to illicit trade, in turn, need to draw lessons and good practices from these and other contiguous fields (e.g. counter-terrorism, anti-corruption and the fight against cyber-enabled crime, etc.)

Illicit trade markets, actors and dynamics are shaped by many factors, including: the level of integrity of State institutions and political and administrative processes; the quality of governance; countries' ability to secure and monitor porous borders; the presence of conflict and the fragility of post-conflict transitions; whether inspection/regulatory agencies work synergistically with law enforcement and criminal justice actors; and market conditions as shaped by demand and supply dynamics, regulatory asymmetries and loopholes.

To tackle illicit trade, one needs to develop an understanding of local weaknesses in their broader context, national and regional. One also needs to confront the phenomenon's global dimensions, specifically the well-documented manner in which illicit trade exploits vulnerabilities in the international financial and trade systems.

### 2.1.2. A working concept of illicit trade

Three features make illicit trade a challenging phenomenon to grasp in essence:

- Illicit trade schemes very often involve a wide range of criminality in their planning, preparation and execution, especially large-scale operations extending beyond national borders. Other practices like money laundering and corruption are crucial enablers.
- Such schemes implicate multiple actors along supply and logistics chains, each with a different role and varying degree of knowledge about the broader scheme in which they participate.
- There are sometimes important divergences between countries in what goods and services are deemed illegal, or the circumstances in which otherwise legal goods may be illicitly-traded in contravention of law.<sup>13</sup> Relatedly, pronounced differences in quality and safety standards may render conduct unlawful in some jurisdictions but not others.

To connect the dots in illicit trade conspiracies and operations, therefore, investigators must cast a wide net. Criminal

behaviour is heterogeneous and may include, among other contributions: procuring chemical precursors or trafficking victims; manufacturing counterfeit goods or their components; infiltration of vulnerable supply chains and diversion of legitimate products therefrom; provision of forged and fraudulent documents to secure import/export approval; repackaging and transshipment in FTZs; or engaging professional services for circumventing anti-money laundering controls or disguising the origin of criminal proceeds through trade misinvoicing practices.

In the context of this project, illicit trade has been broadly understood as

**any transnational practice or conduct prohibited by law and relating to the production, shipment, receipt, possession, distribution, sale or purchase of goods or services, including any practice or conduct intended to facilitate such activity.<sup>14</sup>**

### 2.1.3. Manifestations in SEE

Although illicit trade manifests differently in every country and region, OCGs have shown notable resilience in a handful of markets that continue to be the bedrock of cross-border crime in SEE: illicit drugs, trafficked and smuggled people, tobacco products, and small arms and light weapons (SALW). These have been studied and measured extensively by various national and international actors. They have also consumed the vast majority of political 'bandwidth' when it comes to tackling illicit trade, arguably at the expense of identifying new and emerging forms that may warrant closer attention.

A sixth criminal market appears to be established in several SEE countries even if its full regional scope and effects have not yet been thoroughly scrutinised: in Romania, Bulgaria, Greece and Turkey, and other countries, national advisors have flagged the theft and trafficking of **precious cultural artefacts** as a significant, if overlooked, feature of the criminal landscape.

A detailed overview of each established form of illicit trade in SEE can be found at annex 3, and summarised at section 3.1.1. Other manifestations that largely fly under the radar (e.g. counterfeit consumer goods and pesticides, waste, excise goods including alcohol, crude oil and petroleum products, vehicles) are briefly discussed at section 3.1.2.

In addition to those mentioned above, two further illicit markets warrant closer scrutiny. Illicit trade in counterfeit, falsified and substandard **medicines and other medical products** is not currently a focus for any SEE country but its worldwide growth is a major concern for the region's most

vulnerable health systems (see section 3.1.3). In the aftermath of the COVID-19 pandemic, which has put a spotlight on the relationship between organized crime and public health, it is hoped that EU and SEE leaders will give this sector the attention and resources it warrants. **Illegal logging** is another urgent challenge for countries like Romania (see section 3.1.4), but its broader regional implications remain to be unpacked.

## 2.2. Limits of the current response

### 2.2.1. The criminal justice angle

Law enforcement and criminal justice are the dominant lens through which we approach and respond to illicit trade and related crimes. Consequently, studies and reports that aim to shed light on the phenomenon invariably cover the same bases, namely:

- the existence and adequacy of multilateral treaties that set legal requirements for State cooperation in the law enforcement and criminal justice fields.
- the extent and quality of criminalisation in domestic law.
- the quantum of arrests, seized contraband and confiscated proceeds.
- the nature and severity of criminal penalties as imposed by legislation and at sentencing.
- levels of police and customs funding and resources.
- protective and enforcement measures at borders and ports of entry, border security and associated narratives about irregular migration, national security and citizenship, etc.

Over the past two decades, these elements and others have shaped the criminal justice response to illicit trade and transnational criminal networks. There is near-universal agreement on the basic components of this response, and a common vocabulary necessary for unlocking the vast potential of human cooperation across institutions, borders and sectors. However, against this backdrop:

- enforcement is not having the desired results, and a lack of funding and resources is only part of the picture as to why.
- over the past two decades, the criminal justice response has largely developed independently of burgeoning research into the root causes and drivers of illicit trade.

- even with better-calibrated policies, the limits of criminal justice strategies call for complementary human rights-based approaches that address vulnerability and strengthen resilience at the community level.

Indeed, there is ample opportunity for further innovation in the criminal justice field. As noted by GITOC,

**the methods currently used to fight organized crime would be familiar to cops from the 1970s and, meanwhile, the criminals have taken advantage of all of the benefits of the last 30 years of technological development and globalization.<sup>15</sup>**

#### SIDE NOTE

##### SEE countries' spending on police and other services related to public order and safety

Except for Slovenia, EU members in SEE appear to spend significantly more on public order and safety than their EU counterparts: in 2018, these SEE countries invested about 26% more than the EU-28 on average (see table 2 below). The same is true for the WBs and Turkey, whose spending is compared with SEE EU members in table 3. These data are presented for the purpose of regional comparison; they do not reveal the way these budgeted funds were spent in fact, or provide insight into performance results, 'value for money', etc. Moreover, available data does not allow for a comparison of countries' investment in local policing versus transnational policing against organized crime.<sup>16</sup>

**TABLE 2**

**Government spending by EU members in SEE on public order and safety as percentage of GDP, 2015-2018**

Jurisdiction	2015	2016	2017	2018
Bulgaria	2.7	2.3	2.5	2.5
Croatia	2.5	2.5	2.4	2.4
Greece	2.1	2.1	2.1	2.1
Romania	2.3	2.0	2.0	2.2
EU 28	1.7	1.7	1.7	1.7
Slovenia	1.6	1.7	1.6	1.5

**Source:** Eurostat, 'Total general government expenditure on public order and safety'.



The case of Bulgaria is instructive. A recent World Bank review of Bulgaria's police spending revealed that, while Bulgaria continues to spend a considerable percentage of its GDP on public order and safety (2.5% in 2018), outcomes have not been satisfactory:<sup>17</sup> citizens still perceive the police to be unreliable, and relatively high spending is driven by personnel costs at the expense of necessary investments in modernising equipment and systems.

Available International Monetary Fund (IMF) data for SEE countries, including both EU and non-EU members, are compared below.<sup>18</sup> They further suggest that about half SEE governments spend considerably more on public order and safety as a percentage of national GDP, with a regional average that is approximately 31% higher than the EU's.

**TABLE 3**

**SEE government spending on public order and safety as percentage of GDP, 2015-2018**

Jurisdiction	2015	2016	2017	2018
Serbia	2.4	2.5	2.7	3.0
Kosovo	-	2.6	2.4	2.6
Bulgaria	2.8	2.4	2.5	2.5
Croatia	2.5	2.5	2.4	2.4
SEE	2.2	2.2	2.2	2.2
Romania	2.3	2.0	2.0	2.2
Turkey	1.9	2.1	2.0	2.1
Greece	2.1	2.1	2.1	2.1
Albania	1.8	1.7	1.7	1.7
EU 28 <sup>19</sup>	1.7	1.7	1.7	1.7
Slovenia	1.6	1.7	1.6	1.5

**Source:** IMF, 'Government finance statistics, expenditure by functions of government'.

Governments and citizens in SEE should reflect holistically about the objectives and outcomes of deep, long-term investments in police services and other areas related to criminal enforcement, and the need for more innovative and sophisticated approaches; such approaches may entail refocusing future investments into transnational policing as a national strategic priority (see *inter alia* Recommendation 2).

## 2.2.2. Checking expectations

Even before the latest wave of mass protests against systemic racism and police violence, and before the COVID pandemic, a paradigm shift was underway in the fields of crime prevention and criminal justice. There were signs, for instance, that global drug policy is pivoting (belatedly) from a focus on criminalisation and repressive measures including against drug users, which have largely failed to curtail supply or consumption in spite of vast government spending, to decriminalisation and legal regulation in relation to certain drug types. In SEE, too, Croatia and North Macedonia have legalised medicinal cannabis use, and Albania also appears to be moving in this direction.<sup>20</sup>

As international drug control treaties and policy have played an important role in shaping the response to transnational organized crime, evidence-based changes in this domain could bring about a profound rethink about countries' approach to illicit markets and OCGs more broadly, especially by helping enforcement agencies refocus time and resources on fighting the criminal networks that profit from trafficking operations.

Three main angles are worth considering in relation to the limits of the criminal justice response to illicit trade. First, these limits are best highlighted by real-world scenarios in which organized crime actors collude with high-level politicians and others in prominent government posts. In these contexts, criminal justice institutions may prove unable or unwilling to investigate and prosecute those most responsible for large-scale illicit trade, thereby fuelling a cycle of impunity.

Secondly, in the fight against drug trafficking and other forms of illicit trade, concerted law enforcement action has not curtailed the power of OCGs. Tough questions are rightly being asked about the efficacy of a purely enforcement-driven response as illicit trade flows continue growing at unprecedented pace. At the same time, police and customs officials have never shouldered responsibilities as many or varied as they do today, and this should prompt reflection on the essential (and non-essential) functions performed by enforcement agencies, the manner in which they are funded, and whether alternative models should be conceived and employed for local and transnational policing. In recent months, we have witnessed the mass deployment of police to enforce pandemic-related lockdowns, and this, too, is cause for reflection on society's expectations of law enforcement.

Even in cases where they have benefited from additional funding and expansive powers, law enforcement agencies have not necessarily delivered sufficiently persuasive results. Experience cautions against simply and reactively investing more – more police, better paid police, more expansive powers, more sophisticated equipment, etc.<sup>21</sup>

**TABLE 4****Number of police, judges and prosecutors per 100,000 inhabitants in SEE countries, 2016/2018**

No. police officers, 2018		No. professional judges, 2016		No. prosecutors, 2016	
Montenegro	662	Montenegro	51	Bulgaria	21
Greece	495	Croatia	43	Montenegro	17
Turkey	494	Slovenia	43	Croatia	15
Croatia	492	Serbia	38	Romania	13
BiH	481	Bulgaria	32	SEE average	12
Kosovo	480	BiH	29	Albania	11
Serbia	425	SEE average	31	BiH	11
SEE average	423	N. Macedonia	27	EU average	11
Bulgaria	408	Greece	26	Slovenia	10
Albania	368	Romania	24	Serbia	9
Slovenia	343	Kosovo	22	N. Macedonia	8
EU average	326 <sup>22</sup>	EU average	21	Turkey	6
Romania	256	Albania	13	Greece	6
N. Macedonia	213	Turkey	14	Kosovo	N/A

**Source:** European Commission reports, Eurostat and Council of Europe database: CEPEJ Explorer v5.0, [https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Explorerv5\\_0EN/Tables](https://public.tableau.com/profile/cepej#!/vizhome/CEPEJ-Explorerv5_0EN/Tables). All figures have been rounded to the nearest whole number.

**SIDE NOTE****Are numbers of police officers, judges and prosecutors in SEE countries comparable to EU levels?**

Available data indicate that most SEE countries have above-average numbers of key law enforcement and criminal justice officials: 423 police officers, 31 professional judges and 12 prosecutors per 100,000 inhabitants, on average (see table 4 above). North Macedonia and Romania fall considerably short of the EU average for police resources. Turkey and Albania appear to lack enough professional judges, which can be partially explained by large-scale dismissals in both states. In relation to prosecutors, half SEE countries fall below the EU average. It is noted generally that, in the absence of comparable performance results, these deviations from the regional average are merely descriptive.

In confronting the menace of illicit trade, the answer may in fact lie in reimagining community safety as a collaboration between properly resourced health and social services and enforcement bodies, and better focusing police funding where it is needed most and can be most impactful: the fight against powerful criminal networks through intelligence-led and proactive investigations, and significantly boosting resources for the recovery of tainted assets. The untapped potential of criminal asset recovery, particularly as governments seek to contain spiralling public deficits through budget cuts, can no longer be sidelined. As noted by Stefano Betti,

**crime-control policies need not only represent a burden to state coffers. They can become a wealth-generating strategy if focused, determined and sustained efforts are made to recover stolen criminal assets, well beyond the currently half-hearted efforts.<sup>23</sup>**

Indeed, SEE countries and most others around the world would benefit greatly from substantial further investments in resourcing and training their financial investigators (see Recommendation 19).

Thirdly, there is growing recognition that the criminal justice response to illicit trade needs to take better account of its socio-economic causes and drivers. Law enforcement and criminal justice are unlikely to have all the right tools needed to break the nexus between organized crime and the communities and community-based networks that sustain illicit trade, or its symbiotic relationship with political and business elites. Breaking that nexus will require complementary, human rights-based approaches to organized crime that not only address vulnerability in hotspots but also build resilience in the local communities most affected (in relation to the reinvestment of confiscated criminal assets, see Recommendation 27). This can be achieved through, for instance, targeted development assistance that is tied to rule of law and human rights objectives, and is delivered at the community level. As interlocutors between communities and their government, civil society actors, including the free media and investigative journalists, deserve expanded and deepened support from the international community and European Commission (see Recommendation 6).

Criminal justice approaches should also be complemented by multidisciplinary perspectives and methodologies, drawing from reliable, cutting-edge research across multiple fields such as criminology, social and behavioural sciences, and development and security studies. The application of behavioural insights to drug-related problems and corruption, for instance, has been promoted by the European Monitoring Centre for Drugs and Drug Addiction (**EMCDDA**) and Organization for Economic Co-operation and Development (**OECD**),<sup>24</sup> among others.

## 2.3. Counting the costs

### 2.3.1. Socio-economic and security impacts

Illicit trade, and related flows of goods and money, present multidimensional threats to society. Some forms have a severe impact on government revenues, particularly through the smuggling of excisable goods, and distort market dynamics by exposing legitimate businesses to unfair competition practices (see *inter alia* Recommendation 3).

It may be easy, and somewhat understandable, to view illicit trade as predominately victimless. However, illicit trade can also have serious consequences for the health of individual consumers. By flooding markets with counterfeit or sub-standard food, medicines and alcohol, illicit producers and traffickers jeopardise public health and safety. In Turkey, for example, there is a concerning rise in the illicit production and sale of deadly alcohol products across the country.<sup>25</sup> Society as a whole, too, is often the victim as it becomes ever poorer, ecosystems are plundered through conduct such as indiscriminate logging and fishing, and growing numbers of vulnerable members of society fall prey to OCGs.

Increasingly, the political discourse on illicit trade is being integrated into broader national and international security agendas. For the first time, in 2015, UN Security Council Resolution 2199 linked the prevention of illicit trade to counter-terrorism and the maintenance of international peace and security in what were territories controlled by the Islamic State.

### 2.3.2. Identifying the common denominators

Whereas each form of illicit trade has its own characteristics and calls for tailor-made responses, including the adoption of specific regulatory frameworks, the **involvement of criminal organizations** is a common denominator. These often-sophisticated and flexible actors quickly adapt to market developments and seize new profit-making opportunities. To do so, they act across borders and ethnic divides to exploit a global environment that promotes (and prioritises) the free movement of goods and services. In many cases, the same criminal networks manipulate the same transit routes, and exploit the same weaknesses and shortcomings in governance or customs controls.

GRAPHIC 1

#### Snapshot of OCGs under investigation in Europe, 2019



**5,000**  
international groups  
currently under investigation



**7 out of 10**  
OCGs are typically active  
in more than three countries


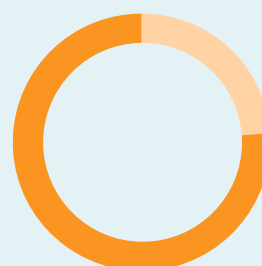


**>180**  
nationalities  
involved



Most OCGs are organized  
hierarchically

**76%**  
Six or more  
members

**24%**  
Up to five  
members




**60%** of suspects involved in serious and organized crime in the EU are EU citizens.

Source: Europol, *Europol in Brief* 2018

**Corruption** is invariably one of the most important facilitators of illicit trade, and is observed at all junctures of supply chains, whether to smuggle goods across borders, obtain fraudulent import/export certificates, ensure enforcement authorities turn a blind eye to an illicit manufacturing facility, or obtain advance information about imminent police raids.

Whatever the form of illicit trade, **criminal profits must be laundered** to ensure they are introduced into the legal economy and either enjoyed or reinvested in further criminality. To these ends, trafficking networks resort to the same mechanisms, including the criminal exploitation of trade misinvoicing practices in what is known as trade-based money laundering (**TBML**).

#### SIDE NOTE

##### TBML prevalence in SEE

IFFs are illegal movements of money or capital from one country to another.<sup>26</sup> Among such flows, those involved in TBML appear to be of the largest-scale and hardest to detect. In brief, TBML is the process of disguising and attempting to legitimise the illegal origins of proceeds of crime by transferring value through trade transactions.<sup>27</sup> It is closely associated with trade misinvoicing practices, whereby the quantity, quality or type of goods being traded is misrepresented in trade-related documents.

In 2013, Global Financial Integrity (GFI) reported that, between 2002 and 2011, 'developing Europe' was the second-highest contributor to global IFFs after Asia,<sup>28</sup> representing around 4.5% of regional GDP.<sup>29</sup> Developing Europe includes all SEE countries except Greece and Slovenia,<sup>30</sup> as well as Russia. As the region's second-largest share in total outflows is almost entirely driven by Russia,<sup>31</sup> its presence in this regional cluster likely distorts the data somewhat vis-à-vis SEE countries.

A 2019 GFI report analysed country-level trade misinvoicing. However, these data do not, in and of themselves, explain the drivers of TBML and related challenges that should be addressed to reduce its prevalence in SEE. Further region-wide investigation into the incidence and drivers of TBML should be undertaken (see Recommendation 35).<sup>32</sup>

### 2.3.3. Cultivating cross-sectoral perspectives

Illicit trade is, most essentially, a form of collusion between criminal networks and corrupt officials who display no

special affinity for any specific commodity. Their motive is profit and, sometimes, power. This is evidenced by how organized criminals readily move into new markets where the risk-reward ratio is most favourable. In this reality, a purely commodity-based response to illicit trade amounts to "missing the forest for the trees".

In the Institute's view, countries would be better-served if investigators and prosecutors could leverage their combined expertise and resources in pursuit of one common objective: mapping and dismantling transnational criminal networks, especially those operating across multiple illicit markets with impunity. This is what we might call the cross-sectoral (or non-sectoral) approach to illicit trade, one strategically targeting criminal networks and the corrupt who service them. In other words, the focus should not be on illicit activities as much as illicit actors, which readily adapt and exploit new market opportunities.

Cross-sectoral perspectives can contribute to connecting dots through wider information-sharing, and promoting a unified sense of purpose across a plethora of law enforcement agencies including customs, ministries, regulatory/inspection authorities, trade bodies and the private sectors. The potential collective contribution of all those actors to policy formulation and investigations is little-explored (see *inter alia* Recommendations 1, 5, 7 and 28).

The creation of synergies between these stakeholders is neither obvious nor inevitable. Inter-agency collaboration, especially among enforcement agencies whose responsibilities intersect or overlap, can be perceived to go against entrenched institutional mistrust and bureaucratic prerogatives that are sometimes jealously guarded. Rather, synergies need substantial and sustained investments in time, technology and human capital, as well as political commitment.

### 2.3.4. Rethinking enforcement success

Police performance tends to be judged in terms of the number of perpetrators arrested or crimes detected. Customs counterparts are expected to increase seizures rates and the quantities of contraband involved. Prosecutors, meantime, are expected to secure high conviction rates.

Traditional metrics are arguably too simplistic, and fail to encourage or reward longer-term investigation strategies for dismantling criminal networks. Yet, not only do governments routinely employ such measurements, they will regularly set them as goals or targets in national strategies. Consequently, the very agencies that best understand the limits of the criminal justice response to illicit trade continue to employ and promote them. Characterising one arrest, seizure or conviction as a marker of success offers little encouragement to investigators and prosecutors who should be looking

more deeply at the wider circumstances associated with illicit trade. In a similar vein, once an arrest or seizure is executed, officials may see little value in pursuing financial investigations that could ultimately lead to criminal asset recovery.

Unlike crimes such as murder and rape, which should continue to be measured (appropriately) in terms of detection, arrest and conviction, transnational crime calls for different metrics that rest on longer-term objectives such as the disruption and dismantlement of criminal networks, and disabling key perpetrators.

To a significant degree, SEE countries appear not to be sufficiently focused on meeting these objectives, which would require a new understanding of what investigative and prosecutorial success entails (see Recommendation 5). Where proactive cooperation at different levels and between two or more countries leads to the dismantling of a transnational criminal network, for example, it may be that arrests, prosecutions, etc. are conducted in some, but not all, cooperating countries. In countries where actions are not taken, it may be challenging to characterise the circumstances as a success for their national authorities. Without this paradigm shift, agencies will continue trying to be goal-scorers rather than assistance providers.

## 2.4. Linking EU accession to the fight against illicit trade

For most, if not all, countries in the region, and particularly the WBs today, the prospect of EU membership has been a positive force overall. Fundamental reforms in all SEE jurisdictions have entailed profound changes in the operation of their criminal justice systems. This process has not been easy and will continue to require sustained political attention, funding and a delicate balancing of interests.

In recent years, notably, WBs countries and their EU counterparts have worked hard to align legislative, institutional and policy frameworks with the EU's *acquis communautaire*. The *acquis* is the body of EU rules across 35 policy areas, which serve to structure the accession process to be followed by candidate countries.

Efforts made by national governments to adopt EU standards have heavily influenced SEE countries' institutional and capacity-building processes. Over the last three decades, in particular, most SEE countries have implemented large-scale reforms and other measures aimed at achieving concrete progress in accordance with the *acquis*. This is true for countries that have already acceded to the EU as well as those that have acquired the official status of candidate countries (Albania, North Macedonia, Montenegro, Serbia and Turkey) and potential candidates (BiH and Kosovo). The

judiciary and law enforcement sectors have been significantly involved in these processes.

WBs countries' near-alignment with certain key requirements of the *acquis* is a major achievement. But it also serves to sharpen attention on the challenges ahead, especially in terms of closing the gap between pristine strategic documents and legislative frameworks, and their generally poor levels of implementation and enforcement on-the-ground.

### 2.4.1. Fundamentals first (and last)

As affirmed by the EU's new enlargement strategy for the WBs (see also annex 4), two negotiating chapters are of primary importance for accession: Chapter 23 and Chapter 24. These are considered 'fundamental', meaning that they will be opened first and closed last in all future negotiations.<sup>33</sup> This points to the deep, long-term efforts required to establish the rule of law and effective criminal justice systems.

Crucially, the full implementation of both Chapters would provide candidate countries with significantly enhanced capabilities to address illicit trade more effectively.

Chapter 23 on the judiciary and fundamental rights, and Chapter 24 on justice, freedoms and security, require prospective EU members to engage in structural reforms that are directly relevant for their ability to address illicit trade. In particular, **Chapter 23's** relevance lies in its fleshing out of benchmarks in the following areas:

- judicial systems' independence and impartiality, accountability of judges and prosecutors, and the judiciary's professionalism, competence and efficiency; and
- strengthening preventive and repressive measures against corruption, including through the elaboration of whistleblower protection laws (see section 4.4.4).
- The most recent and precise standards for EU accession are reflected in interim benchmarks for Serbia and Montenegro. As regards anti-corruption, they include, notably:
  - establishing an independent anti-corruption agency;
  - demonstrating an initial track record of effective investigations, prosecutions and convictions in corruption cases, including high-level ones;
  - establishing a special prosecution office focused on serious crimes including corruption and organized crime; and

- systematically conducting financial investigations and improving criminal asset recovery in organized crime and corruption cases.<sup>34</sup>

**Chapter 24** benchmarks relate to the need for candidate countries to strengthen their ability to confront organized crime, and demonstrate an improved track record in investigations, prosecutions and criminal asset recovery. More specifically, benchmarks include establishing specialist investigative and prosecutorial bodies, reinforcing bodies involved in investigating financial crime and confiscating criminal assets, and establishing information-sharing systems. All countries in the region need to significantly step-up financial investigations and criminal asset recovery, which are in their infancy (see inter alia chapter 5, confiscation of instrumentalities and proceeds of crime).

Countries are also expected to “address the twin-threats of corruption and organised crime at [their] borders through the implementation of a dedicated anti-corruption plan at the borders and provide an initial track record of an adequate follow up of detected cases”.<sup>35</sup> Additionally, countries should step-up international cooperation through judicial and enforcement bodies including the police, strengthen implementation of operational agreements with Europol, as well as establish a track record of successful cooperation on organized crime and drug trafficking cases.

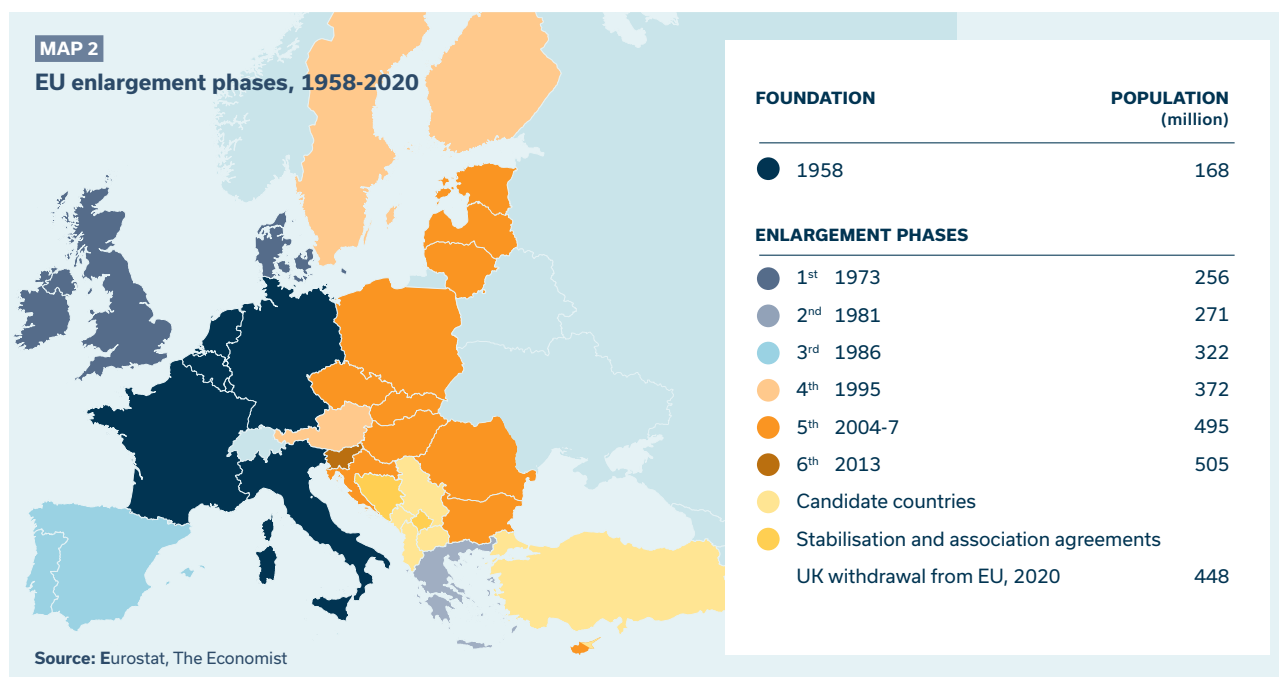
These elements clearly highlight that Chapters 23 and 24 are overlapping and inextricably intertwined, and constitute key pillars of any Governmental strategy to tackle illicit trade from a cross-sectoral perspective. Chapter 24 itself refers specifically to some forms of illicit trade affecting the region, namely drugs, people, weapons and tobacco.

In the Institute’s view, the effective control of organized crime at the national and regional levels is likely to become a matter of even greater strategic importance in connection to accession negotiations, both ongoing and future ones. While organized crime is already an integral element for these negotiations, as noted above, it will also be a crucial issue at the political level. In previous accessions, the focus was on countries formally bringing their systems into technical alignment with the *acquis*, and meeting necessary economic and social criteria. Arguably, organized crime has been treated more as a residual or collateral matter, rather than one that is front and centre in the accession process. This approach needs a major upgrade, considering EU members’ legitimate concerns that SEE’s organized crime challenges might further spread to the Union. Today, in light of past experience, and public opinion and expectations about matters of security and safety, the fight against organized crime is likely to become an even more prominent issue, with EU members demanding that SEE countries not only have appropriate measures in place, but that such measures are working effectively to control organized crime activity.

#### 2.4.2. Other relevant policy areas

Other negotiation chapters contain elements that are relevant to countries’ ability to confront illicit trade. For example, **Chapter 29** seeks to harmonise customs administrations’ approach to cross-border issues including illicit trade.

**Chapter 7**’s focus on the protection and enforcement of intellectual property (IP) rights also bears on the fight against counterfeiting in several key and highly profitable sectors.<sup>36</sup> The challenges posed by illegal, unreported and unregulated (IUU) fishing are directly addressed in **Chapter 13**.<sup>37</sup>





# Regional crime trends and hotspots

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# Regional crime trends and hotspots

## 3.1. Regional trends at a glance

This chapter first provides a snapshot of established criminal markets in SEE, namely: illicit drugs, human trafficking, migrant smuggling, tobacco products, weapons and cultural property (see section 3.1.1). It also analyses forms of illicit trade that appear to be under the radar of enforcement agencies (3.1.2). Sections 3.1.3 and 3.1.4 are a deeper dive into two manifestations that present immediate challenges for policymakers: the illicit trade in medical products and illegally-logged timber. While certainly present in the region, these forms are understudied, presumably underreported, and not yet subject to a coordinated response in most countries.

### 3.1.1. Established crime markets in SEE

In SEE, **drug trafficking** is widespread and represents the largest and one of the most established and profitable criminal markets (see also annex 3.1). Local OCGs have a monopoly over some drug markets, namely heroin, synthetic drugs and cocaine, in some cases ensuring control over the entire supply chain from production to trafficking and sale to end consumers. The cocaine business, in particular, is growing, highly competitive and violent. Organized crime also controls part of the region's cannabis market, although small-scale producers and dealers appear to play a more significant role as compared to other markets. In general, drug trafficking relies on regional and global criminal networks, and increasingly exploits the Darknet to connect producers and suppliers with consumers (although this trend is not restricted to illicit drug markets) (see case study and guidance on cyber-enabled illicit trade at section 4.4.1).

SEE is a highly significant transit region for global flows of illicit drugs, as well as trafficked/ smuggled people and weapons. Indeed, the Balkan route

continues to be the world's busiest channel for the trafficking of heroin.

Cocaine trafficking and, to a lesser extent, local consumption, are on the rise. It is this market, in particular, that reveals the growing sophistication, reach and influence of some Western Balkans OCGs:

**They are reportedly responsible for the financing, transportation and distribution of large amounts of cocaine shipped from South America to Europe. Their ability to work with local crime groups and access cocaine at source, combined with their presence in major European port cities, means that they are able to control the end-to-end supply of cocaine.**<sup>38</sup>

A recent Italian-led investigation involving police authorities in 10 countries serves to illustrate this regional trend. Until its dismantlement, Kompania Bello, an ethnic Albanian OCG involved in cocaine trafficking, reportedly "controlled every aspect of

the supply chain – from arranging shipments from South America to distributing [cocaine] throughout Europe”.<sup>39</sup> As is common practice, the group’s operations were facilitated by encrypted communications, and criminal profits were laundered, in this case through an underground remittance system (*fei ch’ien*) of Chinese origin.

Opioids enter the region through Turkey, whereas cocaine is closely associated with the ports of Durrës, Albania and Bar, Montenegro. Both drug types are moved across the Balkans to reach destination markets in Central and Western Europe, with demand in SEE relatively low. Certain hotspots have been identified for the processing and repackaging of drugs, and crime groups reportedly meet in the region to ‘trade’ one type for another (e.g. heroin for cannabis).

In addition to playing a significant role in transit, Albania’s production of cannabis is a major challenge. It is consumed in the region as well as trafficked to EU countries. There are some indications that Albanian cultivation is shifting to Western Europe where it is grown indoors, and other WBs countries including Serbia may also be involved in large-scale cannabis cultivation.

Heroin and cocaine flows along the Balkan route to Europe are a focus of studies and enforcement efforts. However, experts also point to significant reverse flows of cannabis, including its skunk form, from the Balkans and especially Albania to Turkey; Albanian-Turkish groups reportedly use speed boats to move large volumes (sometimes more than one tonne) along the Adriatic-Ionian-Mediterranean-Aegean sea route. In fact, the project’s experts have noted that enforcement along maritime routes is among the weakest links in SEE’s efforts against illicit trade.

Synthetic drugs such as amphetamine and methamphetamine constitute another major market in SEE where consumption is growing. In recent years, a relatively small number of illicit production facilities have been dismantled in Balkan countries.

Most SEE countries are major origin, transit and destination countries for **human trafficking** (see also annex 3.2). Bulgaria, Romania and, to a lesser extent, Albania, are the main countries of origin for trafficking victims, most of whom are trafficked for the purposes of sexual exploitation and forced labour in the EU and elsewhere. Traffickers may also exploit victims by forcing them to commit crimes.<sup>40</sup> These practices are reported as occurring within the region itself, too, involving victims who are nationals of SEE countries as well as foreigners, especially women from Moldova and Ukraine. Bulgarian experts report that trafficking for slavery-like purposes is on the increase. Transnational crime groups and networks appear to be most responsible for THB in connection to the region, although reports also point to the involvement of individual traffickers. Some members of human trafficking networks also have a significant part to play in the trafficking of illicit drugs and other commodities.

#### SIDE NOTE

##### Distinguishing human trafficking from migrant smuggling

Human trafficking and migrant smuggling are distinct crimes under international law and, in essence, quite different criminal phenomena. From a legal perspective, one element that distinguishes them is ‘exploitation’. The offence of human trafficking requires *inter alia* that the victims be exploited for sexual or other purposes including forced labour; this is not a constitutive element of migrant smuggling. Another distinguishing element is transnationality; migrant smuggling is a transnational offence whereas human trafficking can also be perpetrated domestically. In practice, though, the two offences may be related as smuggled migrants can be particularly vulnerable to human trafficking practices. SEE countries’ investigative and prosecutorial challenges in connection to THB offences are discussed in chapter 4.

In recent years, SEE has been an important transit route for the highly profitable **migrant smuggling** trade (see also annex 3.3). In large part, this is because of the region’s position between the Middle East and North Africa, and Western Europe, a desirable destination for both asylum-seekers and migrants. Since peaking in 2015, this phenomenon appears to have declined. However, periodic episodes mean that migrant smuggling remains a source of grave concern. Serbian experts report that the number of irregular migrants in the country has increased in recent months. Romania and other countries including Austria are also observing an increase in human smuggling and trafficking; in recent months, Romanian authorities reportedly intercepted 181 migrants from countries such as Syria, Turkey and Vietnam.<sup>41</sup>

Smugglers in countries of origin often collaborate with OCGs in the region through loosely associated networks. Use of informal payment methods (notably, *Hawala*) mean that it is especially challenging for investigators to trace related financial transactions and criminal proceeds, and prosecute offenders (see chapter 5.3).

Most SEE states are considered transit countries for the smuggling of migrants, who often enter the region through Turkey before being smuggled to Greece or Bulgaria. From there, migrants move through North Macedonia and Serbia, where they reportedly face heightened risks of falling prey to human traffickers. From these WBs countries, migrants may continue to Croatia, Hungary or Western Europe.

Historically, and today, the SEE region has been a centre of gravity for tobacco smuggling. However, the 'dark figure' regarding this illicit trade may be very high (see also annex 3.4). Illicit trade in **tobacco products** constitutes a major criminal market in SEE for two main reasons: demand for illicit cigarettes and other tobacco products continues to be strong, and their use and smuggling relatively socially accepted. OCGs conduct large-scale smuggling across Western and Central Europe and the Balkans. The most sophisticated perpetrators may be simultaneously involved in the trafficking of drugs, firearms, stolen cars, alcohol and human beings, although this illicit market also features smaller-scale actors. Overall, tobacco smuggling shows a division of stages and labour, with organized crime involved in international smuggling into and from the SEE region, and small groups, families and many individuals including from diaspora communities, assisting in distribution throughout destination markets.

Tobacco products are trafficked along two main routes:<sup>42</sup> the south-eastern route connecting the Balkans with Turkey, and the north-western route linking the Balkans and EU. While illicit production is a major issue in Bulgaria and Montenegro, illicit tobacco products also enter the region from China and the UAE via Turkey. Illicit tobacco is consumed in SEE countries and smuggled into the EU for sale. While Turkey and Bulgaria appear to experience the greatest inflows and outflows of illicit tobacco on the south-eastern route (see annex 3.4 and graphic 10), Montenegro also presents major challenges; organized crime actors exploit the Port of Bar FTZ, in particular, a longstanding regional hub for illicit tobacco that is trafficked and sold in the EU, the Middle East and Africa (for more on illicit trade in FTZs, see chapter 3.2).

Weapons trafficking, particularly the illicit trade of **small and light weapons (SALW)**, is a persistent feature of the region's crime landscape (see also annex 3.5). SEE, and more particularly WBs countries, are the main source for weapons trafficked into the EU. In the post-conflict period, SALW were stockpiled in several countries,<sup>43</sup> which contributed to high levels of gun possession among civilians, and a flourishing black market.<sup>44</sup> Active markets have also been reported in Greece.

Weapons appear to often move along the same trafficking routes as illicit drugs.<sup>45</sup> However, while the weapons trade has long been linked to OCGs involved in drug trafficking, project advisors point to networks of loosely-affiliated individuals as the main players today. Organized crime, therefore, seems to play a smaller role relative to other established criminal markets. For instance, while some Turkish groups are involved in the trafficking of SALW, experts note that the local market, and organized crime's role in it, are less significant when compared to drug, oil and human trafficking. The flow of weapons into Syria and Iraq certainly impacts Turkey, which is a source and transit country, but these flows also implicate a complex array of

State and non-State actors beyond transnational crime networks.

Finally, a form of illicit trade that is also present in the region relates to stolen, looted and trafficked **cultural property** (see also annex 3.6). At the country, regional and global level, this phenomenon has not been studied in-depth, and statistics are scarce. While the project's national advisors have assessed that this market is primarily controlled by professional thieves and individual looters acting opportunistically, OCGs may be key players in the trafficking of cultural property in Bulgaria, as well as Greece and Turkey.

Ongoing conflicts in Libya and Syria have presented opportunities for this illicit trade to flourish, with the EU an obvious destination market. By and large, SEE jurisdictions, including BiH and Serbia, appear to be transit countries for such flows. Turkey and Greece are well-known source countries for trafficked cultural objects. Romanian prosecutors have also highlighted their experience in combating the trafficking of cultural items.

While cultural property is not high on any country's agenda, Serbian Customs has been placing more priority in recent years on the protection of cultural heritage, and its detection at borders. In Serbia, most detected cases concern artefacts such as Roman coins, antique jewellery and religious icons, and to a lesser extent, paintings and antique books. Museums and galleries are sometimes targeted in connection to this form of illicit trade. While some items are sold to collectors in Serbia, most appear to be trafficked to Western Europe.

### 3.1.2. Criminal markets under the radar

The above-mentioned forms of illicit trade represent the most serious and pervasive manifestations of the problem in SEE, based on available information. However, it is highly likely that other, less-detected forms are present and fuelling organized crime. In particular, *SEE:IMPACT*'s national and regional advisors have reported several markets that warrant further investigation: counterfeit consumer goods, agricultural products including pesticides, medical products, alcohol, crude oil and petroleum products, hazardous and other waste, as well as other forms of environmental crime including, in particular, illegal logging. As OCGs are agile in switching between illicit markets, these lesser-known threats should not be ignored (see Recommendation 4).

**Counterfeiting practices** (e.g. in footwear, textiles and cosmetics, pesticides and medical products) have been repeatedly mentioned by national advisors. The OECD notes that a significant share of fake goods intended for the Italian market, for example, transit through SEE countries including Greece, Bulgaria, Slovenia and Albania, as well as several other EU members.<sup>46</sup>

Turkey is both a regional hub and one of the world's most significant producers of counterfeits.<sup>47</sup> Istanbul's Grand Bazaar is included within the EU's 2018 Counterfeit and Piracy Watch List.<sup>48</sup> Counterfeit fashion items originate in Turkey and Albania along with other Asian, Central Asian and Middle Eastern countries.<sup>49</sup> Recently, parcels were transported from Turkey by public bus to Bulgaria and Greece before being shipped to other European countries, as well as by truck from Turkey to Greece.<sup>50</sup> Turkey is also cited as a leading source country for counterfeit food and drinks, an emerging threat according to leading EU agencies including the EU Intellectual Property Office (EUIPO).<sup>51</sup>

Other countries of the region are affected by counterfeiting too. For example, Kosovo is a transit jurisdiction for counterfeit cosmetics, vehicle parts and electronics, much of which originate from China and Turkey. Counterfeit consumer goods from China, Singapore and India enter Slovenia through the seaport of Koper.

Counterfeit pesticides account for a growing share of illicit trade, depriving legitimate industry of EUR 1.3 billion in annual revenue. North Macedonia and Serbia are reportedly source countries. Counterfeit pesticides are smuggled by car from Turkey to Bulgaria and Greece, sometimes together with counterfeit cigarettes.<sup>52</sup> As with other illicit trade sectors, "[i]ncreasingly these goods are also ordered online and arrive in small parcels."

The EU's *Intellectual Property Crime Threat Assessment* notes that OCGs "will counterfeit any item, as long as they can make profit on it, with no thought for the potential harmful consequences to human health."<sup>53</sup> This is as relevant for foodstuffs as it is for medicines. Counterfeit medical products are of special concern for SEE and beyond (see section 3.1.3 below).

Several countries, including Slovenia and North Macedonia, report the presence of **illicit waste trafficking**.<sup>54</sup> Slovenia is a transit country for waste *en route* from Italy to China. An illegal waste dumping scheme involving Italian and local OCGs was recently detected, for example. Recent studies indicate that waste management sectors, in general, are vulnerable to infiltration by organized crime, with several cases reported in EU members including Romania.<sup>55</sup>

Many countries appear to be affected by the illicit trade in **alcohol** and **stolen vehicles**, although the latter has reportedly declined in recent years.<sup>56</sup> In relation to illicit alcohol, the EUIPO estimates that EUR 1.3 billion of revenue (3.3% of the legitimate market) is lost annually in the EU spirits and wine sector due to counterfeiting.<sup>57</sup>

Several jurisdictions also detect cases of illicit trade in **crude oil and petroleum products** including Turkey, Bulgaria, Romania, Albania, Kosovo, Serbia and Greece. Turkey, in particular, is a major transit and destination country,<sup>58</sup>

whereas Bulgaria and Romania serve as entry points for smuggling oil into the EU.<sup>59</sup> Albanian and Serbian crime groups have long been involved in fuel smuggling.<sup>60</sup> In Greece and Kosovo, fuel seems to be among the most lucrative commodities related to illicit trade.<sup>61</sup>

### 3.1.3 A deeper dive: Illicit trade in medical products

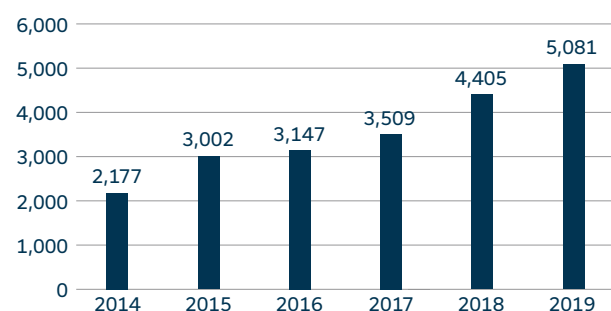
Well before COVID-19, illicit trade in medical products and related pharmaceutical crime were on the rise globally. The practice refers to the production, manufacturing, distribution and sale of counterfeit, falsified, unregistered or substandard medical products, including medicines, medical equipment and other devices. It also encompasses the unlawful diversion of genuine medical products from supply chains.

