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У науковому журналі уміщено наукові публікації вчених, практиків і науково-педагогічних працівників. Призначено для ознайомлення громадськості з результатами наукових досліджень. Розраховано на всіх, хто цікавиться проблемами сучасної науки та правозастосування в царині нормативно-правового забезпечення охорони державного кордону.

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We would like to present to the reader’s attention the first issue of the scientific journal “Law & Border” – a platform for professional discussion in the field of cross-border issues of law, security and law enforcement.

Obviously, the main feature of such problems is their international and interdisciplinary nature.

Choosing exactly this subject area for a new scientific journal, we, firstly, mean that the border for adjacent states is a barrier and an area of contact at the same time. Secondly, the fact that the mod-
ern forms of borders in the twenty-first century are related to their multifunctionality.

This means that applying a special legal regime of the state border, visa, customs, other barriers, the states protect their security interests, and in this case, the barrier function of the border comes first. This function is especially important while ensuring the legal regime of martial law in Ukraine.

On the other hand, no less important is the contact function of peaceful borders, which is realized through their permeability for people, goods, services, and capital. Unhindered implementation of this function is accompanied by the constant search and implementation of technological innovations that allow modernizing border protection, speeding up border and customs control. Obviously, in this case, the state border itself is an objective factor for people living in the border areas, influencing both economic relations and social structures. “Cross-border territory”, “cross-border region” – usually encompasses the territory of economic, cultural and scientific cooperation. That is why the journal will pay special attention to scientific works in the areas of integrated border management, international, customs and trade law.

On the other hand, the signs of cross-border nature can be inherent in illegal activities, including those regions that do not geographically border each other, for example, separated (but at the same time united) by the sea.

Criminality is actively modifying its activities, using new methods of committing cross-border offenses. Cross-border organized crime often works on the principles of network marketing, for example, by attracting new dealers with discounts on contraband items, and this activity itself resembles a regular online store that uses cryptocurrency for payment. These circumstances necessitate prompt publication of research results in the field of combating such activities.

Committing some criminal offenses (for example, human trafficking) may begin on the territory of one state, continue on the
territory of another, and end on the territory of a third one. This makes it extremely difficult to use national legislation to prove guilt and bring those responsible to justice. Do not forget that the neighboring states often pursue opposite political interests. The editorial board of our journal will welcome relevant articles highlighting the results of research devoted to solving problems of this kind.

Global world problems - economic crises, pandemics, and wars as a result bring problems of irregular cross-border migration. Ways to ensure orderliness and regulation of migration are a separate field of scientific research.

Proper attention on the pages of the journal will be paid to the following interdisciplinary problems such as:
- further automation of border checks;
- use passenger data collection systems and passenger registration data API, PNR to prevent criminal offenses;
- improving the reliability of biometric identification, because of the elements of document protection are already vulnerable at the modern technical level used by criminals.

Therefore, these few theses allow forming an idea about what the theme of our journal is built around.

There are a number of scientific publications that specialize in similar topics and publish high-quality scientific articles. We carefully study their experience, for example, “European Journal of Migration and Law” (Netherlands), “Journal of Borderlands Studies” (Great Britain), “Migration and Law” (Ukraine), “Journal of law and border studies”, “Journal of Law and Border Protection” (Indonesia). All these publications are devoted to cross-border problems in the field of integrated border management, law and security. The growing importance of such problems actualizes the necessity of conducting relevant scientific research and publishing their results in Ukraine.

The specificity of this problem area, undoubtedly, requires professional discussion on the pages of a specialized scientific publica-
tion with open access, the one we consider our journal to be. In any case, the range of important cross-border issues in law is extremely large, what determines the choice of the name of our issue.

Therefore, the aim of the journal is the systematic publication of the results of scientific research on topical cross-border issues in the field of law, security, and law enforcement.

We congratulate our authors and readers on the publication of “Law & Border”! We count on the creation of an informative interdisciplinary scientific platform for discussion of scientists and practitioners and hope for further development of the journal that will allow it to take its unique place among authoritative professional scientific journals.