As with most other criminal markets under the radar, it is not currently possible to determine the scale of illicit trade in medical products.<sup>62</sup> The WHO cites two main reasons for this:<sup>63</sup> first, substandard and falsified medical products are seldom detected and inconsistently reported, including by medical professionals and manufacturers; secondly, few sources of data are available beyond reports by regulatory authorities.<sup>64</sup>

However, in addition to national regulatory bodies, an available source of relevant data is the pharmaceutical industry. According to the Pharmaceutical Security Institute (PSI), 5,081 pharmaceutical crime incidents occurred in 2019, more than double the number reported in 2014 (2,177 incidents) (see graphic 2 below).<sup>65</sup> In the past five years, counterfeiting, diversion and theft incidents have increased by around 69% worldwide, and all therapeutic categories of pharmaceuticals are affected.

GRAPHIC 2

Number of pharmaceutical crime incidents reported to PSI, 2014-2019



Source: PSI, 'Incident trends', <https://www.psi-inc.org/incident-trends>.

Based on PSI data, North America and Asia appear to be among the regions most affected.<sup>66</sup> However, the problem is growing in Europe; 358 incidents were reported in 2016 and 456 incidents in 2019. Most counterfeit pharmaceuticals originate in India and China.<sup>67</sup> Between 2016 and 2018, Interpol's yearly Operation *Pangea* resulted in 1,688 people arrested and seizures of more than 25 million illicit pharmaceutical products.<sup>68</sup>

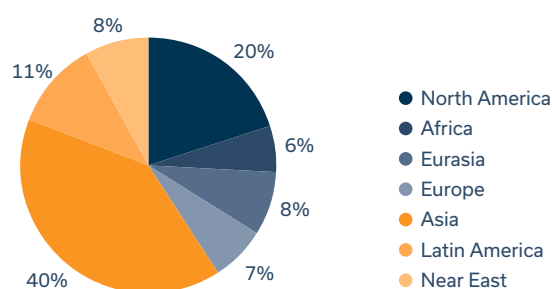
SEE appears to account for a relatively small share of global flows in illicit medical products, with relatively few seizures reported at the country level. However, there is no doubt that this criminal market is established in the region, and likely significantly underreported and investigated. As early as 2010, the Balkans was identified as a significant trafficking route for fake medicines, often moved with heroin and other illicit drugs.<sup>69</sup> Between 2013 and 2017, almost all countries detected and reported illicit medical products to the World Health Organization (WHO).<sup>70</sup>

In terms of identified suspects involved in this illicit trade, Europol's Counterfeit Goods Analysis Project has found that Romanian (11.1%), Bulgarian (6.3%) and Turkish (3.9%) nationals are among the most well-represented.<sup>71</sup>

From an enforcement standpoint, PSI analyses arrest data in connection to counterfeiting, diversion and theft. In 2019, 2,550 people were arrested, mostly in Asia. The regional distribution of these arrests is reflected in graphic 3 below.

**GRAPHIC 3**

#### Regional distribution of arrests for pharmaceutical crimes reported to PSI, 2019



Source: PSI, 'Arrest data', <https://www.psi-inc.org/arrest-data>.

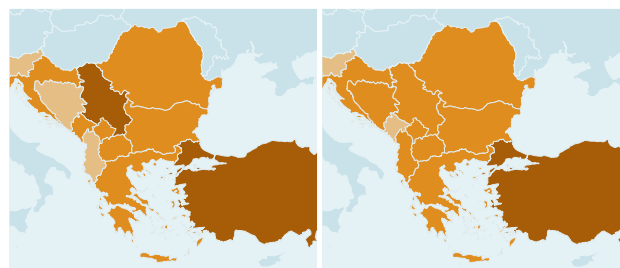
Among other factors, this illicit trade is driven by shortages and otherwise limited access to affordable and high-quality medicines and other medical products, low rates of detection, weak penalties for illicit trade-related crimes, and the expansion of e-commerce. SEE countries are vulnerable on several of these fronts. For more on the adequacy of relevant legal frameworks, see chapter 4.1, and on the rise of e-commerce and associated enforcement challenges, see case study at section 4.4.2.

### Trafficking routes and hotspots

Based on available data, Turkey, Bulgaria, Romania, Greece and Slovenia are among the SEE countries most affected by illicit trade in medical products. As a country of origin, Turkey ranks in the top ten for counterfeit pharmaceuticals destined for the EU.<sup>72</sup> Criminal networks manufacture medicines that are distributed throughout foreign markets.<sup>73</sup>

**GRAPHIC 4**

#### Heat map of trafficking incidents, 2017-2018



- 51-500 instances
- 5-51 instances
- <5 instances

Source: WCO, *Illicit Trade Reports*, 2017-8.

While Turkey appears to play a relatively minor role in global networks and flows,<sup>74</sup> it is an important origin country for counterfeit and diverted medicines that have been detected as far as South East Asia.<sup>75</sup> In recent years, Turkey has also emerged as an important source and transit country for hormones although it is unclear if this is because of increased domestic production or import and onward distribution.<sup>76</sup> In addition to being smuggled abroad, counterfeit pharmaceuticals are produced for domestic consumption and sold through online marketplaces or directly to patients outside hospitals.<sup>77</sup> A significant proportion of medicines produced and sold in Turkey is counterfeit.<sup>78</sup> Turkey is also a significant transit country and potential destination for counterfeit medicines sourced in India and China, and imported across Turkey's eastern and southern borders.<sup>79</sup>

Bulgaria is another leading source and transit country for fake steroids and hormonal products, and has been identified as a potential hotspot and EU entry point for counterfeit pharmaceuticals.<sup>80</sup> According to Europol, Bulgaria is one of the main countries where companies responsible for distributing fake medicines and equipment in the EU are registered.<sup>81</sup> Growing cyber-enabled illicit trade, including via social media platforms, was highlighted by a major investigation that uncovered in 2015 a criminal group of Bulgarian and Spanish nationals responsible for distributing vast



quantities of steroids via Facebook.<sup>82</sup> Bulgarian experts note that these practices are enabled, in part, by the lack of clear definitions for fake medical products in national law.

Various forms of this illicit trade are also present in Romania, where suppliers sell counterfeit medicines online as well as in EU members including, for example, veterinary medicines smuggled to Italy.<sup>83</sup>

OCGs also infiltrate legitimate supply chains including through dodgy business practices. As Operation *Volcano* unveiled in 2014, fake invoices originating from Romania (and Slovenia) purported to legitimise the illegal origins of stolen and smuggled items.<sup>84</sup> This means that legally-obtained medicines are illegally exported to other jurisdictions in order to increase profit margins, their availability in local markets is reduced, and citizens are forced to consider fake alternatives that may be more readily available even if they are ineffective or deadly. Medical professionals sometimes facilitate these criminal schemes: Romanian pharmacists have reportedly asked customers to return authentic Pfizer packaging to be refilled with counterfeits before entering the legitimate market.<sup>85</sup> Romania's phantom pharmacies, which have operated for decades with a veneer of legitimacy, are another example of how nefarious actors can profit from legal and regulatory loopholes.<sup>86</sup>

Greece is another country of origin for illicit pharmaceuticals and, together with Slovenia,<sup>87</sup> ranks among the top five source and transit countries for counterfeit hormonal products. Medicines are often smuggled from Greece to Bulgaria, where they are believed to be repackaged before being sold in other EU countries.<sup>88</sup> The transnational nature of this phenomenon is further illustrated by links between Italian organized crime and criminal networks in Bulgaria, Greece, Romania and Albania, all of which appear to have been destination countries for medicines stolen from Italian hospitals and pharmacies.<sup>89</sup> National advisors note that the theft of medical products from Bulgarian hospitals is not apparently linked to OCGs, with most such items destined for the local market.

In Montenegro, BiH, Serbia and Albania, illicit trade in medicines and related products appears to be relatively less pervasive, based on available information. While some counterfeit Pfizer medicines have been detected in Kosovo,<sup>90</sup> the market is more significantly affected by corruption, with public officials stealing confiscated medicines or pharmaceutical companies allegedly bribing doctors to prescribe certain drug types or brands.<sup>91</sup> Similar corrupt schemes have been detected in Croatia.<sup>92</sup>

While the illicit pharmaceutical market in SEE is currently dominated by urogenital and hormonal products, between 2017 and 2018 North Macedonia reported seizures of more than eight categories of counterfeit medicines.<sup>93</sup> In 2018, as a result of Operation *Pangea XI*, Interpol and its partner

agencies confiscated 737 expired cardiac surgery instruments that had been smuggled into the country.<sup>94</sup>

There may also be links between illicit trade in medical products and drug trafficking. In one case, Turkish police seized 6,000 fake Viagra along with 750,000 ecstasy tablets.<sup>95</sup> In another, cannabis was exported from Bulgaria in counterfeit packaging used for cancer medicines.<sup>96</sup> More recently, Europol reported the criminal diversion of pseudoephedrine (generally used to treat flu-like symptoms) through fake medical prescriptions, to be used in making synthetic drugs in Turkey.<sup>97</sup>

### Inadequate frameworks for tackling illicit medical products

SEE countries do not have dedicated strategies to combat illicit trade in medical products (see Recommendation 4). Moreover, the scope of national laws and associated penalties are inconsistent, even among EU members implementing the 2011 EU Directive on Falsified Medicines as amended over the years.<sup>98</sup> In Greece, Croatia and Slovenia, the manufacturing, distribution, brokering, import/export and sale of falsified medicines attract criminal penalties. Croatia, for instance, prescribes imprisonment of six months to five years, and use of the Internet is an aggravating factor. In Bulgaria, by contrast, criminal penalties only apply to import/export. Romania takes a different approach: production and sale of counterfeit medicines is punishable by six months to five years imprisonment only if the product is proven to be dangerous or otherwise harmful to health, while import/export attract only civil penalties.<sup>99</sup> For more on legal gaps and inconsistencies in SEE, see chapter 4.1.

The leading source of international legal obligations on this illicit trade is the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes involving Threats to Public Health (**Medicrime Convention**).<sup>100</sup> To date, only three SEE countries are bound by the Convention, namely Albania, Croatia and Turkey. Serbia and Slovenia have signed but not ratified it (see Recommendations 8 and 9, and annex 2).

In relation to other relevant frameworks, all SEE jurisdictions except Kosovo are members of the WHO, its Member State Mechanism and Global Surveillance and Monitoring System, which contribute to monitoring, preventing and combating illicit trade in medical products.

All jurisdictions except Kosovo have also contributed to Interpol's annual Operation *Pangea*.<sup>101</sup>

**TABLE 5****Results from select Interpol operations against pharmaceutical crime, 2018-2020**

Operation, scope and year	Seizures, units (value, USD)	Arrests/suspects identified	Websites taken down
<i>Pangea XIII</i> , global, March 2020	4.4 million (14 million)	121 arrests	2,500
<i>Rainfall</i> , Asia, 2018	250,000 (122,400)	15 suspects	-
<i>Qanoon</i> , Middle East & North Africa, 2018	1.4 million (1.5 million)	39 suspects	-
<i>Heera</i> , West Africa, 2018	95,800 (3.8 million)	41 suspects	-

Source: Interpol, 'Pharmaceutical crime operations', <https://www.interpol.int/en/Crimes/Illicit-goods/Pharmaceutical-crime-operations>

**Initial impacts of COVID-19**

The COVID pandemic is having global, society-wide impacts that are rightly being confronted as a health emergency. But the crisis also presents new opportunities for organized crime to infiltrate the economy and misuse public funds invested in the recovery process including, crucially, health-related infrastructure.

**TABLE 6****Total COVID-19 cases and prevalence rates among SEE countries**

Jurisdiction	Total COVID cases, 21 October 2020	COVID prevalence rate (no. cases per million citizens), 21 October 2020
Montenegro	15,892	25,302
North Macedonia	24,196	11,614
BiH	36,315	11,090
Romania	191,102	9,954
Kosovo	17,009	9,371
Slovenia	15,982	7,687
Croatia	28,287	6,904
Albania	17,948	6,239
Bulgaria	31,863	4,596
Serbia	37,120	4,254
Turkey	351,413	4,153
Greece	26,469	2,543

Source: Worldometer, COVID Observer, Countrymeters

Between February and March 2020, the pandemic fueled the sale of a growing volume of fake medicines and personal protective equipment linked to coronavirus, with nearly 34,000 counterfeit surgical masks seized around the world as a result of Interpol's most recent Operation *Pangea*, in addition to substandard hand sanitisers and unauthorised antiviral drugs.<sup>102</sup> The crisis is likely to significantly impact other illicit sectors, with crime groups attempting to scale up trafficking activities while enforcement resources are diverted elsewhere.<sup>103</sup>

In March 2020, the European Anti-Fraud Office (**OLAF**) kicked off an investigation into "the illicit trade of face masks, medical devices, disinfectants, sanitisers, medicines and test kits", also involving EU customs agencies and authorities of third countries.<sup>104</sup> So far, this investigation has identified more than 340 companies acting as intermediaries or traders in connection to counterfeit or substandard items. Moreover,

**Millions of substandard medical products with fake EU conformity certificates have been seized in several Member States. These certificates are meant to guarantee that the products are compliant with strict EU health and safety standards.**

To date, SEE countries have been affected by COVID-19 to significantly different extents (see table 6 above). In absolute terms, Turkey stands apart with a caseload almost twice that of Romania, which has the second highest number of confirmed cases. However, when comparing the prevalence rate, or the number of cases per one million citizens, Turkey has the second lowest rate in the region while Montenegro, as well as North Macedonia and BiH, appear to be the jurisdictions most severely affected.

All countries adopted temporary containment measures including nation-wide lockdowns, and committed to ensuring supply of essential medical products. Due to domestic shortages, countries such as Albania, Bulgaria, Serbia and Turkey also introduced bans prohibiting the export of certain critical medical supplies.<sup>105</sup>

Based on available data, it is not possible to assess the overall regional or global scale of illicit trade in medical products. This challenge certainly predated COVID. However, a qualitative analysis of more than 300 reports published between January and early May 2020,<sup>106</sup> including media reports, supports the identification of preliminary trends and dynamics, and country-specific cases. While the Institute's in-depth analysis may in future be published, initial highlights include the following:





Source: Stock photo, getty\_dumy67

- WBs countries have observed shortages and dramatic price increases for basic items such as face masks, disinfectant and hand sanitiser. This is primarily as a result of price gouging and speculative import practices.<sup>107</sup>
- As governments sought to rapidly procure medical products, they utilised emergency procedures with weaker safeguards. This presents serious corruption hazards. Indeed, several major tenders have been awarded to companies without relevant expertise.<sup>108</sup> In BiH, a berry farm was contracted to supply hospital-grade ventilators as used in intensive care units, but a lower standard of equipment intended for medical transport was delivered instead.<sup>109</sup>
- Unsurprisingly, the region is experiencing a flood of counterfeit masks and other medical products.<sup>110</sup>
- Cases of pandemic-related fraud have also been reported, with large orders of medical equipment never delivered.<sup>111</sup>

Now, more than ever, SEE needs a regional strategy that acknowledges the links between organized crime and public health, and enables a coordinated region-wide response to illicit trade in medical products (see *inter alia* Recommendations 31, 32 and 39). Countries should assess the adequacy of legal and policy frameworks, and penalties, for tackling this form of illicit trade and related pharmaceutical crime (see also chapter 4.1). In parallel, they should consider the role of health regulators and inspection agencies in supporting

investigations and prosecutions, and enhance the quality of cooperation between all relevant actors (see Recommendation 28).

#### 3.1.4. A deeper dive: Illicit trade in timber

Illegal logging is another lucrative form of illicit trade with an estimated global value of USD 52-157 billion annually.<sup>112</sup> Major source countries are Indonesia, Brazil, Russia and Congo, while EU members primarily import and consume wood products including timber. Illegal logging also directly affects Europe, particularly the ancient forests of Central and South Eastern Europe.

Logging is an important source of income for local communities in Romania. At the same time, as Romania hosts a large part of Europe's remaining old growth forests, it has emerged as the region's most significant source of illegally-logged timber.<sup>113</sup> These forests, some of which are recognised as protected by the UN Educational, Scientific and Cultural Organization (UNESCO), are exploited to produce cheap furniture for sale around the world.<sup>114</sup>

While Romania's old growth forests have been at the centre of recent controversy, the country's forested area is not the largest in the region (see table 7 below), and constitutes a relatively small percentage of the total land area by regional standards.

**TABLE 7****Forest area in SEE countries ordered by total forest area, 2016**

Country	Forest area (km <sup>2</sup> )	% total land area
Turkey	118,174	15.36
Romania	69,302	30.12
Greece	40,842	31.69
Bulgaria	38,402	35.37
Serbia	27,214	31.12
BiH	21,850	42.68
Croatia	19,224	34.35
Slovenia	12,482	61.97
North Macedonia	9,980	39.57
Montenegro	8,270	61.49
Albania	7,705	28.12

Source: World Bank

While about half of Romanian forests are state-owned, the Ministry of Waters and Forests is charged with monitoring all forests, both public and privately owned.<sup>115</sup>

Although they have considerably less forested area, Albania and North Macedonia are also reportedly affected by large-scale illegal logging.<sup>116</sup>

### Scale in Romania

The exact scale of illegal logging in Romania is not known. In 2014, reports estimated that 120,000 truckloads of timber were illegally cut each year, with an estimated value of USD 350 million.<sup>117</sup> In recent years, Greenpeace Romania has collected and analysed official data received from the Forest Guards, County Police Inspectorates and the Romanian Gendarmerie in connection to cases that were detected and investigated. In 2016, it reported a total of 9,444 illegal logging cases (or 26 cases every day).<sup>118</sup> In 2018, 11,419 illegal logging cases (or 32 cases per day) were detected.

In 2019, Greenpeace Romania found that

**the area covered by forests has drastically decreased in the 20th century, thus reaching nowadays 29.36%. Therefore, Romania is under the EU mean of 43% and well below the capacity and optimal quantity calculated as 45%.<sup>119</sup>**

However, the full scale of the problem remains unclear. There has also reportedly been a lack of transparency around key findings of a 10-year government research project that assessed the volume of illegal logging.<sup>120</sup>

**TABLE 8****Official estimates of the volume of illegally logged timber in Romania**

2008 – 2012	2013 – 2018	Percentage change
8.8 million m <sup>3</sup>	20 million m <sup>3</sup>	227%

Source: Greenpeace, *Illegal Logging in Romania*, 2019

In 2018 alone, 206,490.39 m<sup>3</sup> timber was confiscated by authorities, almost 16% more than in the previous year.<sup>121</sup> The majority (64%) came from three Romanian counties: Maramureş, Bistriţa-Năsăud and Sibiu.

According to Greenpeace's latest analysis, Romanian inspection authorities detect about 1% (or 200,000 m<sup>3</sup>) of timber illegally-logged annually.<sup>122</sup>

### Forms and dynamics

Illegal logging in Romania appears to be turning increasingly violent with murders, physical attacks and intimidation against those who denounce or oppose it. Between 2014 and early 2020, at least six forest rangers were killed while confronting the local 'lumber mafia', and 184 have been attacked.<sup>123</sup> In some cases, prosecutions are reportedly slow and offenders tend not to be found or convicted.<sup>124</sup>

There is mounting evidence, too, that authorities have long turned a blind eye. Cases of corruption and collusion between criminal groups and forestry officials, including rangers and other national park employees, are reported.<sup>125</sup> Collusion between small-scale illegal loggers and local politicians in Albania has also been reported.<sup>126</sup>

Confronting illegal logging schemes is challenging because it involves broad community networks including rural communities of villagers, farmers, local rangers, state forestry bosses and others. Moreover, incidents are widespread across the country and affect several national parks and other protected areas (see map 3 below).

### Escalating responses from Romania and the EU

In recent years, Romanian authorities have taken measures intended to address these challenges. In 2014, the Government established a mandatory digital tracking system for trucks involved in transporting timber. Because this system proved easy to bypass, authorities later instituted a geographic information system that monitors logging through analysis of satellite imagery and government data.<sup>127</sup>

In 2015, Forest Guards were established to enforce forest protection laws. They support the Romanian Police and Gendarmerie in detecting and investigating illicit trade. Although some prominent investigations have been launched,<sup>128</sup> the European Commission has been critical of Romania's performance so far.

Following a complaint by environmental protection groups, in February 2020 the European Commission took legal action against Romania over its forest mismanagement.<sup>129</sup> A new specialised agency, the Directorate for the Investigation of

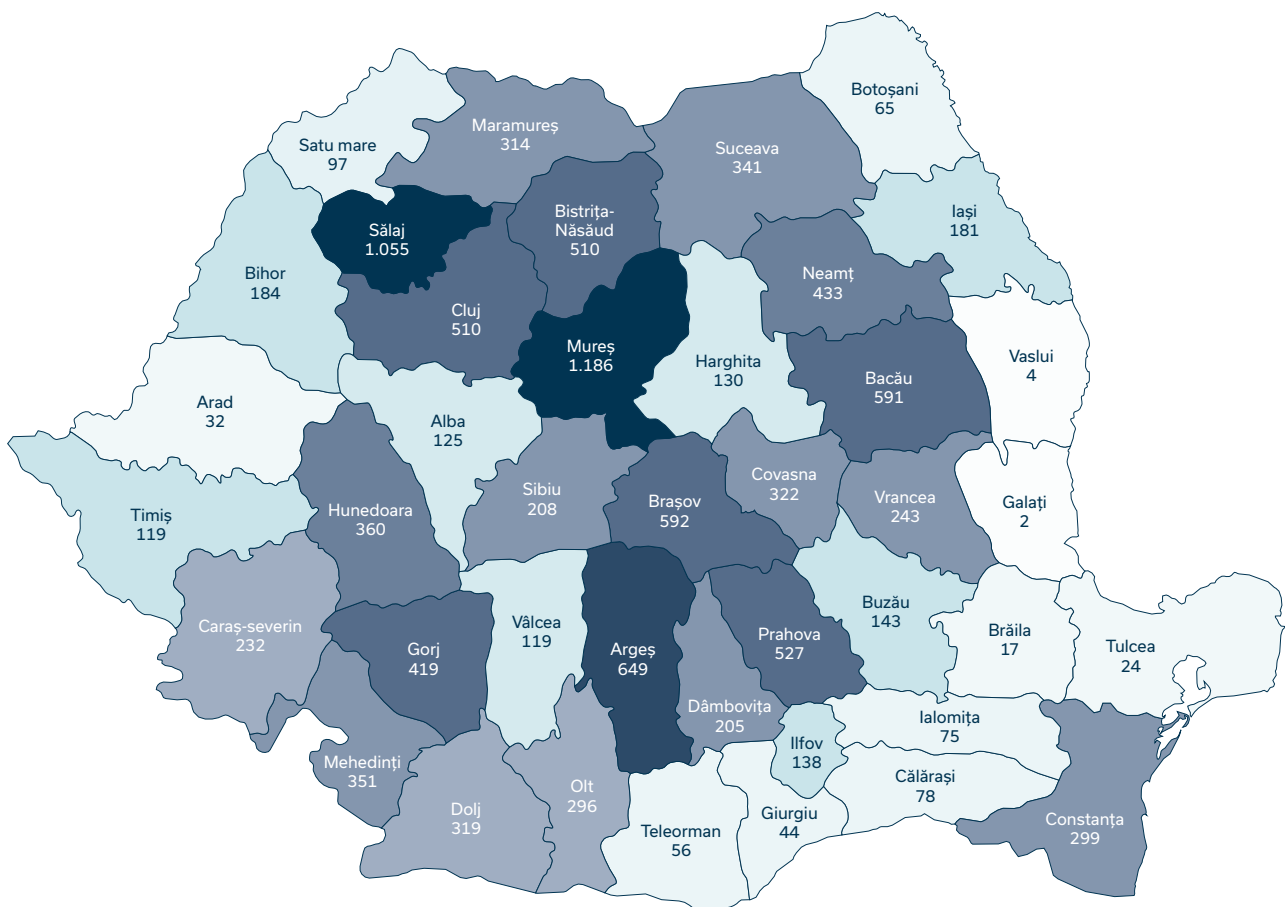
Environmental Crimes (**DIIM**), has since been established to investigate and prosecute environmental crimes including illegal logging.<sup>130</sup> DIIM is the latest in a series of specialised, prosecutor-led structures to have been created after the Directorate for the Investigation of Organized Crime and Terrorism (**DIICOT**) and the Anti-Corruption Directorate (**DNA**).

Despite the setting up of DIIM, the Commission's infringement procedure continued. In July 2020, it concluded that Romania had not yet satisfactorily resolved problems on the ground and needed to take further concrete action.

### MAP 3.

#### Distribution of illegal logging incidents detected by authorities in Romania, 2018

The values indicate the number of illegal logging cases, which the Forest Guards and the County Police Inspectorates have found.



Source: Greenpeace, *Illegal Logging in Romania*, 2019

## 3.2. Illicit trade and Free Trade Zones

### 3.2.1. FTZs: Engines for growth, but prone to criminal exploitation

FTZs are designated areas to which business-friendly tax and excise regimes apply. Goods entering the zone are exempt from import/export duties or otherwise subject to lower duties than would apply if the goods were released into free circulation.

Free zones help attract foreign investment and generate jobs and growth. For instance, the total volume of trade in connection Turkey's Mersin FTZ amounted to USD 2.8 billion in 2019, and it employed 10,680 people.<sup>131</sup> In 2018, Serbia's FTZs collectively generated EUR 2.2 billion in goods produced, and employed 34,676 people.<sup>132</sup> It is unsurprising, therefore, that many countries in SEE and elsewhere have established free zones as part of their broader development strategies. Beyond their economic impetus, however, FTZs can be understood as platforms for transportation, logistics and trade.

TABLE 9

Main FTZ types

	<b>Typical FTZs</b> Usually situated near seaports or airports, typical FTZs offer exemptions from import/export duties on goods, generally labour-intensive manufactured goods (e.g. textiles, electrical equipment) that are re-exported. They offer warehousing, storage and distribution facilities for trade, trans-shipment, and re-export.
	<b>Export processing zones (EPZs)</b> FTZs that focus on exports with a significant value added, rather than only on re-exports. They tend not apply the same benefits as other free zones. According to the OECD and EUIPO, almost all Western Balkans zones are EPZs.
	<b>Special economic zones</b> Multi-sectoral zones that target both foreign and domestic markets. They bring an array of incentives (e.g. infrastructure, tax/customs exemptions, simplified administrative procedures, etc.) and also permit on-site residence.
	<b>Investment/industrial zones</b> These prioritise certain sectors or economic activities and their infrastructure is tailored accordingly (e.g. science/technology parks, petrochemical, logistics and airport-based zones, etc.)

Light regulation and oversight, and a reduced customs presence in FTZs, also offer opportunities for illicit trade to flourish across its various forms and manifestations. There is mounting evidence that organized crime actors readily exploit many of the business-friendly features that keep transparency and oversight to a minimum.<sup>133</sup> Another factor that contributes to the criminal exploitation of free zones is that many of them serve as high-volume logistical hubs, which helps to disguise illicit trade amidst legitimate flows of goods and money.<sup>134</sup> As a result, zones are generally associated with higher flows of illegal and illicitly-traded goods including, for example, counterfeit goods,<sup>135</sup> protected wildlife species,<sup>136</sup> and tobacco products,<sup>137</sup> as well as counterfeit medicines.<sup>138</sup> Indeed, the diversity of illicit goods seized in FTZs has been characterised as a "notable trend" by the WCO, which analysed 626 seizures inside FTZs reported between 2011 and 2018.<sup>139</sup> A recent study further notes that the abuse of FTZs for illicit trade in tobacco, in particular, is "global and systemic".<sup>140</sup> FTZs also contribute to vast IFFs including money laundering and terrorist financing.<sup>141</sup>

### 3.2.2. The international regulatory framework

Key international instruments reflect the vital role that customs agencies should play in ensuring that FTZs are not abused for illicit trade purposes. Most countries in the region are contracting parties to the Revised Kyoto Convention.<sup>142</sup> Specifically, Albania, Bulgaria, Croatia, Greece, Montenegro, Romania, Serbia, Slovenia and Turkey, have signed-on. However, none has adopted the Convention's Specific Annex D, the sole international legal instrument setting out basic principles for customs controls and procedures in FTZs.<sup>143</sup>

At the EU level, FTZs are regulated by the Union Customs Code.<sup>144</sup> In order to avoid "security loopholes",<sup>145</sup> the EU's free zone regime is considered strict compared to others. Consequently, while the last decade has seen the creation of 14 FTZs in SEE,<sup>146</sup> the need for candidate countries to comply with EU law may discourage the establishment of new zones in future, and potentially reduce their significance as a tool for economic development (and illicit trade) in the region.

Globally, momentum is building for countries to enhance transparency, oversight and accountability in relation to FTZs. In 2019, the OECD Council adopted the 'Recommendation on Countering Illicit Trade: Enhancing Transparency in Free Trade Zones', to which Greece, Slovenia, Turkey and the EU have adhered.<sup>147</sup> The OECD Recommendation urges countries to abide by a Code of Conduct that is designed to reduce vulnerabilities to illicit trade. A diagnostic tool is also being developed to assess the compliance and performance of specific zones.<sup>148</sup>

In a complementary development, the World Free Zones Organization (**WFZO**), an industry organization of more than



600 FTZs,<sup>149</sup> recently launched its Safe Zone Certification Program (Safe Zones). This initiative relies on certification by an independent third party of a zone's compliance with security criteria drawn from the OECD Code of Conduct and the WCO's SAFE Framework of Standards (see case study in section 4.3 below).<sup>150</sup> Safe Zones has been successfully piloted for five FTZs and its full roll-out was due to launch in July 2020.<sup>151</sup>

This momentum, and the presence of objective risk factors in SEE (see section 3.2.3 below), present an opportunity for deeper commitment and regional study of illicit trade-related vulnerabilities and risks associated with SEE's FTZs (see Recommendations 12 and 36).

### 3.2.3. Illicit trade risks in SEE FTZs

#### FTZ distribution and governance

Based on open sources and consultations with national advisors, the Institute has conducted a preliminary mapping of at least 89 FTZs in SEE (see map 4 below). The number of zones in each SEE country varies (see table 10 below). Slovenia hosts only one at the seaport of Koper whereas Turkey's 19 zones are dispersed across its territory. Turkey, Croatia, North Macedonia and Serbia have significantly more zones than other countries in the region. With six zones, Bulgaria reflects the regional average.

In the EU context, Croatia has the most FTZs among all EU members, and Romania, Bulgaria and Greece also appear in the Union's upper tier.<sup>152</sup> This illustrates the important role that FTZs already play for SEE's trade.

All 12 SEE countries host at least one FTZ, which is not the case for EU Member States; seven EU countries do not have any FTZs within their territory.<sup>153</sup>

**TABLE 10**

**Number of FTZs in SEE countries, 2020**

Jurisdiction	Number of FTZs
Turkey	19
North Macedonia	15
Serbia	15
Croatia	11
Bulgaria	6
Romania	6
SEE average	6
Greece	4
BiH	4
Albania	3
Kosovo	3
EU average	3 <sup>154</sup>
Montenegro	2
Slovenia	1

Depending on their type (see table 9 above), FTZs present variable levels of risk from an illicit trade perspective. The OECD and EUIPO have linked EPZs to significantly higher volumes of counterfeit goods being exported from host countries.<sup>155</sup> Another OECD study highlighted that, due to economic policies focused on attracting foreign investment in export-oriented manufacturing, all free zones in the Western Balkans are EPZs with the exception of the Port of Bar FTZ, Montenegro.<sup>156</sup>

MAP 4

## FTZ distribution in SEE







The location of FTZs also varies depending on their type and function (see map 4 above). When attracting investment and driving industrial activity, they are best situated close to local human and other resources, and markets i.e. near major transport hubs and corridors, large cities, educational centres or existing industrial infrastructure.<sup>157</sup> FTZs are also established in more remote and underserved regions where they are intended to boost the local economy, and drive regional development.<sup>158</sup>

Countries deploy different models for FTZ ownership, development and management, ranging from zones that are fully publicly owned, developed and operated, to privately controlled ones. Hybrid public-private approaches are also adopted.<sup>159</sup> It is not uncommon for several models to be applied to different zones in the same country.

On paper, almost all countries recognise FTZs as part of their customs territory, meaning that the zones are subject to customs supervision (for more, see case study on Turkey below). Albanian, Kosovar and Macedonian law, for instance, provide that customs officers can inspect goods entering or exiting, or present within, FTZs. Romania appears to be the sole country in the region to exclude free zones from the customs territory, such that customs checks can only be conducted at the external border of FTZs.<sup>160</sup>

## Regional risk factors

No region-wide study has yet been conducted on the illicit trade risks associated with FTZs in SEE. Available data and analysis nonetheless help to identify some risk factors that are relevant to the region's illicit trade flows. First, organized crime activity is believed to be more intense in several areas where FTZs are established. At least one third of the 42 FTZs in Western Balkans countries (i.e. 14 zones) have been linked to organized crime hotspots in previous studies.<sup>161</sup>

Secondly, as already noted, the prevalence of EPZs in the WBs raises the sub-region's risk profile for certain forms of illicit trade. Specifically, previously-cited OECD studies suggest that these zones are more susceptible to exploitation for illicit trade purposes including through the export of counterfeit goods.

Thirdly, there is mounting evidence linking certain higher-profile FTZs in SEE to illicit trade and organized crime. Montenegro's Port of Bar, perhaps the region's most notorious example, is briefly discussed below.

Finally, even in countries where customs and criminal justice officials are technically empowered to tackle illicit trade in FTZs, investigations do not appear to be systematically launched in practice. According to some advisors, it is difficult to investigate, for example, import/export companies suspected to be engaging in illicit trade schemes and practices in FTZs, especially in cases where such businesses have close political connections.

### CASE STUDY

## FTZ administration and oversight in Turkey

Turkey has established robust frameworks that are adapted to tackle illicit trade in FTZs. The Directorate General (DG) of Free Zones, Overseas Investment and Services is part of the Ministry of Trade. A dedicated law on the administration of FTZs (Law No. 3218) and regulation were enacted in 1985 with strong support from the then Turkish Prime Minister. According to this law, FTZs are administered by an inter-institutional board comprising representatives from: the Under Secretariat of Foreign Trade; Turkish Customs; the DGs of FTZs, Revenue, Naval Affairs, Naval Trade and the Turkish National Police; the Turkish Chambers of Foreign Trade; the Chairman of the Council of FTZs; and other relevant departments.

Experts confirm that the Turkish Penal Code, and anti-smuggling and organized crime legislation, apply to FTZs.

Customs representatives are reportedly located at all of Turkey's 19 FTZs (see map 4). Customs, together with the relevant DG, are responsible for conducting inspections, examining business transactions, etc. Prosecutors can examine business records and accounts in connection to FTZs or, alternatively, delegate this work to customs or police officers who act at their direction. Customs may also cooperate with Turkey's FIU (MASAK) and prosecutors to carry out financial investigations into FTZ operators. Furthermore, Customs is empowered to arrest suspects and seize illegal and illicitly-traded goods based on intelligence and risk analysis. For large-scale investigations that call for electronic and/or physical surveillance, Customs can request operational partnerships with specialised police departments.

## CASE STUDY

## The Port of Bar FTZ, Montenegro

Established on the Adriatic coast in 2000, the Port of Bar FTZ is one of two zones in Montenegro. It is privately owned and operated, with widely reported links to organized crime and illicit trade.<sup>162</sup>

Bar is connected to significant cocaine seizures. For example, in 2014, Montenegrin Customs seized 250 kilograms of cocaine (worth around EUR 12.5 million) hidden in a container of bananas from Ecuador.<sup>163</sup> In June 2018, 38 kilograms of cocaine were seized.<sup>164</sup> Counterfeits destined for the Montenegrin market have also been seized.<sup>165</sup>

However, tobacco products are the most prominent commodity linked to the Port of Bar. In 2018, illicit tobacco seizures increased and several investigations were initiated. More than 43 million cigarettes were seized upon entering Bar, with an estimated 600 containers of illicit Montenegrin and foreign cigarettes (roughly valued at EUR 300 million) allegedly smuggled out of Bar each year.<sup>166</sup> Between 2015 and 2018, Spanish and Greek authorities seized eight vessels carrying nearly EUR 70 million in illicit cigarettes, vessels that had been loaded in Bar.<sup>167</sup> The EU Anti-Fraud Office (OLAF) noted:

**For the past years, OLAF has been paying particular attention to vessels loaded with significant quantities of cigarettes in the port of Bar in Montenegro, which were destined mainly for Libya, Egypt, Lebanon and Cyprus. Many times, these vessels were found to arrive at their destination empty, with the cigarettes most likely diverted into the EU contraband market. The cigarettes were either illegally directly unloaded on the EU territory or, were transferred onto other vessels on the high seas, unknown to the customs or coastguard services, and then smuggled back into the EU.<sup>168</sup>**

In 2018, the European Commission reported

**persistent concerns relating to fight against illicit tobacco trade through Montenegro, especially in the port of Bar, which serves as a platform for smuggling counterfeit cigarettes into the EU together with legally produced and illegally traded cigarettes.<sup>169</sup>**

Despite reported improvements in cooperation between OLAF, Montenegro Customs and EU customs authorities, and several recent arrests and convictions for tobacco smuggling, corruption and abuse of office,<sup>170</sup> in 2019, the Commission reiterated its position that Montenegro, and the Port of Bar in particular, continue to be highly vulnerable to illicit trade. Accordingly, the Commission has urged Montenegro to

**make it a national priority to establish a strategic response to the vulnerability of the Port of Bar Free Zone, including the risk of political interference in the work of law-enforcement agencies and the infiltration of criminal interests into the local chains of command.<sup>171</sup>**

In addition to hosting several companies linked to tobacco smuggling,<sup>172</sup> the FTZ in Bar reportedly suffers from a lack of controls and alleged high levels of corruption among public officials. A Europol officer who visited the zone in 2014 highlighted security shortcomings including fences and locks that could be easily bypassed, and customs officials only authorised to carry out controls during a seven-hour period of the day.<sup>173</sup> According to Montenegrin authorities, security has since been improved.<sup>174</sup> However, an ex-senior official at the Port of Bar recently told GITOC that “the export of cigarettes is so significant (and connected to people of influence), that apparently some warehouses at the port are kept only for smuggled cigarettes, and private companies are in charge of loading and unloading the containers.”<sup>175</sup>

### 3.2.4. Detecting and sanctioning illicit trade in FTZs

OCGs exploit multiple weaknesses in FTZ governance, regulation and oversight, for example:

- Customs has limited involvement in the establishment and operation of FTZs, approval of companies to operate in such zones and monitoring cargo.<sup>176</sup>
- Relatedly, companies operating in free zones benefit from relaxed customs procedures and controls in respect of cargo. These include relaxed data requirements for customs declarations.
- There are minimal requirements for setting up companies, which can be vehicles for illicit trade.
- National agencies suffer from a lack of integration in IT systems, which means that customs have limited access to cargo management systems.<sup>177</sup>

For these reasons, customs agencies often lack data on goods that enter FTZs, rendering their risk management controls “virtually useless”.<sup>178</sup> This is deeply problematic in the context of customs’ already limited capacity to physically inspect cargo, and the staggering volume of trade that goes through the world’s busiest zones. In 2019, the port of Piraeus in Greece, for example, handled 5.65 million containers,<sup>179</sup> while Romania’s Constanta handled in excess of 666,000.<sup>180</sup> More than 959,000 containers transited through Slovenia’s port of Koper in that same year.<sup>181</sup>

In sum, SEE countries have established legal frameworks for regulating FTZs in their territory but further investigation should be undertaken to assess what role, if any, law enforcement and criminal justice officials play in the detection and investigation of illicit trade therein (see Recommendation 36). From a political and enforcement perspective, it appears at least questionable that economic incentives are being appropriately weighed against crime fighting and prevention objectives. Ultimately, without an effective enforcement presence, Free Trade Zones are at risk of being ‘law-free’ zones.

# Mapping challenges for the criminal justice response

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# Mapping challenges for the criminal justice response

## 4.1. Legal frameworks

Efforts by SEE countries to incorporate the EU's *acquis* have resulted in different criminal justice systems becoming more aligned, both in terms of governance and legislative frameworks. Constitutions, criminal codes and procedural laws have been amended (and re-amended) during periods of intense legislative activity. Major reforms essentially, but not exclusively, aimed at enhancing the independence of the judiciary have been implemented, albeit not without difficulties.

By and large, SEE countries now have in place the substantive laws and procedural frameworks for tackling illicit trade from a criminal justice angle, reflecting the 'domestication' of international standards. However, a few discrepancies and implementation gaps remain. This chapter provides a non-exhaustive list of shortcomings detected by national advisors at the time of their review (see also Recommendations 9, 10 and 24).

- **Legal frameworks against illicit trade in medical products:** Most SEE countries have not ratified the Medicrime Convention, the only international instrument related to counterfeit medical products and similar crimes involving threats to public health. The Convention entered into force in 2016 and has been ratified by Albania, BiH, Croatia and Turkey, while Slovenia has only signed it.<sup>182</sup> The approach taken by Medicrime's States Parties and other countries in the region is uneven. Some appear not to have fully complied with the Convention's criminalisation requirements. Moreover, national laws generally require that some level of danger/harm be established, seemingly narrowing the scope of offences set forth by Medicrime. For example, Albania's Criminal Code criminalises the production, import, storage or sale of drugs that are dangerous or otherwise harmful, conduct that is

punishable by fines or up to 10 years' imprisonment (in case of death or serious harm to more than one person, the minimum sentence is raised to five years). Serbia does not have a specific offence in connection to counterfeit medical products, but its medicines law criminalises the production, sale and distribution of harmful products, which is punishable by six months to five years' imprisonment and a fine (EUR 8,000 to 25,000). However, in cases where OCGs illegally divert pharmaceuticals from another country's legal market to be sold in Serbia, only general offences (e.g. smuggling) appear to apply. For more on relevant legal frameworks in SEE EU members, see section 3.1.3.

- **Linking human traffickers and their associates to the 'benefit' they stand to gain:** Countries such as Bulgaria do not qualify conduct as human trafficking if the financial or other material benefit is promised to, or received or provided by, a third person in control of a trafficking victim (or a victim of other forms of exploitation or slavery-like practices). Sometimes prosecutors struggle to connect the crime to members of criminal networks that stand to benefit and thereby prove criminal responsibility. Other countries' THB-related challenges are considered below and at chapter 4.2.



- **Legal frameworks do not adequately shield adult THB victims from prosecution:** A different concern emerges in Croatia, where the Criminal Code does not expressly provide for the possibility of non-prosecution, or at least non-punishment, of adult THB victims. Such victims may have committed, or been forced to commit, a range of crimes and misdemeanours in connection to their trafficking (e.g. prostitution, begging, illegal entry and residence, etc.).
- **Illicit drug-related gaps:** Legal frameworks in BiH, North Macedonia, Montenegro and Serbia do not allow authorities to keep small samples of seized drugs and drug precursors as material evidence for court proceedings, as opposed to the entire seized quantity. This exacerbates pre-existing storage constraints in many countries.<sup>183</sup> A distinct issue arises with drug precursors in Albania:

**The list of precursors for which production, trafficking and possession is illegal in Albania has not been updated since 1995 when Albania ratified the United Nations Convention on Psychotropic Substances. This leaves many such activities without criminal penalty.<sup>184</sup>**

- **Non-criminalisation of diversion:** In Turkey, experts confirm that the diversion of licit fuel to the black market is not an offence. SALW trafficking legislation similarly does not criminalise the diversion of licit arms. Moreover, penalties for arms trafficking are generally low because aggravating circumstances are seldom applied in practice.
- **Non-criminalisation of illicit import of cultural property:** While Bulgaria criminalises illicit export, import is not criminalised.
- **Penalties against legal persons involved in illicit trade:** Montenegro's alternative penalty regimes for legal persons (e.g. business closures, prohibiting business activities for a certain period, revoking licences, etc.) are reportedly not clearly prescribed. In Bulgaria, legal persons involved in criminal offences face financial sanctions but there is no provision for imprisonment of company officers, etc. On addressing this challenge, see Recommendation 10.

On a related note, the European Commission recently highlighted what could amount to an impunity gap as a result of the Montenegrin Law on Amnesty, which was passed in June 2020 to reduce prison overcrowding in the context of the COVID-19 pandemic. Of particular relevance, amnesty can apply to organized crime-related offences.<sup>185</sup>

## 4.2. Investigative priorities, neglected areas

Not all serious and pervasive forms of illicit trade are investigated or prosecuted to the same extent. As countries devote different levels of attention to different aspects of the phenomenon, drug trafficking is consistently rated as the focus for enforcement agencies. Romania's DIICOT, for instance, consistently reports drug-related cases as the bulk of their caseload, amounting to 66-73% of DIICOT's 2019 cases.<sup>186</sup> In contrast, human trafficking cases represented 7-9% with migrant smuggling cases a much smaller percentage. It is unclear whether these disparities are due to the low prevalence of people trafficking/smuggling, or the relatively lower priority placed on these crimes as compared to more 'traditional' organized crime-related activity.

The low prosecution rate vis-à-vis THB and migrant smuggling is a general trend in the region, despite the prevalence of these illicit markets. For example, although Albania is a source, transit and destination country for human trafficking, only nine final convictions were recorded in 2017, and three in 2018.<sup>187</sup>

On the one hand, advisors suggest that prosecutors prefer to charge other offences with which they may have more experience. But another contributing factor to the region's low level of human trafficking prosecutions may be that THB legislative provisions are not sufficiently clear or understood by criminal justice officials (see Recommendation 24). Prosecutors in several countries display a tendency to mischaracterise and prosecute human trafficking as prostitution-related offences (e.g. pandering, exploitation of prostitution). These offences are simpler to prove but do not include the crucial element of *exploitation* of trafficking victims that sets apart THB. In Albania, human traffickers continue to be prosecuted for the lesser crime of exploitation of prostitution. To varying degrees across the region, there is also a misconception that THB must be transnational.

Concerns about THB provisions and their application are not simply a matter of prosecutors selecting the most appropriate crime to be charged in a particular case. In the Albanian context,

**law enforcement rarely initiated cases when civil society identified a potential victim, but [Albanian State Police] noted that definitional differences with civil society on what constituted trafficking caused obstacles in identification.<sup>188</sup>**

Concerns have also been raised about how Albania's criminal justice system treats unaccompanied children and child trafficking victims.<sup>189</sup> More specifically, prosecutors are reluctant to qualify child begging as a THB-related practice due to challenges in proving the child was coerced. However, as a matter of international law, there is no requirement to prove coercion in such cases.<sup>190</sup>

In Romania, the practice of charging human trafficking as a prostitution-related offence suggests that these two crime types are not sufficiently distinguished in national legislation and/or the legal concept of exploitation is not properly understood by criminal justice officials. Charging a lesser offence may not only fail to do justice to victims, but could undermine efforts to uncover the involvement of OCGs and criminal networks; in the Romanian context, human trafficking is investigated by the country's specialised agency, DIICOT, while pandering is addressed by non-specialised prosecutors attached to first instance courts.

In Montenegro and several other SEE countries, prosecutors have tended to stop investigations when enough evidence is secured to prosecute the offence of brokering in prostitution, for example. In these circumstances, SITs are not applied to uncover additional evidence that could point to trafficking crimes and organized crime perpetrators. To deal with this, the prosecution has established a supervisory mechanism, whereby all trafficking-related cases are reviewed for THB elements before potentially being downgraded to prostitution, child begging or other lesser offences.<sup>191</sup> This is a welcome development that could be followed by countries experiencing similar challenges.<sup>192</sup> Training prosecutors and criminal investigators on key concepts of THB, in particular on exploitation, would also improve the prosecution of such crimes (see Recommendation 24).

In connection to drug-related conduct, possession offences tend to be far more frequently charged than trafficking, ostensibly due to greater challenges in prosecuting the latter. In Croatia and other countries, what distinguishes these two crime types is an intent to sell, which elevates the seriousness of the offence. Proving such an intent can be extremely challenging unless an actual sale is intercepted by enforcement officers, itself a resource-intensive exercise that may not always be practical. A related issue arises when national law does not set minimum quantities of prohibited substances necessary to be qualified as trafficking. For example, while some guidance exists in Serbian law, the thresholds are subjective: drug possession is distinguished from trafficking by relative terms (e.g. 'smaller quantities', 'lesser value'). This can result in similar conduct being charged and prosecuted differently based on a prosecutor's own interpretation of the material facts of a case (see Recommendation 25).

The illegal arms trade does not appear to be a top order priority for investigative and prosecutorial authorities. Interestingly, while this form of criminal activity is present in

Serbia and other countries, illegal possession and trade of weapons is perceived more as a public safety, rather than organized crime or national security, threat.

Certain illicit trade sectors are neglected altogether in the region. Most countries' enforcement agencies admit that minimal attention, if any, is paid to the illegal wildlife trade and logging, or trafficking in cultural property, among other forms of illicit trade. The reasons for this are likely multifaceted. It may be that enforcement and regulatory agencies' capacity to prevent, detect and investigate such crimes is underdeveloped. At least in the case of illegal logging, inadequate enforcement can be explained by alleged links between OCGs and politicians (see section 3.1.4).

It is also possible that these and other manifestations of illicit trade are objectively absent in certain countries, although this should not be assumed simply based on low levels of detection, especially when enforcement agencies assume a predominately reactive, rather than proactive, posture. This, in turn, may mislead policymakers into disregarding discrete forms of criminal behaviour, or new and emerging forms of illicit trade (see Recommendation 4).

### 4.3. Investigation strategies

Several countries have ongoing difficulties in adopting a strategically-sound law enforcement policy against illicit trade. A case in point is the **tendency to adopt a reactive approach** among police and other enforcement bodies. In the context of sometimes severe budgetary pressures, finite resources are focused on the most 'visible' criminal behaviour to the detriment of in-depth investigations into underlying economic crimes and other criminal ramifications.

Contributing factors to a reactive, rather than proactive, approach may include the absence of sufficiently clear national strategies against organized crime, the **prevalence of formalistic and bureaucratic institutional cultures** and, relatedly, a general reluctance to engage in bold and innovative investigative initiatives. This may help to explain why seizures of drugs, stolen cultural artefacts and other smuggled commodities are unquestioningly accepted as successful outcomes that mark the end of an investigation. Oftentimes, decisions not to take an investigation further are 'justified' by the fact that illegal or illicitly-traded items have not reached the local market. By following a reactive approach, authorities can hope to contain, to some extent, illicit trade flows. In so doing, however, they effectively abdicate their even more significant responsibility to dismantle underlying (and often internationally-active) criminal networks and tackle such complex problems at their source.

A recurrent issue is the **fragmentation of investigations**, particularly apparent in cases where corruption and/or money laundering offences are pursued separately from the

'main' illicit trade conduct. This is sometimes the result of criminal jurisdiction over connected offences being dispersed across multiple judicial authorities (e.g. Bulgaria, Romania). By relying on compartmentalised approaches, it becomes exceedingly difficult for authorities to connect the dots among offences that are, in practice, part of the same or interrelated criminal enterprises (see Recommendation 7).

Related to this, **intelligence-led policing** is not always as effective as it should be (see Recommendation 15). In Serbia, such approaches were only quite recently introduced in policing practices. The concept has since been intensively promoted within the Ministry of Interior. However, the lack of central or mutually accessible databases remains the most evident challenge (see Recommendation 14). Similar concerns are expressed for intelligence-led policing in Montenegro, where the concept is insufficiently applied to daily practice. As a general remark, Greek experts highlight the need for more extensive and effective use of intelligence-led policing as a means to capture and analyse data from a range of sources in a secure environment, carry out crime-mapping and threat assessments, and better utilise this information-base to drive investigation strategies (see Recommendation 15). On the other hand, Croatia's experience with intelligence-led policing since 2008 is reportedly positive; USKOK's central repository of information and

intelligence, and in-house analytical capacity, facilitate crime-mapping, threat assessments and information-exchange in connection to organized crime cases (see related Recommendation 7).

While agencies often face resource constraints in their use of **special investigative techniques (SITs)**, practitioners deem them critical for disrupting OCGs linked to illicit trade (see Recommendations 11 and 17). Macedonian officials noted that it is extremely difficult to penetrate crime groups without information 'from the field'; wiretaps and intercepted communications should accordingly be supported by surveillance, with additional resources still needed to overcome challenges with the criminal exploitation of encrypted communication. In Serbia, SITs have proven useful in investigations involving excise goods and drug trafficking. In Turkey, traffickers increasingly use cargo companies for small and large smuggling schemes, to hide their identities and avoid transport-related risks. In this context, controlled deliveries are considered highly useful in dismantling cargo-based trafficking across borders, and Turkish agencies have had some success employing them with European and US counterparts. At the same time, difficulties are noted in cooperating with Turkey's neighbours at its eastern and southern borders.

#### CASE STUDY

### International guidance on risk-based approaches from a Customs perspective

Intelligence-led policing is complemented by risk assessment processes that should be carried out by customs administrations. In order to balance the need for efficient trade (trade facilitation) and security, the WCO has long advocated for risk-based approaches to illicit trade detection.<sup>193</sup> By carrying out advance risk assessments of incoming consignments, to determine the level of risk that certain consignments might contain illegal or illicitly-traded goods, or otherwise be part of illicit trade schemes, customs is able to simplify screening procedures on arrival, and focus scarce resources on the highest-risk consignments.

To guide national customs agencies in this crucial task, the WCO has developed a series of tools and standards, most notably the WCO Customs Risk Manage-

ment Compendium, which outlines organizational and operational best practices in risk management, and the SAFE Framework of Standards to Secure and Facilitate Global Trade. Four 'core' elements underpin the SAFE Framework:

- requiring transport operators to provide Advance Electronic Data on consignments to customs;<sup>194</sup>
- using a consistent risk management approach in relation to the application of customs controls;
- performing outbound controls of high-risk cargo, preferably through non-intrusive inspection methods such as scanning; and
- incentivising businesses to comply with supply chain security standards.<sup>195</sup>

In relation to e-commerce, the WCO has developed a complementary Framework of Standards.

In 2018, the Montenegrin Constitutional Court found several SITs to be unconstitutional, which appears to have the effect of depriving the prosecution and criminal investigators of essential tools against OCGs. The full use of those SITs, in full compliance with constitutional law, is yet to be restored.<sup>196</sup>

Another challenge for the effectiveness of investigations is the fact that **'traditional' SITs (e.g. phone interceptions) have become inadequate** as OCGs and other nefarious actors rely increasingly on encrypted communications. All countries indicate a surge in the use of technological tools and platforms employing encryption protocols (e.g. Skype, Viber, WhatsApp, Signal, etc.) as well as spikes in cryptocurrency transactions including on the Darknet (e.g. using Bitcoin or a wide range of alternatives). In North Macedonia, concerns were raised as to whether the Ministry of Interior and police agencies have the necessary means to deal with encrypted communications. On these challenges, see case study and guidance on cyber-enabled illicit trade in section 4.4.1.

As emphasised in connection to Serbia, the unavailability of effective techniques that have been tried and tested in the criminal justice sphere is increasingly pushing enforcement authorities to rely on monitoring and surveillance tools that were once the reserve of national security/intelligence agencies. This raises questions about the permissible bounds of criminal justice entities and processes.

There is consensus about the key role of **witness protection schemes** in investigative strategies for disrupting OCGs. However, existing strategies are not always brought to fruition. According to Turkish legislation, while criminal justice institutions are expected to maintain witness anonymity including at trial and in the aftermath, in practice the identities of most victims and witnesses are revealed during the adjudication process. This puts their life in danger and

therefore presents an overwhelming disincentive to testify. Similarly, 'intrusive' cross-examinations in Greece, especially in human trafficking trials, often result in the revelation of victims' identities.

To improve the effectiveness of investigations, some concrete suggestions have been offered by national experts. According to interviewed Serbian police officers, traffic police could be given a more prominent role in detecting and fighting illicit trade because of their presence in the field. In Bulgaria, the potential of engaging expert witnesses to advise criminal courts is largely underutilised even though expert evidence is described as priceless for complex cases involving illicit trade and money laundering.

In relation to illicit trade in narcotics, Turkish officials emphasise specific problems with the precursor control system. Multiple factors stand in the way, including the continual production by crime networks of new psychoactive substances, the lobbying influence of mostly large precursor-importing companies, the lack of risk analysis teams or intelligence collection mechanisms including at the regional level, and the fact that the national drug control policies do not prioritise precursor control.

## 4.4. Investigative and prosecutorial challenges

### 4.4.1. Legal/procedural burdens and inconsistencies

Officials in several countries point to excessive procedural burdens in domestic criminal legislation. In Croatia, for instance, some interviewed practitioners criticise the Criminal Procedure Act for unduly constraining the police's investigative work. Similarly, in Bulgarian law, excessive

#### SIDE NOTE

##### Witness protection programs

WBs countries face a variety of challenges in implementing existing programs, and their use can be uneven: in 2019, Montenegro applied protective measures for 28 people (47 in 2018), whereas Albania initiated programs in relation to 20 cases (17 in 2018).<sup>197</sup> In 2019, Kosovo's programme was engaged for the first time to protect one individual, with three others being temporarily relocated internationally.<sup>198</sup>

While Serbia has taken steps to strengthen its witness protection framework, necessary amendments have been proposed for the criminal procedure code.<sup>199</sup>

Among other challenges for the WBs, the European Commission has pointed to low levels of trust, inadequate cooperation between national entities and at the international level, inadequate resources for the implementation of protection programs generally, as well as gaps in support offered to victims and witnesses.<sup>200</sup> For more on investigative and resource-related challenges associated with witness protection, see discussion at sections 4.4.1 and 4.4.2.

procedural formalism has been assessed as unsuited to the dynamics of modern investigations.

More specifically, the **evidence collection process** is sometimes deemed too burdensome for law enforcement. In BiH, judges acknowledge the difficulty in ensuring compliance with legal requirements for evidence-gathering by law enforcement officials, highlighting the many complex actions to be taken during investigations. They mention cases in which acquittals resulted from unlawfulness in the evidence-gathering process; considerable relevant data has reportedly not been admissible as evidence. This issue appears especially problematic vis-à-vis transnational organized crime and illicit trade; such cases require a level of procedural flexibility and investigative creativity, but they also endeavour to expose criminal patterns and schemes intentionally conceived to circumvent formal evidence-gathering rules.

From a different perspective, Croatian police report that their everyday work and exercise of powers set out in the police law are unduly constrained by the law on criminal procedure, which is considered too prescriptive. Enforcement officials query whether the Act should be made more concise on matters related to police work, and leave operational issues for regulations.

#### SIDE NOTE

##### **Striking a balance in the regulation of criminal investigations and evidence collection**

In relation to the general complaint that legislative requirements, and the evidence collection process, is unnecessarily burdensome for law enforcement agencies, a further comment is warranted. All criminal procedure codes regulate some investigative actions in detail, usually the most invasive ones (e.g. wiretapping, surveillance, undercover operations, etc.). However, they cannot cover the full range of possible investigative initiatives. From a procedural standpoint, the crucial question is how to deal with non-expressly regulated actions and the evidence collected via them. Are they to be considered free and legal, provided that the entire course of action is well-documented, or unlawful? Relatedly, should information collected in these manners be deemed admissible or inadmissible as evidence? These challenges remain to be resolved in many SEE countries where especially law enforcement entities take the general view that “what is not expressly allowed and regulated is illegal”.

Attributing illicit trade-related offences to OCGs is a recurring challenge, partly related to the **difficulties in proving the underlying element of a criminal association**. While Montenegro saw an increase in drug smuggling cases in 2018, just over 3% qualified as organized crime.<sup>201</sup> In 2019, Serbian courts convicted 23 perpetrators for THB but no organized crime links were formally established. Until two perpetrators were sentenced (at first instance) to 15 and 17 years’ imprisonment in 2019, Montenegro had been on a five-year streak without any convictions for organized crime-related human trafficking.<sup>202</sup> In a further effort to establish a track record, in 2019 Montenegrin authorities were investigating three THB cases, with four additional cases under preliminary investigation. However, “the cases are not related to organised crime and no important trafficking rings have been uncovered in recent years, despite objective risk factors”.<sup>203</sup> In 2019, only a fraction of THB, arms trafficking and money laundering cases in Kosovo were tied to organized crime-related charges.<sup>204</sup>

Several countries, including Albania, Bulgaria and North Macedonia, report other **challenges in engaging organized crime legislation** when illicit trade schemes appear to involve a small number of loosely-associated individuals; these ‘groups’ are unlikely to be sufficiently structured or organized to qualify as a ‘structured criminal group’ as required by national law. Albania and North Macedonia have experienced this in the context of migrant smuggling, which occurs through the collaboration of loosely connected individuals. Bulgarian analysis reveals similar challenges with illicit trade in excise goods and cultural property as well as migrant smuggling; ‘ordinary’ criminal groups active in these illicit markets are thereby distinguished from more structured groups in other markets. At the same time, North Macedonia has been singled out for praise by the European Commission for further improving its track record on organized crime, especially in drug and migrant smuggling cases.<sup>205</sup>

More generally, complaints that a certain criminal offence is too difficult to be proved because of its legal structure (i.e. the elements of the crime and *mens rea* requirements) recur in all jurisdictions. Other than maintaining the status quo, three possible actions can be taken to address this situation. First, countries may amend the relevant legal provision(s). Secondly, countries may provide investigators and prosecutors with more effective procedural and material means to do their jobs. Thirdly, countries can endeavour to improve the professionalism of their judicial officers. The first option, in the Institute’s view, is viable and advisable only where the legal description of a criminal act does not correctly and/or completely reflect the underlying criminal phenomenon, thereby fuelling the risk that serious illegal conduct goes unpunished.



In connection with difficulties in satisfying evidentiary standards, some countries point to **limited time frameworks for investigations**. In North Macedonia, the Criminal Procedure Code's general time limit of six months is deemed too short. However, investigation time limits may be extended for a short period in exceptional cases, usually due to their complexity. Similarly, Kosovar officials noted that, while time limits are generally adequate, this is not true for complex organized crime cases. Some BiH prosecutors identify specific challenges relating to proving offences directly and broadly related to illicit trade, which they believe require considerable time and resources. Accordingly, a specific illicit trade case may require as much time as three cases in other, less involved crime areas. Bulgarian experts describe time limits as too restrictive, especially for complex illicit trade schemes involving OCGs, money laundering and corruption; these cases should be subject to special, more generous procedural rules. Ultimately, practitioners in North Macedonia and other countries agreed that ministries should be encouraged to accept that complex, large-scale investigations take time if they are to be effective.

Some practitioners have experienced difficulties in adapting to changed paradigms, notably the introduction of **prosecutor-led investigations**, which has led to initial teething problems in most jurisdictions, or confusing or partially contradictory outcomes. One consequence of major reforms to criminal justice systems, generally speaking, is that lack of familiarity with new procedures may induce practitioners to apply them less enthusiastically or systematically than needed.

Montenegro's Criminal Procedure Code appears to have contributed to some misunderstanding between prosecutors and the police. Reported problems include reluctance by police officers to take a proactive stance, rather waiting for prosecutors' instructions. In turn, some prosecutors are said to rely solely upon the police and have no apparent interest in directing investigations or attending crime scenes.

Serbia's Criminal Procedure Code, which in 2013 brought criminal procedure into much closer alignment with the accusatorial tradition, and introduced the prosecutor-led investigation model, has already had broad effects. These reforms are generally perceived as constructive, especially in enhancing the effectiveness of prosecutors; prosecutors are now more involved and work closely with the police from the beginning of cases, including through pre-investigative procedures. This allows prosecutors to be better prepared and actively participate throughout the case-building process. However, ambiguity and apparently contradictory elements across relevant legal frameworks, in combination with practical challenges in implementation, introduce complexity in the Serbian context.

One concern is that Serbia's relatively new police law, which was adopted in 2016, does not fully integrate the concept of

prosecutor-led investigations as elaborated in the Criminal Procedure Code. As a result, police officers report not only to the prosecutor at the head of pre-investigation procedures and investigations, but also to their chain of command – which ultimately leads to the Ministry of Interior. This may have the effect of undermining not only the **operational independence of police investigators**,<sup>206</sup> but also the prosecution's ability to effectively lead investigations. Moreover, the integrity of investigations themselves may be called into question as a result of the inappropriate disclosure of confidential information.

In Serbia, too, the new investigation system and its procedures have also injected complexity as a result of prosecutors' relative inexperience. Furthermore, the sometimes-lengthy nature of criminal proceedings means that criminal cases initiated under the previous procedure have 'outlived' the reforms, with practitioners forced to apply different procedural regimes to multiple cases being run in parallel.

A few countries stress the need to **strengthen legal measures for witness protection**. Some Bulgarian experts, for example, consider that measures for witness protection need to be improved with better legal guarantees for witness safety. The European Commission has identified witness protection-related progress and challenges in other jurisdictions, including in Kosovo where a "lack of trust" undermines the implementation of witness protection mechanisms.<sup>207</sup> It is noteworthy that the EU Rule of Law Mission in Kosovo (**EULEX**) continues to manage its own witness protection program.<sup>208</sup> For more on witness protection, see side note on WBs countries in chapter 4.3 and discussion of resource-related challenges at section 4.4.2.

Challenges arise also in the context of **covert operations**. Under the Turkish Criminal Procedure Code, and based on a court order, undercover agents can be deployed to monitor criminal networks and provide evidence. On deployment, officers are accountable for any crimes they commit intentionally, but not crimes committed by the infiltrated criminal group. In other words, officers are punishable if they instigate or actively participate in criminal schemes. This issue mainly concerns undercover agents who are tasked by a criminal organization to carry out certain criminal acts. Depending on the circumstances, vacillating or refusing to perform the act could expose an agent to serious and immediate danger; here, there is a question as to whether self-defence or necessity may apply to shield agents from liability (see Recommendation 18).

Other challenges arise when investigating or undercover officers are called to testify about their work; officers may be obliged to reveal their working methods, but it could also endanger their lives. Such outcomes may disincentivise officers from contributing to covert actions.



A connected issue is the need for legal frameworks to more effectively incentivise **justice collaborators** to come forward and cooperate with investigators. Bulgarian law, for example, does not allow for charges to be withdrawn, or for specific benefits or protection to be granted, in relation to offenders who agree to cooperate. Equally, Greek experts highlight the need to enhance illicit trade investigations and prosecutions by introducing the possibility of more 'lenient' treatment of persons who are themselves potentially criminally liable but can provide key information that could lead to the apprehension of co-perpetrators, discovery of broader criminal schemes or dismantling of criminal organizations.

Country-specific issues were reported as potentially benefitting from legislative changes. One example is the cargo inspection system in Turkey, which is increasingly used by Turkey-based organized crime to smuggle goods within and outside the country. The fact that law enforcement authorities cannot search suspicious cargo without a court warrant or prosecutor authorisation is perceived as a significant obstacle for law enforcement. In practice, police units use periodic court warrants for specific locations (e.g. border control stations, police checkpoints, etc.).

Turning to the vital role played by customs, not every customs agency in SEE looks alike or is similarly empowered to contribute to the fight against illicit trade. While all are called on and empowered to detect illicit trade, including through inspections and seizures of contraband, means of transport, etc., the regional picture is mixed when it comes to **customs officers' investigation powers** (see Recommendation 20):

- In Albania, Greece, Kosovo, North Macedonia and Slovenia, customs officers are vested with broad investigative powers to look into and punish customs violations and, sometimes, criminal offences. In Albania, Kosovo and North Macedonia, customs investigators have the status of judicial police.<sup>209</sup> In Greece, they are considered 'special investigative officers' in the course of carrying out enforcement-type actions.
- Customs officers in BiH, Bulgaria, Montenegro, Serbia and Turkey have some investigative powers but rely on police or prosecutors to take operational measures including surveillance or controlled deliveries. For example, when authorised by a prosecutor, Bulgarian Customs can jointly carry out controlled deliveries with police entities.<sup>210</sup> In some other cases, investigative powers appear to exist only on paper. While Montenegrin Customs officers are empowered to interrogate criminal suspects when duly authorised by a prosecutor, this power has reportedly not been exercised. In Serbia, the fact that customs officers are not legally mandated to investigate independently of police and/or prosecutors has been raised as a legal and operational obstacle (see case study below).

- In Croatia and Romania, customs agencies appear to have relatively limited or no investigative powers, rather playing a supportive role to police and prosecutors. Nonetheless, the Croatian Customs Service is responsible for preventing and detecting misdemeanours and criminal offences relating to illicit trade. In Romania's case, the General Directorate of Customs does not technically investigate but exercises robust powers in connection to bank checks and financial investigations.

To be clear, the fact that not all SEE customs agencies have robust investigation powers has not emerged as a regional challenge *per se*, whether viewed through the lens of inter-agency or international cooperation. Ultimately, much comes down to the way in which police and customs officers collaborate on specific cases, irrespective of their competencies (assuming those competencies are clearly understood by all actors). In the Serbian context, however, experts query whether customs' role in the fight against illicit trade could be enhanced with more police-like investigation powers (for more, see case study below).

#### CASE STUDY

### Customs powers in Serbia

Like some SEE counterparts, Serbian Customs officials are not vested with criminal investigation powers (e.g. to arrest, enter private property for inspection purposes, etc.). They also lack access to tax-related databases. While Customs has the right to inspect, seize contraband and make inquiries in the course of carrying out controls and procedures, its officers rely on police to apply surveillance and other operational measures. In these circumstances, Customs has sought to expand its investigative footprint in two main ways. First, greater powers for customs officers are promoted within the EU accession process and linked to Serbia's compliance with the Naples II Convention (see also case study in chapter 6.2). Secondly, Serbian Customs has entered into an agreement with the Ministry of Interior's Department for Combating Organized Crime in a step towards strengthening customs-police cooperation. Notably, Serbian Customs seems to be the only national entity to already cooperate extensively with the private sector, thereby uniquely positioning it to enhance the detection of some forms of illicit trade (e.g. counterfeiting).<sup>211</sup>

## CASE STUDY AND GUIDANCE

## Combating cyber-enabled illicit trade

International trade has increased exponentially in recent decades, and so too has the volume that takes place online. This trend continues to accelerate, with a proliferation of websites, platforms and related online actors that are exploited for illicit trade purposes. OCGs and other criminal actors infiltrate the flow of legitimate online trade, concealing illegal content and related transactions in an extremely high volume of data traffic. Consequently, enforcement authorities face an ever more technical and complex task in investigating OCGs involved in cyber-enabled illicit trade.

Such criminality takes place on the 'surface web', or the part of the Internet that is readily accessible to the general public, as well as the Darknet (or Dark Web). In the latter case, special challenges arise as a result of the fact that network traffic is hidden and largely anonymous. These features of the Darknet have legitimate justification in some cases, but they also facilitate the sale of illegal and illicitly-traded goods and services via so-called 'cryptomarkets'. Specialised expertise and tools are required to reveal illicit trade in these environments and carry out financial investigations. Accordingly, SEE countries should know where they stand in terms of capabilities and capacity levels:

**SEE countries should assess existing national capacity, technical skills and resources to employ cutting-edge strategies and tactics against OCGs and other illicit trade perpetrators on the Darknet. This assessment should consider the desirability of establishing a specialised Darknet task force or similar.**

While cyber-enabled illicit trade is not a threat unique to SEE, the region is generally underprepared to tackle it. SEE countries will need to review existing legal and regulatory frameworks including those that empower enforcement officers to investigate, and consider supplementary laws/regulations to ensure a strong and coordinated response. This response should draw on the growing expertise and experience of key international agencies.

In particular, SEE countries are encouraged to enact laws that leverage the central role of online intermediaries in the fight against cyber-enabled illicit trade:

**SEE countries should introduce legislation or regulations that prescribe the core responsibilities of online intermediaries<sup>212</sup> in combating cyber-enabled illicit trade, including in detecting and removing illicit trade-related content online. At a minimum, these intermediaries should be held responsible for:**

- i. Publishing clear and enforceable terms of service that prohibit, and are adapted to prevent, the exploitation of online intermediaries for illicit trade purposes.
- ii. Adopting policies for dealing with illicit trade perpetrators and facilitators who violate the terms of service (i.e. notice and repeat infringer policies).
- iii. Improving mechanisms (e.g. keyword-blocking and rank demotion) and utilising available technologies and software (e.g. machine learning, automated detection software) to facilitate the detection of illicit trade and related online content.
- iv. Establishing transparent, user-friendly procedures for the reporting and timely removal of illicit trade-related content, and assisting authorities to investigate and prosecute cyber-enabled illicit trade.
- v. Stepping-up the removal of illicit trade-related content (via notice and takedown systems) while ensuring appropriate safeguards against, and remedies for, violations to content owners' rights (due to excessive removal, etc.)
- vi. Promptly implementing relevant court judgments and directives of competent national authorities, including those requiring site-blocking measures to be applied to websites developed or used for illicit trade purposes, or against online intermediaries that fail to take reasonable measures to mitigate illicit trade-related risks.
- vii. Cooperating with law enforcement and criminal justice authorities, and rights holders, to support the detection and removal of illicit trade-related content, and related investigations and prosecutions.

Indeed, addressing illicit trade on the surface web is relatively more straightforward due to the visibility and influence of major online service providers, which are obvious partners for criminal justice entities.

Relatedly, national enforcement agencies should be empowered to utilise available technologies and tools, to produce and make full use of digital evidence, to analyse cryptomarkets and online data and traffic, to cooperate with international partners like Europol and Interpol, and contribute their expertise to strategy-setting processes at the national level:

**In light of the capacity-needs assessment outlined above, SEE countries should ensure that legislation and regulations adequately empower law enforcement agencies to:**

- i. **Utilise available technologies and analytical tools for detecting illicit trade on the Darknet while respecting the rights of legitimate users to enjoy free expression and privacy to the extent possible.**<sup>213</sup>
- ii. **Produce and make full use of digital evidence, including evidence extracted from computers, mobile phones and other devices, to investigate and prosecute illicit trade on the Darknet in line with the 2001 Council of Europe Convention on Cybercrime,<sup>214</sup> the 2019 UNODC Practical Guide for Requesting Electronic Evidence Across Borders, and other relevant international standards.**
- iii. **Support analysis of cryptomarket features and dynamics, online data and traffic on the Darknet, and the use of cryptocurrencies, by drawing on the expertise of cyber specialists including from the private sector, and by promoting the sharing of information and expertise between enforcement agencies, rights holders and online intermediaries (e.g. information and communication technology companies, online platforms including social media, payment service providers, postal/courier services, etc.).**
- iv. **Cooperate with international enforcement agencies and cybercrime centres (e.g. Interpol's Cyber Fusion Centre, Europol's European Cybercrime Centre) for the purposes of sharing intelligence and expertise on illicit trade on the Darknet, and conducting related operations.**
- v. **Contribute enforcement expertise and analysis to strategy-setting processes, ensuring that specific threats, challenges and trends associated with illicit trade on the Darknet are integrated into relevant national strategies.**

Specialised training will be essential on all these fronts:

**In light of the capacity-needs assessment outlined above, SEE countries should address the training needs of law enforcement and criminal justice officials, and other key stakeholders, through tailored training programs that strengthen capacity to monitor, prevent and combat illicit trade on the Darknet, including via programs offered by international enforcement agencies.**

Relatedly, SEE countries are also called on to consider the adequacy of existing regulatory frameworks vis-à-vis cryptocurrencies, the main means of transacting on the Darknet:

**SEE countries should review any existing laws and regulations that may be relevant to cryptocurrency payments and assess their impact on the elements of specific criminal offences.**

In this context, countries should take account of recent guidance from the Financial Action Task Force, which calls on authorities to prevent the use of cryptocurrencies to obfuscate IFFs.<sup>215</sup> Regional and international cooperation will have a vital role to play in sharing lessons learned, technical expertise, good practices and similar in relation to state-of-the-art investigation methods,<sup>216</sup> and conducting joint operations against perpetrators on the Darknet.<sup>217</sup>

Another legal concern is the **regulation of cryptocurrency payments** (see case study and guidance on cyber-enabled illicit trade above). This appears particularly pressing in Serbia where the Criminal Code establishes that, for certain illicit trade offences, proving a material gain is essential. If material gain cannot be proven (because the transactions in question utilise cryptocurrencies, for example), it becomes challenging for police to obtain enough evidence for indictments. Crucially, the problem does not seem to relate to the inability to track transactions *per se* but rather linking accused persons to accounts, e-wallets, or devices used to perform the transactions. Macedonian practitioners noted that, although the national bank had made official statements in opposition to cryptocurrencies, the country lacks any specific regulations in this field. Inadequate regulatory frameworks are a more general concern for the region and many other countries worldwide.

A distinct challenge stems from law enforcement authorities in Montenegro not being able to electronically **acquire data from telecommunication operators**. Reportedly, this is

having a significant impact on the time needed by investigators to carry out investigations. Legislative amendments and/or introduction of rules and procedures for electronic data acquisition following a court order may therefore be necessary. In this respect, the adoption of a new rulebook has somewhat improved enforcement agencies' level of access to telecommunications data.

In relation to cyber-enabled illicit trade, SEE countries are called on to assess the adequacy of existing regulatory frameworks, as well as national capabilities and capacity levels. It is likely that new legislation or regulations, and further training, will be necessary. In these contexts, the Institute has set out its guidance below drawing on emerging international good practices.

Several countries face **legal challenges in specific illicit trade sectors**, mostly related to existing legislative frameworks for combating THB and migrant smuggling. Recent reforms in Albania enshrine the right of human trafficking (and sexual assault) survivors not to answer questions

#### SIDE NOTE

##### **Modernising Customs and related entities to facilitate digital and sustainable trade**

Although distinct from the criminal justice response, the international digital trade agenda is closely linked to the fight against illicit trade and IFFs, including TBML (see Recommendations 13 and 20). Broadly speaking, this agenda calls for customs and other trade-related entities to *inter alia* modernise and digitalise their systems and processes in ways that can support the detection of illicit trade. Countries are encouraged to implement, for instance: automated customs systems that mitigate the risk of human error, corruption and fraudulent practices; establish an electronic Single Window environment to ensure relevant government agencies have timely access to accurate data;<sup>218</sup> carry out risk management and limit physical inspections through the use of risk assessments; cooperate with countries involved in the transit of shipments; establish a legal basis for electronic transactions; enable the electronic submission of customs declarations, sanitary and phytosanitary (SPC) certificates and similar; enable the electronic submission of air and sea cargo manifests to facilitate risk analysis; ensure that customs and trade control authorities have mutual Internet access to ensure their smooth communication and cooperation, etc.

Against this backdrop, the Institute has sought to assess where countries stand in implementing the aforementioned sample of measures, which have potential for enhancing data-exchange and analysis between government agencies, especially those investigating illicit trade and money laundering. Overall, available data from the UN Global Survey on Digital and Sustainable Trade Facilitation indicate that EU members in SEE are generally more prepared than their non-EU counterparts in the region.<sup>219</sup> Bulgaria leads the charge, having fully implemented 83% of the sample measures. Croatia and Greece are also relatively advanced (67%). Among non-EU members, Turkey has implemented 75% of measures while BiH's modernisation is at the earliest stage: 25% of measures have been implemented and 50% remain unimplemented. In general, all countries have automated their customs systems but most lag in adopting an electronic Single Window system and enabling the electronic submission of SPC certificates and sea cargo manifests.

For more on the rise of e-commerce, and associated challenges for enforcement agencies, see case study at 4.4.2.

strictly related to their private lives, and which are not connected to the criminal offence. Criminal justice officials report, however, that this reasonable protection can be an obstacle for investigations. In Turkey, where prosecutors are obliged to establish an intent to materially profit from THB crimes, suspects may avoid punishment by claiming they acted for humanitarian purposes.

Greek and Bulgarian practitioners report gaps and inconsistencies in legal provisions as well. In Greece, punishment of customs offences (especially, the offence of smuggling) may lead to violations of the *ne bis in idem* principle and presumption of innocence due to the parallel application of administrative and criminal sanctions. Bulgarian legislation does not criminalise the illicit import of cultural property, as opposed to its export, which is criminalised.

Another sector where some countries identify room for improvement is illicit trade of tobacco products. In Romania, this type of conduct can fall under several criminal offences, which generates confusion. In Turkey, it is unclear whether the export of illicit tobacco products is criminalised. Moreover, Turkish experts have questioned whether legal frameworks are appropriate and adapted to deal with illicit trade's enablers and facilitators, in general, especially those involved in laundering the proceeds of illicit trade.

#### 4.4.2. Resource constraints, material, human and financial

Several countries point to the insufficient availability of **material resources and equipment** to carry out effective investigations, particularly through SITs (see Recommendation 17). These limitations are exacerbated by the fact that criminals readily use cutting-edge technology. In Greece, for example, enforcement agencies involved in combating customs offences have a real need to modernise their infrastructure and processes.

Additionally, Greece's geographical features make smuggling by boat particularly challenging to monitor. Greece has "almost 14,000 km of coastline to monitor, a sea that includes some 2,000 islands, and more than 500 vessels around Greece at any time, according to the Hellenic Coast Guard."<sup>220</sup>

From an enforcement perspective, Greece, Turkey and Croatia face unique challenges in **monitoring extensive coastlines** (see table 11 below). The Greek, Turkish and Croatian coast guards are paramilitary entities belonging to the armed forces. They generally have broad powers to carry out surveillance, stop and inspect suspicious vessels, temporarily seize items and detain suspects. Some are also empowered to apply coercive measures and force in appropriate circumstances.

TABLE 11

#### Comparison of select national coastlines and coast guard personnel, 2019

Coast authority	Length of coastline, kms	No. personnel in coast authority
Italian Guardia Costiera	7,600 kms	11,000
Hellenic Coast Guard	13,676 kms	8,000
Turkish Coast Guard Command	7,200 kms	5,500
Croatian Coast Guard	5,835 kms	< 1,400

Source: CIA World Factbook, Guardia Costiera, Ioannis Michaletos and Chris Deliso, 'The Hellenic Coast Guard: Greece's first line of maritime defence.'

Specific challenges were raised in the context of North Macedonia's 'investigation centres', a model that was trialled with some success by the former Special Prosecutor's Office (SPO), according to practitioners. The Criminal Procedure Code envisaged the investigation centres to have regional jurisdiction and bring together prosecutors and judicial police (who may include authorised financial police and customs officers) on a semi-permanent basis. While four such centres were initially foreseen, only one – the SPO's investigation centre – has so far been established due to resource constraints. Prosecutors stressed that the model had delivered good results for the SPO, with adequate resourcing the key to success.<sup>221</sup> Nonetheless, some resource and capacity-building needs were highlighted for North Macedonia's investigation centre and prosecutors. Specifically, there is reportedly a need for cybercrime investigators, training on transcribing intercepted communications, and training to assist prosecutors in meeting their obligations vis-à-vis the Operative and Technical Agency (OTA). The OTA is an independent body set up in late 2018 to prevent abuse of electronic surveillance measures.<sup>222</sup>

In the fight against corruption, Macedonian officials also stated that cooperation between the Ministry of Internal Affairs and the prosecution would be further enhanced if the investigation centre model could be replicated.

Among enforcement agencies, not all are created equal or resourced to the same extent. More established specialised agencies appear best equipped to confront illicit trade (e.g. Croatia's USKOK, Romania's DIICOT). In BiH, the State Investigation and Protection Agency (SIPA), which handles state-level crimes linked to illicit trade, is deemed well-equipped relative to police bodies at the entity and cantonal levels. This is not necessarily true, however, for Republika Srpska's enforcement agencies, which are highly regarded by national and international experts alike.



Taking a step back, it appears that SEE countries should be investing **greater resources in transnational policing** (or the fight against transnational organized crime). For example:

- Romanian Police comprises 50,024 officers, or 256 officers per 100,000 inhabitants, which is well below the EU average in 2017 (326) (see table 4 above).<sup>223</sup> DIICOT, the lead agency on organized crime, employs 39 judicial police officers/agents,<sup>224</sup> representing 0.08% of the national force.
- In 2018, with 5,400 police and border police officers,<sup>225</sup> Montenegro had the highest ratio of police to the general population among SEE countries (662 officers per 100,000 inhabitants). The specialised team that investigates organized crime, the Special Police Unit, comprises 29 personnel,<sup>226</sup> representing 0.54% of Montenegro's police force.
- In 2018, Croatia's police force comprised 20,199 officers, amounting to 452 officers per 100,000 inhabitants.<sup>227</sup> Its specialised police department (PNUSKOK), which supports the prosecutor-led USKOK in the fight against organized crime and corruption, is estimated to have around 452 members (2.24% of the national force).<sup>228</sup>

The UK's transnational policing model, which is led by the National Crime Agency (**NCA**), provides a useful point of comparison. In 2019-20, the NCA directly employed around 4,291 officers on a permanent basis.<sup>229</sup> As a proportion of the 129,110 officers within territorial forces across England and Wales, NCA personnel represent about 3.3%.<sup>230</sup> Even so, the NCA's chief has sounded the alarm about the UK's preparedness to meet the growing threat of organized crime, calling for significant further investment in the Agency (more than EUR 716 million) and border authorities (more than EUR 2.1 billion).<sup>231</sup>

On matters related to resource availability, there also appears to be a distinction between EU and non-EU members in SEE. Apart from Greece, whose law enforcement agencies have been hit by severe budgetary cuts over the last decade, most EU countries are generally satisfied with current levels of material assets. Romania, for example, does not identify any pressing need with respect to specialised structures such as DIICOT. Professionals from relevant Romanian agencies consider that they have the investigative tools needed to carry out controlled deliveries, electronic surveillance, bank account audits, telephone or other wiretaps and interceptions, and equipment is updated. In Bulgaria, relevant agencies reportedly have sufficient technical equipment to respond to illicit trade although this contrasts with the previously-cited World Bank spending review (see section 2.2.2). Progressively, modern technologies have been developed, introduced and integrated in various SEE countries through project-based initiatives including EU-funded ones.