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Представляємо увазі читача перший номер наукового журналу “Law & Border” – платформу для професійної дискусії у сфері транскордонних проблем права, безпеки, правоохоронної діяльності.

Очевидно, що головною особливістю таких проблем є їх міжнародний та міждисциплінарний характер.

Обираючи саме таку предметну сферу для нового наукового журналу, ми, по-перше, маємо на увазі те, що кордон для суміжних держав є водночас бар’єром і сферою контакту. По-друге, те, що сучасні форми кордонів у двадцять першому столітті обумовлені їх поліфункціональністю.

Це означає, що застосовуючи особливий правовий режим державного кордону, візові, митні, інші бар’єри, держави захищають свої безпекові інтереси, у такому випадку на першому плані – бар’єрна функція кордону. Дана функція є особливо важливою під час забезпечення заходів правового режиму воєнного стану в Україні.

З іншого боку, не менш важливою є контактна функція мирних кордонів, яка реалізується через їх проникність для людей, товарів, послуг, капіталу. Безперешкодна реалізація цієї функ-
ції супроводжується постійним пошуком та впровадженням технологічних новацій, які дозволяють модернізувати охорону кордону, пришвидшити прикордонний та митний контроль. Очевидно, що в такому випадку сам державний кордон є для людей, які проживають у прикордонні, об’єктивним чинником впливу як на економічні відносини, так і на соціальні структури. “Транскордонна територія”, “транскордонний регіон” – це зазвичай території економічного, культурного, наукового співробітництва. Саме тому особлива увага журналом буде приділятися опублікуванню наукових робіт у сферах інтегрованого управління кордонами, міжнародного, митного, торгівельного права.

Очевидно, ознаки транскордонності можуть бути притаємні і протиправні діяльності, у тому числі і у тих регіонах, що географічно не межують між собою, наприклад, розділені (але, водночас і об’єднані) морем.

При цьому криміналітет активно модифікує свою діяльність, застосовуючи нові способи вчинення правопорушень. Транскордонна організована злочинність часто працює за принципами мережевого маркетингу, наприклад, шляхом залучення нових дилерів знижками на предмети контрабанди, а сама ця діяльність нагадує звичайний інтернет-магазин, який використовує для оплати криптовалюти. Дані обставини, у свою чергу, обумовлюють необхідність оперативного опублікування результатів досліджень у сфері протидії протиправні діяльності.

Вчинення деяких кримінальних правопорушень (наприклад, торгівлі людьми) може починатися на території однієї держави, продовжуватися на території іншої, а закінчуватися на території третьої. Це робить надзвичайно складним використання національного законодавства для доведення вини та притягнення винних до відповідальності. Не варто забувати і про те, що держави-сусіди часто переслідують протилежні політичні інтереси. Редакційна колегія нашого журналу буде вітати
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спеціальність 081 “Право”, 262 “Правоохоронна діяльність”

Актуальні статті з висвітленням результатів досліджень, присвячених розв’язанню проблем такого роду.

Глобальні світові проблеми – економічні кризи, пандемії, війни мають своїм наслідком проблеми неврегульованої транскордонної міграції. Шляхи забезпечення впорядкованості та регульованості міграції є окремою сферою наукового пошуку.

Належна увага на сторінках журналу буде приділена і таким міждисциплінарним проблемам, як:
- подальша автоматизація прикордонного контролю,
- використання систем збору даних про пасажирів та даних реєстрації пасажирів API, PNR для запобігання кримінальним правопорушенням,
- підвищення надійності біометричної ідентифікації, оскільки елементи захисту документів вже є вразливими на сучасному технічному рівні, який використовує криміналітет.

Отже, ці декілька тез дозволяють сформувати уявлення про те, навколо чого побудована тематика нашого журналу.


Специфічність цієї проблемної сфери, поза сумнівом, потребує професійної дискусії на сторінках спеціалізованого наукового видання з відкритим доступом, яким ми бачимо наш журнал. У будь-якому випадку, коло важливих транскордонних проблем у праві є надзвичайно великим, що обумовило вибір назви нашого видання.