#### CASE STUDY

### Enforcement challenges stemming from electronic commerce

The rise of e-commerce occurs in the context of broader forces shaping the digital economy and international trade, with a shift from traditional markets and in-person shopping to online marketplaces.<sup>233</sup> In addition to transforming the retail experience of consumers, who now have more choice at lower prices, the phenomenon has transformed the transport and logistics sector; this sector rapidly expanded to meet unprecedented demand from consumers and businesses alike.<sup>234</sup>

In 2018, 1.4 billion people shopped online and the value of global e-commerce sales amounted to a record USD 25.6 trillion.<sup>235</sup>

Relatedly, postal and courier services are experiencing exponential growth in the volume of small consignments that move via both channels: in 2016, the total number of cross-border and domestic parcel shipments reached 216 billion.<sup>236</sup> Compared to 'traditional' container trade, parcel trade involves even more complex networks of actors and policies.

COVID has contributed to a massive increase in online shopping in the first half of 2020; while container trade diminished sharply, online orders were up in the Asia Pacific (by 70% in the first quarter), North America (120% by the end of May) and Europe (50%).<sup>237</sup>

From an illicit trade perspective, these trends present significant challenges for customs agencies, in particular. On the one hand, OCGs and other illicit trade perpetrators are moving ever-greater volumes of counterfeit goods and other illegal and illicitly-traded items (e.g. drugs and precursors, illicit tobacco, wildlife products, weapons, etc.) by way of small shipments. That is not to suggest that small parcels have replaced traditional shipments in illicit trade schemes: within FTZs, for example, bulky cargo containing counterfeits is broken down into smaller shipments before transshipment to their destination points, thereby exploiting a lack of oversight in such zones to reduce the risk (and cost) of detection.<sup>238</sup> For more on illicit trade and FTZs, see chapter 3.2. On the other hand, the growth in parcel trade has exposed vulnerabilities in postal and express courier systems, as well as limitations to customs' resources and capacity to detect illicit



trade.<sup>239</sup> Among other factors, customs' task is complicated by the following:

- Customs agencies have generally limited capacity to screen and physically inspect consignments. Moreover, they are both more accustomed and better equipped to screen bulk shipments rather than thousands of small parcels. The OECD notes that, as a result of growing demand during the pandemic, customs – which is operating with fewer personnel due to confinement and physical distancing precautions – are becoming overburdened.<sup>240</sup>
- To find the proverbial needle in a haystack, customs relies on risk assessments, intelligence profiling and targeting procedures, which draw on available sources of data and intelligence (including from postal/courier services among other logistical intermediaries) in order to identify high-risk shipments. But these analytical processes are undermined by patchy information provided by postal/courier services, if any is provided at all, as well as evasive measures employed by OCGs.

Indeed, postal and courier services do not always share advance, accurate information on small consignments. This is due, in part, to the *de minimis* rule widely adopted by customs administrations around the world: if a parcel's value falls below a certain threshold, it is exempt from trade and value-added taxes but also benefits from expedited clearance procedures (meaning less documentation and less customs oversight). These minimal requirements apply to a significant share of parcel trade: from January to April 2020, about two-thirds of cross-border small consignments in the EU concerned parcels valued under USD 100 (while the EU's *de minimis* threshold is about USD 169).<sup>241</sup>

Another important factor is that postal services typically lack infrastructure to fully digitalise shipments, and updating existing infrastructure may not be economically feasible.<sup>242</sup> Postal services are also bound by an obligation to provide universal service, which may compel them to handle small parcels even when they are not accompanied by enough data to allow risk assessment by customs.<sup>243</sup>

In addition to modernising customs agencies, the digitalisation of postal services is therefore also crucial for confronting the flood of small consignments. The tables below compare SEE countries' capacity to deliver digital postal services, including e-commerce, and reflect considerable divergence across the region.

**TABLE 12**

**Digital postal services capacity index measuring countries' readiness (scored from 0 to 1), 2017**

Croatia	0.49
Greece	0.32
BiH	0.22
Albania	0.22
Bulgaria	0.19
North Macedonia	0.14
Romania	0.14
Turkey	0.11

Source: Universal Postal Union Digital Postal Survey 2017

UN Conference on Trade and Development (UNCTAD) analysis provides a fuller and more recent picture as to SEE countries' readiness to engage in and benefit from e-commerce (see below).

**TABLE 13**

**UNCTAD e-commerce index (scored from 0 to 100), 2019**

Croatia	84.3
Slovenia	82.7
Bulgaria	78.3
Greece	77.6
Serbia	76.2
Romania	74.5
North Macedonia	73.0
Turkey	71.8
BiH	61.5
Albania	54.4
Montenegro	54.2

Source: UNCTAD Business-to-Consumer E-commerce Index 2019<sup>244</sup>

While COVID has accelerated the expansion of e-commerce, and therefore heightened associated risks from an illicit trade standpoint, it is also giving renewed impetus for countries to belatedly adopt digital platforms, tools and solutions;<sup>245</sup> these can support the detection of illicit trade and investigations (see side note above on modernising customs through the digital trade agenda). SEE countries should seize this opportunity, too.

**Resources for witness protection** are, in some cases, deemed too low (see also side note on WBs countries in chapter 4.3 and discussion of legal challenges at section 4.4.1). Turkey's witness protection units were recently set up within law enforcement agencies, especially the police and gendarmerie. However, resource constraints mean that these units struggle to provide security to individuals testifying against crime syndicates, or to provide them with a 'new life'. In Greece, prescribed measures range from extrajudicial protection (police protection to ensure that protected persons remain physically unharmed), relocation within the country,<sup>232</sup> and preserving their anonymity during pre-trial and trial procedures. While sometimes applied, this regime is reportedly inadequate and ineffective. Some existing, rudimentary provisions, such as those relating to the provision of testimony through audio-visual means in order to protect witness identity, are rarely applied, if at all. This is mainly due to a lack of necessary equipment. However, the overall situation is improving gradually according to project advisors. Also, although the Greek Government has increased its efforts and funding for protecting human trafficking victims, progress is generally considered insufficient.

On **surveillance measures**, the need to establish and maintain capacity to translate the multiple languages used by traffickers is another area where countries are overstretched. The problem is often linked to recent waves of migration. In Serbia, for example, most migrants enter the country without identification documents and interviews have been hampered by inadequate resources for interpretation. Monitoring communication between migrants and smugglers, for example, is therefore complicated even without the use of encrypted messaging. Turkish interviewees point to enormous challenges stemming from criminal networks that continue to diversify their operations, often involving a variety of ethnic groups. Surveillance units are under a heavy burden in terms of **translating and decoding communications** of thousands of foreign nationals. In many cases, it is impossible to comprehend voice and message communications that may relate to illicit trade schemes. Experts recommend that Farsi, Russian, African and Arabic interpretation/translation capacity be increased within electronic and physical surveillance units, and that Turkish agencies step-up cooperation with foreign liaison officers based in Ankara and Istanbul for communication-decoding purposes.

Many countries in the region face challenges as a result of **understaffed law enforcement and prosecution agencies**. Advisors from BiH, Bulgaria and Greece explicitly mention that prosecutors are overloaded with work, causing delays in the criminal justice process and, more specifically, in handling complex cases (e.g. tracking cross-border financial transactions or the provenance and flow of illegal or illicitly-traded commodities). The 'work overload' problem seems worse in countries that apply a mandatory prosecution model, such as Turkey. In the absence of guidelines that

assist in triaging certain types of cases, prosecutors in Greece, Turkey and other countries are overwhelmed. This, in turn, significantly reduces the time and resources that can be allocated to each matter. On the other hand, discretionary prosecution opens the door to criminal justice policies that might follow political logic and interests.

Kosovar prosecutors face unique and considerable challenges as a result of EULEX's winding-down. Kosovo and its prosecution offices are not yet fully prepared to take on the many cases that have been transferred from the Mission. Practitioners noted that, in relation to some cases, EULEX has not taken any investigative action prior to their transfer.

Another human resource-related challenge is the **frequent turnover of law enforcement officials**. This is highlighted by Albanian experts and reported to negatively affect police performance, and undermine institutional knowledge retention and workflow continuity. This issue is not confined to enforcement officials; in Bulgaria, prosecutors are frequently replaced, in some cases even while leading a criminal investigation. The possibility of taking over an ongoing investigation from a prosecutor is a general problem and should be strictly regulated, with an indication of the conditions that must be satisfied in order to allow such case reallocations.

A few countries have resource constraints specifically related to illicit trade in cultural property. In Serbia, storage facilities for culturally-valuable goods are not sufficiently secure and their staff reportedly lacks training. Turkish units responsible for addressing the illicit antiquities trade and others report being overwhelmed by the number of illicit trade schemes and investigation-related workloads.

Finally, in SEE, all countries are observing, and attempting to grapple with, the **growth in e-commerce and small shipments**. In BiH, for instance, officials noted the dramatic transformation that the Indirect Taxation Authority (ITA), the state-level customs body, has undergone in recent years; the importance of revenue collection is slightly diminishing relative to customs' other security and safety-oriented functions. In this context, concerns were raised about how the ITA will respond to increasing flows of small consignments, which make the work of customs officers even more challenging – in conducting risk analysis, identifying high-risk shipments, conducting inspections and otherwise detecting illicit trade and related crimes. The Banja Luka post office alone reportedly receives 1,500 shipments daily. At the same time, experts noted that postal and courier services provide sometimes significantly different levels of advance information to the ITA and other authorities, a further major obstacle to their ability to conduct risk assessments. These and related concerns are shared by other countries in SEE and elsewhere, and a focus for the OECD's illicit trade task force.

#### 4.4.3. Developing expertise and specialisation

Several countries have set up **specialised anti-organized crime units** both within the police and at the prosecutorial level. The most recent example is Albania, which now has a specialised prosecution office and a specialised police unit to combat organized crime and corruption.<sup>246</sup> In certain cases, specialised structures have been established either in the police or in the prosecutor's office, but not in both. In BiH, the lack of specialised prosecutors means that any prosecutor can oversee any case. This prevents the acquisition of specific abilities and knowledge through repeated practical investigative and prosecutorial experiences.

That said, criminal justice officials assigned to specialised bodies do not necessarily possess adequate **expertise and technical knowledge**, especially for handling complex, cross-border cases. As a general observation, training academies at the national level, and donors and technical assistance providers in the region, should pay closer attention to ensuring that 'the basics', in terms of core professional knowledge, skills and techniques, are not assumed to be in place but consistently reinforced.

In Bulgaria, for example, prosecutors' indictments are often procedurally flawed, with incomplete facts, unclear specification of criminal charges and discrepancies. Consequently, proceedings may be delayed or interrupted even when there are strong grounds for conviction. In some cases, a matter has had to be returned to the responsible prosecutor on several occasions because of significant procedural flaws. A similar situation exists in BiH, where the poor drafting of indictments is deemed one consequence of important changes to the legal system and the inability of practitioners to swiftly adapt to them.

In terms of enforcement bodies, experts report that Serbian police officers may be inadequately trained to guarantee that evidence is collected in a way that best ensures its future admissibility in court, especially in connection to drug cases. Practitioners in other countries, including Slovenia, report a lack of investigative experience in some key areas such as detecting money laundering and combating THB networks.

The work of Greek investigators is complicated by their **patchy access to applicable legislation**. While relevant databases and Internet channels are in place, these are not readily accessible in every police station. Subscriptions are few and expensive, while officers are not always clear where to look and how to achieve accurate results. Consequently, investigators tend to rely on more senior officers who themselves may not be aware of modern legal and practical realities. Accordingly, there have been calls for criminal investigators to have access to specialised legal support on theoretical as well as practical matters. Lack of access to, and knowledge about, relevant legislation is also raised as a concern in North Macedonia.

#### Lack of specialisation among some law enforcement agencies

seems to generally affect investigations into illicit trade, with two sectors being particularly touched: human trafficking and illicit trade in cultural property. In Greece, THB cases are normally added to prosecutors' regular workload with no close operational supervision of individual cases, which are handled by law enforcement agencies. Serbian interviewees raise challenges in securing evidence in connection to the trafficking of cultural goods, and tracking stolen items. As previously noted, storage facilities have no particular security measures in place and their staff is not specifically trained on illicit trade. Moreover, there are no plans to establish a centralised database of cultural property-related information, or specialised investigative units, which points to the relatively low priority of this form of crime.

#### 4.4.4. Persistent corruption in law enforcement and the judiciary

In connection to all countries, corruption in the public and private sectors has been raised as one of the most formidable obstacles to investigations and prosecutions into illicit trade. Several countries flagged bribe-taking among enforcement officers, including in Bulgaria, Croatia and Turkey, or their more direct involvement in illicit trade schemes. In some cases, the problem has been directly linked to instances of political interference in the work of enforcement agencies, affecting investigation outcomes. Concerns were also expressed about entrenched links between OCGs, political elites, and corrupt law enforcement and judicial authorities. In Kosovo and elsewhere, government officials have allegedly sought to influence the decision of prosecutors to terminate specific investigations.

Country-level analysis in Albania indicates the judiciary has been particularly prone to corruption in past years, with bribes exchanged for favourable judicial decisions. This has been a focus of the country's anti-corruption and **judicial vetting processes** that are delivering concrete results even if mistakes and some excesses are inevitable; several judges, including at the highest levels, have resigned or been dismissed as a result of vetting processes, which are intended to restore public confidence in the judiciary.<sup>247</sup>

Among the many challenges in containing high-level corruption, Greece's immunity regime has been flagged as problematic. **Immunity granted to key public officials**, including former or incumbent members of the Government, cannot be lifted except through a cumbersome, formalistic and time-consuming procedure involving the Plenary of the Parliament and a special parliamentary committee. Crucially, procedural time limits on this process, which effectively limited any possibility of effective prosecutions, were removed by constitutional amendment.

In some countries, including Albania, the reporting rate for corruption offences appears to be low in comparison with other crime types. Moreover, the main forms of corruption that are present – bribery and trading in influence or favours – are not reported. Poor reporting may also be partly explained by the ineffectiveness of existing legal frameworks for **protecting whistleblowers**, including those sounding the alarm within the enforcement community. Turkish experts note that the country's whistleblowing practices are widely viewed with diffidence. The same experts describe illicit trade in cultural property as a breeding ground for collusion between public officials and looters, who sometimes share criminal profits.

#### SIDE NOTE

##### Whistleblower protection frameworks

WBs jurisdictions, in particular, are making much-needed progress in establishing legal frameworks for whistleblower protection. Kosovo and North Macedonia, for instance, recently reinforced their laws,<sup>248</sup> while Albania created 166 central and local units within governmental institutions and 446 units across private companies to support whistleblower reporting and protection.<sup>249</sup> As a general comment, though, all non-EU countries in the region will need to align national legislation with new EU standards in this field.<sup>250</sup> From an implementation perspective, in 2018, Montenegro's Anti-Corruption Agency received 110 reports concerning potential threats to the public interest, whereas Serbia's equivalent entity received 122 new cases.<sup>251</sup> In that same year, the Albanian anti-corruption authority investigated 16 cases and, in BiH, administrative protection was twice granted to whistleblowers.<sup>252</sup>

Regarding potential 'incentives' for public officials to engage in corruption, Romanian interviewees point to remarkable differences between wages of law enforcement officials employed in anti-organized crime departments and those assigned to corruption cases. Other countries also point to wage imbalances between generalist and specialist practitioners, whether police or prosecutors.

It is noteworthy that North Macedonia has sought to mitigate the risk of corruption in the law enforcement domain by establishing an independent oversight mechanism. Since its establishment, this mechanism has commenced investigations against 15 people, two of whom were indicted with a further two in detention.<sup>253</sup>

## 4.5. Inter-agency coordination

To a greater or lesser extent, all countries experience challenges in achieving effective coordination among the plethora of agencies involved in investigating and prosecuting illicit trade. A core issue is the quantity, quality, speed and regularity of information-exchange between actors at the national level. Uneven coordination of information-sharing can, in turn, negatively affect the outcomes of ongoing criminal investigations and impair law enforcement agencies from seeing the 'wider picture' in terms of criminal networks and schemes, corrupt officials and the ramifications of illicit trade, including transnationally.

### 4.5.1. Forms and modalities

Some countries report generally good levels of coordination among national agencies. In Croatia, for example, no specific challenges appear to inhibit information-sharing between law enforcement, criminal justice and other bodies including regulatory/inspection agencies and the FIU. Cooperation between Croatia's Anti-Money Laundering Office and the State Attorney's USKOK, in particular, was highlighted as positive. While they generally have limited investigative powers (see section 4.4.1), Croatian customs officers are reportedly sufficiently trained to preserve seized items and other evidence so that it can be adduced in criminal proceedings.

In many cases, inter-agency coordination is formalised in specific **agreements, policy or normative instruments**. In Turkey, the concept is enshrined in the national strategy against organized crime. In Slovenia, the police have established formal working arrangements with other institutions. An example is the decree on cooperation between the prosecution, police and other competent state institutions in the detection and prosecution of criminal offenders. Another is the cooperation agreement entered into by the police and the financial administration (in charge of customs controls). Similarly, Bulgaria has adopted numerous ordinances, instructions and administrative instruments regulating, in detail, the cooperation between the prosecution and other relevant agencies.

In a few cases, inter-agency coordination occurs more as a matter of practice than as a result of normative instruments. In Turkey, the police and gendarmerie share jurisdiction over the national territory. While the police take charge of urban centres, the gendarmerie has jurisdiction over rural areas. In practice, however, this territorial division is flexible and adaptive.

Coordination is often achieved through one entity taking the lead. In Greece, the Public Prosecutor's Office against Corruption is competent for the supervision and coordination of law enforcement efforts in this field. The Public

Prosecutor's Office for Economic Crime exercises the same coordinating functions over tax offences. The result of these initiatives appears to have been positive, leading to an increase in the effectiveness of involved agencies.

In Turkey, the Financial Crimes Investigation Board (MAMAK) leads money laundering investigations and is supported by the police and gendarmerie in organized crime and terrorism cases, including through electronic and physical surveillance.

As illustrated by many countries' experiences, the most effective form of inter-agency coordination occurs when multiple entities come together under the same 'roof' as **joint mechanisms, structures or operations**. In Albania, the establishment of joint investigation mechanisms is identified as a good practice, especially when relevant members are in close contact. Such mechanisms have been set up with a focus on *inter alia* organized crime, corruption, human trafficking, money laundering and smuggling.

Montenegrin officials highlighted its inter-agency operational team against organized crime as a positive and cross-sectoral approach. Established in 2015, the team comprises representatives of the Police Administration (both criminal and border police), Customs, the Administration for the Prevention of Money Laundering and Terrorist Financing, the National Security Agency, the Supreme State Prosecutor's Office and the Ministry of Justice. However, the European Commission has stressed the lack of significant results against organized crime (for more on inter-agency coordination in Montenegro, see section 4.5.2 below). Bulgaria reports a mobile joint group, comprising customs and border police agents, responsible for monitoring the external EU border with Turkey. Mobile customs-police units are also cited as a good practice in Croatia's inter-agency cooperation.

#### 4.5.2. Regulatory and procedural challenges

Several regulatory and procedural factors have been identified as hampering inter-agency coordination. To varying degrees, these shortcomings underpin the tendency of individual agencies to maintain self-referential and compartmentalised attitudes, discourage information flow, and otherwise undermine synergistic dynamics in the course of investigations.

Desk research and interviews show that bureaucratic procedures sometimes slow down and complicate coordination in practice. In some cases, **slow and inefficient communication techniques** are a major source of problems. In Greece, for example, several enforcement agencies are required to submit formal requests for information or other assistance by post or fax.

In Montenegro, the European Commission has stressed that inter-agency coordination is not achieving sufficiently robust

results. Interviews revealed a specific obstacle in the practice of prosecutors who direct investigations by issuing **oral instructions to police** officers, rather than in writing. This sometimes results in a high degree of uncertainty and friction when determining which institution should take responsibility for failed actions. Additionally, few consultative meetings are held between prosecutors and police officers, with communication mostly reduced to oral, often telephone, exchanges. At some level, this reflects different professional and organizational attitudes, cultures and traditions that may not have been sufficiently accounted for in the process of instituting prosecutor-led investigations. At the same time, Montenegro's growing number of serious and organized crime investigations since 2016 is credited to improved coordination between its specialised prosecution office and police unit, among other factors.<sup>254</sup>

Enhanced information-sharing and data collection systems are deemed necessary in order to address important operational challenges. Indeed, communication issues are often compounded by the **lack of common or shared platforms** that would facilitate access to information and avoid the need to lodge requests to the agencies that 'own' a certain piece of information.

In Greece, while there is a police database, electronic criminal records are not centralised. A major challenge for Serbia's Customs Administration stems from it not having the same legal powers as the police or access to tax-related databases. As a result, when customs officials need to carry out certain operational measures, they must rely on the police. Macedonian officials stressed the fact that relevant agencies do not have mutual access to databases and there is no official and secure information-exchange system with security/intelligence services. Although numerous memoranda and protocols for cooperation have been signed, in practice they are not sufficiently applied. As a result, inter-agency coordination is haphazard and appears not to have been truly embraced as a guiding principle for investigations and prosecutions.

A distinct set of challenges pertains to agencies' **overlapping mandates and sometimes unclear divisions of labour**. A case in point is Kosovo, where imprecise case allocation procedures between the regular and specialised prosecution offices tend to blur competencies and slow down investigations. Analogous problems are detected in North Macedonia where customs, the financial police and border police all perform overlapping functions. In Bulgaria, inter-agency coordination at the investigation level is described as seriously limited by inadequate and confusing regulations (see Recommendation 20).



### 4.5.3. Non-regulatory challenges

Other obstacles may be rooted in **cultural attitudes** and 'die-hard' law enforcement practices. An issue of widespread concern is the general reluctance to share information with other institutions (e.g. in Bulgaria, BiH, and Kosovo). This can hinder timely access to data to the detriment of proactive and intelligence-led investigations.

In the absence of any specific legal or procedural obstacle for collaboration between the police and other bodies, practitioners identify the biggest issue as **reciprocal mistrust**, hampering the exchange of operational information. This has led to some instances of several police agencies and prosecutors conducting parallel, uncoordinated investigations into the same case. The situation appears to have been particularly acute in BiH in view of the highly decentralised nature of the country's enforcement system and its institutional fragmentation.<sup>255</sup> Competition for results between enforcement agencies can have a direct impact on the willingness of counterparts to exchange information and cooperate. While institutional mistrust is a major impediment in many countries, it should be noted that BiH presents particular difficulties that will require tailored solutions.

Although Kosovar practitioners are attuned to the potential of inter-agency cooperation, the overall situation is described as suboptimal. The causes are diverse but essentially relate to mutual lack of trust generated by, *inter alia*, the survival of a clan-based mentality. Practitioners stated that police, customs and prosecution officials cooperate closely on around one to two major cases each year.

Some advisors, including from Bulgaria, Serbia and Kosovo, attribute instances of successful inter-agency coordination more to the personal attitudes and dedication of individual officials than to the existence of strong institutional mechanisms. In Bulgaria, police-prosecutor relations are said to largely depend on personal links. While Turkey's Criminal Procedure Code clearly maps out the relationship between prosecutors and investigators, the closeness and quality of these relationships in practice are shaped by investigators' own personal traits and past professional experience working with prosecutors.

**Institutional rivalries and misunderstandings** are also mentioned as factors leading to weak coordination. Experts from Montenegro ascribe initial misunderstandings between the police and prosecution office to provisions of the Criminal Procedure Code introduced in 2011, especially those that entrust prosecutors with leading criminal investigations. Accordingly, police officers would not be proactive enough and wait instead for prosecutors' instructions. In turn, some prosecutors were considered to rely solely upon the police with no apparent interest in directing an investigation or attending crime scenes.

In addition to changing professional dynamics between police and prosecutors, agency-specific practices appear to hamper information-sharing. In Bulgaria, the National Security Agency acts as the country's FIU but is reluctant to share information requested by other agencies (see also Recommendation 7). The problem seems to occur as a result of internal practices aimed at classifying virtually all documents, files and related correspondence as for 'internal use' only, regardless of their content. As disclosure is regularly denied on this basis, money laundering investigations end up being severely affected. This is another example of the need for a central, managing authority at the top of the pyramid (i.e. the prosecutor in-charge).

In North Macedonia, specific challenges were highlighted in the relationship between customs and related enforcement bodies, specifically the Ministry of Interior and border police. This was said to contribute to tensions in their day-to-day interactions.

Another perceived source of inter-agency rivalry is found in **institutional settings where success is measured by volumes of seizures** of illegal or illicitly-traded goods (see also Recommendation 5). In Turkey, for example, the police, gendarmerie, customs and coast guard often compete to be the agency achieving the highest volume of seizures, as these bring greater operational bonuses, institutional budgets, prestige, and opportunities for promotion.

Even where inter-agency cooperation is effective at the operational level, countries generally need to improve **information-sharing and analysis for strategic objectives**. A case in point is Greece:

**Greece benefits from a single police authority in the form of the Hellenic Police, but local experts observe that cooperation between the police, customs and coast guard occurs principally at the operational level, while more macro-level cooperation – such as sharing intelligence and strategic assessments – is limited.**<sup>256</sup>

This challenge is more broadly relevant to the region, where risk and strategic analysis capabilities need to be boosted, both within and between individual entities (see *inter alia* Recommendation 16). In Turkey and elsewhere, analytical capabilities that may exist in headquarters are not readily available to regional offices. North Macedonia's financial police were praised for their quality analysis but officials stressed that they rely on data provided by other criminal justice actors; such data is generally not made available on any systematic basis.

Finally, some countries highlight the **unexploited potential of many stakeholders** indirectly involved in the fight against



illicit trade. In Romania, the view has been expressed that prosecution bodies could make more strategic use of information contained in studies and research produced by non-investigative agencies. In Serbia, police officers are well-aware of inspection agencies' potential when it comes to illicit trade, especially in relation to excise goods. As inspection agencies enjoy a generally higher degree of flexibility than the police, they often handle information that could be precious for criminal investigations. However, they are frequently insufficiently trained and/or reluctant to share information with competent enforcement agencies. This undoubtedly contributes to low numbers of criminal convictions for offences originally detected through administrative inspections.

## 4.6. Public-private cooperation

Overall, the private sector plays a marginal role in illicit trade-related criminal investigations in SEE. At the same time, there is growing consensus that efforts are needed to make both criminal justice actors and business representatives cognizant of the mutual benefits of their reinforced cooperation. This presents an opportunity that countries across the region should seize with both hands.

Many practitioners recognise the untapped potential of the private sector's involvement; business is widely viewed as an underutilised source of data and other information, operational intelligence, technical expertise, equipment and technology. Where engaged, the private sector's involvement in investigations stems from *ad hoc* regulatory frameworks compelling certain businesses to provide data. Alternatively, prosecutors or judges may request information in connection to a specific investigation or trial. Beyond these 'mandatory' scenarios, few examples emerge of private and official entities reaching out to each other in a proactive and voluntary manner (see Recommendation 33).

The following section has two parts. The first two examine the extent to which legal frameworks (or their absence) and cultural attitudes influence the development of public-private cooperation (see sections 4.6.1 and 4.6.2). The concluding sections give an overview of the status of the collaboration between the private sector and criminal justice actors from two angles: exchange of data, information and intelligence (see 4.6.3); and provision of material support, technological solutions and technical expertise (4.6.4).

### 4.6.1. Legal frameworks

A few countries explain low levels of voluntary public-private collaboration as the result of **gaps or inadequacies in existing legal frameworks** (see Recommendation 34). This might suggest that enforcement officers and others do not

feel adequately empowered – by legislation or otherwise – to engage directly with businesses in the course of investigating. In Croatia, some companies' attempts to provide technical equipment and software to support criminal investigations have been rejected on grounds that there is no legal basis for receiving such items.

A common limitation is that, without **certification by relevant ministries**, companies cannot provide their technical expertise. In Serbia, for example, the Ministry of Justice plays an important certification role. In North Macedonia, there are no apparent impediments to NGOs or private companies reporting counterfeits or illicit trade-related criminal offences, for example. However, when it comes to investigative support, technical expertise and forensic analysis, as well as provision of training and equipment, etc., this role can only be played by specially-registered private entities. These types of problems are connected to a certain regional interpretation of procedural rules of evidence. The view that the request and acquisition of technical information from private companies is non-permissible is the result of a **formalism** that is common across SEE, based on the principle that what is not expressly allowed and regulated is illegal (see Recommendation 33).

In the context of illicit trade investigations, public-private cooperation is most deliberate and closest when based on specific legal **frameworks that mandate active cooperation**. Typically, prosecutors may compel financial institutions to provide data on certain bank accounts, and monitor and periodically report on associated transactions. However, such procedural tools exist in practically in all jurisdictions and should not be misconstrued as a form of collaboration so much as due compliance with judicial orders.

Incentives to deepen collaboration may well come from **international legal frameworks** to which countries in the region have subscribed. These include UNTOC's Firearms Protocol and the Medicrime Convention. Both instruments directly encourage PPPs as key tools for supporting anti-illicit trade efforts.

However, when it comes to putting international standards into practice, as mentioned by experts from Albania, it often proves challenging for governmental agencies, businesses and industry bodies to sit down together and elaborate the concrete conditions and prospects for this cooperation to succeed.

### 4.6.2. Cultural attitudes

More detrimental than legislative gaps to the development of PPPs is a seeming reluctance of enforcement agencies and the judiciary to accept deeper private sector involvement. Some country advisors emphasised a **culture of 'non-interference' by private companies** in the public domain and

exercise of governmental prerogatives. Along these lines, experts from Montenegro and Turkey, among other countries, suggest that some private sector actors are not willing to proactively and voluntarily provide data or support to enforcement agencies. Companies prefer to stay on the sidelines unless they perceive that their business has been directly affected by criminality, which is often the case with infringements of their IP rights.

Lack of proactive engagement by the private sector is also partly explained by companies not always being fully aware of the potential benefits of cooperating with criminal justice authorities (and vice versa). In Bulgaria, national strategies and crime prevention policies recognise the significance of business cooperation. However, these strategic documents generally fail to concretise the concept of 'cooperation' in any meaningful way, beyond providing feedback on legislation or other initiatives taken by the executive, and businesses' widely-accepted reporting functions.

Albanian experts mention the usefulness of meetings being jointly organized by governmental and business entities in order to raise awareness on the specific role that businesses have in promoting legality and fighting informality in the economic sphere.

#### 4.6.3. Exchanging information and intelligence

In the context of criminal proceedings, information provided by the private sector cannot normally be used as evidence in trial unless corroborated by other evidentiary material. This is not to suggest that such information does not have value for initiating and steering investigations. Indeed, some countries report that private sector information is highly valuable for **identifying investigative leads, as well as trial-ready evidence**. In Greece, for example, criminal justice institutions place considerable importance on information and intelligence provided by private corporations and industry bodies, including those in the petroleum/fuel, pharmaceutical and tobacco industries. Such leads are almost always followed up, with significant results in uncovering offences and updating the knowledge of law enforcement agencies on crime dynamics and trafficking routes. In Greece, too, authorities have put in place measures to encourage and facilitate reporting to the authorities, including telephone hotlines.

On the other hand, one of the perceived challenges to public-private cooperation in the fight against illicit trade, from both a legal and practical point of view, is the fact that **information flows are fundamentally one-sided** and cannot be reciprocated by criminal justice authorities. Countries should take note of an emerging good practice that compels a level of two-way communication between criminal justice actors and private sector actors, including companies, that contribute to effective investigations and prosecutions. From a private sector perspective, businesses have a desire to

better understand the extent to which information that it provides to enforcement authorities is useful for the fight against illicit trade – and in what ways, and leads to effective enforcement actions.<sup>257</sup> In turn, the sharing of non-sensitive information with private sector contributors may lead to their provision of better and more helpful information in future.

Public-private information-sharing is relatively more advanced in the **detection of money laundering**. This can be explained by the existence of robust international standards that have generally been implemented in national legal frameworks. These frameworks compel banks, other financial institutions and certain professions (e.g. lawyers, notaries, estate agents, money changers, etc.) to carry out customer due diligence and report suspicious transactions.

However, the presence of mandatory anti-money-laundering regimes does not necessarily generate higher levels of private sector engagement. In Turkey, while banks are required to report on suspicious transactions, **penalties for non-compliance are not persuasive**. This means that private actors may accept the risk of penalties rather than miss out on lucrative opportunities with clients who might be linked to dodgy business activities.

One sector that stands out in terms of the general quality and frequency of information-exchange is **customs-business cooperation**. Unlike other national authorities in Montenegro, Customs appears to be more proactive in strengthening cooperation with the private sector. As a result, information exchanges for preventing and detecting violations of customs laws are common. Such exchanges may occur based on written agreements and include access to businesses' IT systems. On Customs' request, the owner or holder of a shipping vessel, aircraft or other means of transport, or their agent, may be compelled to provide a list of crew members, passengers and goods transported. This approach appears to be yielding results, with businesses showing interest in providing information on irregularities they have noticed with their business partners, passengers, service users, etc. Customs' risk management system uses data provided in the implementation of memoranda of understanding, including with air and maritime transport companies, in order to obtain information on shipments prior to their arrival. Customs have also signed cooperation agreements with large, multinational cigarette manufacturers in order to strengthen the fight against illicit trade in tobacco products.

Another category of information-exchange between private actors and customs authorities relates to the **detection of IP crime**. As rights holders, companies not only have a vested interest in the efficient work of customs administrations but can also sometimes rely on well-developed investigative procedures and networks of their own. In this way, the **private sector is a source of intelligence** that can fuel customs investigations. In Serbia, this form of cooperation is

functioning smoothly and has proven to be a great asset in discovering illicitly-traded goods as well as other customs infringements. All major international companies operating in Serbia have legal representatives, usually local law firms, who facilitate this cooperation.

In several countries, including Albania and Serbia, some companies organize **training for customs, police and prosecution officials** to assist them in distinguishing original and counterfeit goods. This has been valuable and contributed to deeper understanding of illicit trade. Serbian experts recommend further training for police and prosecutors, in particular, on potential modes of public-private cooperation in the context of illicit trade, as well as on counterfeiting/ piracy methods, modalities and detection.

Other countries have highlighted positive examples of cooperation. The Turkish government requires **transport companies** to enter passengers' personal details into a nationwide online system to enable enforcement and intelligence agencies to track individuals across the country. However, Turkish institutions do not have access to Advance Passenger Information Systems and International Air Transport Association databases.

Additionally, in Turkey, the Ministry of Health monitors **imported chemical precursors**, including those that may be diverted for the purposes of illicit production. Companies in Turkey are required to report the quality, quantity and purpose of such precursors. Although the Turkish health authorities and importing companies meet with one another, the Ministry of Health's oversight function is limited by inadequate resources and staffing. Moreover, the Ministry's lack of risk analysis teams, and intelligence collection mechanisms, undermine its role in the fight against illicit trade, especially in circumstances where companies rarely provide actionable intelligence about diversion. Based on reports from import companies and the Ministry of Health, no prosecution has been recorded in this field. The fact that Turkish enforcement agencies do have extensive intelligence collection and risk analysis capabilities highlights the importance of close cooperation between relevant ministries, regulatory/ inspection agencies and enforcement actors.

Likewise, cooperation between enforcement authorities and **car rental companies** is limited. Car rental services have proliferated in Turkey in the last decade, and criminals increasingly make use of them to diversify and spread risks. However, no sustainable cooperation mechanisms are in place. While enforcement units may establish *ad hoc* relationships with individual companies, thereby gaining access to Global Positioning System (**GPS**) data in connection to certain vehicles, legislation does not require systemic provision of GPS and other identifying information to investigators.

Overall, there seem to be opportunities for more extensive and preventative use of data and information possessed by

the private sector. Possible actions include measuring and communicating the incidence of illicit trade to affected communities of stakeholders and the general public, awareness-raising including via social media, and organization of training events.

#### 4.6.4. Material support, technological solutions and technical expertise

Greece and other countries have reported examples of successful cooperation in the provision of material support, including **donations of equipment and pro bono technical assistance** for detecting illicit products. Macedonian officials also reported good practices in the field of financial and technical forensic analysis, where government-authorised companies contribute crucial evidence to financial investigations. In relation to cybercrime, too, the private sector's expertise is appreciated, and companies are quick to respond to investigators' requests.

Albanian and Greek experts identify a promising area for partnerships between government and industry in the development and use of **track and trace technologies**. These can enable competent authorities to spot the movement of a specific product along the supply chain and identify if, and when, it was diverted for smuggling purposes. In this context, businesses are seen as a potentially rich source of data to complement law enforcement databases.

Another source of information of private sector origin relates to **surveillance camera networks**. In 2016, the Albanian Parliament made it compulsory for business operators to use cameras for public security purposes. Before the Constitutional Court, the law was challenged by the Association for the Protection of Merchants and the Market, which claimed that the law violated the right to privacy, undermined businesses' freedom of economic activity, and was disproportionate to the goals to be achieved. The Association's application was denied and, today, all businesses operating in Albania and which come within Law 19/2016's risk analysis scheme, have established video monitoring systems and, on request by enforcement authorities, produce recordings.

The establishment of PPPs, and provision of material and technical support, are overall assessed to be positive developments and desirable for illicit trade investigations and prosecutions. This is especially so when many enforcement agencies across the region struggle for adequate financial and other resources, only heightened during times of economic hardship.

However, caution has reasonably been expressed about the risk that unfettered and unregulated partnerships may interfere with the **independence and impartiality of criminal proceedings**. This risk can be somewhat mitigated

by establishing legal or other frameworks for deeper public-private cooperation, with checks and balances including in respect of monitoring corruption risks. Apart from corruption, the real risk is to make the effectiveness of investigations, a state duty, dependent on private material and technical support, which could potentially be offered selectively and/or withdrawn at will.

## 4.7. Adjudicating illicit trade offences

The sentencing of offenders is complex and depends on a variety of factors, including whether legislation sets minimum penalties for certain illicit trade-related conduct. In some countries, practitioners believe that penalties for certain offences are too lenient. In Turkey, for example, the common perception among enforcement officers and archaeologists is that penalties for illicit trafficking of cultural property, from three months to five years' imprisonment, are inadequate for deterring looters and smugglers. Other offences, typically those relating to more serious forms of illicit trade, are considered to attract sentences that are too harsh. Serbian experts point to the mandatory minimum term of three years' imprisonment for drug-related offences, which is applied irrespective of the offender's age or other personal factors, their lack of any criminal history, or the quantity or type of drugs that were sold in a certain case.

Illicit trade-related penalties are generally viewed as adequate from a legislative perspective. Nonetheless, several experts from the region point to **divergences between legislative frameworks and actual sentences imposed**. For example, in some cases, penalties imposed have been lower than those prescribed by law, or may significantly vary in cases involving similar conduct. In this context, country-level reviews highlight the general **absence of sentencing guidelines** across the region, where such a tradition is not well established (see Recommendation 23). While guidelines were used in North Macedonia until recently, an interviewed judge lamented their repeal because it meant the judiciary was "back where it started", relying too heavily on subjective factors in sentencing.

Such subjective factors may include the judiciary's perception of the seriousness of certain illicit trade offences. In BiH, advisors mention that lighter punishment is perceived as fairer in cases involving the smuggling of excise goods, whereas trafficking in human beings, narcotic drugs, and weapons warranted harsher sentences. Bulgarian judges reportedly impose tougher sentences for conduct involving illegal border crossings or that hits government revenue. Relatively more lenient sentences are observed in connection to THB cases in Bulgaria, where there may be an ingrained view that human trafficking victims consent to their treatment.

Sentencing may also be impacted by **judges' seniority and level of experience**. The Turkish criminal justice system, for example, has had to overcome the removal of thousands of judges and prosecutors following the 2016 attempted coup, and their replacement with less experienced magistrates. This has slowed down justice processes and contributed to a higher margin for error. In Albania, where sentences are generally viewed as excessively lenient in illicit trade cases, some judges reportedly struggle to grasp the key elements to be proven in corruption cases and fail to exercise their right to request more evidence.

Moreover, the judicial level at which an illicit trade matter is brought to court appears to impact sentencing. In Greece, lower courts tend to impose harsher sentences than higher courts, reportedly because they do not take due account of mitigating circumstances that should bear on sentencing. Lower courts in Albania also tend to impose higher sentences, but these are regularly overturned or modified by higher or appeal courts, except for more serious crimes.

The presence in a criminal justice system of sentencing guidelines is certainly positive. However, since statute punishments always have a minimum and maximum, it is ultimately up to the courts to determine sanctions in specific cases. A balance accordingly needs to be found between jurisprudence and lawmakers, where both the legal punishment and its concrete implementation are perceived as satisfactory in terms of efficacy and deterrence. In any event, it is important to note that increasing the level of punishments, in theory or practice, will never compensate for a low number of successful investigations and prosecutions.

**Plea deals are widely used in illicit trade cases**, including those linked to organized crime (see Recommendation 22). In circumstances where court proceedings can be complex, resource-intensive, lengthy, costly and unpredictable, plea deals present an attractive alternative. Serbian courts, for example, approved plea agreements in nearly 68% of organized crime cases for which a conviction was recorded in 2018.<sup>258</sup> Plea deals become more problematic when they authorise a sentence below legally-prescribed minimums. This issue has arisen in BiH, where the most serious corruption offences attract a minimum sentence of three years' imprisonment and technically, sentences cannot be suspended. Nonetheless, courts have approved plea agreements that give the green light to sentences below this threshold.

In Montenegro, case law reveals that plea deals usually led to more lenient prison terms even in drug trafficking cases. The European Commission has characterised this practice in Montenegro as a serious problem that undermines the credibility of the criminal justice system and contributes to impunity.<sup>259</sup> In 2019, 92.54% of final convictions for organized crime offences were based on plea agreements, as were all final convictions for serious crimes. In relation to organ-

ized crime offences, plea bargains resulted in sentences ranging from three months' 'imprisonment' at home to two years in prison, and fines from EUR 1,000 to 50,000.<sup>260</sup> From another angle, *SEE:IMPACT's* experts note that defence lawyers may prefer to decline a plea deal and proceed to trial, especially where there are prospects that an accused will receive a lenient sentence, or be acquitted on the basis that the investigation or particular evidence is tainted.

For matters that proceed to trial, sentences may be affected by consideration of mitigating factors in each case. In BiH, consideration of mitigating circumstances generally results in more lenient sentences for illicit trade-related offences.<sup>261</sup> A similar trend has been observed in Montenegro, where an accused was convicted and sentenced to eight months' imprisonment for weapons trafficking, below the one to three years prescribed by law. On sentencing, the judge pointed to mitigating factors including the accused's admission of liability, remorse, relatively young age, and socio-economic circumstances. In Romania, drug trafficking sentences can vary greatly depending on individual circumstances, from five to 12 years' imprisonment. Although variance in sentencing is to be expected in any criminal justice system, Romanian experts consider that such wide disparities tend to undermine public perceptions about the system's fairness.

Even where sentencing is conducted in accordance with law, perpetrators may not need to serve time in prison if their sentences are suspended or modified. In BiH, most sentences imposed on perpetrators who were convicted of organized crime-related offences in 2017 and 2018 were suspended.<sup>262</sup> Sentences may also be suspended in Greece, but other possibilities were also flagged including the substitution of prison terms with community service and conditional release. The possibility of substitution with fines was repealed in 2019.

In the Institute's view, the seriousness of any organized crime-related offence should render a suspended sentence impossible.

Kosovo faces resource-related challenges in adjudicating illicit trade cases among others. Insufficient numbers of judges, and low levels of judicial specialisation, are undermining the jurisdiction's ability to address a massive backlog of unresolved cases.<sup>263</sup> However, significant recruitments and progress in improving the efficiency of court proceedings in recent years are reportedly having positive results.





# Confiscating instrumentalities and proceeds of illicit trade

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# Confiscating instrumentalities and proceeds of illicit trade

**The possibility to confiscate proceeds of crime and instrumentalities has practically always existed in national law. However, the use of legal enhancements and mechanisms designed to facilitate confiscation actions by the competent authorities (e.g. extended and non-conviction-based (NCB) confiscation) is in its infancy, especially in the WBs.<sup>264</sup>**

All countries in SEE have adequate, if imperfect, legal and institutional frameworks in place to support criminal asset recovery. But even with robust legal frameworks, the overall number of confiscation procedures launched at the national level and their results remain very low, especially in terms of the quantum of criminal assets confiscated. Herein lies the implementation gap between legislation that is generally fit for purpose, and its practical application and outcomes.

In practice, challenges relating to criminal asset recovery largely fall into four broad categories:

- specific legislative gaps and inconsistencies, and apparent confusion about how existing provisions are to be applied, especially where confiscation regimes overlap or potentially conflict, and criminal justice officials may not fully appreciate the distinction between sometimes basic notions such as direct versus extended confiscation;
- the need to build further capacity and resources into specialist bodies conducting financial investigation;
- practical difficulties with identifying and tracing criminal proceeds and other assets; and
- storing and managing seized and confiscated assets.

## 5.1. Legal/institutional frameworks and their application

In recent years, considerable assistance has been rendered to WBs countries, in particular, for improving legal frameworks for criminal asset recovery. Today, most jurisdictions have instituted laws on accessing financial information, seizing and freezing criminal property, and asset management. Moreover, most countries have modernised their legal regimes through the introduction of extended, third party and NCB confiscation.

These efforts must be sustained, especially in WBs countries and Turkey that still have important work to do in building and/or reinforcing such frameworks:<sup>265</sup>

- While legislation generally provides for classical, extended and NCB confiscation, BiH is yet to elaborate a comprehensive, coherent framework for criminal asset recovery and management.<sup>266</sup> One major challenge is that the state and entity levels take different approaches including to NCB confiscation procedures; these have been elaborated for BiH's three entities but not at the state level, and different rules apply even between the entities.

- While Albania, in turn, has established robust frameworks and significantly stepped up its asset recovery efforts,<sup>267</sup> two main challenges emerge. First, extended confiscation can only be applied in connection to organized crime-related offences under the so-called anti-mafia law.<sup>268</sup> Secondly, Albania is yet to establish an asset recovery office (**ARO**) to take charge of identifying and tracing criminal assets (see Recommendation 26).<sup>269</sup> Other related legislative enhancements, such as 'unjustified wealth' provisions, are yet to be adopted.
- Similarly, Montenegro's ARO does not have direct access to all relevant databases.<sup>270</sup> More broadly, Montenegro is urged to prioritise and significantly improve its track record on seizure and confiscation.<sup>271</sup>
- Serbia faces particular challenges in systematically applying extended confiscation, due in part to inconsistency between the criminal procedure code and the 2016 law on seizure and confiscation of proceeds of crime.<sup>272</sup>
- While acknowledging improvements in its use of temporary freezing measures, North Macedonia has been called on to amend and align legislation with a new strategy on financial investigations and asset confiscation.<sup>273</sup> The powers and resources of justice actors should also be strengthened to make temporary measures (seizure, freezing) possible even in the early stages of investigations. Experts further note that extended confiscation provisions can only be applied in terrorism, money laundering and organized crime cases.
- Kosovo's Law on Extended Powers for Confiscation, which supplements the Criminal Code on extended/third party confiscation, is a major step forward. After a final conviction, this regime can be applied against the accused and third parties in cases involving a diverse range of serious crimes directly related to illicit trade and organized crime, or where criminal proceeds exceed EUR 10,000. However, Kosovo's ARO needs to be operationalised and further supported.<sup>274</sup>
- Turkey's legal framework for the confiscation of proceeds of crime has been criticised for a lack of coherence, and its capacity to manage seized and confiscated assets needs improvement.<sup>275</sup>

Looking beyond the WBs, most EU members in SEE have enabled extended confiscation for a specified list of offences, although different legislative criteria may guide national courts in determining whether the asset in question originated from unlawful conduct. In relation to NCB confiscation, different models and hybrid approaches are detected. While Greece's system is conviction-based, there is some scope to confiscate unexplained wealth through tax law. Croatia's classical NCB approach permits confiscation in the absence of a criminal conviction when an accused is unfit

to plead or otherwise unavailable to authorities (i.e. death, flight or illness), and the value of relevant assets exceeds around EUR 8,000. Other EU members in the region apply different approaches. Civil proceedings in Bulgaria and Slovenia may permit forfeiture without a criminal conviction, subject to certain requirements being met.<sup>276</sup> Slovenia's classical NCB confiscation regime, however, is restricted to corruption and money laundering cases. Finally, Romanian officials can utilise both classical NCB procedures as well as unique administrative provisions for confiscating the unexplained wealth of public officials, although the scope of the latter is limited.

Beyond these country-specific observations, several regional challenges have been identified in connection to asset recovery frameworks and their practical application. One concern relates to **overlapping or fragmented confiscation regimes**. In Bulgaria, there appears to be a real risk that different, poorly-connected confiscation regimes conflict with one another, and that the same assets could theoretically be confiscated more than once but on different legal grounds. A similar issue is relevant to Greece, where multiple confiscation provisions could apply in connection to the same offences, without full alignment in the scope and conditions for criminal asset recovery.

Apart from the existence of multiple confiscation regimes, it is also generally true that confusion arises because prosecutors and judges do not always have an adequate grasp of basic notions, such as the distinction between direct and extended confiscation.

More broadly, extended and NCB confiscation regimes, which widen the permissible scope of asset recovery actions, appear to be causing ongoing legal uncertainty in the region, with several regimes under challenge and needing revision. Such concerns recently manifested in Albania, where a far-reaching anti-corruption law was returned to Parliament for reconsideration due to concern about its compatibility with human rights standards and constitutional powers.<sup>277</sup> Constitutional concerns and challenges have also affected extended confiscation regimes in Slovenia and Romania. In Romania's case, two Constitutional Court decisions have considered the regime's scope, specifically the offences to which it can be applied and other necessary conditions, which is now being considered by the legislature.

In Croatia and other countries, experts pointed to the general **lack of jurisprudence and other guidance** for applying extended confiscation measures. Albania has also been recommended to elaborate and implement presumably internal 'rules' on extended confiscation (and precautionary asset freezing).<sup>278</sup>

Doubt and confusion around confiscation regimes help to explain practitioners' **apprehension about commencing confiscation proceedings**. In North Macedonia, practition-

ers expressed concern that defendants who are not ultimately convicted may sue the State for compensatory damages in connection to the application of temporary measures such as freezing and seizure. This situation materialised in Montenegro, where EUR 50 million was temporarily seized from two individuals who were ultimately acquitted of criminal association offences; the State was

obliged to return their property and compensate associated damage. To prevent this situation in future, Montenegro has sought to use plea deals in order to assure convictions, but this has not increased the number of final confiscations.<sup>279</sup> The solution clearly lies in ensuring that investigations and prosecutions are of good quality.

#### CASE STUDY

### Reusing confiscated assets for governmental and social purposes

The reuse of confiscated assets has not comprehensively studied at the regional level. In general, confiscated assets (either the assets themselves or proceeds from their sale) may be reinvested into government services or used for other social purposes, in cases where specific legal and regulatory frameworks have been elaborated.

Four SEE countries (Slovenia, Romania, Greece and Albania) have legal frameworks that permit both government and social reuse:

- A Slovenian regulation permits the transfer of assets to NGOs if their sale is not possible or desirable from a financial standpoint, or potential beneficiaries can demonstrate their need.<sup>280</sup>
- In Romania, confiscated property can be transferred to state or local authorities, educational bodies and NGOs to be used for social purposes. Revenue from the sale of confiscated assets is allocated according to a scheme that prioritises social reuse.<sup>281</sup> The General Directorate of Public Finance maintains a website on which goods available for social reuse are listed, and eligible beneficiaries can apply.<sup>282</sup>
- In Greece, Law 251/1976 provides for movable assets (e.g. vehicles, ships, machinery, etc.) to be transferred to state or local authorities for reuse. According to Law 4270/2014, the State can also devote confiscated funds to educational, research, health, training and social solidarity programs.<sup>283</sup>
- Assets confiscated under Albania's anti-mafia law are pooled in a dedicated fund to be used for: strengthening the criminal justice system and

investigations into organized crime; supporting and compensating victims of organized crime and related social programmes; and funding NGOs that work with vulnerable members of society, especially communities affected by organized crime. The asset management agency currently collaborates with NGOs on a project promoting social entrepreneurship through the repurposing of assets (e.g. buildings) that have been confiscated from OCGs.<sup>284</sup>

In contrast, Bulgarian and Croatian law permit only governmental reuse.<sup>285</sup>

Except for Albania, WBs jurisdictions have not established funds or reuse programs, although this appears to have occurred on an *ad hoc* basis in BiH and Montenegro (through reuse or donations).<sup>286</sup> The project's Croatian advisor also reported instances of social reuse (for example, judges ordering the donation of confiscated assets to schools).

It is also noted that Albania, BiH, Bulgaria, Croatia, Kosovo, Montenegro, North Macedonia and Slovenia are members of the Balkan Asset Management Interagency Network (**BAMIN**), an informal network of asset recovery practitioners.<sup>287</sup> Members can exchange intelligence and information on asset management procedures via BAMIN, as well as exchange good practices, facilitate training and elaborate policy recommendations on asset recovery and the reuse of confiscated assets among other topics.<sup>288</sup>

All SEE countries should review their confiscation regimes in light of regional experience and lessons learned in relation to the reinvestment of confiscated criminal assets, and consider establishing a concrete legal basis for both governmental and social reuse (see Recommendation 27).

## 5.2. Capacity and resources for financial investigations

While SEE countries recognise the vital importance of financial investigations for tackling illicit trade, such investigations are generally not run in parallel with investigations into underlying criminal offences (see Recommendation 19).<sup>289</sup> Capacity in this field is gradually increasing over time, but there is still a need to build further expertise, especially among enforcement personnel. In Montenegro, economic crime expertise has been identified as a need within police and prosecution bodies, with judges who preside over complex cases also standing to benefit from more specialised training.<sup>290</sup> This is a crucial point because many judges do not have a clear understanding of concepts like 'disproportionate to the level of legitimate income' and, above all, 'proof of legitimate origin'. In some countries, including Serbia, judges accept mere assertions as to the allegedly legitimate source of a person's income as evidence (e.g. "I had money because I worked in Germany").

Even where training is made available, greater institutional support and engagement may be needed to encourage practitioners to seize these kinds of opportunities. In Kosovo, for example, specialised courses for judges and prosecutors have reportedly been poorly attended.<sup>291</sup>

Even where capacity exists, already overburdened investigators may **lack enough resources to pursue criminal asset recovery**. Romanian prosecutors, for example, may decide not to investigate the criminal network connected to drug trafficking offences because they are already overloaded with cases. In Turkey, a limited and insufficient number of financial intelligence analysts can be made available to work on illicit trade schemes. Resource constraints also affect the broader work of the Turkish FIU, which has one office in Ankara that sometimes struggles to support investigations at the provincial level. In Serbia, two of the five forensic financial investigators envisaged for an anti-organized crime and corruption unit had been employed by 2019.<sup>292</sup>

But it is not simply a matter of resources. Countries need to greatly improve their proactivity and level of innovation in pursuing criminal asset recovery in organized crime and corruption cases.

## 5.3. Practical impediments to identifying, storing and managing criminal assets

Criminals, and especially sophisticated crime networks, are effective in disguising their profits and other assets to obstruct the work of investigators. This means that financial investigations face significant challenges related to a lack of

transparency around money flows, making it difficult to determine who owns what assets and where. In Croatia, practitioners refer to challenges when money is transferred to foreign banks, in jurisdictions where bank secrecy is invoked to prevent the disclosure of crucial financial information.

Practitioners report that North Macedonia has adequate asset recovery frameworks and mechanisms for quickly securing assets based on official information.<sup>293</sup> Challenges are of a more practical nature, in **obtaining enough and timely information from relevant institutions** for the purpose of identifying and tracing criminal assets. Relatedly, the EU has called for "[a] more integrated operational approach to effectively ensure asset recovery".<sup>294</sup> This situation is exacerbated by the country's largely cash-based economy. Investigators struggle to monitor cash payments, especially in migrant smuggling cases where perpetrators utilise informal money transfer systems like *Hawala*; in such cases, payments are virtually impossible to track. Informal payment systems also present major challenges for Turkish enforcement agencies as penalties for 'Hawaladars' engaged in money laundering schemes are not clearly defined in legislation. Moreover, Slovenia and other countries report an increase in the use of digital currencies, which is further complicating criminal asset recovery efforts in illicit trade cases.

Similar challenges apply in Albania, which has been criticised for lacking a "strategic or systemic approach to identify and confiscate criminal assets located abroad".<sup>295</sup> A national asset recovery strategy is in the process of being drafted.

Practitioners also face **challenges in distinguishing criminal assets that are comingled with legal assets**, another common technique used by criminals to evade detection and asset recovery. Certain assets may be registered in the names of a perpetrator's family members or others more remotely associated with the perpetrator. In BiH, for example, it is extremely difficult to confiscate property not directly owned by a specific perpetrator, including assets for which ownership has been transferred to others in order to obstruct investigations. A similar story applies in Turkey, where criminals do not register properties in their names or those of immediate family members. Properties and bank accounts are officially controlled by relatives, drivers and bodyguards who are most loyal.

This problem arises from **the concept of ownership generally adopted in domestic legislation**. Usually, financial investigations, and asset seizures and confiscations, are ordered against the owner of the assets targeted. As defined by lawmakers, ownership reflects the formal situation as recognised by law, and is therefore formally binding on third parties. However, such legal frameworks neglect cases where formal ownership is merely a façade (i.e. the formal owner is not the person who can take decisions regarding

the use, sale or more generally, fate, of the asset). Criminals, especially in organized crime cases, often use frontmen from the outset to obscure the owner (or controller) of assets in reality. In these situations, there is technically no transfer of assets; the frontman directly acquires property with money provided by the relevant criminal actor (usually, a feared criminal) who then becomes the proprietor. In such cases, legal provisions for confiscation from third parties cannot assist because there has not been an asset transfer to any third party. The solution might be to opt for a broader notion of ownership, comprising individuals who, regardless of formal ownership, exercise full control over the asset (through sale, renting, use, etc.), i.e. the 'beneficial owners'.

Distinguishing criminal and legal assets is also complicated by sometimes **inaccurate property records** held by key agencies dealing with land and real estate registrations, for example. Croatia's outdated land registries have been flagged as problematic. The register of Montenegro's Real Estate Directorate may also be unreliable as a result of owners' failure to register their properties.<sup>296</sup> North Macedonia is reported to lack robust mechanisms for monitoring and sanctioning individuals for failing to register property that they lawfully hold. Even where registries and databases are up-to-date, relevant agencies may not have access to information they need to investigate effectively. In Serbia, enforcement agencies and prosecution services do not have direct access to tax databases or registries for land and vehicles among others.<sup>297</sup> An inter-agency agreement was signed in 2017 to give Montenegrin authorities mutual access to relevant databases but implementation challenges remain: some relevant agencies are yet to sign-on and, in the case of national police databases, these are not interoperable and lack basic search functionality.<sup>298</sup>

Once criminal assets are identified, national authorities need to move quickly to engage asset recovery and management processes. Storage is important because it allows frozen and seized contraband, cash or even moveable property like vehicles or boats, to be held while these and other criminal justice actions unfold. However, many countries report **lack of adequate storage facilities to meet current demand**. In Croatia, the responsible ministry does not have the storage room, protocols or people to take care of all confiscated assets. Storage capacity is strained especially when legislation or practice dictates that authorities retain the full quantity of seized drugs, for example, rather than a sample to be used as evidence in court proceedings. This is true for Albania and North Macedonia.<sup>299</sup> Both countries have been recommended to boost their capacities to securely store and destroy seized drugs and precursors.<sup>300</sup> In Albania's case, an appropriate process for destroying precursors will also need to be introduced.<sup>301</sup>

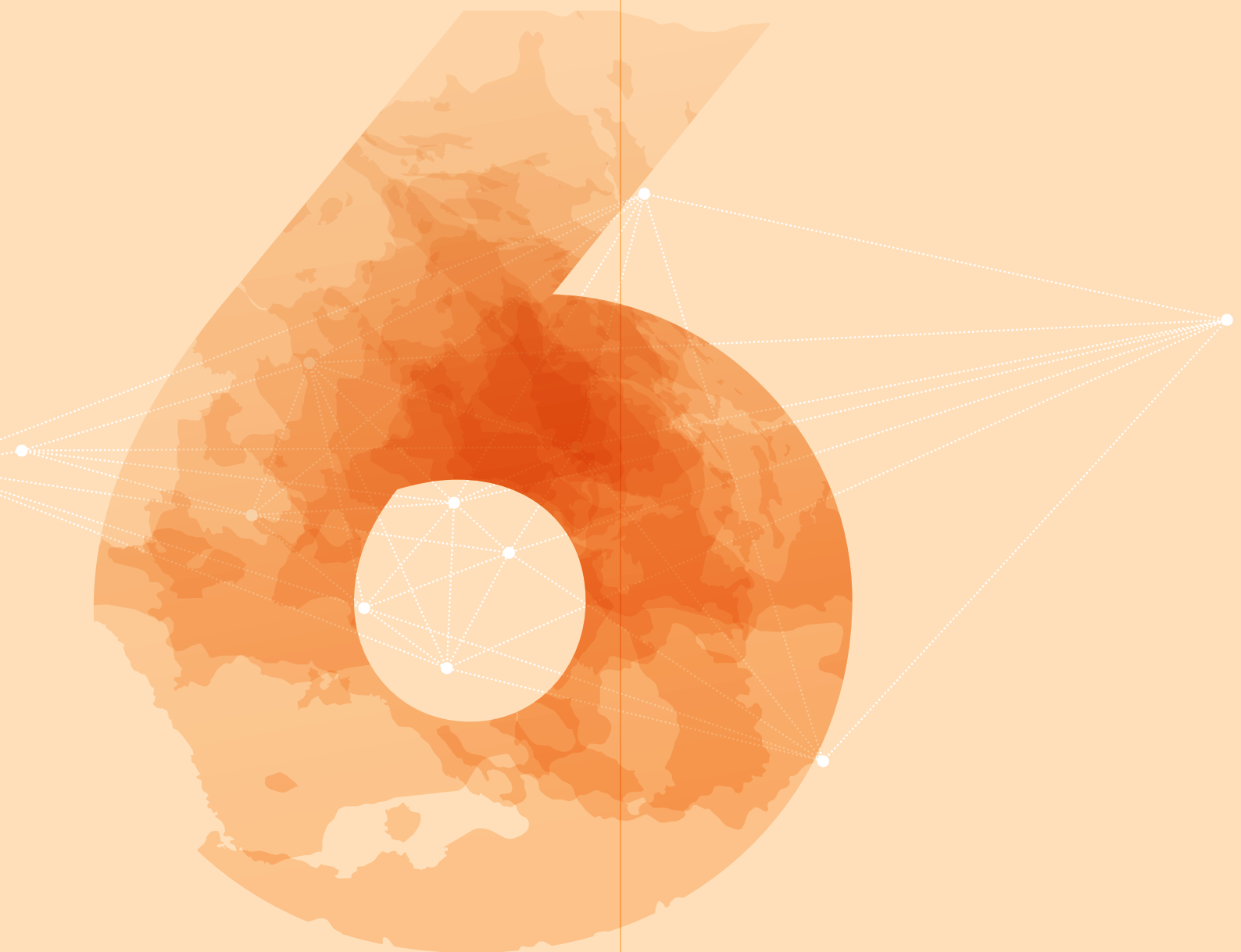
Laws in several countries also make it **difficult for frozen and confiscated assets to be sold**. In Croatia, where property can only be frozen for two years, a failure to confirm an indictment within this period means that seized property must be released. This has happened in at least two high-profile cases. In BiH, the law provides that seized property should be managed in the spirit of a 'good host'. However, this standard has resulted in high implementation costs while also preventing authorities from selling seized assets. Both Albania and Turkey have been urged to improve their capacity to manage frozen and confiscated assets so that they do not lose economic value.<sup>302</sup>

In Montenegro, criminal asset recovery is further undermined by the lack of national, standardised systems for the collection of data on frozen, seized and confiscated assets, and their estimated value.<sup>303</sup>



# Regional and international cooperation

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# Regional and international cooperation

## 6.1. Collective efforts, uneven results

Regional and international cooperation is widely recognised as crucial but uneven across SEE. Some countries may more readily cooperate based on longstanding socio-political, linguistic, religious and cultural ties. Neighbouring countries also have a mutual interest in close cooperation, on border management and other threats including illicit trade. However, common borders do not necessarily translate into effective cooperation; Kosovo and Serbia's ongoing political tensions have wider ramifications for the region's security and tend to prevent Kosovo from making a more impactful contribution to the fight against illicit trade in the Balkans.

In recent years, several developments have brought some neighbours closer together, namely the 2018 border demarcation agreement between Montenegro and Kosovo, and the 2019 Prespa Agreement between Greece and North Macedonia, which paved the way for North Macedonia's accession to the North Atlantic Treaty Organization (**NATO**) in March 2020. These should serve as stepping-stones toward stronger political cooperation on cross-border crime, and a more coordinated operational response to the many shared challenges that lie at the core of this report.

Regional cooperation is also uneven depending on the form of illicit trade under consideration, which ultimately reflects political choices and priorities. These political choices are also partially shaped, particularly for WBs countries, by donors' enlightened self-interest. Countries have proven increasingly effective over many years in working together against drug and human trafficking, and migrant smuggling, three top-order concerns for the European Commission and EU Member States.

This is also reflected in joint investigations coordinated by SELEC, discussed in more detail below, the majority of which relate to the trafficking of drugs and people. In contrast, cooperation levels are markedly less significant in relation to other forms of illicit trade, namely in medical products, cultural artefacts, excise goods such as alcohol and tobacco, and illegal logging.

Regional and international enforcement agencies, and likeminded countries in the EU and elsewhere, are important allies for ensuring no safe harbour for perpetrators of large-scale, cross-border illicit trade. Collective security depends on the broadest and deepest cooperation possible at all levels, converted into operational results.

As detailed in this chapter, cooperation between SEE countries takes various forms, including:

- Formal cooperation based on mutual legal assistance (**MLA**) and extradition agreements.

- Deploying liaison magistrates and enforcement officers to other countries as well as international organizations.
- Other forms of law enforcement cooperation including information-exchange, coordination units and teamwork at the border.
- Joint investigations.
- Use of international law enforcement bodies' platforms and initiatives (e.g. SELEC, Europol, Interpol).
- Jointly produced risk and threat analyses.
- Peer-to-peer networks, which appear to be most well-established for prosecutors.

These forms of cooperation are, by and large, complementary. They serve as mechanisms for closer communication, information-sharing and joint action in pursuit of perpetrators, their associates and ill-gotten profits. However, their application in practice is uneven, as are the results. This presents opportunities for all countries to make full and effective use of the entire 'toolbox'.

## 6.2. Forms and modalities

### 6.2.1. MLA and extradition

In relation to MLA and extradition, nearly all SEE countries can cooperate with partners in the region on the basis of bilateral, regional and multilateral agreements such as the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters, UNTOC as well as the UN Convention against Corruption (**UNCAC**) among others.

However, one jurisdiction stands apart from the rest. While Kosovo is not party to regional or multilateral treaties in criminal matters, it has entered into bilateral MLA agreements with a handful of countries in the region, namely Albania, Croatia, Montenegro, North Macedonia and Turkey. In 2015, Kosovo and Serbia agreed on the Procedures on Mutual Legal Cooperation, which form the basis of their judicial cooperation. For formal cooperation with other non-EU jurisdictions, including BiH, Kosovo usually needs to rely on the principle of reciprocity.<sup>304</sup>

Some practical MLA challenges frequently arise in all countries. Delays may be due to **difficulties in identifying an appropriate legal basis** for responding to certain requests, or **complicated procedures** for processing requests at the national level, sometimes involving multiple authorities depending on the procedural stage at which the request is formulated.

Several countries noted that their MLA requests are sometimes left unanswered by foreign partners. Bulgarian practitioners observe a general lack of responsiveness although not for all forms of illicit trade: on human trafficking cases, cooperation with neighbouring countries has been prompt and effective.

Legislative and procedural asymmetries may prove an obstacle to international cooperation, and sometimes cause for evidence obtained from abroad to be eventually found inadmissible by the courts of requesting countries. For example, not all countries recognise the principle of corporate liability for the commission of criminal offences by individuals acting on behalf of the corporation. This may prevent the **provision of assistance in cases involving legal persons**. For example, in Greece it is contested as to whether the country's central authority could provide MLA in investigations into a company's involvement in illicit trade. Another potentially more serious challenge concerns requests to waive bank secrecy in illicit trade cases involving misdemeanours, rather than felonies; in Greece, such requests may be denied.

As noted above, central authorities play a crucial role in MLA. However, the **division of competences among multiple central authorities** at the national level may frustrate mutual assistance processes. Navigating Romania's three central authorities is illustrative: the Ministry of Justice handles requests relating to trials and execution of sentences; the Prosecutor's Office of the High Court of Cassation and Justice handles those relating to investigations and criminal prosecution; and the Ministry of Internal Affairs handles criminal record requests. Within the Romanian Prosecutor's Office, and depending on the relevant criminal offence, competence is further subdivided between DIICOT, DNA, and the Service for International Cooperation, International Relations and Programs; the latter handles requests relating to offences other than organized crime, corruption and terrorism. For different cross-border matters (e.g. controlled delivery, covert investigations, temporary transfer of a person to an investigating country, etc.), the central authority may be the Ministry of Justice or the Prosecutor's Office.

Bulgarian and Serbian advisors also point to the unclear allocation of competences in assisting countries as a significant obstacle to MLA. Accordingly, Serbia has been recommended to establish a single national point of contact for international judicial cooperation.

Greece and many other countries, do not have the benefit of **systematically collected and analysed data** on MLA requests, their rate of processing and outcomes. This is an obstacle for assessing how MLA is handled. However, Serbia's and Montenegro's implementation of an electronic case management system, in partnership with The Netherlands,<sup>305</sup> is positive and gaining broader traction in the region. **LURIS**, as the system is known, has been operational

in both countries since 2015/2016.<sup>306</sup> Recent research indicates that LURIS is working in Montenegro and contributing useful data for reporting to the European Commission as well as comparing Montenegro's efficiency with EU members and WBs neighbours.<sup>307</sup> In 2018, LURIS was also implemented in North Macedonia for the Ministry of Justice's MLA Department.<sup>308</sup>

Another common challenge relates the **unmet human resources and capacity needs** of MLA central authorities across the region, including an apparent **lack of high-quality translators**. Resource and capacity limitations slow down MLA and, in turn, undermine effectiveness of investigations and prosecutions. Several countries have committed to boosting their resources. For example, in Montenegro, the Ministry of Justice's MLA Directorate staff of five, which reportedly needs to double in size in order to meet current and future demands, deals with both civil and criminal matters. A total of two investigative judges from higher courts in Podgorica and Bijelo Polje act on rogatory letters as part of their normal workload, but proposed amendments may extend this competence to basic court judges, too. Similarly, in North Macedonia, the Ministry of Justice's International Legal Assistance Department works with two thirds of its planned staff.<sup>309</sup>

On extradition, and other key modalities for international cooperation in criminal matters (e.g. transfer of proceedings and transfer of sentenced persons), no specific issues were raised in the course of this project's country-specific analyses.

### 6.2.2. Deploying liaison magistrates and enforcement officers

MLA can be buttressed by the deployment of liaison magistrates (i.e. prosecutors or judges) and enforcement officers to foreign countries and international organizations, and *vice versa* (see Recommendation 37). Traditionally, liaison magistrates from certain EU Member States have been deployed to SEE countries, serving as on-the-ground focal points for information-sharing, follow-up and trouble-shooting in mutual assistance procedures. Liaison enforcement officers from the region are also deployed to regional bodies like SELEC and Europol. SELEC's headquarters aims to host, from all members, a police and customs liaison officer; they interact directly with the national focal point in each member country. The Center also hosts, on a part-time basis, liaison officers from foreign enforcement agencies.

Europol and Frontex have deployed their own liaisons to the WBs as a means of further strengthening cooperation with EU candidate countries. Since 2016, Europol and Frontex have significantly accelerated deployments. Overall, these trends may promise a new, more mature and effective phase of cooperation between SEE and the EU and its enforcement agencies.

In 2016 and 2017, **Frontex liaison officers** have been deployed respectively to Turkey and the WBs (Belgrade). In 2018, Frontex liaisons were also deployed to several EU countries in SEE, namely Bulgaria, Croatia, Romania and Slovenia. Frontex's cooperation with Greece is more longstanding, as its Pireaus liaison office opened in 2010. This was brought to bear when Greece requested rapid assistance in early 2020 to manage a mass influx of migrants at its land border with Turkey.<sup>310</sup>

In 2019, Europol's first liaison office in the WBs was established in Tirana, Albania, complementing the earlier deployment of an Albanian police officer to Europol's headquarters. Future Europol liaisons have been flagged for BiH and Serbia.

The headquarters of **Eurojust hosts liaison prosecutors** from some WBs countries (see table 14 below), notably North Macedonia, Montenegro and Serbia,<sup>311</sup> and cooperation agreements were concluded with Albania<sup>312</sup> and Serbia.<sup>313</sup> Since 2014, BiH has had a designated contact point with Eurojust and a cooperation agreement is under negotiation; this has reportedly not prevented BiH from participating in joint investigations and coordination meetings, or providing other investigative assistance.

**TABLE 14**

#### **Eurojust cases involving SEE liaison prosecutors, 2019**

Desk	Cases initiated by national desk		Participation in cases initiated by other desks	
	New in 2019	Ongoing	New in 2019	Ongoing
Montenegro	2	1	10	10
North Macedonia	5	-	16	14

Source: Eurojust, *Annual Report 2019*

In addition to tried and tested deployments, more **innovative liaison magistrate arrangements** are worth considering on a case-by-case basis (see Recommendation 37). For example, EU countries such as Italy, France, Germany and the UK, which have a longstanding presence and interests in the region as well as extensive experience in building liaison magistrate networks, should consider hosting liaison prosecutors from select WBs countries. This approach is being trialled through a UN-led project involving deployments of Nigerian prosecutors to Italy and Spain. In a few short years, the project has contributed to building trust, fostering hands-on professional mentorship, generating positive results in mutual assistance related to migrant smuggling and other organized crime-related cases, as well as sparking new investigations and prosecutions.<sup>314</sup>

### 6.2.3. Other forms of law enforcement cooperation

Law enforcement and criminal justice officials routinely communicate and exchange information with counterparts in the region on various cross-border matters. This is often based on **ad hoc sharing of information and intelligence** between enforcement officers. Turkish enforcement officers, for instance, prefer to communicate directly with foreign counterparts for reasons of speed, efficiency and reliability. For informal communication to be effective, however, counterparts need to know each other and maintain relatively close working relationships (for more on associated challenges with higher-than-usual turnover in enforcement agencies, see section 4.4.2). Beyond enforcement, Serbian courts regularly communicate on an informal basis with counterparts in Montenegro, BiH, North Macedonia and Slovenia, and this has proven effective from a Serbian perspective.

**International Law Enforcement Coordination Units (ILECUs)**, established at the national level, facilitate cooperation with both foreign and international enforcement agencies. In essence, they serve as a national focal point for police-to-police cooperation and exchanging operational information. With EU support, ILECU have been set up in seven countries (the WBs and Croatia) and delivered some promising results.

ILECUs in Serbia and Kosovo, established in 2010 and 2011 respectively, have interacted on an informal basis to speed-up cooperation with the UN Interim Administration Mission in Kosovo (UNMIK), for example, and coordinate cross-border operations.<sup>315</sup> This is because cooperation through UNMIK or EULEX can be time-consuming. Indeed, Kosovo's ILECU has assumed special importance in the absence of formal cooperation agreements with Europol or Interpol. However, workarounds and band-aid solutions can only be applied for so long; from a regional cooperation perspective, it is imperative that these two international agencies do their bit to level the playing field by entering into strategic agreements with Kosovo.

In BiH, it remains to be seen if its ILECU will help or hinder cooperation across a complex array of enforcement agencies, including 15 police entities and a state-level coordinating body.<sup>316</sup> Consultations with BiH and international officials indicate that the status and legitimacy of this existing coordination body is contested.<sup>317</sup> Ultimately, BiH arguably has an over-abundance of capable institutions and cooperation mechanisms, but these are undermined by a lack of sufficient political will to cooperate across ethnic divides; such divides permeate the country's complex institutional arrangements that tend to prioritise consensus over effectiveness.

Other effective forms of cooperation are utilised at borders, especially to combat cross-border challenges like migrant

smuggling. For example, **police coordination centres** involve all WBs jurisdictions, and have been established between: BiH, Serbia and Montenegro; North Macedonia and Serbia; and Montenegro, Albania and Kosovo. The Kosovar and North Macedonian police institutions also signed a protocol to establish a joint task force.<sup>318</sup>

**Joint border patrols** and other integrated border management initiatives bring together jurisdictions such as Slovenia and Italy, Bulgaria and Turkey, as well as Albania, Kosovo and Montenegro. Indeed, the only direct and formal cooperation between Serbian and Kosovo enforcement agencies takes place in the context of their Integrated Border Management Agreement. While this agreement has been in-force since 2013, implementation remains incomplete; permanent border crossing points, for example, are yet to be established.<sup>319</sup> Full implementation is vital for the region's security, with the Kosovo-Serbia border a known hotspot for illicit trade.

Other examples point to successes in inter-agency cooperation at the regional level. **Customs-police cooperation** is fostered through joint contact centres near major border crossings, such as those established by Bulgaria and its neighbours. Since 2016, law enforcement and prosecution officials from BiH, Bulgaria, Croatia, Hungary, North Macedonia and Serbia have regularly met under the OSCE's auspices, to discuss emerging challenges in the field, opportunities for regional cooperation and information-sharing, and necessary steps to strengthen cooperation.<sup>320</sup>

While all SEE countries are WCO members, customs-to-customs cooperation, including through the WCO itself, did not feature prominently in country-level analyses, and the reasons for this are unclear.

TABLE 15

WCO membership dates for SEE countries

Greece	1951
Turkey	1951
Romania	1969
Bulgaria	1973
Albania	1992
Slovenia	1992
Croatia	1993
North Macedonia	1994
Serbia	2001
Montenegro	2006
BiH	2008
Kosovo	2017

Source: WCO

## SIDE NOTE

**Customs-to-customs cooperation under the Naples II Convention**

Without prejudice to national laws that set out the powers and prerogatives of customs administrations, all EU members are obliged to implement the Naples II Convention on international customs cooperation (see Recommendation 11). Like EU members, candidates also need to align their customs frameworks with the Convention's provisions. Crucially, Naples II provides a legal basis for five special forms of customs-to-customs cooperation in preventing, investigating and prosecuting illicit trade (e.g. trafficking in illicit drugs and precursors, weapons, cultural goods, hazardous waste, excise goods, etc.) and other customs violations:

- Hot pursuit across borders.
- Cross-border surveillance.
- Controlled delivery.
- Covert investigations.
- Use of joint special investigations teams.

Except for 'hot pursuit', which is unique to Naples II, these investigative measures are also encouraged under UNTOC and UNCAC.

#### 6.2.4. Joint investigations

In recent years, greater attention has rightly been paid to joint investigations in the Balkans, often facilitated by the establishment of **ad hoc joint investigation teams (JITs)**. These constitute a further example of formal cooperation between judicial, police and customs authorities from different countries. JITs are universally recognised as a good practice.

Although UNTOC and UNCAC encourage States Parties to establish JITs, these and other international instruments (e.g. Police Cooperation Convention for Southeast Europe, EU Convention on Mutual Assistance in Criminal Matters) provide limited guidance on their composition, powers and prerogatives. These details are usually fleshed out in **detailed agreements between participating countries**. Such agreements appear to be especially important for countries like Albania, where national law does not directly authorise the establishment of JITs.<sup>321</sup>

SELEC, Europol, Eurojust, Frontex, Interpol and the WCO have important roles to play in setting up, facilitating and potentially co-financing such investigations (see Recommendation 31).

**SELEC**, the region's main enforcement body,<sup>322</sup> places a major focus on joint investigations. SELEC coordinated 109 joint investigations by its members in 2018, and 81 in 2019.<sup>323</sup> However, not all members participate in SELEC joint actions to the same extent. Bulgaria, for example, participated in a high proportion of joint investigations in 2018, whereas BiH and Montenegro have been considerably less active.<sup>324</sup> This is without prejudice to the use of bilateral and other multilateral channels. For example, Croatian practitioners noted that, while their country is no longer a SELEC member, they utilise bilateral agreements and EU channels to jointly investigate with regional partners.

Curiously, while Interpol is an operational partner together with Italy, the UK and the US, SELEC does not have formal agreements with Europol or Eurojust.

However, JITs are not consistently employed for all serious and pervasive forms of illicit trade in the region. A **long-standing focus on drug trafficking** and, more recently, THB and migrant smuggling, is reflected by significantly more joint investigations to tackle these threats. This is consistent with SELEC's experience: in 2017, most joint investigations were carried out through its drug trafficking, THB/migrant smuggling and cyber-enabled crime task forces (see graphic 5 below).<sup>325</sup> Over the past five years, anti-fraud was another area of substantial and growing collaboration.

Drug trafficking also features prominently among Eurojust JITs (see table 16 below). Other prominent crime types include money laundering, swindling/fraud and human trafficking.

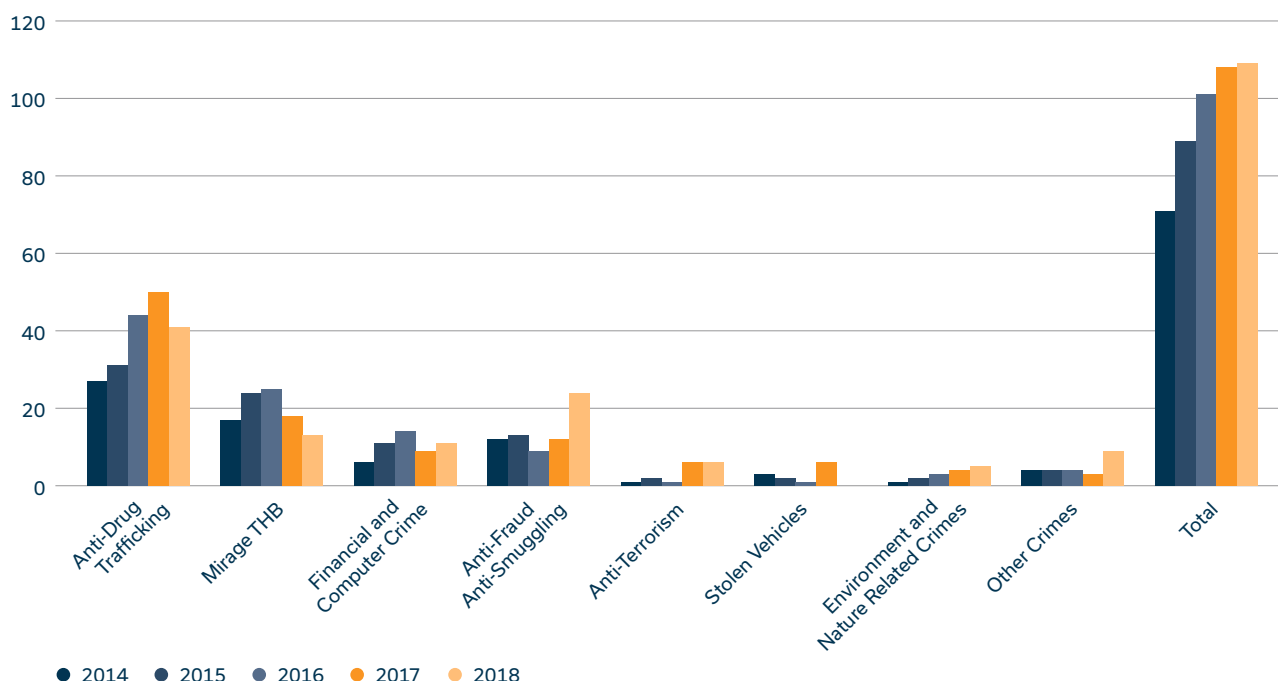
TABLE 16

**Number of Eurojust JITs ranked by crime type, 2016-2019**

Crime type	2016	2017	2018	2019
Money laundering	36	44	49	73
Swindling/ fraud	38	46	52	63
Human trafficking	31	51	56	62
Drug trafficking	25	29	42	53
Cybercrime	8	7	10	17
Migrant smuggling	11	14	12	12
Environmental crime	-	2	4	6

Source: Eurojust, *Annual Report 2019*



**GRAPHIC 5****Number of SELEC joint investigations per taskforce, 2014-2018****TABLE 17****Eurojust cases involving EU members' national desks, 2019**

Desk	Cases initiated by national desk		Participation in cases initiated by other desks		Total cases involved
	New in 2019	Ongoing	New in 2019	Ongoing	
Romania	171	178	251	295	895
Bulgaria	160	191	177	176	704
Slovenia	151	82	80	79	392
Croatia	75	14	91	105	285

Source: Eurojust, Annual Report 2019

Eurojust supports JIJs and makes available other judicial cooperation tools such as coordination meetings and coordination centres. Positive examples include joint investigations by Bulgaria and Romania under Eurojust's auspices, and Serbia's cooperation with the Czech Republic and Eurojust in dismantling an international currency counterfeiting ring.<sup>326</sup> Other forms of support offered by Eurojust include urgent assistance in collecting evidence and freezing assets, facilitating information-exchange, connecting related investigations, and developing prosecutorial strategies.<sup>327</sup>

**TABLE 18****National desk/liaison prosecutor participation in Eurojust joint activities, 2019**

National desk/ liaison prosecutor	Coordination meetings	JITs
Romania	76	55
Bulgaria	21	8
Slovenia	15	8
Croatia	7	-
North Macedonia	3	-
Montenegro	1	-

Source: Eurojust, Annual Report 2019

Overall, available data suggest that Romania is considerably more engaged in Eurojust-facilitated cases and joint activities (coordination meetings, JIJs) than other EU members in SEE, although Bulgaria is another active and engaged member (see tables 17 and 18).

The entry into force of the new Eurojust regulation in December 2019 slowed down negotiations between BiH and the European Commission concerning operational cooperation with Eurojust.<sup>328</sup>

### 6.2.5. Joint operations

In addition to joint investigations, **SELEC** coordinates regional operations against certain crime threats. The Center's capacities were recently boosted by the launch of its state-of-the-art operational centre.<sup>329</sup> In 2018, SELEC supported important regional operations against counterfeit goods (*KNOW-HOW III*) and tobacco products (*ECLIPSE III*), indicating a broadening illicit trade focus. In 2019, *ECLIPSE IV* continued the targeting of illicit tobacco; the first operational phase of the operation involved all SELEC members, Interpol and Italy, and resulted in 54 seizures.<sup>330</sup>

Operation *Synergia/Brezi I Gjellbër* has been highlighted as a success for SELEC and its members, Albania and Greece, which exchanged information in real-time and jointly arrested 61 members of an OCG involved in drug trafficking. Illicit drugs, munitions, vehicles and mobile phones, as well as significant sums of money, were seized as a result of this 2019 operation.<sup>331</sup>

In recent years, **Frontex** has supported joint operations with several SEE countries (see table 19 below). In May 2019, it conducted its first joint operation outside the EU with Albanian authorities.<sup>332</sup> Joint patrols, training and exchange of good practices between Albanian Customs and Frontex officers aimed to control irregular migratory flows and combat cross-border crimes such as human trafficking and smuggling, and terrorism. This successful operation marked a new phase for border cooperation between the EU and WBs countries;<sup>333</sup> cooperation agreements based on Albania's have since been concluded with Serbia and Montenegro.<sup>334</sup>

**TABLE 19**  
**Number of Frontex joint operations involving SEE jurisdictions, 2018**

Bulgaria	12
Romania	11
Slovenia	10
Croatia	7
Greece	6
Albania	6
Kosovo	5
North Macedonia	4
BiH	1
Montenegro	1
Serbia	1
Turkey	1

Source: Frontex, *Annual Activity Report 2018*

Successful joint operations have also been conducted in cooperation with Europol. In 2019, law enforcement officials from Slovenia, BiH, Croatia and Italy successfully dismantled an OCG responsible for smuggling more than 150 migrants from the Balkans to Italy.<sup>335</sup> Other successes that involved countries from in and outside the region have also been highlighted, including between Albania and Germany, Italy, Belgium and Spain.