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Отже, метою журналу є систематичне оприлюднення результатів наукових досліджень з актуальних транскордонних проблем у сфері права, безпеки, правоохоронної діяльності.

Щиро вітаємо наших авторів та читачів із виходом “Law & Border”! Ми розраховуємо на створення інформативної інтердисциплінарної наукової платформи для дискусії науковців і практиків та маємо надію саме на такий розвиток видання, що дозволить йому зайняти своє унікальне місце серед авторитетних професійних наукових журналів.
GLOBAL ECONOMIC CRIME, CORONAVIRUS (COVID-19) PANDEMIC AND NATIONAL BORDERS PROTECTION: COMBINATION OF NEW CHALLENGES

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The article comprehensively examines the issues related to the transformation of economic crime in the period of globalization and, in particular, the global impact of the COVID-19 pandemic. Arguments in favor of the author's idea of ways to improve the mechanism of criminal law protection of the domestic economy in the face of new challenges. It is stated that in modern societies the emergence of new types of economic crimes, the growth of economic crime in general and its adaptation to various socio-economic changes.

Globalization of crime, together with economic globalization, which serves, so to speak, as a general background, requires experts in the field of comparative criminal law to strengthen international cooperation and develop ways to address a number of issues related to combating criminal behavior that has long gone beyond boundaries of national criminal justice systems.

The conclusion is reached that the year 2020 has brought new challenges to the modern connected world: the COVID-19 pandemic, which indirectly made nations unite in the face of a major health-care threat; also, in a somewhat secondary mode, new forms of
white collar criminal behavior, which spreads across the state borders is caused, either directly or indirectly, by the pandemic, and also a wide range of issues, related to national border protection modes. This requires law enforcement agencies to build up joint efforts in combatting new forms of white collar crime both on national and international levels.

**Key words:** globalization, COVID-19 pandemic, economic crime, criminal law, comparative legal studies, border protection, national border.

1. **INTRODUCTION.**

**Problem Actualization.** Despite the evolution level of the particular economic system and regardless of its “nationality”, successful development of any national economy largely depends on the degree of interaction with other economic systems. Such conclusion seems all the more relevant when considering modern trends of globalization, especially economic one. Against such background, the priority function of public authority in Ukraine should be to establish a harmonious, productive relationship between the national economic system and similar systems of foreign countries, as well as with the regional economic systems, in particular with the European Union economy.

Being for a long period of time the world economy leader with the national GDP making almost a quarter of the world GDP since the end of World War II, today the United States of America is the recognized leader in many areas of global economic development. This leadership starts with the enormous stock markets and innovative technologies, and ending with free competition laws and effective bankruptcy procedures. America demonstrates significant achievements in the functioning of a liberal market economy model to the rest of the world.

Relevant American experience, always praised for the stability of the economic development vectors and, in particular, by the freedom of market relations as well as pragmatic limitations, set by the
state, is even more useful for Ukraine, which has recently chosen the “market” direction for its economic development. At the same time, learning from the relevant American experience leads us to a conclusion that free market relations are not immune from illegal practices. As such, the issue of counteracting economic crimes constantly remains on the radars of the US law enforcement agencies, as will be demonstrated throughout this article.

In the year of 2020 a new threat has emerged for the world in general and the globalized economy in particular to face: the COVID-19 pandemic and its destructive impact not just on the lives and health of people across jurisdictions, but on the economic relations at different levels both domestically and at foreign level. Thus, this article will explore some of the pressing issues at the intersection of economy, health and national borders protection, which is especially important for Ukraine nowadays.