### 6.2.6. Use of international enforcement bodies, platforms and initiatives

Cooperation via **Europol** is unsurprisingly closest with EU Member States in the region. Most non-EU countries in SEE have formal agreements with Europol but their implementation is uneven. BiH's Strategic and Operational Cooperation Agreement with Europol requires a national focal point but this designation has been left vague due to political disagreements between BiH's layers of government. Without a focal point, the agreement cannot be meaningfully implemented.

Europol's agreement with Turkey remains unimplemented. Publicly, this is widely reported to be a result of Turkey's divergent data protection regulations and souring relations with the EU.<sup>336</sup> However, according to the Institute's advisors, and for more than a decade, the deeper issue has been ensuring reciprocal access to key databases; Turkey is reluctant to give EU officials access to its law enforcement and judicial databases without mutual access to Europol and Eurojust databases. EU database access is denied, in turn, on the basis that Turkey is not an EU member, leading to the present stalemate.

These issues are quite distinct from Kosovo's unique position, as acknowledged by Europol:

**Kosovo is the only partner in the Western Balkans without any structured and formalised cooperation with Europol, which creates a significant gap. Strengthening cooperation with Kosovo seems essential in the light of the gradual changes in the mandate of EULEX Kosovo.**<sup>337</sup>

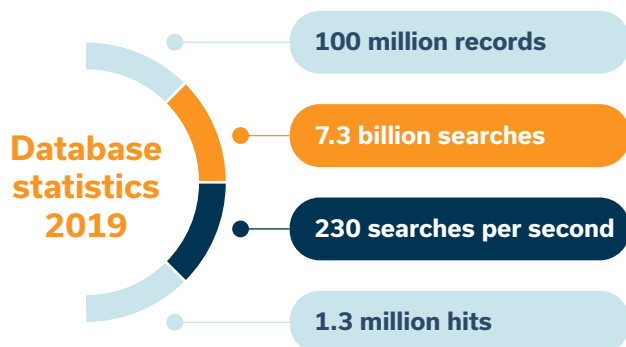
Europol affirms that its cooperation with SEE jurisdictions is a strategic priority.<sup>338</sup> Moreover, a working arrangement between Europol and Kosovo was concluded in July 2020.<sup>339</sup> More than any working arrangement, however, a concrete and permanent solution for Kosovo is in the interests of all jurisdictions in the region and the EU.

Apart from Kosovo, all SEE countries are **Interpol** members, opening up an array of cooperation platforms and tools for quickly sharing sensitive police information, accessing

databases, and issuing requests for international cooperation as well as alerts. Kosovo cannot technically host a National Central Bureau and its application to join Interpol was withdrawn from consideration at Interpol's General Assembly in October 2019.<sup>340</sup>

GRAPHIC 6

#### Interpol database statistics, 2019



Source: Interpol, Annual Report 2019

Interpol recently confirmed that it is proceeding with two programmes in the WBs: *Hotspot* will deploy mobile devices to cross-check migrant-related information with Interpol's foreign terrorist fighter database; and *Millennium* will support organized crime analysis in the sub-region.<sup>341</sup> It is unclear how the latter project will interact with other organized crime-related assessment processes carried out by Europol and SELEC.

Although Kosovo is essentially an outsider as far as Europol and Interpol are concerned, cooperation remains possible through two non-Kosovar intermediaries: **EULEX and UNMIK**. EULEX supports direct communication and cross-border operations with Europol and countries including Serbia, but has been criticised for not fully sharing information with Kosovar authorities.<sup>342</sup> In turn, the Interpol Liaison Office in Pristina is hosted by UNMIK and this appears to have some practical consequences for the quality and speed of Kosovo's cooperation with other countries and their National Central Bureaus.<sup>343</sup> There have been reports, for instance, that UNMIK has not always shared with Kosovo Police all relevant information received from Interpol.<sup>344</sup>

EULEX notes that, from 15 June 2018 to 14 June 2020,<sup>345</sup>

- EULEX received 2,876 requests. Of these, 233 requests related to information-exchange between Europol and Kosovo Police, and 258 requests related to Kosovo Police and the Serbian Ministry of Interior.
- Within UNMIK's Interpol Liaison Office, EULEX staff received 2,340 requests relating to Interpol National Central Bureaus.

In relation to judicial cooperation, **Eurojust's engagement** with non-EU members in SEE appears uneven, and could benefit from reinforcement and expansion. Practitioners from countries including North Macedonia indicated that, despite an active cooperation agreement and liaison prosecutor deployed to Eurojust, engagement has been limited. That said, efforts in 2018 to establish a deeper relationship with Eurojust have already improved information flows.<sup>346</sup> Albania's judicial cooperation with Eurojust reportedly increased significantly in 2019.<sup>347</sup> In relation to Kosovo, Eurojust can only get involved through UNMIK or EULEX, which does not appear to have happened since 2015.<sup>348</sup> As already noted, discrepancies between EU and Turkish data protection legislation are among the factors preventing the exchange of personal data between Turkish authorities and Eurojust and Europol.<sup>349</sup>

The **European Multidisciplinary Platform against Criminal Threats (EMPACT)** is a collaborative platform for EU countries and agencies, and other international actors, to strengthen operational cooperation with third countries in Europe, the Middle East and South America. EU-WBs relations have been strengthened through this platform, which has 10 key focus areas: cybercrime, drug trafficking, facilitation of illegal immigration, organized property crime, THB, excise and Missing Trade Intra Community fraud, illicit firearm trafficking, environmental crime, criminal finance and money laundering, and document fraud. While all WBs jurisdictions contributed to planning the 2018 roll-out of EMPACT, they participate in the platform to different extents. Serbia committed to 21 EMPACT-related operational actions in 2019,<sup>350</sup> while Montenegro committed to three actions.<sup>351</sup> In 2019, BiH participated in 21 actions.<sup>352</sup> The European Commission has suggested that countries like Albania should make greater use of EMPACT.<sup>353</sup>

EMPACT's Joint Action Days have delivered strong results from the perspective of international cooperation. In 2019, 6,758 enforcement officers from 30 EU and non-EU jurisdictions, including Albania, BiH, North Macedonia, Serbia, Montenegro and Kosovo, participated, as well as several international agencies like Europol, Frontex, Interpol, UNODC and SELEC. This joint action focused on firearm and drug trafficking, illegal immigration and document fraud, and resulted in 175 arrests.

In recent years, spikes in irregular migration and related trafficking and smuggling crimes spurred the creation of the **Task Force Western Balkans and Joint Operational Office in Vienna**. These coordination entities, and Europol's European Migrant Smuggling Centre, have driven cooperation and a more integrated response to such crimes, aligning the efforts of border authorities, police and financial investigators. WB countries regularly participate including in *Scirocco-2*, which led to the arrest of 39 migrant smugglers operating along the WBs route.<sup>354</sup> The European Commission has encouraged several countries to enhance their use of the Task Force and Office.<sup>355</sup>

While all countries are WCO members, Kosovo Customs does not appear connected to the WCO's Regional Intelligence Liaison Office for East and Central Europe.<sup>356</sup> Subject to these limits, countries can avail themselves of information and intelligence-sharing tools including secure communication lines for operational purposes. Customs and other enforcement bodies generally consider the WCO as an important partner in combating illicit trade.

While not an enforcement body, UNODC and its partners, the WCO and Interpol, deserve special mention for two enforcement-focused projects that are highly successful and ongoing, namely the UNODC-WCO Container Control Programme, and the UNODC-WCO-Interpol Airport Communication Programme (AIRCOP) (see Recommendation 30). Among other activities in the region including through the joint EU-UNODC Regional Programme for SEE, these projects support the establishment and training of port and airport control units in Serbia, BiH and North Macedonia, and establishment of joint air interdiction task forces in Serbia, BiH, Albania and North Macedonia. Each of these multi-agency units is equipped to exchange information with their counterparts in other countries. Accordingly, both projects have enormous promise for enhancing international cooperation in the WBs and broader region, and should be extended to other countries, and new and emerging forms of illicit trade.

UNODC is also reportedly consulting with Frontex about how they can step-up coordination, information-exchange and cooperation in the region.<sup>357</sup>

### 6.2.7. Jointly produced risk and threat analyses

As noted above, countries – either individually or in partnership with regional partners and international agencies – conduct **strategic assessments** on organized crime and certain forms of illicit trade. Except for Europol and SELEC assessments, most are *ad hoc* rather than routine. By and large, any national assessments that may exist are not publicly available.

In the past, OSCE has made important contributions to several countries' preparation of Serious and Organized Crime Threat Assessments (**SOCTAs**), namely for Serbia (2016), Albania and Kosovo, comprising both individual assessments and a joint one (2016), and a regional assessment for Serbia, Montenegro and North Macedonia (2017). To the Institute's knowledge, no updates to these assessments have since been published. Moreover, no OSCE-supported assessment process appears to have been undertaken in BiH. Europol and others have supported the OSCE's efforts, and its threat assessment methodology has also been used at the national level, including by Kosovo Police.<sup>358</sup>

At the broader regional level, SELEC and Europol take the lead in assessing organized crime threats. Published most recently in 2018, SELEC's Organized Crime Threat Assessment analyses a broad spectrum of criminal phenomena, from drug trafficking to environmental crime, and has both public and confidential versions. However, despite its thematic comprehensiveness, it does not draw on analysis from non-members, namely Croatia, Kosovo and Slovenia. This gap means that no truly regional threat assessment covering all jurisdictions and forms of illicit trade has ever been conducted for SEE.

For the EU, Europol's SOCTA is the main threat assessment and was last published in 2017. It identifies European developments in relation to organized crime activity, as well as enforcement and research priorities. Europol's methodology relies on qualitative and quantitative analysis of law enforcement data, including data provided by non-EU countries pursuant to strategic and operational agreements, and open sources. The SOCTA methodology is public,<sup>359</sup> and has been adopted by at least Albanian<sup>360</sup> and Kosovar<sup>361</sup> law enforcement agencies. The European Commission has recommended it for North Macedonia, too.<sup>362</sup> Europol's SOCTA comprises both public and restricted versions, and serves as the basis for its *Internet Organized Crime Assessment*.<sup>363</sup>

A further assessment process commenced in April 2019 under the auspices of the South East Europe Police Chiefs' Association (**SEPCA**), and appears to be ongoing. While there is limited information publicly available, SEPCA's assessment seems to be limited to WBs countries even though SEPCA's geographical scope covers the wider region.<sup>364</sup>

Frontex also supports risk assessment at the sub-regional level through its Western Balkans Risk Analysis Network (**WB-RAN**), a platform for cooperation between WBs countries, Frontex and five neighbouring EU Member States, namely Bulgaria, Croatia, Greece, Hungary and Romania. WB-RAN promotes information-sharing and joint intelligence analyses on border controls, irregular migration and other forms of cross-border crime.

### 6.2.8. Peer-to-peer networks

Professional, and especially prosecutor, networks can contribute to peer-to-peer cooperation in the region. Two prosecutor networks exist: the South East European Prosecutor Advisory Group (**SEEPAG**) and Western Balkans Prosecutors Network (**WBPN**). In addition to serving as a network of national prosecution contacts, SEEPAG arranges its activities according to several task forces on illicit trade and related crimes. While WBPN is a professional network that appears to overlap to a significant extent with SEEPAG;<sup>365</sup> the former focuses on organized crime and plays a role in supporting ILECs in WBs countries.

# Annexes







# Project methodology and activities

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# Project methodology and activities

## 1.1. Methodology

In assessing the extent and adequacy of criminal justice responses to illicit trade, *SEE:IMPACT* applied a cross-sectoral perspective. This perspective was built not only into the project's research methodology but also its capacity-building activities and the preparation of this report.

The project is grounded in **country-level analysis** by national advisors in each project country. A **comparative regional analysis** was then conducted by an independent expert, who brought regional insights to bear in identifying key strengths, weaknesses and opportunities for the fight against illicit trade in SEE. Based on these multi-layered analyses, the Institute devised an innovative capacity-building program consisting of two key elements:

- **Regional strategic dialogues** for national ministers and senior law enforcement and criminal justice officials from SEE countries. The first of two dialogues concentrated on highlighting the cross-sectoral dimensions of illicit trade, raising awareness about the support that international agencies including Interpol, UNODC, WCO, Europol and SELEC can offer states in the region, and providing high-level delegates with forums in which to discuss the most pressing illicit trade-related challenges and threats affecting SEE from national perspectives. At the second regional dialogue, this report was launched.
- **National strategic dialogues** were also held for a broad range of law enforcement and criminal justice practitioners, as well as policymakers, in seven countries. These events aimed to foster

inter-agency communication and cooperation in investigating and prosecuting illicit trade as a cross-sectoral phenomenon. Practitioner insights shared during the dialogues fed into the project's next phase of research and analysis.

Due to time constraints, it was not possible for national dialogues to be organized in all project countries. Accordingly, seven priority jurisdictions were identified, namely: Albania, BiH, Kosovo, Montenegro, North Macedonia, Romania and Serbia. These jurisdictions were selected based on two main criteria: the Institute first considered which states would benefit most from this type of cross-institutional capacity-building; and the breadth and depth of its institutional relationships at the national level.

### 1.1.1. Consultations with national partners

SEE countries do not have dedicated focal points for illicit trade matters; strategic, policy, operational and other responsibilities are dispersed across multiple ministries, specialist departments/teams and independent agencies at the national level. Accordingly, even before the project had formally commenced, the team worked hard to map and engage relevant partners in all 12 countries as well as at the regional level.

More than 250 meetings were convened with senior national ministry, law enforcement and criminal justice officials with responsibility for criminal law and justice, finance, customs, trade and EU/foreign affairs. The Institute outlined the project's aim, objectives and scope, and invited advice about the main priorities and challenges from each institution's perspective. The potential benefits of a cross-sectoral approach to illicit trade were also discussed, and appreciated by customs agencies, in particular, given the inherently cross-sectoral nature of their mandates and powers.

While cooperation agreements were signed with some national institutions, less formal cooperation was preferred by most other partners and proved effective.

### 1.1.2. Research and analysis

The Institute developed a set of assessment guidelines in consultation with its advisory team, in order to define a common research framework that would facilitate regional analysis (see annex 1.2 below). This framework helped to structure and analyse a wide range of information from official and open sources, determine key information gaps to be filled, and draw conclusions on regional gaps, trends and dynamics affecting the criminal justice response. In the hope that they may be useful and adapted for other countries or regions, the Institute's guidelines are reproduced below.

In brief, the guidelines set out key topics that bear on the criminal justice response to illicit trade,<sup>366</sup> and related questions to guide the work of the project's national and regional experts. The topics selected were, namely:

- i. national strategies, policies and action plans.
- ii. institutional frameworks, including task forces and other coordinating bodies.
- iii. legislation and illicit trade-related offences in their practical application.
- iv. investigative and prosecution challenges.
- v. adjudication and sentencing.
- vi. inter-agency cooperation in investigations and prosecutions.
- vii. the role of the private sector in supporting investigations.
- viii. confiscation of instrumentalities and proceeds of illicit trade.
- ix. international law enforcement and judicial cooperation.

x. data collection, analysis and reporting.

xi. training for justice.

In conducting country-level assessments, national advisors drew on local sources of knowledge including:

- Legislation, both adopted and in development, and case law.
- Governmental plans, reports, statistics and other analyses, compiled by or on behalf of key national institutions.
- Scientific studies, academic literature, policy papers, etc. developed at the national and regional levels.
- Relevant national, regional and international reports prepared by NGOs and intergovernmental bodies.<sup>367</sup>
- Media reports and investigative journalism.
- Interviews with national law enforcement and criminal justice officials.

Practitioner interviews were a key source of information for the project's national advisors. While the number of interviews held in each country varied, law enforcement and customs officers, the prosecution, members of the judiciary, and key ministries were consulted in all cases.

In terms of this report's preparation, three other sources of data, information and analysis were relied on:

- recently published regional and international reports that contribute to a baseline understanding of some, more entrenched forms of illicit trade afflicting SEE, and the supporting role played by transnational crime networks and corrupt elites;
- practitioners' insights shared during the Institute's national strategic dialogues, which gave practitioners and policy-makers an opportunity to contribute their perspectives on the main national strengths, weaknesses, opportunities and threats that bear on the fight against illicit trade; and
- informal consultations with EU delegations and OSCE missions in SEE, among other EU and international actors.

Other frameworks, policies and tools that form an integral part of countries' anti-illicit trade strategies (e.g. IP protection and enforcement, track and trace solutions, consumer awareness-raising programs, etc.) largely fell outside the project's scope.

### 1.1.3. Strategic dialogues

Preliminary regional analysis revealed three important points, each of which contributed to the development of the project's capacity-building program:

- Although positive examples of cross-institutional collaboration are found in all countries, they tend to occur on an *ad hoc* or case-specific basis.
- Law enforcement agencies and criminal justice actors would benefit from a greater appreciation of the support available to them from outside their borders, including from Interpol, the WCO, Europol and SELEC.
- Many countries in the region, including in the WBs, feature a wide range of 'traditional' training opportunities for certain kinds of law enforcement or criminal justice practitioners. However, there are few forums in which customs officers, financial intelligence analysts and policymakers can come together with other relevant national actors.

Against this backdrop, the Institute decided to convene new types of capacity-building events where illicit trade issues would be addressed in a more organic and dynamic way than ever done previously. The ensuing strategic dialogues were also seen as opportunities for participants to discuss (and on some occasions, debate) findings emerging from *SEE:IMPACT*'s preliminary mapping exercise and determine priorities in taking the project forward.

In preparation for each strategic dialogue, the project team carried out a preliminary assessment of the main strengths, weaknesses, opportunities and threats (**SWOT**) in connection to the fight against illicit trade – whether from a specific country's perspective or at the regional level. The Institute's findings were presented in a user-friendly matrix that served as a working document throughout the dialogues; participants engaged constructively with the SWOT matrix in the course of cross-institutional dialogue and problem-solving exercises.

#### Regional strategic dialogue: 5-6 December 2018

A high-level regional dialogue was held in Siracusa, Italy in early December 2018. Around 100 senior ministry, law enforcement and criminal justice officials from partner countries participated, as well as directors of training academies. Also present were senior representatives of international agencies such as Interpol, SELEC, Europol and UNODC, alongside experts and researchers in the field of combating illicit trade and organized crime.

Over the course of two days, attendees were briefed on the project and its preliminary research findings, the legal and

enforcement aspects of illicit trade, and the assistance that could be made available by key regional and international institutions. Following the briefings and general discussions, country representatives divided into two groups, primarily along the lines of those representing political or policy-related matters and those representing enforcement and prosecution. They met in closed sessions that were conducted according to Chatham House Rules, and reviewed the results of the project's regional SWOT analysis. This prompted useful and frank interactions, with considerable agreement as to the analysis. These sessions also provided an opportunity for senior officials to discuss illicit trade with counterparts from across the region. In closing the event, the Institute gave participants an overview of the project's next capacity-building phase.

#### National strategic dialogues: May-October 2019

Over the course of several months, national dialogues were organized in seven jurisdictions. In many respects, their structure and content followed the approach taken in the regional dialogue. However, for these occasions, participants were primarily frontline practitioners, including team leaders or heads-of-unit from specialist prosecution offices, national police and border police departments, customs administrations, FIUs, asset recovery/management agencies, members of the judiciary and training academies. Each event took place over three days, and involved from 50 to 70 participants.

In each event, the first two days focused on general briefings regarding illicit trade and *SEE:IMPACT*. They also incorporated presentations from 'support agencies', with Europol and SELEC invariably participating, as well as other regional actors such as the OSCE.

A special focus was placed upon group discussions, where participants were divided into small clusters composed of representatives from different agencies, ensuring a variety of knowledge and perspectives. They were then allocated specific questions or case studies to debate and subsequently, offer feedback in plenary.

The facilitators noticed that, regardless of the country, participants tended to instinctively focus on 'classical' forms of illicit trade (e.g. illicit drugs, THB, migrant smuggling), while illegal trade in counterfeit medical products or the like was generally not commented upon. This was especially apparent in sessions where participants were invited to present case studies or examples of successful enforcement actions. This was even though, in several countries, other forms of illicit trade, or crime linked to it, are apparently occurring at serious levels.

A significant part of the events was devoted to the review of the national SWOT analysis, with participants divided into

two mixed groups to facilitate discussion. While sometimes initially reluctant or hesitant to voice opinions, careful facilitation contributed to increasingly honest and sometimes passionate exchanges.

This enabled issues like corruption, political interference, inadequate inter-agency collaboration, difficulties in accessing intelligence held by various authorities, poor working conditions, and questionable appointments to specialised or promoted posts in agencies, to be addressed in a relatively frank manner. As time progressed, several sessions allowed attendees to challenge the practices of their counterparts or to contest individuals who were perhaps viewed as 'towing the party line'.

Evaluation forms, completed anonymously at the conclusion of the dialogues, demonstrated participants' considerable satisfaction with the SWOT discussions. The facilitators observed that, in most instances, this appeared to be the first time that participants had experienced the chance to come together in a multi-agency manner and debate issues of common interest and relevance. It was noted, in particular, that participation by members of the judiciary inevitably prompted the most open and constructive discussions.

Day three in each dialogue was given over to training led by Neville Blackwood, with an extensive background in policing, and Paula Lavric, an experienced financial crime prosecutor. These trainers facilitated practical exercise-like sessions. Here, the small multi-agency clusters were presented with enforcement and prosecution scenarios and tasked with determining appropriate actions. Although the facilitators offered feedback and constructive input (and participants were later given detailed and instructive handouts), an emphasis was placed upon attendees learning from each other and drawing upon the specialised expertise which each has.

Overall, participation in these sessions was enthusiastically active and, when groups reported in plenary on their plans, considerable further debate occurred. Any of the reluctance or hesitation encountered during the SWOT discussions was absent. These also offered learning opportunities for the Institute, in designing further project actions.

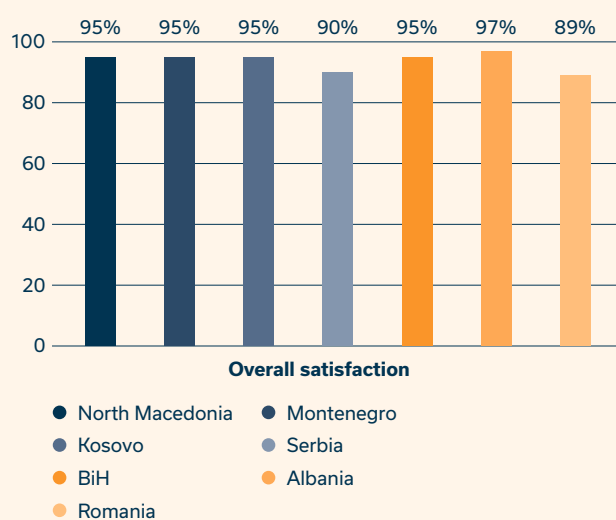
The first two days of the national dialogues, and the third, were evaluated separately. Categories such as the standard of speakers, structure of the events, understanding of the cross-sectoral nature of illicit trade, and appreciation of national strengths, weaknesses, opportunities and threats in the fight against illicit trade, all received high levels of satisfaction. A clear majority of participants also expressed the view that the event had reinforced cooperation and collaboration between law enforcement and criminal justice officials. The concept of future collaboration with the Siracusa Institute received substantial support.

The evaluation did, however, provide lessons for the Institute to learn. For example, some participants indicated that they would have liked to have learned more about some aspects of illicit trade, and this would seem to be reflected in the facilitators' observations regarding the focus on 'classical' forms. The capacity-building sessions were also highly rated, although it seems that some attendees may have found the financial crime elements complex and taxing. Numerous participants approached the project team and made complimentary remarks regarding the event and the project.

Analysis of the evaluation forms produced overall satisfaction results (see graphic 7 below). It was not possible to determine why satisfaction levels in Serbia and Romania were noticeably lower than in other countries, and the analysis does not identify any specific elements of the dialogues which might have prompted dissatisfaction.

**GRAPHIC 7**

#### Participants' overall satisfaction with the national strategic dialogues



#### 1.1.4. Linking up with complementary regional projects

Both prior to, and during, the project's implementation, the Institute made efforts to link up with complementary projects related to SEE. In particular, the Institute cooperated with the following projects and initiatives:

- UNODC's project on measuring and assessing organized crime in the WBs.
- GITOC's Regional Observatory for SEE, which has been working on civil society responses to organized crime, and the identification of regional hotspots among other topics.

- The IPA 2017 project on countering serious and organized crime in the WBs, implemented by GIZ, the Italian Ministry of Interior and the Center for International Legal Cooperation.

Synergies with UNODC and GITOC, in particular, were explored at various joint meetings.<sup>368</sup>

## 1.2. Assessment guidelines

As introduced above, these assessment guidelines could potentially be used in any national or regional context to assess the adequacy and effectiveness of the criminal justice response to illicit trade.

### Executive summary

This should be a condensed 1-2-page overview of the most salient points and outcomes of the assessment. It should reference but not reproduce the full text of the recommendations listed in the relevant section below.

### Scope and methodology

#### a. Project scope and methodology

This sub-section will be drafted by the Institute and outline the project's research methodology, and objectives and scope of the assessments.

#### b. Country-specific methodology

Advisors will draft a brief overview of their specific application of the project methodology in the national context. For example, they may include a brief explanation of how they specifically went about selecting data sources and other outstanding methodological issues and approaches.

### Mapping illicit trade

#### a. Nature and scale of illicit trade

This section should provide a snapshot of the current types, manifestations, dynamics and magnitude of illicit trade in the country. This is not the section for legal analysis. Rather, experts should endeavour to take a 'snapshot' of the situation on the ground. The section will give an overview of the five specified sectors of illicit trade (narcotic drugs and psychotropic substances, human trafficking and its links to migrant smuggling, arms, tobacco products and cultural property), as well as other sectors that the experts observe in the process of conducting the assessment. Experts should briefly illustrate how the phenomenon of illicit trade has

evolved over time and discuss its historical and social underpinnings in the broader regional context. They are also encouraged to focus on what emerge as new illicit trade-related threats and risks specifically affecting the country.

#### b. Links between illicit trade, organized crime and related crime areas

In which form(s) do such links materialise? Are they occasional or systematic? In which ways do corruption practices and criminal associations manifest themselves in relation to illicit trade dealings? "Related crime areas" include corruption, money laundering, terrorism and terrorist financing, cybercrime, etc. The analysis should assess, among other issues, the extent to which national, regional and international studies and assessments reveal links between organized crime and related crime areas on the one hand, and illicit trade on the other hand. Such studies and assessments include those produced by national bodies (e.g. SOCTAs), regional bodies (e.g. assessments within the EU framework that include, but are not limited to, Frontex reports, SOCTAs by Europol, GRECO reports) and other international bodies (e.g. review mechanisms under UNCAC and the OECD Convention on the Bribery of Foreign Public Officials).

### National strategies, policies and action plans relating to illicit trade: an evaluation of approaches, effectiveness and gaps

Experts should analyse the main axes of relevant national criminal policies and positions (whether explicitly adopted or emerging). A list of relevant strategies, policies and action plans should be included as an annex. In this section, experts are asked to consider the following: how effective are they? What are their gaps? How do they address links between illicit trade, organized crime and related crime areas? To what extent is illicit trade considered to constitute a threat to national security under existing strategies, policies and action plans? The analysis should include, when applicable, Chapter 23 and 24 action plans for EU accession. It should additionally consider strategies, policies and action plans which are currently under elaboration and have not yet been officially approved. Advisors are invited to identify lessons learnt, emerging good practices and innovative approaches.

### Institutional framework

#### a. Overview of the criminal justice system and its actors

Include here a succinct overview to ensure readers have a basic understanding of who the main criminal justice actors are as well as the key principles and phases of the criminal justice process in the country (e.g. inquisitorial versus accusatorial system, role of police vis-à-vis prosecutors,



pre-trial, trial and appeal phases). Also, illustrate briefly the institutional interaction between customs/border officials in charge of seizing smuggled goods and the police as well as the role of FIUs in the context of criminal investigations. The role of regulatory/inspection agencies should also be briefly illustrated here.

#### **b. Task forces and similar bodies in charge of addressing illicit trade, organized crime or related crime areas**

Include here an analysis of the structure, competencies and prerogatives of such task forces or similar bodies dealing with one or more illicit trade sectors, whenever they exist. Include current governmental plans to set up such bodies in the future. Of particular interest are inter- agency/inter-governmental bodies seeking to provide inter-ministerial coordination. How effectively do these bodies perform their mandate, and what are the most significant challenges and obstacles they face? If these bodies do not exist, how feasible and desirable would it be to establish a national interagency task force dealing with illicit trade from a cross-sectoral perspective, based, if applicable, on solutions and lessons learned in combating organized crime, corruption and related crime areas?

### **Offences related to illicit trade**

After mapping illicit trade-related conduct observed at the national level (through analysis of reports, interviews, etc.), experts will provide an analysis of the extent to which such conduct is prohibited in national legislation either criminally or administratively. This overview will have two sub-sections: one will focus on criminal and administrative offences directly related to the five specified sectors of illicit trade (narcotic drugs and psychotropic substances, human trafficking, arms, tobacco products and cultural property), as well as other sectors that the experts observe in the process of conducting the assessment; the other sub-section will focus on offences broadly related to illicit trade.

Both criminal and administrative offences are important to be included in this overview. They can be distinguished based on their penalties. Broadly speaking, criminal (and civil) penalties may only be imposed by courts. In contrast, administrative penalties arise automatically by operation of legislation or can be imposed directly by an agency or regulator. This highlights the importance of consulting regulatory/inspection agencies that impose administrative sanctions against illicit trade-related conduct.

#### **a. Offences directly related to illicit trade: an overview**

Specifically related to the five specified sector of illicit trade, this section will describe where and how such illicit trade conduct is addressed in national legislation and regulations (e.g. customs codes, criminal codes, special legislation, etc.).

Provide an overview of the substantive elements of such offences, their scope and applicable penalties. Are there measures establishing the administrative or criminal liability of legal persons for participation in criminal offences relating to illicit trade? To what extent can the jurisdiction of national courts be established for offences directly related to illicit trade when these have been committed abroad?

#### **b. Offences broadly related to illicit trade: an overview**

This section should mirror the previous one and focus on offences that are key facilitators or instrumental to illicit trade-related conduct (typically fraud, customs fraud, false declarations, forgery, tax and duty evasion, evasion of currency controls, corruption, laundering of proceeds of crime, racketeering, smuggling, conspiracy and offences related to criminal associations/organizations. Provide an overview of the substantive elements of such offences, their scope and applicable penalties. Are there measures establishing the administrative or criminal liability of legal persons for participation in criminal offences broadly related to illicit trade? To what extent can the jurisdiction of national courts be established for such offences when these have been committed abroad? With regards to laundering of proceeds of crime, determine, in particular: i) the extent to which illicit trade-related conduct appears as predicate offences; ii) if money laundering offences can be prosecuted in your country when the predicate offences have been committed abroad. With regards to criminal associations/conspiracies, determine the extent to which these are punishable when members of criminal groups engage in illicit trade-related conduct.

#### **c. Illicit trade offences in their practical application**

While the two previous sections are mainly descriptive in nature, this one should contain an assessment of the practical application and overall adequacy of legislation and regulations related to illicit trade. In particular: are there any significant gaps in the scope of application of these offences (e.g. excessively high punishment thresholds, inconsistencies with requirements of ratified international treaties, etc.)? This section should also feature an evaluation of whether certain offences are more frequently used than others in illicit trade investigations and prosecutions, and why this is the case (e.g. excessive burdens of proof for certain offences, practitioners' lack of familiarity with newly introduced offences, etc.). To what extent is organized crime and corruption legislation actually used in the context of investigations and prosecutions of illicit trade? Are there examples of lessons learnt and good practices in selecting criminal offences for the investigation and prosecution of illicit trade-related conduct? National Experts are invited to discuss whether it would be preferable, for practical and/or legal reasons, for certain conduct currently attracting criminal penalties to be 'downgraded' to an administrative violation and vice versa.

## **Investigation, prosecution, adjudication and sentencing of illicit trade-related conduct**

### **a. Investigative and prosecutorial challenges**

This section will concentrate on an assessment of key strengths, limitations and challenges (institutional, legal, practical, cultural or of a different nature) that practitioners face in investigating and prosecuting illicit trade-related conduct. Of particular interest are cases in which countries are undergoing (or have recently undergone) deep structural reforms of their criminal justice system and consequent practical, cultural and legal challenges faced by criminal justice actors in 'adapting' to the new setting. If no specific issues are detected in relation to illicit trade, experts are invited to discuss strengths, limitations and challenges that are broadly applicable to criminal investigations and prosecutions and that are also applicable to illicit trade cases. A key issue to be addressed is the extent to which investigations of illicit trade offences (in general or related to specific sectors of illicit trade) are considered as a law enforcement priority. If this is not the case, why? (e.g. lack of resources for investigators, competing requests for attention in other criminal fields, etc.)

Other issues to be addressed include: how effectively do prosecutors lead both pre-investigation and investigation processes? To what extent and how effectively do competent bodies use intelligence-led policing and investigations based on crime mapping and threat assessments, and what are the key practical challenges for enhancing the use of intelligence-led policing and investigations? Do those tasked with combating illicit trade have the necessary investigative tools and techniques (e.g. using controlled deliveries, electronic surveillance, accessing bank accounts, telephone or other communication wiretaps and interceptions, witness protection schemes, forensic science support, etc.)? Are these available logistically and also through empowerment by legislation? Do relevant agencies have the appropriate equipment and resources to combat illicit trade (e.g. inspection and border control equipment, staff vehicles, radios, surveillance gear, etc.)? Finally: are there examples of lessons learnt and good practices in criminal investigations and prosecutions relating to illicit trade (or not specifically related to illicit trade, but applicable to it?).

### **b. Adjudication and sentencing of illicit trade-related crimes**

This section should look broadly into judges' perception of illicit trade offences and how this perception is reflected on the adequacy of the penalties applied (while this is necessarily a subjective evaluation, argue based on existing case law and/or the perception and experience of interviewed practitioners). Are there judicial principles, sentencing policies or other guidelines that have an impact on judges' decisions in relation to illicit trade-related cases? Are there

significant and recurrent differences between first instance and appeal courts in the interpretation of relevant laws? Experts are invited to present, if they exist, examples of case law showing judges' motivations and reasoning that appear to be of particular interest either in facilitating or hindering the fight against illicit trade. Beyond judges' perception, are the penalties generally considered to be adequate from the perspective of other criminal justice officers and related professionals (e.g. police, prosecutors, academic experts, prison officers and others working with prisoners, etc.)? Then, experts should look broadly into the adequacy of administrative penalties, including from the perspective of regulatory/inspection agencies. Can it be argued that penalties other than classical detention and monetary sanctions would offer stronger or additional deterrents to the commission of illicit trade offences (e.g. closing businesses, withdrawing licences, etc.)?

### **c. Inter-agency cooperation in investigations and prosecutions relating to illicit trade**

This section will analyse the practical challenges and obstacles to the effective cooperation and exchange of information between criminal justice bodies and other bodies (e.g. regulatory/inspection agencies, FIUs, etc.) whose findings, data and intelligence are often key to the success of illicit trade related investigations and prosecutions. How effective is inter-agency cooperation? Particularly relevant is the quality of the cooperation between the police and customs/border agencies in the investigation and prosecution of illicit trade. For example: to what extent are customs authorities able and sufficiently trained to preserve seized items in a manner that will ensure that such items can be admissible in criminal proceedings? Are there examples of lessons learnt and good practices in inter-agency cooperation in investigations and prosecutions relating to illicit trade?

### **d. The role of the private sector in supporting criminal and other investigations against illicit trade**

This section will analyse the role of businesses and industry bodies in supporting criminal investigations against illicit trade. Issues to be explored include: to what extent is the private sector allowed to play a role in the context or in support of illicit trade-related investigations and prosecutions (e.g. detecting counterfeits, sharing intelligence, investigative support, technical expertise and forensic analysis, provision of training and equipment, etc.), and how effectively does the private sector play such a role in practice? What value do criminal justice institutions place on information provided by private sector actors in the context of criminal or other proceedings? What are the key practical and legal challenges, obstacles and limitations to public-private cooperation in the fight against illicit trade in the criminal justice field? Are there examples of lessons learnt and good practices in public-private cooperation in the criminal justice field directly, or in areas that can be easily

replicated in this field? Experts should also assess the extent to which the private sector can and should play a deeper role in supporting criminal and other investigations against illicit trade, and to collect ideas in terms of innovative forms of partnerships.

### **Confiscation of instrumentalities and proceeds of illicit trade-related conduct**

Advisors should analyse the main axes and effectiveness of national legislation and regulations dealing with the freezing and confiscation of instrumentalities and proceeds of crime with particular reference to illicit trade offences. What are the legal and practical challenges and obstacles in this area? How effective are bodies and policies for managing asset confiscation and recovery, and administering criminal assets, if such bodies and policies exist? How effective are enforcement measures including civil procedures, confiscation when assets are transferred to third parties, and non-conviction-based confiscation, if such measures are available? The experts may discuss challenges faced in the application of such measures from the human rights perspective (e.g. following rulings by the European Court of Human Rights). How effectively do law enforcement agencies run financial investigations to trace money flows and lead to the seizure and confiscation of criminal assets? Following seizures and interceptions, do agencies have adequate storage/detention facilities (as lack of such logistics can discourage enforcement actions)? Are there examples of lessons learnt and good practices in asset confiscation relating to illicit trade?

### **International law enforcement and judicial cooperation**

The section should be introduced by a brief overview of the main principles, procedures and authorities involved in providing international judicial cooperation in the country (e.g. how may national legislation be applied in a subsidiary way when treaties do not regulate certain issues, issues related to mutual legal assistance flow and competent authorities, are there possibilities to allow direct cooperation between national and foreign courts, etc.).

The section should focus on the practical, legal and institutional challenges that national authorities face, if any, in providing and obtaining MLA in criminal matters to/from foreign countries, particularly on illicit trade-related offences. Are there particular issues with certain countries such as those belonging to a certain region? If yes, which ones and why?

Other issues to be addressed include: the extent to which competent national bodies have access to and make effective use of international criminal intelligence databases, including of Interpol, Europol and the World Customs

Organization and its Regional Intelligence Liaison Offices (RILOs); the effectiveness of cooperation with SELEC, Europol and Eurojust on criminal matters, including coordination meetings and joint investigation teams. Are there examples of good practices in international cooperation that are applicable or transferable to the handling of illicit trade-related cases? Interesting information partly covering the above topics can be obtained through the publicly available reports submitted by countries in the context of the Inter-Governmental Review Mechanism for the UN Convention against Corruption (see UNODC website) among others.

This section should not contain lists of treaties, but rather reference the annexed tables dealing with the ratification status of international treaties dealing with illicit trade and international cooperation in criminal matters.

### **Data collection, analysis and reporting**

Experts are invited to assess the extent to which competent bodies have access to and make effective use of central criminal intelligence systems and harmonised statistics. Identify and evaluate gaps in and limitations of official data or indices on: i) the number of investigations, prosecutions, convictions, etc. for illicit trade and related criminal offences; and ii) freezing, seizing, confiscating or destroying items in the course of investigating and prosecuting illicit trade and related criminal offences. Consider and seek to explain any significant differences between investigation, prosecution and conviction rates.

How is intelligence collected, analysed and shared? Are agencies targeting specific individuals in a proactive manner? Is illicit trade-related intelligence incorporated into risk assessment practices for border control, profiling, etc.? Do relevant regulatory/inspection authorities have sufficient understanding of the need for intelligence, how to collect and share it, etc.? Also: what are the gaps in and limitations of periodical reports or other analyses on these issues by competent bodies? What lessons learnt or good practices exist in data collection, analysis and reporting on illicit trade?

### **Training for justice: an assessment of programs, needs and institutional capabilities**

This section should begin with a prioritised list of the main weaknesses in the criminal justice response to illicit trade and the specific training needs associated with each of these weaknesses. Issues to then be covered in this section include: to what extent is training offered on a continuous basis to judges, prosecutors, and law enforcement and customs officers on illicit trade and related crime areas? What is the focus of these training programs? Assess: the type and nature of existing training programs including training of trainers; duration of training; funding sources;

subjects covered; good practices documented and/or shared; development and distribution of reference materials or manuals; training evaluation mechanisms. In relation to customs officers, do they receive training relevant to identifying contraband and smugglers, or is their training focused on identifying misdeclarations and duty avoidance?

In terms of learning modalities, what needs if any relate to face-to-face training, the use of virtual trainers, e-learning, joint training with the private sector including in relation to understanding the manufacturing process and identifying counterfeits? To what extent are training programs offered and conducted jointly with judges, prosecutors, law enforcement and customs officers, and related criminal justice professionals? Do experts envisage specific problems in conducting mixed trainings with different categories of criminal justice actors? From the perspective of criminal justice officers, how effective are joint programs and how could they be improved? To what extent is training provided both centrally and at the regional level? Are these examples of lessons learnt and good practices in training? What aspects of such programs and topics could be strengthened or more comprehensively addressed, and why? Are there plans to provide such training programs if they are not yet offered?

How should desirable training outcomes relating to illicit trade be expressed? How should the realisation of such training outcomes be monitored and evaluated? What are the strengths and limitations of institutional capabilities to deliver training on illicit trade or related subjects? How effective are cooperation and joint training activities between national training entities, and regional and international training entities (e.g. European Police College – CEPOL, OSCE, UNODC, etc.) (a brief overview of existing regional and international training programs and their main beneficiaries should be included as an annex).

Considering the above, what are the most significant training needs of relevant criminal justice officers in relation to the fight against illicit trade, and what topics or issues should be covered in specialised training in this area? What are the ideal format and methodology of such training, bearing in mind the failure of several trainings to provide effective knowledge and empowerment for their participants? The experts are encouraged to propose innovative ideas.

### **Recommendations for strengthening the criminal justice response to illicit trade**

Experts should elaborate a series of strong, candid and frank recommendations covering each section of the report. Experts should keep in mind that these recommendations should be focused on strengthening the national criminal justice response to illicit trade, as well as strengthening regional and international cooperation. The recommendations should be the logical outcome of the assessment

exercise and stem from interviews held with stakeholders, existing reports, the personal and reasoned view of each advisor, etc. There is not a pre-determined number of recommendations. Few strong and well-reasoned proposals are preferred to several unrealistic suggestions. Ideally, this section would list a concrete set of steps that governmental and law enforcement authorities should be able to take in order to better counter illicit trade. Focus on feasible actions and avoid generic statements such as those broadly calling for strengthened international cooperation. If relevant, you may consider including more ambitious proposals for enhancing the long-term effectiveness of criminal justice institutions and cooperation on illicit trade, for example by restructuring existing institutional arrangements. The recommendations should also include suggested follow-up actions for the Institute to take at the national and regional levels, in an effort to build political will in the national government as well as constructively engage with the European Commission, Council of Europe and other regional entities.

# **Key illicit trade- related treaties and their dates of adoption**



# Key illicit trade-related treaties and their dates of adoption

## i.

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970.<sup>369</sup>

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## ii.

Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 1972.<sup>370</sup>

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## iii.

Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973.<sup>371</sup>

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## iv.

UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.<sup>372</sup>

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## v.

Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal, 1989.<sup>373</sup>

## vi.

Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992.<sup>374</sup>

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## vii.

Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994.<sup>375</sup>

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## viii.

Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997.<sup>376</sup>

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## ix.

Council of Europe Convention on the Protection of the Environment through Criminal Law, 1998.<sup>377</sup>

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## x.

International Convention for the Suppression of the Financing of Terrorism, 1999.<sup>378</sup>



**xi.**

UN Convention against Transnational Organized Crime, 2000 and its supplementary Protocols.<sup>379</sup>

- a.** Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, 2000.
- b.** Protocol against the Smuggling of Migrants by Land, Sea and Air, 2000.
- c.** Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components, 2001.

**xii.**

UN Convention against Corruption, 2003.<sup>380</sup>

**xiii.**

Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health, 2011.<sup>381</sup>

**xiv.**

Protocol to Eliminate Illicit Trade in Tobacco Products, 2012.<sup>382</sup>

**xv.**

Arms Trade Treaty, 2013.<sup>383</sup>

**xvi.**

Council of Europe Convention against Trafficking in Human Organs, 2015.<sup>384</sup>

**xvii.**

Council of Europe Convention on Offences relating to Cultural Property, 2017.<sup>385</sup>





# Established criminal markets in SEE

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# Established criminal markets in SEE

Six criminal markets are established in the region and present serious challenges for SEE countries. These markets are, namely: drugs, trafficked people, smuggled migrants, weapons, tobacco products and cultural property. For each market, the apparent scale, relevant crime actors, trafficking routes and hotspots are outlined below.

## 3.1. Drugs

Drug trafficking in SEE is widespread and largely controlled by organized crime actors. It also represents the largest and one of the most established illicit markets; UNODC estimates that the value of drugs trafficked across the region annually amounts to USD 28 billion.<sup>386</sup> Although there are indications that COVID-related restrictions had initially stymied the production and trafficking of illicit drugs, OCGs have proven extremely resilient and promptly changed their routes and production practices.<sup>387</sup>

While seizures of **opiates/heroin** increased worldwide in 2017, global opium production declined in 2018 and remained stable in 2019.<sup>388</sup> Even so, the Balkan route remains the world's busiest heroin trafficking channel.<sup>389</sup> Compared to others, the Balkan route<sup>390</sup> has the highest percentage of heroin and morphine seizures from 2007 to 2016, accounting for 31% of global seizures in 2017.<sup>391</sup> In SEE, Turkey and Bulgaria had the largest share of the region's seizures.

Worldwide **cocaine** production increased in 2017 (+15%) and 2018 (+4.6%), and 1,311 tonnes were seized in 2019.<sup>392</sup> The Institute's advisors highlighted that, in line with global trends, this business is on the rise in SEE. It has been estimated that cocaine trafficking to Western Europe may

generate annual profits of up to EUR 100 billion for an individual OCG.<sup>393</sup> In 2014, police confiscated 250 kilograms of cocaine *en route* from Ecuador to Albania.<sup>394</sup> In 2018, 613 kilograms were confiscated after arriving in Albania from Colombia.<sup>395</sup> However, seizures over the past 20 years in SEE have remained relatively modest.<sup>396</sup> Turkey (1,485 kilograms) and Croatia (466 kilograms) reported the largest seizures in 2017.

**Cannabis** is the world's most widely produced and used drug. Both indoor and outdoor cultivation increased over the period 2012-7, while global quantities seized in 2018 decreased (-10%).<sup>397</sup> In SEE, Turkey and Albania reported the largest quantities seized in 2017. Albania is the leading producer of cannabis destined for consumption in the EU. Apparently in response to an escalation in enforcement action in 2017, recent analysis indicates that Albanian cultivation may be shifting to countries in Western Europe, including Belgium, The Netherlands and the UK, where it is grown indoors.<sup>398</sup> Some reports further suggest that other WBs countries, including Serbia, are involved in large-scale cannabis cultivation;<sup>399</sup> in November 2019, police seized almost four tonnes of cannabis near Stara Pazova, in addition to handguns, fake police identification, and a car with police-type markings. According to national experts, and unlike most other illicit substances, cannabis is not only produced in the region but also consumed locally.

Among **synthetic drugs**, methamphetamine continues to dominate the global market; it accounted for 66% of global seizures from 2013 to 2017, followed by amphetamine (26%) and ecstasy (5%).<sup>400</sup> These global trends manifest differently in South Eastern Europe, where consumption and trafficking of synthetics are also on the rise; amphetamine was the most seized substance (around 60%) followed by ecstasy (around 30%) and methamphetamine (around 10%).<sup>401</sup> Experts reported worrying increases in consumption in Turkey and Serbia among other countries. In 2017, Turkey and Bulgaria reported the highest share of the region's seizures.

### 3.1.1. Crime actors

Opiate/heroin and cocaine markets are exclusively controlled by organized crime networks. In the former case, Turkish and Kurdish groups cooperate with Iranian producers, while Albanian, Bulgarian, Croatian, Montenegrin and Serbian groups facilitate distribution to Western markets. According to national advisors, some OCGs exercise control over the cocaine market from production to trafficking,<sup>402</sup> drawing on global networks that include crime actors in Latin America, Albania,<sup>403</sup> Bulgaria, Croatia, Montenegro, Kosovo, North Macedonia, Serbia, Turkey and Greece as well as Italy. Each 'guarantees' distribution in their respective territories.

The cocaine market is not only highly profitable but violently competitive; violent clashes and murders involving Montenegrin and Serbian groups are an example.<sup>404</sup> OCGs are also deeply involved in synthetic drug trafficking.

While organized crime plays a role in the cannabis market, too, small-scale production and individual smugglers are more prominent. When involved in the cannabis trade, OCGs generally perpetrate smuggling and distribution. In another example of the frequent cross-over between illicit markets, Albanian groups who have profited through the cultivation and trafficking of cannabis are now established players in the cocaine market.<sup>405</sup>

### 3.1.2. Trafficking routes and hotspots

Opiates/heroin account for a diminishing but still significant share of the region's illicit drugs market. Opiates originate in Afghanistan and Pakistan before moving into Western Europe via the Balkans. Turkey is a major regional hub for heroin, which generally passes through Bulgaria and Greece before entering Romania,<sup>406</sup> North Macedonia and Serbia;<sup>407</sup> Novi Pazar and Preševo valley<sup>408</sup> are reported hotspots for processing and repackaging.<sup>409</sup> Heroin is also trafficked to Italy via North Macedonia, Kosovo, Albania and Montenegro.<sup>410</sup> Other hotspots include Gevgelija at North Macedonia's southern border, and centrally-positioned Veles. In Veles, OCGs reportedly meet to trade heroin and cannabis.<sup>411</sup> Opiates in transit appear to be stockpiled in BiH, particularly its Trebinje region.

National advisors point out that, while the opiate/heroin market appears to be shrinking somewhat, the cocaine business is booming. WBs groups import it directly from South American producers or through West African intermediaries. Shipments from Latin America arrive at the ports of Durrës, Albania and Bar, Montenegro, before transiting Kosovo, Serbia, and BiH before distribution throughout Central and Western Europe. Crime actors in BiH's Trebinje region appear to be connected to Port of Bar counterparts although this warrants further investigation. SEE is primarily a transit region with relatively low local demand, and local OCGs with a foothold in the region increasingly focus on their criminal activities abroad.<sup>412</sup>

Turning to the **cannabis** market, the region comprises origin, transit and destination countries.<sup>413</sup> Albania is the main producer,<sup>414</sup> with large-scale cultivation in and around the villages of Lazarat and Dukagjin. A main destination for Albania-grown cannabis is Italy,<sup>415</sup> but it also moves through many other countries in the region where it is consumed and/or trafficked into the EU. Other jurisdictions report small- to large-scale production including Turkey, Kosovo and Bulgaria among others. Greece is emerging as a producer of cannabis, which is reportedly traded with heroin. Cannabinoids may also originate from North Africa and the Middle East, entering SEE at seaports including Greece's. Turkey is a destination country for Iranian and Afghani produce, and synthetic cannabis.

Consumption and trafficking of **synthetic drugs** is growing in SEE, which comprises origin, transit and destination countries. These drugs usually originate in The Netherlands, before moving through Croatia and Hungary to BiH and Serbia, or through Kosovo to North Macedonia, Bulgaria, Greece and Turkey.<sup>416</sup> Production also occurs in BiH where the Rača/Granični area is a reported hotspot.<sup>417</sup> Turkey is a transit and destination country for Iranian methamphetamine, which moves through Turkey to European and South East Asian markets.

According to project advisors, countries including Montenegro, Slovenia, Serbia, Greece and Romania have raised concerns about the growth in **drug trafficking via the Darknet**. This underexplored phenomenon is likely affecting the region more widely, and warrants further investigation and attention from law- and policymakers (see case study and guidance on cyber-enabled illicit trade at section 4.4.1).

## 3.2. Human trafficking

According to 2016 estimates, nearly 25 million people worldwide are victims of human trafficking.<sup>418</sup> Among its various forms, trafficking for the purpose of sexual exploitation is a major challenge; in 2016, there were believed to be around 4.8 million victims, mostly female.

Available data indicate that South East Asia and Europe are major regional clusters for THB, and SEE countries represent a considerable share of Europe's trafficking cases, whether as countries of origin or destination.<sup>419</sup> According to the US Department of State's annual assessment, Slovenia is the only SEE country that meets minimum standards in the fight against human trafficking (i.e. Tier 1).<sup>420</sup> Others only partially comply with these standards (i.e. Tier 2), and two countries (BiH and Romania) are on the Department's Tier 2 watchlist.<sup>421</sup>

**TABLE 20**

**Number of potential and officially recognised victims identified by SEE countries, 2018-2019**

	2018	2019
Romania	497	698
Bulgaria	376	340
Turkey	134	193
Greece	31	150
Montenegro	4	124
Albania	95	103
BiH	36	61
Serbia	78	36
Slovenia	70	31
Kosovo	15	26
Croatia	73	25
North Macedonia	9	6
<b>Total for SEE</b>	<b>1,418</b>	<b>1,793</b>

Source: US State Department, *THB Report 2020*

### 3.2.1. Crime actors

Transnational crime networks dominate the business of human trafficking. In Turkey, both OCGs and more loosely associated individuals are active. Individual or unaffiliated groups were also reported in Serbia, North Macedonia and Montenegro.<sup>422</sup> In some contexts including Croatia, collusion with corrupt police officers has also been reported.

### 3.2.2. Trafficking routes and hotspots

Almost all SEE states are, to some extent, countries of origin, transit and destination in connection to human trafficking. Trafficking for the purposes of sexual exploitation is one of the most widespread THB forms in the region. Victims are predominately women and girls from within, as well as outside, the region (primarily Moldova and Ukraine). Other

forms of forced labour (and forced criminality<sup>423</sup>) also account for a significant share of the region's human trafficking. Worrisome cases of the trafficking of babies were reported by Bulgarian and Greek advisors; Bulgarian women bring their babies to Greece where they are 'sold' to individuals who cannot legally adopt children, or who wish to get around Greece's strict adoption system.

Bulgaria and Romania are the region's major source of trafficking victims. Most victims are subjected to forced sexual exploitation in Western Europe (specifically in Italy, France, Spain and Germany among other countries), but some are also exploited locally in the Bulgarian and Romanian markets. Albania is another source country, with Albanian women exploited in the local market during the tourist season or trafficked to Western Europe, usually Italy. There are also instances of forced child labour in cannabis fields in Albania, and some human traffickers are likely involved in drug trafficking.<sup>424</sup>

Croatia, Greece and Slovenia are mainly destination countries for women and girls from Ukraine and Moldova. North Macedonia has a high number of foreign victims from Eastern Europe, while human traffickers in Kosovo exploit both domestic and foreign victims, with OCGs operating in the town of Ferizaj said to be involved in forced sexual exploitation.<sup>425</sup> Serbia and BiH are also countries of origin, transit and destination. In Montenegro, trafficking concerns mainly domestic victims exploited for forced begging. Turkey is a source country for trafficking towards Azerbaijan and the US, and a destination for victims from Ukraine, Moldova and Turkmenistan.

## 3.3. Migrant smuggling

Migrant smuggling is highly profitable and closely tied to OCGs and, perhaps more importantly, transnational crime networks. Given its inherently cross-border nature, the facilitative role of corrupt public officials and enforcement officers is often vital.

In 2016, at least 2.5 million migrants were smuggled worldwide, generating estimated profits of USD 5.5 - 7 billion.<sup>426</sup> Europol has found that more than 90% of migrants travelling to the EU relied on the services of criminal smuggling networks.<sup>427</sup> Indeed, business is booming to the point that migrant smuggling, as a criminal market, is comparable to certain illicit drug markets in Europe.<sup>428</sup>

SEE became a particularly significant transit zone in 2015, when more than 764,000 irregular border crossings were detected at EU borders with WBs countries.<sup>429</sup> Smuggling to and within the EU is believed to have generated profits of around EUR 3 - 6 billion in 2015.<sup>430</sup> Smuggling then declined between 2016 and 2018, when there were about 213,058



illegal crossings, mostly at the Greece-North Macedonia border, the Hungary-Serbia border and the Albania-Greece border (see graphic 8 below).<sup>431</sup>

### 3.3.1. Crime actors

Loosely-connected groups appear to be involved in the business of assisting migrants to cross borders and reach their destination. Between 2016 and 2018, at least 2,247 smugglers/facilitators were detected in SEE, mainly from Serbia and, to a lesser extent, Albania, North Macedonia and Bulgaria.<sup>432</sup>

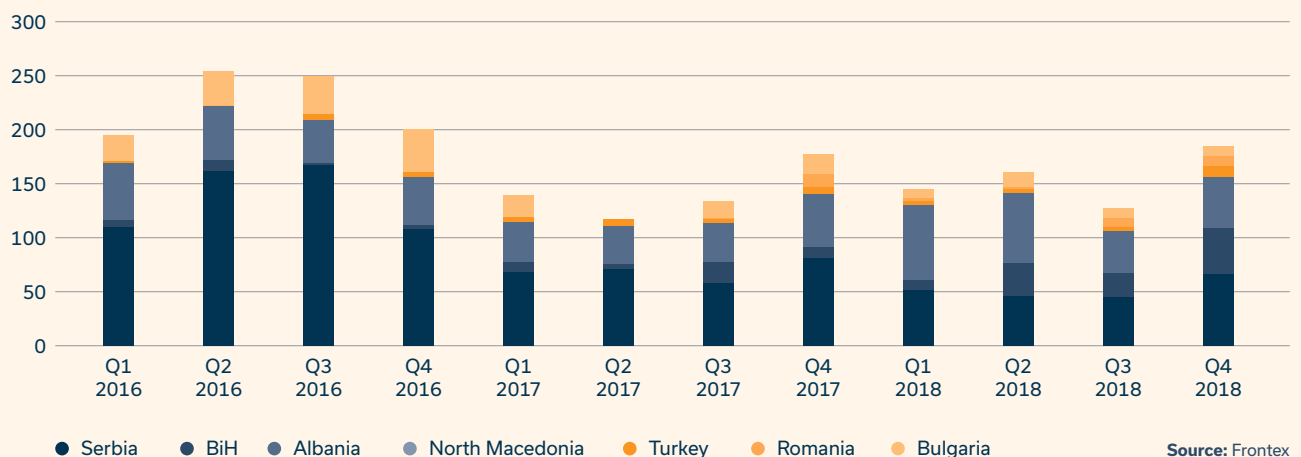
Many national advisors and practitioners reported the *Hawala* informal payment system used by migrant smugglers

as the most difficult to trace. At the same time, they identify corruption of public officials and 'lenient' migration policies at the national level as facilitating factors for this illicit trade. Smugglers from countries of origin often directly operate in SEE in cooperation with other local criminal players. This is the case, for instance, with Afghani citizens who purchased facilities and means of transport to be used for smuggling operations in Bulgaria.

Advisors noted that a seemingly growing share of OCGs are polycriminal in nature:<sup>433</sup> in addition to migrant smuggling operations, they carry out complex, cross-border schemes involving more than one form of illicit trade (e.g. THB, illicit drugs, counterfeit medicines, weapons) and related crimes (e.g. document forgery for the purpose of facilitating the cross-border transport of smuggled persons).

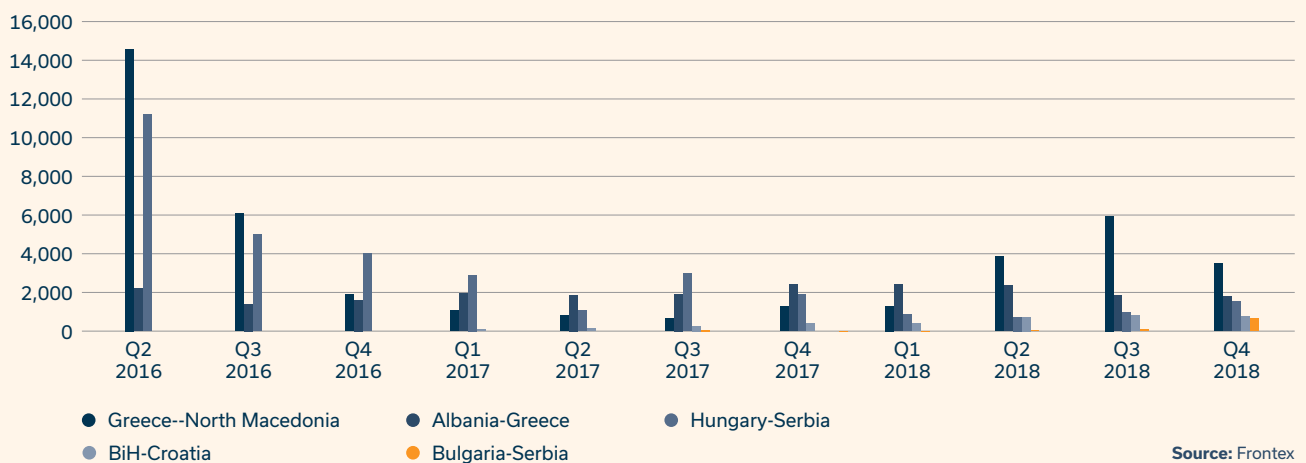
GRAPHIC 8

#### Nationalities of identified smugglers in SEE, 2016-2018



GRAPHIC 9

#### Number of illegal border crossings detected at SEE land borders, 2016-2018



### 3.3.2. Trafficking routes and hotspots

Almost all states in SEE are transit countries for migrant smuggling due to their position along the WBs route. Turkey is a major source country, with most migrants resorting to smugglers in order to reach Bulgaria or Greece.<sup>434</sup> From there, migrants pass through North Macedonia and Serbia *en route* to Western Europe. North Macedonia's northern border has emerged as a crossing point for smuggled migrants.<sup>435</sup> Serbia is a significant transit country to Hungary, and this route is among those most used. For this reason, in 2015, Hungary built a barbed wire fence at the border with Serbia.<sup>436</sup> Serbia is also a transit country to Bulgaria or Croatia via BiH. According to national advisors, Subotica and Vršac are major smuggling hotspots in Serbia,<sup>437</sup> as is Velika Kladuša in BiH. Irregular migrants transiting through Serbia and North Macedonia are at significant risk of becoming involved in human trafficking.<sup>438</sup> Advisors also note that, from Greece, smuggling networks operate across the Albanian border to Montenegro and Kosovo.

#### CASE STUDY

### Operation Theseus

In December 2019, Interpol led *Theseus*, a large-scale operation against human trafficking in SEE.<sup>439</sup> It involved 3,000 immigration and criminal justice officers (including from specialised units) from eight jurisdictions: Albania, BiH, Bulgaria, Moldova, North Macedonia, Romania, Serbia and Turkey. *Theseus* resulted in the arrest of 72 suspected traffickers and 167 migrant smugglers. It also rescued 89 trafficking victims from 14 countries; they had been subjected to forced labour, begging and sexual exploitation. In addition to the seizure of 30 smuggling vessels and 200 inflatable boats, and more than 1,500 fraudulent passports and national identity cards, reinforced border controls also recovered firearms, drugs and cash.

## 3.4. Tobacco products

While global statistics are not available, in 2019 Transcrime estimated that, across 57 countries surveyed worldwide, 132 billion illicit cigarettes were consumed annually.<sup>440</sup> In the EU alone, 40 million illicit cigarettes are consumed; these were found to originate from 128 countries across five continents.<sup>441</sup>

SEE countries, and the Balkan route, are involved in the smuggling of 29 billion cigarettes each year; of these,

approximately 8.7 billion (30%) are smuggled into the EU.<sup>442</sup> Cigarette smuggling can therefore be considered a major and established form of illicit trade in SEE, due to high local demand and a degree of social acceptance.

A recent study indicates that, across five WBs countries, Croatia and Slovenia (i.e. seven countries in total),<sup>443</sup> this illicit trade generates annual profits of more than EUR 200 million, and hits government revenue to the tune of nearly EUR 307 million each year in lost taxes.<sup>444</sup> A country-level comparison of this study's key results is below.

TABLE 21

**Estimated proportion of smokers in SEE countries that buy illicit and tobacco smuggling profits**

Country	% smokers who buy illicit	Estimated illicit profit, EUR million	Illicit profit as % GDP
Montenegro	27.9%	20.42	0.52
BiH	20.3%	77.33	0.51
Average	11%	28.85	0.22
Croatia	7.6%	31.80	0.06
Serbia	6.5%	44.97	0.12
Kosovo	6.3%	17.94	0.28
North Macedonia	3.8%	3.71	0.04
Slovenia	3.3%	5.77	0.01

European authorities shed further light on the scale of the problem. Illicit trade in tobacco products is estimated to hit EU and Member State budgets with a loss of EUR 10 billion annually.<sup>445</sup>

Invariably, enforcement agencies detect only the tip of the iceberg, and seizure results can vary considerably from year to year. In 2017, European Joint Customs Operations confiscated 76 million cigarettes, thereby preventing the loss of EUR 12 million in duties and taxes.<sup>446</sup> In 2018, Joint Customs Operations seized 48 million cigarettes.<sup>447</sup>

Tobacco seizures generally occur on a greater scale in SEE. In 2018, SELEC member countries seized 1.5 billion illicit cigarettes;<sup>448</sup> this represents a substantial drop from 2017 during which 2.5 billion cigarettes were seized.

#### 3.4.1. Crime actors

OCGs are involved especially in large-scale cigarette smuggling operations, with networks operating across the Balkans, and Western and Central Europe. In addition to tobacco products, such groups and networks are often

engaged in other forms of illicit trade, namely: drugs, firearms, stolen cars, alcohol and people.<sup>449</sup> Country-level analysis indicates that smaller groups acting alone are also active in this sector.

### 3.4.2. Trafficking routes and hotspots

Tobacco products are trafficked via two main routes:<sup>450</sup> the south-eastern route and north-western route. Turkey is a major destination for illicit cigarettes from Bulgaria (either directly or through Greece), with a massive annual inflow (see graphic 10 below). In addition, the project's advisors note that Turkey is a major hub for cigarettes originating from China and the Middle East (United Arab Emirates – **UAE**) and trafficked to Bulgaria and Greece. Bulgaria is the most significant country of origin in connection to Turkey and Montenegro. It is also an important transit country for cigarettes originating from the UAE and Turkey, which are then smuggled to other EU countries.<sup>451</sup> Greece is an important transit hub in connection to Turkey, Libya and Italy.<sup>452</sup> Romania is both a destination and transit country in connection to Bulgaria and North Macedonia, with onward smuggling to Hungary and Serbia.<sup>453</sup> The latter is a transit country between the Balkans and EU members, with Subotica, Vrsac, Nis and Niksic identified as major hotspots for trafficking and repackaging.<sup>454</sup>

Kosovo is a key transit country and smuggling hub for virtually all countries in the immediate vicinity.<sup>455</sup> Most tobacco smuggling takes place at border crossings in North Kosovo (e.g. the Jarinje and Branjak checkpoints).

Data presented below does not appear to accurately reflect the situation in Montenegro, a longstanding hub for illicit trade in tobacco products (see also section 3.2.3). Today, Montenegro is a regional platform for illicit production and smuggling across the region. Cigarettes enter from Albania (either directly or through Kosovo), before moving to BiH and Croatia.<sup>456</sup> The Port of Bar FTZ is a widely-recognised hotspot that is linked to Europe, the Middle East and Africa; some warehouses are reportedly reserved for smuggled cigarettes due to close ties between organized crime actors, politicians and custom officers.<sup>457</sup> Kosovo is also reported to play a role in distribution, with loads transported into the country from Serbia, North Macedonia and Bulgaria, before being smuggled into Montenegro and the EU.<sup>458</sup>

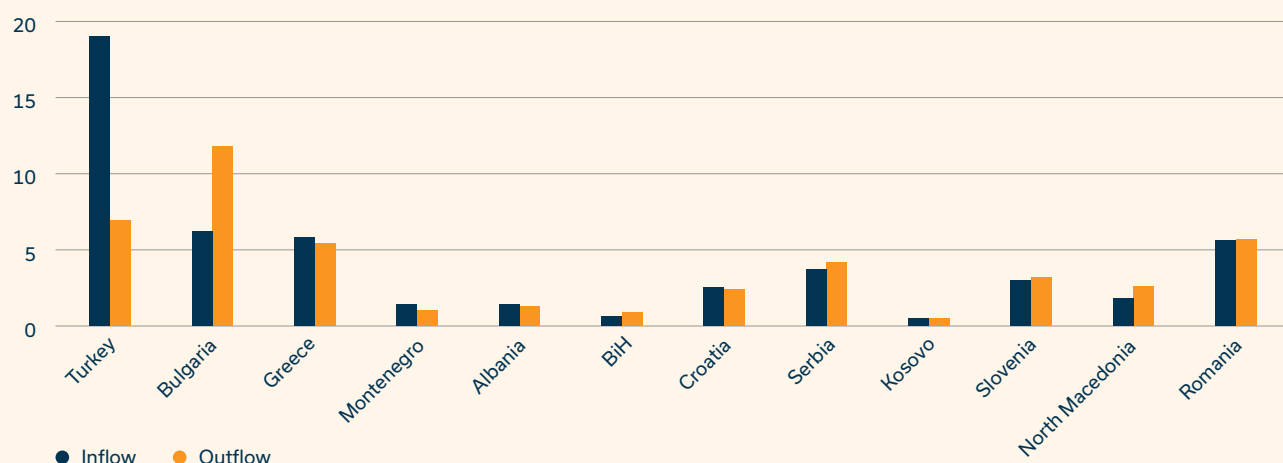
## 3.5. Small arms and light weapons

Illicit trade in small arms and light weapons (**SALW**) is a global phenomenon but concentrated in conflict-affected areas. It is partly fuelled by the wide availability of firearms in nearly all jurisdictions: Small Arms Survey estimates that there were more than one billion firearms in 2017, with the vast majority held by civilians (84.6%).<sup>459</sup> Available seizure data indicate that, across 81 countries surveyed, 550,000 firearms were seized in each of 2016 and 2017.<sup>460</sup> Reported seizures mostly took place within the national territory; only 10% of interceptions occurred at the border.<sup>461</sup>

The WBs is a main source of firearms sold on the international weapons market and trafficked into the EU.<sup>462</sup> An estimated 6.8 million firearms can be found in WBs jurisdictions and most of these are in civilian hands (6.1 million).<sup>463</sup> A substantial proportion of civilian-held firearms are believed to be unregistered (3.8 million).

GRAPHIC 10

Estimated illicit cigarette inflows/outflows in SEE, 2017



Source: Transcrime, ITTP Nexus

In 2017, all WBs countries except Albania were among the 25 jurisdictions worldwide with the highest rates of civilian firearm holdings.<sup>464</sup> When illicit firearms are also factored in, only Turkey appears among top-ranked jurisdictions; this suggests the presence of a significant black market for weapons in the country.

**TABLE 22**

**Total cases involving weapons seized in WBs countries, 2014-2020**

	2014	2015	2016	2017	2018	2019	2020
Albania	48	22	33	82	90	74	43
BiH	87	75	36	67	118	66	90
Kosovo	53	70	60	28	157	347	339
Montenegro	60	46	62	76	171	130	65
North Macedonia	7	9	7	6	89	85	81
Serbia	17	39	34	37	107	102	66
<b>Total</b>	<b>272</b>	<b>260</b>	<b>232</b>	<b>296</b>	<b>732</b>	<b>804</b>	<b>684</b>

Source: South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC)

In the recent past, the illicit SALW market flourished in SEE countries. The armed conflicts of the 1990s, and arms embargos imposed by the international community, led to the accumulation and stockpiling of weapons outside government control.<sup>465</sup> Civil unrest in Albania in 1997, and the ethnic conflict in North Macedonia in 2001, contributed to this proliferation.

According to Croatia's intelligence agency, smuggling from SEE to the EU mainly concerns weapons that have been in circulation since the 1990s, as well as other weapons taken from inadequately secured arms depots.<sup>466</sup> National advisors suggest that, relative to the past, the scale of this illicit trade has been progressively decreasing in the region. In Turkey's case, however, ongoing conflicts in near-east countries continue to fuel weapon flows into neighbouring Turkey, a source and transit country.

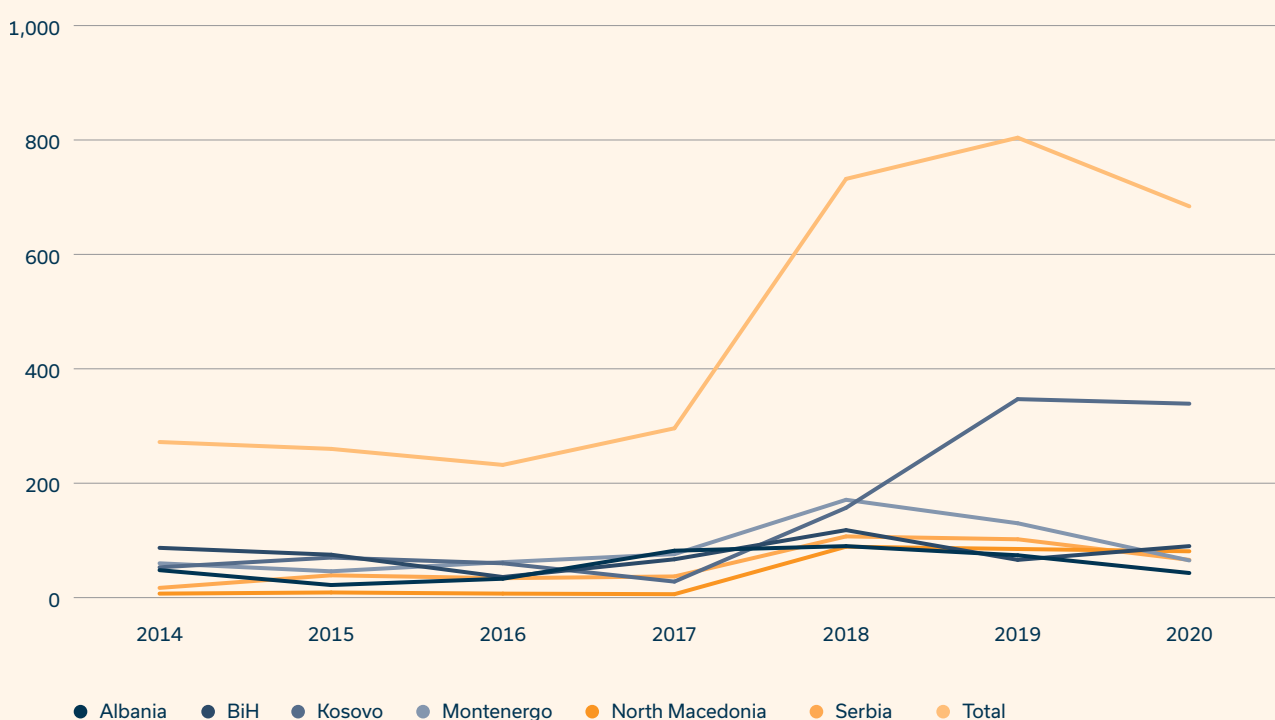
On the other hand, seizures in WBs countries have increased sharply over the past three years (see graphic 11 below). This trend coincides with the adoption, in 2018, of the Regional Roadmap on combating illicit arms trafficking in the WBs, which was endorsed by the Council of the EU.<sup>467</sup>

### 3.5.1. Crime actors

Although SALW trafficking has traditionally been linked to OCGs, especially those active in drug trafficking, national

**GRAPHIC 11**

**WB trends in firearm seizures, 2014-2020**



advisors suggest that this illicit trade is not an exclusive prerogative of OCGs and, today, their involvement appears subsidiary or limited to smaller-scale groups that operate in a largely *ad hoc* manner. Rather, the largest share of this form of illicit trade is reportedly carried out by loosely-affiliated individuals. While OCGs appear to play a relatively more substantial role in Turkey's illicit market, this is dwarfed in comparison to other illicit sectors such as oil, illicit drugs and human trafficking/smuggling.

While there are no grounds to link fundamentalist Islamic terrorism and illicit weapons markets in SEE, international terrorist groups appear to be involved in arms trafficking; Serbian advisors noted that some of the weapons used during the 2015 Paris attacks were manufactured in Serbia.

The availability of cheap weapons means that there is also demand among Italian OCGs, reportedly major customers for weapons originating from Albania.

### 3.5.2. Trafficking routes and hotspots

SEE is the primary source of weapons smuggled into the EU, often following the same routes used for drug trafficking.<sup>468</sup> OCGs from Kosovo, Montenegro, North Macedonia, and small-scale groups in Serbia, are involved in smuggling weapons to Croatia, Hungary, Slovakia, Slovenia and Austria, wherefrom they are further distributed to EU countries including Romania.<sup>469</sup> Active local markets were reported by Macedonian, Kosovar and BiH advisors.

BiH and the city of Banja Luka are believed to be a significant source of SALWs. Rozaje in Montenegro and Peja in Kosovo are also identified as hotspots for weapons trafficking among other forms of illicit trade.<sup>470</sup> Project advisors note that, according to the Hellenic Police, some 300 gangs involved in this trade are active in Greece, with the Greek-Albanian border and southern coast of Crete both major entry points. In 2016 alone, Greek authorities seized 6,435 arms in connection to illicit trafficking.<sup>471</sup>

Illicit possession and trafficking have also presented challenges for Albania in recent years. Authorities reported that 751 arms were seized in 2016-17 in connection to illicit possession, while 17 arms linked to trafficking were seized during the same period.<sup>472</sup>

The apparent growth in weapons trafficking via the Darknet, and associated challenges with cryptocurrency payments, were reported by the project's Serbian and Slovenian advisors. These trends are also of broader concern for EU authorities.<sup>473</sup> On these challenges, see case study and guidance on cyber-enabled illicit trade at section 4.4.1

## 3.6. Cultural property

Trafficking in cultural property is understudied, and global statistics on its scale are scarce. Anecdotally, it is believed to be a growing sector for illicit trade, partly due to its links to organized crime. Conflicts in Libya and Syria appear to have contributed to an intensification of trafficking from North Africa and the Middle East to the EU and elsewhere. Online sales of stolen or trafficked cultural property are becoming a more prominent feature of this market too.

Law enforcement operations provide some insight into this criminal market. In July 2019, for instance, the joint Europol/Interpol *Operation Pandora III* led to seizures of more than 18,000 items in European countries, Colombia, Egypt, Iraq and Morocco.<sup>474</sup> In November 2019, a criminal network stretching across France, Germany, the UK and Serbia was dismantled, with 10,000 items seized mainly in Italy.<sup>475</sup>

Country analysis indicates that crime actors in this sector are relatively isolated and opportunistic, with individual looters and professional thieves the main players. However, the involvement of organized crime has been reported in connection to Greece and Turkey, and to a lesser extent Bulgaria. Further investigation should be carried out into this sector, including possible links between organized crime and terrorist actors at the regional level.

Turkey and Greece are major source countries, and BiH, Bulgaria, Serbia and Romania have also been flagged as such. Further investigation may reveal that these and other countries in the region are significant transit countries, especially in connection to cultural goods originating in Syria and other conflict hotspots.







# Navigating the path to European integration

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# Navigating the path to European integration

## 4.1. A revised enlargement strategy

In February 2020, the European Commission announced an updated EU enlargement strategy to boost the accession process.<sup>476</sup> While this new document rests on the view that full EU membership for Western Balkans countries is a geostrategic investment that needs unequivocal support and commitment, the Commission clearly recognises the convoluted implementation and poor effectiveness of current processes; in order to tackle countries' structural weaknesses, these processes must be improved. The revised strategy comes in the wake of a previous communication urged WBs countries to "urgently redouble their efforts",<sup>477</sup> and calls by some EU members to reform the accession negotiation process.

For these reasons, the Commission's enlargement strategy sets out four principles for reinvigorating the accession process. The first is the need for more credibility and commitment from both WBs leaders, who are responsible for delivering tangible reforms, and EU Member States, whose agreement will be necessary before candidates can move forward to the next stage of the process, when certain objective criteria are satisfied.

The second principle is a stronger political steer, in terms of new opportunities for political and policy dialogue, in the context of regular EU-WB summits and country-specific intergovernmental conferences.

The third principle is a more dynamic negotiation process that is less focused on single negotiating chapters, and more focused on six thematic clusters, namely:

- fundamentals including Chapters 23 and 24.
- the internal market.
- competitiveness and inclusive growth.
- the green agenda and sustainable connectivity and resources.
- agriculture and cohesion; and
- external relations.

The last core principle is predictability and better conditionality, with clear and tangible 'carrots' and 'sticks' for those countries moving on reform priorities, or rather stagnating and backsliding.

## 4.2. Current prospects

In light of these recent developments, what are the enlargement prospects for WBs countries? The Commission recently confirmed that, while negotiating frameworks for Serbia and Montenegro will not be amended, some changes may be incorporated into the existing frameworks to ensure “a level playing field” across the region.<sup>478</sup> In turn, the revised strategy is likely to give a boost to the start of entry negotiations with Albania and North Macedonia.

Building on the new enlargement methodology, on 1 July 2020, the European Commission presented draft negotiating frameworks for Albania and North Macedonia, setting out principles and matters of substance and procedure to be followed in accession negotiations with these countries.<sup>479</sup> It is now up to EU Member States to adopt these negotiating frameworks.

The membership prospects for Kosovo and BiH, in contrast, are less promising. In its 2019 opinion on BiH's membership application, the European Commission stated that it does not yet sufficiently fulfil the Copenhagen criteria.<sup>480</sup> Similarly, Kosovo has been advised that it will progress in the integration process when “objective circumstances will allow”,<sup>481</sup> suggesting no material change to the status quo for the foreseeable future. Against this backdrop, Kosovo and BiH will be a crucial test for the Commission's revamped enlargement strategy.

## 4.3. Country profiles

### 4.3.1. Greece

Among SEE countries, **Greece** was the first to join the EU (then, the European Community) in 1981.<sup>482</sup> This followed the signature of an Association Agreement (AA) in 1961.<sup>483</sup> Its admission as the tenth member of the EU was supported as a way of aligning Greece with the West during the Cold War,<sup>484</sup> thereby preserving its newly-restored democracy and mitigating the risk of resurgent authoritarianism; Greece's military junta had frozen the accession process for over seven years.<sup>485</sup> The country joined the Schengen area and Eurozone in 2000 and 2002 respectively, and frequently took the reins of the Council of the EU; Greece held the rotating presidency on five occasions between 1981 and 2014.<sup>486</sup> The next presidency will be held in 2027.<sup>487</sup>

During its almost 40 years of membership, two major crises have tested Greece's integration and relations with the EU. The first is the debt crisis, and ensuing Eurozone crisis, which hit Greece particularly hard between 2010 and 2015.<sup>488</sup> Significant tensions arose with the EU and other EU members over Economic Adjustments Programs and

austerity measures imposed by lenders as a condition to boost the Greek financial system. In the eyes of many, Greece's economic crisis was the belated consequence of a premature EU membership, with democratic political considerations outweighing economic concerns in connection to the country's structural fragility at the time of accession.<sup>489</sup> While many warned against 'Grexit' and a rupture with the EU during this crisis, the country remains a full member of both the Eurozone and the EU.<sup>490</sup>

Secondly, the recent migration crisis saw a huge inflow of asylum-seekers to the Greek islands, putting Greece under immense strain between 2014 and early 2016. Due to the reluctance of other Member States, the European Commission's plan to relocate asylum-seekers from Greece to other European countries failed to meet its stated objectives.<sup>491</sup> In breach of the solidarity principle and equitable sharing of responsibility between members as enshrined by article 80 of the *Treaty on the Functioning of the EU (TFEU)*, the burden of managing these flows was largely left with Greece.

### 4.3.2. From 'big bang' to the latest enlargement wave: Slovenia, Romania, Bulgaria, Croatia

Slovenia, Romania and Bulgaria, and Croatia, joined the EU during the fifth (2004-2007) and sixth (2013) phases of enlargement. For these countries, EU membership was a strategic priority for breaking with the past and achieving greater democratic, economic and social stability. The backbone of the EU's integration policy was the conditionality principle: full membership would be conditioned on fulfilment of the three so-called 'Copenhagen criteria', namely:

- the existence of democratic institutions;
- a functioning market economy; and
- administrative capacity to implement the EU acquis and obligations of membership (Articles 2 to 49, TFEU).<sup>492</sup>

Among Balkans countries including members of former Yugoslavia, **Slovenia** was first to join the EU. After securing independence in 1991, Slovenia's prospective membership was broadly supported by the political system and general public.<sup>493</sup> Despite this broad base of support,<sup>494</sup> Slovenia's path was not without obstacles. Due to concerns regarding the status of Italian minorities in the country and the ensuing issue of land ownership, Italy vetoed the signing of an AA for some time.<sup>495</sup> On 10 June 1996, an AA was finally signed,<sup>496</sup> and Slovenia applied for membership.<sup>497</sup>

Accession negotiations were conducted between March 1998 and 2002. By making considerable efforts to reform its judiciary and internal market, Slovenia emerged as one of the most successful candidates in aligning with the EU *acquis*.<sup>498</sup> Following signature of the Accession Treaty in 2003,<sup>499</sup> the

country officially became an EU member on 1 May 2004. This occurred in the context of the 'big bang' enlargement with 10 countries simultaneously acceding. Slovenia joined the Eurozone and Schengen area in 2007, and held its first EU Presidency in 2008. Its second presidency will be in 2021.

In contrast to Slovenia's speedy path to EU membership, the path of **Romania** and **Bulgaria** was more convoluted, with both countries facing similar challenges along the way. After the fall of Soviet Union, European integration became a national priority for 'returning to Europe'. The two countries signed an AA in 1993 and applied for EU membership in 1995. Accession negotiations started in March 2000 and various reforms were undertaken by Sofia and Bucharest to prepare for accession. However, due to modest progress in the judicial sector and in the fight against corruption, Bulgaria and Romania were both excluded from the 'big bang' enlargement and their accession was postponed to 2007, when they entered the EU. The perception that these two new Member States were less prepared for integration than others<sup>500</sup> led to the adoption of the Cooperation and Verification Mechanism (**CVM**),<sup>501</sup> a post-accession program for monitoring and assessing progress in the fight against corruption and organized crime. While originally devised as a temporary measure, after almost thirteen years the program remains in place and several weaknesses continue to be reported by the European Commission.<sup>502</sup> At the same time, the program's persistence has been criticised by Romanian and Bulgarian elites as evidence that their countries are 'second class' members of the EU and victims of double standards.<sup>503</sup> Both countries face numerous infringement proceedings for non-compliance with EU law.<sup>504</sup>

In 2018 and 2019, Bulgaria and Romania respectively held the six-month rotating EU Presidency for the first time. However, neither of the two countries is a member of the Eurozone or Schengen area. In relation to the Eurozone, they do not yet fulfil all necessary criteria in order to be able to adopt the Euro, and their national currencies are not within the Exchange Rate Mechanism (**ERM**). Romania has set 2024 as its target for adopting the Euro. Bulgaria has not yet set a date although, since 10 July 2020, it participates in the ERM.<sup>505</sup> In relation to Schengen arrangements, while both countries have already met conditions for the full application of the Schengen acquis, the European Council has not reached a unanimous decision to progress the issue due to persistent concerns arising from the CVM process.<sup>506</sup>

**Croatia's** road to Europe is grounded in the Stabilisation and Association Process (**SAP**), the EU's common strategy for the WBs that was established in 1999.<sup>507</sup> It is the first and only SAP country to achieve membership, which it did in July 2013. Croatia signed a Stability and Association Agreement (**SAA**) in 2001, applied for membership in 2003, and was recognised as a candidate in 2004. Accession negotiations were later postponed by about a year due to Croatia's failure

to cooperate with the International Criminal Tribunal for the former Yugoslavia.<sup>508</sup> Talks were also complicated by a border dispute with Slovenia, which contributed to delays in negotiations that lasted six years. Due to a dispute over the Piran Bay boundary, and Slovenia's claims on accessing international waters, Ljubljana blocked Croatia's accession to the EU until the dispute is settled through arbitration.<sup>509</sup> Croatia's Accession Treaty was finally signed in July 2011 but relations with Slovenia remain tense after Croatia unilaterally withdrew from arbitration and refused to implement the court's ruling.<sup>510</sup> It remains to be seen whether these challenges will preclude Croatia's participation in the Schengen area; although the Commission confirmed in October 2019 that Croatia meets the requisite criteria,<sup>511</sup> Slovenia insists on its implementation of the aforementioned arbitration ruling.<sup>512</sup> Finally, Croatia is not a member of the Eurozone but joined the ERM II on 10 July 2020.<sup>513</sup>

#### 4.3.3. Old frontrunners: Montenegro and Serbia

For several years, Montenegro and Serbia have been considered frontrunners from among their neighbours, with an aspirational goal to conclude EU accession negotiations by 2025.<sup>514</sup> Among countries involved in the SAP, they are the only two countries with ongoing accession negotiations.

**Montenegro** applied for EU membership in 2008 and, after its SAA entered into force, obtained candidate status in 2010. Accession talks were formally opened in 2012. Currently, Montenegro has advanced farthest in its negotiations with the EU, with 33 chapters opened and three chapters closed to date.<sup>515</sup> Further progress is dependent on substantial progress in relation to the 'rule of law cluster', namely Chapters 23 and 24.<sup>516</sup> Moreover, it remains to be seen how Montenegro's unusual adoption of the Euro in 2002,<sup>517</sup> even without EU membership or admittance into the Eurozone, will be addressed during the negotiations. In 2019, 52% of Montenegrins supported EU membership, and 32% strongly believed it will be accomplished by 2025.<sup>518</sup>

In **Serbia**, EU accession is viewed favourably by only 32% of the population, and 33% consider EU membership to be unrealistic. Nonetheless, in terms of its results so far, Serbia is second-in-line for accession. Talks were opened in 2014, following a membership application in 2009, approval of Serbia's candidate status in 2012, and the entering into a SAA in 2013. After five years of negotiations, 16 out of 35 chapters have been opened, with two chapters since provisionally closed.<sup>519</sup> Serbia currently faces two major obstacles to accession. First, it is viewed as relatively underprepared to combat corruption and organized crime, with the independence of the judicial system also under challenge.<sup>520</sup> Secondly, Serbia is expected to normalise relations with Kosovo, which Serbia refuses to recognise after Priština's unilateral declaration of independence in 2008. Normalisation (Chapter 35) is considered urgent and

crucial to advance negotiations and avoid this bilateral dispute being carried into the EU.<sup>521</sup>

#### 4.3.4. New frontrunners?: North Macedonia and Albania

North Macedonia and Albania were among the first Balkan countries to be involved in the SAP and to open SAA-related negotiations in 2000 and 2003, respectively. **North Macedonia** submitted a membership application in 2004 and was recognised as a candidate in December 2005. The country has since taken several steps to strengthen democracy and the rule of law, and to fulfil accession criteria.<sup>522</sup> Although the Commission has repeatedly recommended since 2009 that accession talks with North Macedonia should commence, for over a decade and until recently these were blocked by Greece.<sup>523</sup> The signature of the Prespa Agreement in June 2018, and its ratification in 2019, officially established the country's name as North Macedonia. By accepting the Prespa Agreement in the consultative referendum held in September 2018, 91.5% of Macedonians expressed their support for EU membership.<sup>524</sup>

Since the fall of its communist regime in 1991, **Albania** has declared European integration as the country's highest political priority.<sup>525</sup> According to the 2019 Balkan Barometer, Albania is the region's foremost EU supporter with 86% of the population in favour of joining the EU. After signature of the SAA, the country submitted a membership application in 2009 and obtained candidate status in 2014. Due to Albania's considerable reforms to comply with the membership criteria, in April 2018 the Commission recommended that accession talks be opened.<sup>526</sup> This recommendation was repeated in 2019.

This year, after its new revised enlargement strategy garnered broad support, the European Commission gave the green light for accession negotiations to be opened with both countries.<sup>527</sup>

#### 4.3.5. Potential candidates: Kosovo and BiH

Kosovo and BiH are potential candidates, meaning that they have signed an SAA with the prospect of joining the EU in the future, but do not have status as candidate countries.

**BiH** has been a potential candidate since 2003. After the delayed entry into force of the SAA in 2015 as a result of the European Court of Human Rights's disputed ruling in the *Sejdic and Finci* case,<sup>528</sup> BiH applied to join the EU in 2016. However, according to Commission's opinion in May 2019, BiH is not yet ready to start entry negotiations due to insufficient compliance with membership criteria on democracy and the rule of law.<sup>529</sup> After submitting its application, the Commission submitted to BiH authorities 3,897 questions designed to assess its preparedness for

accession.<sup>530</sup> The country's response to this inquiry was delayed and, in the case of 22 questions, BiH authorities were unable to agree on their response.<sup>531</sup> Unless these outstanding questions are addressed, and EU membership criteria more comprehensively satisfied, BiH is unlikely to proceed in its negotiations.

**Kosovo** is another potential candidate and its SAA entered into force in 2016.<sup>532</sup> Along with Albania, Kosovo is one of the region's most enthusiastic supporters of EU membership. Moreover, integration has been a top priority since the country's declaration of independence in 2008. Kosovo has not yet applied for membership and its prospects of joining the EU remain limited for three main reasons. First, the EU remains divided over the country's statehood, with five Member States refusing to recognise Kosovo's independence (Spain, Slovakia, Cyprus, Romania and Greece). After the recent crisis in Catalonia, Spain's opposition to Kosovo's entry is likely only to have hardened; it explicitly rejected Kosovo's inclusion in any plan for accelerating EU enlargement in the WBs.<sup>533</sup> Secondly, Kosovo (and Serbia) are unlikely to progress without normalisation of their bilateral relationship. While a legally-binding agreement between Kosovo and Serbia is crucial for the integration prospects of both, should Serbia enter the EU before Kosovo, Belgrade may block Kosovo's own accession process. Thirdly, Kosovo needs to make significantly more progress in reinforcing its criminal justice system and the rule of law, and the fight against corruption and organized crime.<sup>534</sup> Accordingly, the Commission has determined that Kosovo's accession process will only advance "once objective circumstances allow".<sup>535</sup>

#### 4.3.6. Negotiations at a standstill: Turkey

Since 1999, **Turkey** has officially held candidate status based on its membership application that was submitted in 1987. Accession negotiations started in 2005 but proceeded slowly, with 16 chapters opened and only one chapter provisionally closed between 2006 and 2016.<sup>536</sup> In June 2018, after numerous ups and downs on Turkey's long path to EU integration, accession negotiations were suspended. In its Conclusions, the Council acknowledged that entry talks have "come to standstill and no further chapters can be considered for opening or closing".<sup>537</sup>

This move came as no surprise due to several critical issues that have interrupted and blocked negotiations to date. First, Turkey's strained relationship with Cyprus is the result of its refusal to recognise Cyprus, and closure in 2006 of Turkish ports and airports to trade with Cyprus. Cyprus, in turn, has acted to halt progress in Turkey's accession talks. Moreover, in the context of the EU's 2004 enlargement that saw the entry of Cyprus and other countries, Turkey failed to apply the AA's additional protocol through which it was required to recognise new Member States as a precondition for acces-

sion. Secondly, following the attempted coup in 2016 and consequent prolonged state of emergency, Turkey has become increasingly authoritarian.<sup>538</sup> These developments not only led the EU to suspend accession talks in the aftermath of the coup,<sup>539</sup> but also seriously impinged on Turkey's ability to meet the Copenhagen criteria. Finally, it should be noted that Germany, France and Austria, in particular, have been sceptical of Turkey's accession process from the outset.

It is arguable whether Turkey's accession process will ever get back on track for as long as the current government is in power. In March 2019, the European Parliament approved a resolution calling on the Council and Commission to suspend talks with Turkey.<sup>540</sup> If this resolution is actioned, Turkey will be demoted from a candidate to 'neighbouring country'. For the foreseeable future, therefore, bilateral relations will continue only in the framework of the AA signed in 1963, and in the context of the EU-Turkey Agreement signed in March 2016 to stem irregular migration. In 2020, that same agreement was called into question as a result of the Turkish President's move to open the country's border with Greece.

TABLE 23

#### Shengen arrangements with non-EU members in SEE

Country	Visa facilitation agreement	Visa-free access until 2020	ETIAS <sup>541</sup> from 2021
<b>Serbia</b>	2008	2008	Yes
<b>Montenegro</b>	2008	2009	Yes
<b>North Macedonia</b>	2008	2009	Yes
<b>Albania</b>	2008	2010	Yes
<b>BiH</b>	2008	2010	Yes
<b>Kosovo</b>	-	-	No
<b>Turkey</b>	-	-	No

**Croatia** is not yet part of the Schengen area. In October 2019, the Commission acknowledged that the country met Schengen standards but the Council's decision is needed for Croatia to become a full Schengen member. As noted above, Slovenia might delay or block the process due to its unresolved border dispute.

All Balkan countries except Kosovo have visa-free access to the Schengen area. Following the signature of visa facilitation agreements, **Serbia, Montenegro, North Macedonia, Albania** and **BiH** have obtained visa-free access to Schengen countries in the period from 2008 to 2020. However, from 2021, their citizens will need to register online for a visa waiver, the new EU mandatory travel authorisation that has been introduced to improve security across the Schengen area.

In May 2016, the Commission proposed visa-free access for Kosovo. However, the Council is yet to decide on the matter, which is opposed by the EU Member States that do not recognise Kosovo, and other countries that are concerned about waves of Kosovar migrants entering the EU as a result of visa liberalisation.<sup>543</sup> While dialogue on liberalisation was launched with Turkey in 2013, its recognition of Cyprus is a condition for launching negotiations on visa-free travel.

## 4.4. A Schengen patchwork

**Greece** and **Slovenia** have been part of the Schengen area since 2000 and 2007, respectively. Due to migratory influxes, Slovenia temporarily suspended Schengen and reintroduced controls at its border with Hungary twice between 2009 and 2015.

According to the European Parliament, in 2011 **Bulgaria** and **Romania** met all necessary formal conditions for the full application of the Schengen *acquis*. However, as noted above, the Council has failed to approve their entry to the Schengen area. Some EU countries maintain that Sofia and Bucharest are not ready, and link Schengen accession to the progress requirements under the CVM.<sup>542</sup>





# Notes and references

- 1 M. Cherif Bassiouni and Christina Abraham (eds.)/Siracusa Institute, *Siracusa Guidelines for International, Regional and National Fact-finding Bodies* (Intersentia, 2013).
- 2 This ongoing work is conducted by the Institute's Mechanism for Combating Illicit Trade (M-CIT) project.
- 3 *SEE:IMPACT* was implemented from September 2017 to November 2020.
- \* All references to Kosovo in this report should be understood in the context of UN Security Council Resolution 1244 (1999) and the International Court of Justice Advisory Opinion on Kosovo's declaration of independence (2010).
- 4 National strategic dialogues were held in seven jurisdictions, namely Albania, BiH, Kosovo, Montenegro, North Macedonia, Romania and Serbia. For more, see annex 1.1.3 on the project's methodology and activities.
- 5 Walter Kemp/Global Initiative against Transnational Organized Crime (GITOC), *Transnational Tentacles: Global Hotspots of Western Balkan Organized Crime*, July 2020, 3 (hereafter GITOC, *Transnational Tentacles*). On the recent dismantlement of one such group, Kompania Bello, see Mike Corder, 'Italian-led investigation busts ethnic Albanian crime gang', *San Francisco Chronicle*, 17 September 2020 (hereafter Corder), which is also discussed in chapter 6, regional and international cooperation).
- 6 See also GITOC, *Transnational Tentacles*, n. 5, 25.
- 7 In Arabic, *Hawala* means 'to change' or 'transform'. It refers to an informal value transfer system used primarily in South Asia, the Middle East and Africa. For a small fee, a *hawaladar* in one jurisdiction facilitates the payment of someone in another jurisdiction without the need for a cross-border transaction. On one hand, this system offers financial services to those who cannot access the formal financial system (the so-called 'unbanked'). On the other hand, *Hawala* and its money transmitter networks are exploited for money laundering, terrorist financing and fraud purposes, as well as to evade sanctions. Traditionally, *Hawala* and similar channels that rely on trust and reputation were based on family, tribal or regional links. Today, they service broader networks: Financial Action Task Force (FATF), *The Role of Hawala and Other Similar Service Providers in Money Laundering and Terrorist Financing*, October 2013.
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- 10 *SEE:IMPACT* builds on the Siracusa Institute's technical assistance experience in SEE between 1999 and 2019, including two projects on transnational organized crime. Specifically, the Institute has provided assistance in Albania (1999-2012), North Macedonia (2002-2009) and Kosovo (2015-2019). Its most recently-concluded project in Kosovo, a 30-month Twinning project that the Institute implemented as the *ad hoc* mandated body of the Italian Judicial Council, supported Kosovo's Judicial Council, Prosecutorial Council and Special Prosecution Office (SPRK).
- 11 All countries were invited to participate in *SEE:IMPACT*'s regional strategic dialogues in December 2018 and November 2020. Tailored three-day national strategic dialogues were held between May and October 2019 in six WBs jurisdictions and Romania.
- 12 This is due mainly to the difficulty in identifying common features across the many illicit trade forms that exist – other than the involvement of OCGs and networks, and corruption. This prevents the unified categorisation of different illegal conduct involved in illicit trade schemes, usually comprising multiple criminal offences with different legal elements. The present report endeavours to contribute to that categorisation.
- 13 These discrepancies seriously undermine efforts to quantify illicit trade, which requires comparable data and statistics across jurisdictions, but this was less of a concern for *SEE:IMPACT*; rather than quantifying illicit trade, the project assessed nationwide, country-specific responses to it.
- 14 While illicit trade can occur solely within national borders, there is general consensus that its most egregious and harmful manifestations are transnational (or international) in scope. Accordingly, in the Institute's view, this is where SEE countries should focus their efforts in collaboration with regional partners. It is also noted that the project's broad concept of illicit trade is not currently recognised by national legal systems as constituting a criminal offence *per se*.
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- 17 World Bank, *Bulgaria: Spending Review on Policing and Firefighting*, 29 June 2018.

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- 21 In recent decades, the US policing experience, which has involved government-funded militarisation of police departments across many states, provides important lessons for other countries. See, for e.g., Jonathan Mummolo, 'Militarization fails to enhance police safety or reduce crime but may harm police reputation', 115 *Proceedings of the National Academy of Sciences of the United States of America* 37, 11 September 2018.
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- 29 Ibid., 12.
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- 33 This methodology already applies to Albania and North Macedonia, while Montenegro and Serbia can opt in.
- 34 Dragana Lukic, *EU Accession Negotiations: Analysis of Benchmarks For Montenegro Through Comparison with Croatia and Serbia*, January 2018, 87–8.
- 35 Ibid.
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- 153 These countries are, namely, Austria, Belgium, Finland, Ireland, The Netherlands, Slovakia and Sweden: *Ibid.*
- 154 The EU average is slightly less than 3 zones.
- 155 OECD/EUIPO, *Counterfeit Goods and FTZs*, n. 47, 51.
- 156 OECD, *Tracking Special Economic Zones in the Western Balkans: Objectives, Features and Key Challenges*, 2017, 32 (hereafter OECD, *Tracking Special Economic Zones in the WBs*). This characterisation does not suggest, however, that the Port of Bar does not present significant illicit trade risks (for more, see the case study on the Bar FTZ).
- 157 *Ibid.*, 14.
- 158 *Ibid.*
- 159 Reliable, in-depth information about the ownership, development and operation of SEE FTZs is generally not publicly available. Based on credible open sources, this report's map 4 endeavours to identify which zones are public or privately controlled.
- 160 FTZ Law No. 84/1992, Articles 2-5. Article 3 notes that access to FTZs shall be controlled by customs and border authorities, but Article 2 provides that customs controls can be enforced only up to the "limits" of FTZs.
- 161 GITOC, *Western Balkans Hotspots*, n. 45. The zones in question are Subotica, Gevgelja, Tetovo, Vlora, Bar, Novi Sad, Sarajevo, Belgrade, Podgorica, Skopje (with a total of 3 FTZs), Stip and Mitrovica.
- 162 *Ibid.*, 13-4; Transcrime, *ITTP Nexus*, n. 42, 111; 'Bananas Coke Bust Worth \$17 Million', *Reuters*, 6 May 2014, <https://www.newsweek.com/bananas-coke-bust-worth-17-million-253562>; GITOC, *A Filterless Environment: Illicit Tobacco Trade in Kosovo*, 2020, 5; Zdravko Ljubas, 'Montenegrin police bust cigarette smuggling ring', OCCRP, 11 August 2020, <https://www.occrp.org/en/daily/12928-montenegrin-police-bust-cigarette-smuggling-ring>.
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- 169 European Commission, *Montenegro 2018 Report*, 17 April 2018, SWD(2018) 150 final, 33.
- 170 European Commission, *Montenegro 2019 Report*, 29 May 2019, SWD(2019) 217 final, 37 (hereafter European Commission, *Montenegro 2019 Report*). In 2020, the Commission reported that there remain "systemic deficiencies" in the Bar FTZ: European Commission, *Montenegro 2020 Report*, n. 40, 49.
- 171 *Ibid.*

- 172 Transcrime, *ITTP Nexus*, n. 42, 127, Box 10. See also Ahmed El Shamy/True Story Award, 'Cleopatra: Made Outside Egypt', 13 December 2018, <https://truestoryaward.org/story/36>; Visar Prebreza et al., 'Copying Cleopatra: The cigarette 'made in Egypt', via Montenegro', *BIRN*, 11 December 2018, <https://balkaninsight.com/2018/12/11/copying-cleopatra-the-cigarette-made-in-egypt-via-montenegro-12-10-2018> (accessed 21 October 2020); isar Prebreza et al., 'Cigarette smugglers find safe harbour in Montenegro, again', *BIRN*, 30 May 2019, <https://balkaninsight.com/2019/05/30/cigarette-smugglers-find-safe-harbour-in-montenegro-again/> (hereafter *BIRN*, 'Cigarette smugglers find safe harbour').
- 173 *BIRN*, 'Cigarette smugglers find safe harbour', n. 172.
- 174 *Ibid.*
- 175 *GITOC, Western Balkans Hotspots*, n. 45, 14.
- 176 *WCO, Extraterritoriality of FTZs*, n. 139, 22. This paper notes, moreover, "Even in countries where Customs is endowed with sufficient authority to reject approval of companies hoping to operate in [FTZs], it is rare in reality that Customs conducts substantive record checks of applicants and rejects applications".
- 177 *Ibid.*, 3.
- 178 *Ibid.*
- 179 Piraeus Port Authority, 'The financial results for the year 2019 of PPA S.A. were presented to the Hellenic Fund and Asset Management Association', 19 May 2020, <http://www.olp.gr/en/press-releases/item/5149-the-financial-results-for-the-year-2019-of-ppa-sa-were-presented-to-the-hellenic-fund-and-asset-management-association> (accessed 21 October 2020). The precise unit is 'twenty-foot equivalent units' or TEUs.
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- 181 Luka Koper, d.d., *Annual Report 2019*, 11.
- 182 Council of Europe, 'Chart of signatures and ratifications of Treaty 211 as at 21 September 2020', <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/211/signatures>. BiH ratified the Convention most recently, on 18 September 2020.
- 183 European Commission, *Analytical Report on BiH*, 29 May 2019, SWD(2019) 222 final, 62 (hereafter European Commission, *BiH Analytical Report*); *North Macedonia 2019 Report*, n. 37, 39; *Serbia 2019 Report*, n. 37, 36; *Montenegro 2019 Report*, n. 170, 38.
- 184 European Commission, *Albania 2019 Report*, n. 37, 37.
- 185 European Commission, *Montenegro 2020 Report*, n. 40, 22.
- 186 DIICOT, *Raport de Activitate 2019*, 24 February 2020, 15-6 (hereafter DIICOT, *Activity Report 2019*).
- 187 European Commission, *Albania 2019 Report*, n. 37, 35.
- 188 US Department of State, *Trafficking in Persons Report: 20th Edition*, June 2020, 69 (hereafter US Department of State, *THB Report*).
- 189 European Commission, *Albania 2019 Report*, n. 37, 36.
- 190 Article 3(c) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements UNTOC, states: "The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article" including, namely, coercion.
- 191 This point is also supported by the European Commission: *Montenegro 2019 Report*, n. 170, 36.
- 192 Beyond such sector-specific mechanisms, however, this report's Recommendation 7 is intended to have broader effects and impact, ensuring that the prosecution has the information and intelligence it needs to uncover, pursue and prove organized crime links wherever these exist. This is relevant to the fight against THB and all other forms of illicit trade.
- 193 *WCO, Customs Risk Management Compendium - Common Part*, V.
- 194 Advance Electronic Data refers to information provided to Customs to help them target and screen high-risk consignments, and typically includes: the shipper's name and address, any consignee's name and address, a description of the cargo, the piece count (or number of physical pieces in the package), and its weight.
- 195 *WCO, Cross-Border E-Commerce Framework of Standards*, 2018.
- 196 European Commission, *Montenegro 2020 Report*, n. 40, 45.
- 197 European Commission, *Montenegro 2019 Report*, n. 170, 37; *Albania 2019 Report*, n. 37, 36.
- 198 European Commission, *Kosovo 2020 Report*, 6 October 2020, SWD(2020) 356 final, 43 (hereafter 'European Commission, *Kosovo 2020 Report*').
- 199 European Commission, *Serbia 2020 Report*, 6 October 2020, SWD(2020) 352 final 45 (hereafter European Commission, *Serbia 2020 Report*).
- 200 European Commission, *Kosovo 2019 Report*, 29 May 2019, SWD(2019) 216 final, 35 (hereafter European Commission, *Kosovo 2019 Report*); *Serbia 2019 Report*, n. 37, 29; *BiH Analytical Report*, n. 183, 61.
- 201 European Commission, *Montenegro 2019 Report*, n. 170, 37.
- 202 *Ibid.*, 36.

- 203 Ibid. Four new THB investigations were launched at the beginning of 2020: European Commission, *Montenegro 2020 Report*, n. 40, 48.
- 204 European Commission, *Kosovo 2020 Report*, n. 198, 43.
- 205 European Commission, *Update on the Republic of North Macedonia*, 2 March 2020, SWD(2020) 47 final, 4 (hereafter European Commission, *North Macedonia Update*). The Commission stated: "There is an increase in the number of criminal investigations opened in 2019 in relation to organised crime groups, especially against groups involving a large number of suspects, i.e. up to 21 individuals for smuggling migrants. There were 15 new investigations opened against 96 persons and the continuation of two investigations from 2018 against 15 suspects."
- 206 This concern has also been raised by the European Commission: *Serbia 2019 Report*, n. 37, 32. In contrast, the Montenegrin Police Directorate was made independent of the Ministry of Interior in late 2018, and restructured in April 2019; the department focused on organized crime, in particular, now benefits from a clearer chain of command and greater coordination in the use of police resources to support prosecutor-led investigations into organized crime: European Commission, *Montenegro 2020 Report*, n. 40, 44.
- 207 European Commission, *Kosovo 2019 Report*, n. 200, 35.
- 208 EULEX, 'Operations', <https://www.eulex-kosovo.eu/?page=2,59>.
- 209 Article 47 of North Macedonia's Criminal Procedure Code, for e.g., states that customs officers have the status of judicial police when investigating a wide range of crimes related to illicit trade: production and sale of harmful medicines; production and sale of harmful food and other produce; unauthorised production and sale of narcotic drugs, psychotropic substances and precursors; unauthorised collection and disposal of nuclear material; import of hazardous materials; export of cultural property; money laundering; smuggling, customs fraud and hiding smuggled goods; tax evasion; unlawful possession of weapons and explosives; and other crimes including those related to the cross-border import, export and transit of goods.
- 210 Bulgarian Customs Act, Promulgated SG No. 15 as amended and supplemented, 6 February 1998, Article 16(1).
- 211 Interviewed Serbian prosecutors expressed interest in learning more about the range of support that private sectors can provide to their illicit trade investigations.
- 212 Online intermediaries or service providers comprise both surface web platforms for sharing content, advertising offers and generating sales, as well as intermediaries that facilitate online access and activity in diverse ways. More specifically, platforms may refer to social media networks (e.g. Facebook, Twitter, Instagram) and other user-generated digital content sites (e.g. YouTube, Vimeo), marketplaces (e.g. Amazon, Alibaba, e-Bay), peer-to-peer networks for uploading and sharing digital content (e.g. The Pirate Bay, BitTorrent) and encrypted messaging services (e.g. Whatsapp, Telegram).
- Intermediaries facilitate data transmission and a broad range of other online activities and transactions, and include hosting providers, domain registries, internet service providers, search engines, online advertising services and, importantly, online payment systems. There is increasing cross-over between these different categories. The Institute also notes that online cryptocurrency money laundering services (e.g. mixers, tumblers, foggers) and the platforms that support these, and other unregulated services such as 'crypto kiosks' (or Bitcoin ATMs), present particular regulatory challenges that are being addressed by its Mechanism for Combating Illicit Trade (M-CIT) project.
- 213 Such technologies and tools include: computer and internet protocol address verifiers for focusing investigations on potentially problematic traffic involving the use of anonymisation tools (e.g. Tor); in appropriate circumstances and subject to judicial oversight, seizing and transferring Darknet websites to enforcement agency servers in order to facilitate monitoring and identification of perpetrators; and other analytical tools for understanding cryptomarket features, dynamics and trends.
- 214 All SEE countries except Kosovo have ratified the Convention, which has entered into force.
- 215 FATF, *Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers*, June 2019.
- 216 In 2017, a Council of Europe project provided training on Darknet investigation techniques to law enforcement officers of Albania, BiH, Kosovo, Montenegro, North Macedonia, Romania, Serbia and Turkey: Council of Europe, 'iPROCEEDS: pilot training on Investigation on Darknet and virtual currencies', 2017, <https://www.coe.int/en/web/cybercrime/-/iproceeds-pilot-training-on-investigation-on-darknet-and-virtual-currencies>.
- 217 See, for e.g., Europol, 'Darknet arms vendor arrested in Slovenia with support of Europol', 20 December 2016, <https://www.europol.europa.eu/newsroom/news/darknet-arms-vendor-arrested-in-slovenia-support-of-europol>.
- 218 As noted by the UN Trade Facilitation Implementation Guide, "a Single Window is set up to allow the exchange of information between traders and government agencies, and amongst government agencies, for trade relevant procedures such as obtaining permits and licences, certificates and necessary approvals, customs clearance and port exit. Single Windows offer a single point of entry and single submission of trade relevant data for traders, and a more efficient and faster processing in a paperless environment": 'The Single Window concept', <http://tfig.unece.org/contents/single-window-for-trade.htm>.
- 219 Elaborated from UN Trade Facilitation and Paperless Trade Survey, 'Global Data', <https://untfsurvey.org/>. Data were not available for Kosovo, Romania or Slovenia.
- 220 Ioannis Michaletos and Chris Deliso, 'The Hellenic Coast Guard: Greece's First Line of Maritime Defence', *Balkananalysis*, 2015, <http://www.balkananalysis.com/greece/2015/06/08/the-hellenic-coast-guard-greeces-first-line-of-maritime-defense/>.

- 221 A two-year EU Twinning project, *Building of the Institutional Capacity of the Investigative Centres*, commenced in May 2019. It is led by the German Foundation for International Legal Cooperation (IRZ) and supported by Croatia's Ministry of Justice: IRZ, 'North Macedonia: Building of the Institutional Capacity of the Investigative Centres', 7 June 2019, <https://www.irz.de/index.php/en/north-macedonia/247-nordmazedonien-eu-projekte/2273-building-of-the-institutional-capacity-of-the-investigative-centres>.
- 222 The OTA serves as an interface between telecommunications service providers and national authorities charged with electronic surveillance pursuant to court orders: OTA, 'Basic information', <https://ota.mk/en/osnovni-informacii>.
- 223 Eurostat, 'Police, court and prison personnel statistics', n. 22.
- 224 While 39 judicial officers/agents are currently employed, 90 such posts were funded in 2019. The total numbers of posts budgeted is well short of the 290 judicial police posts that are intended to be filled within five years: DIICOT, *Activity Report 2019*, n. 186, 7. This figure does not take account of specialised police officers within Romanian Police's Organized Crime Directorate, the General Inspectorate of the Border Police, and the Gendarmerie.
- 225 European Commission, *Montenegro 2019 Report*, n. 170, 33.
- 226 Ibid., 23. In 2019, the Special Police Unit grew to 32 staff members: European Commission, *Montenegro 2020 Report*, n. 40, 44.
- 227 Eurostat, 'Police, court and prison personnel statistics', n. 22.
- 228 Current data on PNUSKOK staffing levels were not available. The figure cited appears to have been accurate at least up to 2013: Police Directorate of the Croatian Ministry of Interior, 'Hrvatski Sabor – Nacionalno vijeće za praćenje provedbe, strategijesuzbijanja-korupcije n/p gospodina Vladimira Seksa, 8 November 2012, <https://www.sabor.hr/sites/default/files/uploads/inline-files/PNUSKOK.pdf>; Association Zenith, *Embedding Rule of Law in the Enlargement Process: A Case for EU Political Conditionality in the Accession of the Western Balkans Countries*, 2013, 17.
- 229 NCA, *Annual Report and Accounts: 2019-20*, 21 July 2020, 54. This figure does not include non-permanent officers (327) or officers attached to the NCA from other organizations (91). Overall staffing levels increased between 2018-19 and 2019-20.
- 230 The total number of officers in territorial police forces does not include NCA officers: UK Home Office, 'Police workforce, England and Wales, as at 31 March 2020', 1, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/905169/police-workforce-mar20-hosb2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/905169/police-workforce-mar20-hosb2020.pdf).
- 231 Vikram Dodd, 'Spend £2.7bn more to tackle organised crime, says NCA chief', *The Guardian*, 14 May 2019. These figures were originally reported in British Pounds and converted into Euros on 29 September 2020. The NCA chief's call was supported by the UK Police Federation.
- 232 It is not clear whether relocation to a location outside the country is possible.
- 233 For more on the role of online intermediaries, including online marketplaces, in combating cyber-enabled illicit trade, see case study at section 4.4.1.
- 234 World Economic Forum, *Delivering the Goods: E-commerce Logistics Transformation*, 23 October 2018.
- 235 UN Conference on Trade and Development (UNCTAD); 'Global e-commerce hits \$25.6 trillion: latest UNCTAD estimates', 27 April 2020, [https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2345&Sitemap\\_x0020\\_Taxonomy=UNCTAD%20Home;#1713;#Information%20and%20Communication%20Technologies;#2045;#Information%20Economy:%20Measurement](https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2345&Sitemap_x0020_Taxonomy=UNCTAD%20Home;#1713;#Information%20and%20Communication%20Technologies;#2045;#Information%20Economy:%20Measurement) (hereafter UNCTAD, 'Global e-commerce hits \$25.6 trillion').
- 236 OECD and EUIPO, *Misuse of Small Parcels for Trade in Counterfeit Goods: Facts and Trends*, 12 December 2018, 14 (hereafter OECD/EUIPO, *Misuse of Small Parcels*).
- 237 OECD, *Connecting Businesses and Consumers During COVID-19: Trade in Parcels*, 9 July 2020, 3 (hereafter OECD, *Connecting Businesses and Consumers During COVID*).
- 238 OECD/EUIPO, *Misuse of Small Parcels*, n. 236, 13. See also OECD/EUIPO, *Mapping Trade in Fake Goods*, n. 72.
- 239 See *ibid.*
- 240 OECD, *Connecting Businesses and Consumers During COVID*, n. 237, 8.
- 241 Ibid., 7.
- 242 OECD, *Governance Frameworks to Counter Illicit Trade*, 1 March 2018, 29.
- 243 Office of the Inspector General of the United States Postal Service, *Use of Postal Service Network to Facilitate Illicit Drug Distribution*, 28 September 2018, 7.
- 244 UNCTAD, *B2C E-commerce Index 2019*, December 2019, TN/UNCTAD/ICT4D/15, 2.
- 245 UNCTAD; 'Global e-commerce hits \$25.6 trillion', n. 235.
- 246 European Commission, *Albania 2020 Report*, 6 October 2020, SWD(2020) 354 final, 20 (hereafter European Commission, *Albania 2020 Report*).



- 247 European Commission, *Albania 2019 Report*, n. 37, 4.
- 248 European Commission, *Kosovo 2019 Report*, n. 200, 13, 22-3; *North Macedonia 2019 Report*, n. 37, 13, 20.
- 249 European Commission, *Albania 2020 Report*, n. 246, 25.
- 250 European Commission, *Montenegro 2019 Report*, n. 170, 24; *Albania 2019 Report*, n. 37, 22; *North Macedonia 2019 Report*, n. 37, 22; *Kosovo 2019 Report*, n. 200, 22-3; *Serbia 2019 Report*, n. 37, 22; *BiH Analytical Report*, n. 183, 40. On these EU standards, see EU Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 35, 26 November 2019.
- 251 European Commission, *Montenegro 2019 Report*, n. 170, 22; *Serbia 2019 Report*, n. 37, 20; *Turkey 2019 Report*, 29 May 2019, SWD(2019) 220 final, 27 (hereafter European Commission, *Turkey 2019 Report*). In 2019, these figures remained unchanged in Montenegro, while cases in Serbia increased to 152: European Commission, *Montenegro 2020 Report*, n. 40, 28; European Commission, *Serbia 2020 Report*, n. 199, 27. On concerns that Serbia's law on whistleblowers might have been weaponised, see Nikola Burazer/Friedrich Ebert Stiftung, *Assessing Serbia's Progress on the EU Accession Agenda 2016-2020*, June 2020, 7.
- 252 European Commission, *Albania 2019 Report*, n. 37, 20; *BiH Analytical Report*, n. 183, 42. In 2020, the Albanian anti-corruption authority investigated 14 cases and, in BiH, administrative protection was granted in one case: European Commission, *Albania 2020 Report*, n. 246, 25; European Commission, *Bosnia and Herzegovina 2020 Report*, 6 October 2020, SWD(2020) 350 final, 23 (hereafter European Commission, *BiH 2020 Report*).
- 253 European Commission, *North Macedonia 2019 Report*, n. 37, 36.
- 254 European Commission, *Montenegro 2020 Report*, n. 40, 45.
- 255 Relatedly, BiH enforcement bodies "reported difficulties in investigating trafficking offenses involving multiple cantons or entities, due to a lack of communication and coordination with cantonal prosecutors": US Department of State, *THB Report*, n. 188, 113. The only mechanism for cross-entity coordination of enforcement efforts, the anti-trafficking strike force, has proven largely ineffective to date, according to the State Department.
- 256 RUSI, *On Tap Europe: Greece*, n. 88, 31.
- 257 In the anti-money laundering context, see FATF, *Private Sector Information Sharing*, November 2017, 26-7.
- 258 Elaborated from European Commission, *Serbia 2019 Report*, n. 37, 33.
- 259 European Commission, *Montenegro 2019 Report*, n. 170, 34.
- 260 European Commission, *Montenegro 2020 Report*, n. 40, 45.
- 261 European Commission, *BiH Analytical Report*, n. 183, 59.
- 262 Ibid.
- 263 Backlogs are also reported for complaints against Kosovo Customs and the Tax Administration: European Commission, *Kosovo 2019 Report*, n. 200, 60-2. This challenge is also related to the incremental rollout of Kosovo's Case Management Information System, which is in the process of registering all cases.
- 264 'Extended confiscation' refers to the possibility to confiscate assets that are not technically proceeds of the crime for which the offender has been convicted. 'NCB confiscation' regimes enable competent authorities to confiscate tainted assets without the prerequisite of a criminal conviction.
- 265 It should be noted, too, that there is considerable divergence among EU Member States on matters related to asset recovery and confiscation: European Commission, *Asset Recovery and Confiscation: Ensuring that Crime Does Not Pay*, 2 June 2020, COM(2020) 217 final.
- 266 This point is echoed by the European Commission: *BiH Analytical Report*, n. 183, 58.
- 267 European Commission, *Update on the Republic of Albania*, 2 March 2020, SWD(2020) 46 final, 5-7.
- 268 European Commission, *Albania 2019 Report*, n. 37, 32-3.
- 269 The establishment of this ARO is foreseen by the new law on the administration of seized and confiscated assets, adopted in July 2019.
- 270 European Commission, *Montenegro 2020 Report*, n. 40, 44.
- 271 European Commission, *Montenegro 2019 Report*, n. 170, 20, 32-3. On similar recommendations for Montenegro and Serbia, see *Serbia 2019 Report*, n. 37, 19, 31; *Serbia 2020 Report*, n. 199, 44; *Montenegro 2020 Report*, n. 40, 26.
- 272 European Commission, *Serbia 2020 Report*, n. 199, 44.
- 273 European Commission, *North Macedonia 2019 Report*, n. 37, 22, 35, 37.
- 274 European Commission, *Kosovo 2019 Report*, n. 200, 33.
- 275 See also European Commission, *Turkey 2020 Report*, 6 October 2020, SWD(2020) 355 final, 44 (hereafter European Commission, *Turkey 2020 Report*).
- 276 As noted by the European Commission, and unlike other EU members in SEE, Slovenia's forfeiture procedures in civil proceedings target specific assets (i.e. *in rem* confiscation), rather than specific suspects. The value of assets owned by suspects must exceed EUR 50,000, with the assets derived from or obtained through particular criminal offences: *Analysis of Non-Conviction Based Confiscation Measures in the European Union*, 12 April 2019, SWD(2019) 1050 final, 16.
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- 280 Barbara Vettori, Todor Kolarov and Atanas Rusev/Center for the Study of Democracy (CSD), *Disposal of Confiscated Assets in the EU Member States Laws And Practices*, 2014, 97 (hereafter CSD, *Disposal of Confiscated Assets*).
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- 289 In BiH, there is no overall policy for carrying out financial investigations systematically, and the results of investigations so far have been insignificant: European Commission, *BiH Analytical Report*, n. 197, 60. Likewise, the Commission has recommended that Macedonian law enforcement and prosecution bodies further build up operational capacity, including for systematically conducting financial investigations: *North Macedonia 2019 Report*, n. 37, 37. The same is recommended for Montenegro: *Montenegro 2019 Report*, n. 170, 35.
- 290 European Commission, *Montenegro 2019 Report*, n. 170, 36.
- 291 European Commission, *Kosovo 2019 Report*, n. 200, 22.
- 292 European Commission, *Serbia 2019 Report*, n. 37, 21.
- 293 The European Commission is not yet convinced, reporting that "tools for freezing, managing and confiscating criminal assets are still not effective enough": *North Macedonia 2019 Report*, n. 37, 37.
- 294 Ibid.
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- 296 Improving the land registry has also been recommended by the European Commission: *Montenegro 2019 Report*, n. 170, 33.
- 297 European Commission, *Serbia 2019 Report*, n. 37, 34.
- 298 European Commission, *Montenegro 2019 Report*, n. 170, 35.
- 299 European Commission, *North Macedonia 2019 Report*, n. 37, 35; *Albania 2019 Report*, n. 37, 37.
- 300 Ibid.
- 301 European Commission, *Albania 2019 Report*, n. 37, 37.
- 302 Ibid., 35; European Commission, *Turkey 2019 Report*, n. 251, 43.
- 303 European Commission, *Montenegro 2019 Report*, n. 170, 36. BiH's system for collecting statistics on asset seizure has also been noted as needing improvement: European Commission, *BiH Analytical Report*, n. 183, 60.
- 304 European Commission, *Kosovo 2019 Report*, n. 200, 43. Reciprocity is a generally-accepted principle of international relations.
- 305 LURIS was developed by the Dutch Prosecution Service for registering and monitoring MLA cases.
- 306 In Montenegro, LURIS was implemented for the Ministry of Justice and Supreme State Prosecutor's Office, and in Serbia for the Ministry of Justice and Republic Public Prosecutor's Office. The EUROL II project sought to assess *inter alia* how well the LURIS system is functioning in Montenegro.
- 307 The European Commission commented favourably on Montenegro's increased involvement in international cooperation in 2018, based on statistics generated by LURIS: *Montenegro 2019 Report*, n. 170, 43. See also Center for Democracy and Human Rights, *Regional Judicial Cooperation in Criminal Matters: Overview of Comparative Practices of Western Balkans Countries*, April 2019, 82.
- 308 European Commission, *North Macedonia 2019 Report*, n. 37, 44.
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- 314 For more on the strengths of this innovative approach: Chervine Oftadeh and Annalisa Paucillo, 'Rethinking Judicial Cooperation Between Africa and Europe: The Nigerian Case', *Eucrim*, 2019.
- 315 Shpend Kursani/Belgrade Centre for Security Policy and Kosovar Centre for Security Studies, *Police Cooperation between Kosovo and Serbia*, 2015, 7-8 (hereafter Kursani, *Police Cooperation*).
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- 317 This point is echoed by the European Commission: *BiH Analytical Report*, n. 183, 57.
- 318 European Commission, *Kosovo 2020 Report*, n. 198, 42.
- 319 The Agreement was signed in 2011 and became operational in 2013: Bojan Elek/Belgrade Centre for Security Policy, *Towards More Effective Police Cooperation between Serbia and Kosovo*, 2015, 9. Permanent border crossing points are still to be established: European Commission, *Serbia 2019 Report*, n. 37, 54.
- 320 See, e.g., OSCE, 'Mission to Skopje organised regional meeting on organized crime and irregular migration', 7 December 2016, <https://polis.osce.org/node/1681>.
- 321 Article 13 of Albania's Law on Jurisdictional Relations with Foreign Authorities in Criminal Matters permits international cooperation in whatever form unless prohibited by law.
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- 327 Eurojust, 'Casework at Eurojust', <http://www.eurojust.europa.eu/Practitioners/operational/casework/Pages/Casework-at-Eurojust.aspx>.
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- 329 SELEC, *Annual Report 2019*, 15.
- 330 *Ibid.*, 33. The Center further notes that, in the first operational phase, 925 pieces of information were exchanged between participating authorities, and seizures amounted to 23 million cigarettes, 863 kgs of smoking tobacco, and 32 kgs of water-pipe tobacco. In addition to regional operations, the Annual Report also describes joint investigations into illicit trade in tobacco products.
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- 350 European Commission, *Serbia 2019 Report*, n. 37, 34.
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- 367 A core list of international reports on illicit trade was furnished to national advisors before starting their assessments.
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