Analyses of the recent research and publications. Issues related to criminal liability for economic crimes in Ukraine, including in a comparative context and also partially related to healthcare and border protection issues covered in this article, devoted, in particular, to the research of P. Andrushko, P. Berzin, A. Boyko, N. Gutorova, R. Volynets, V. Moysyk, V. Navrotsky, M. Panov, V. Popovych, A. Savchenko, E. Streltsov, O. Shapovalova, M. Khavronyuk, V. Khilyuta, G. Boldar, B. Grek, V. Datsyuk, O. Kashkarov, R. Movchan, L. Pavlyk, O. Radutnyi covered issues related to the criminal-legal assessment of certain types of acts in the economic sphere and the definition of their features. V. Franchuk and some other authors. The most consistent and systematic approach to solving problems related to the qualification of this category of crimes and the practice of applying provisions of the Criminal Code of Ukraine, which establish them, is embodied in the scientific works of O. Dudorov.

In the American criminal law doctrine, the issues of responsibility for economic crimes have been studied at different times by K. Brickey, S. Buel, S. Green, L. Dervan, W. Zagaris, J. Coffey, E. Luna, P. Morgan, J. O’Sullivan E. Podgor, R. Posner, J. Rakoff,
E. Sutherland, K. Strader, P. Henning and others. The fragmentary corresponding sphere of criminal law regulation have been reflected in the scholarship of W. Butler, W. Burnham, S. Kadish, P. Larkin, P. Robinson, F. Sayre, W. Stanz, and J. Fletcher.

The goal for this publication lies in the comprehensive and comparative analyses of a set of issues related to the global economic crime, coronavirus (COVID-19) pandemic and national borders protection with a specific focus on the relevant Ukrainian law and practice.

2. RESEARCH RESULTS.

For the record: to this date there is no clear, all-inclusive definition of white collar crime (WCC), and such description is not likely to appear anytime soon due to a variety of reasons. These include: (1) traditionally broad nature of nonviolent and predominantly for-profit offenses; (2) changes in both related legislation and its interpretation, more so during the last three decades; (3) shifts in research focuses from looking into white collar criminals themselves to the specific nature of crimes committed by the latter; and (4) absence of any attempts to categorize distinct groups of offenses by either legislators or courts.

The term “white collar crime” is notorious for its ambiguity. At least some agreement among scholars exists on what types of criminal behavior this phrase should include. Among various types of criminal activity, one can name antitrust violations, computer and internet fraud, credit card fraud, phone and telemarketing fraud, bankruptcy fraud, healthcare fraud, environmental violations, insurance fraud, mail fraud, government fraud, tax evasion, financial fraud, securities fraud, insider trading, bribery, kickbacks, counter-

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feiting, public corruption, money laundering, embezzlement, economic espionage and trade secret theft.

The commonly used phrase “white-collar crime” was reportedly introduced in 1939 during a speech given by sociologist Edwin Sutherland to the American Sociological Society. Sutherland defined this term as an offense committed by a person of respectability and high social status in the course of his occupation. Later in his other paper, Sutherland stated that different forms of illegal white-collar conduct “consist principally of violations of delegated or implied trust, and many of them can be reduced to two categories: misrepresentation of asset values and duplicity in the manipulation of power”.

Reference sources propose similar definitions of white-collar crime, defining it as “a non-violent crime usually involving cheating or dishonesty in commercial matters;” as “a non-violent, financial crime, committed by a white-collar worker, typically involving the abuse of his or her professional status or expertise;” and also defining the term as: nonviolent crime for financial gain committed by means of deception by persons whose occupational status is entrepreneurial, professional or semi-professional and utilizing their special occupational skills and opportunities; also, nonviolent crime for financial gain utilizing deception and committed by anyone having special technical and professional knowledge of business and government, irrespective of the person’s occupation.

The word “fraud” widely used in the white-collar crime context. This term underlines the “intelligent”, nonviolent, and primarily for-profit nature of such offenses that are intended to deceive (an individual, a corporation, or public at large) in order to earn some-

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3 Sutherland E. White Collar Criminality. American Sociological Review. 1940. № 1. P. 1, 3.

thing of value, power, or both. The key message is that fraud is typically the cornerstone of every white-collar offense, no matter how simple and meager or intricate and grandiose.

Some scholars have brought up the challenges of coming up with a universal definition of WCC in their research. Indeed, there is a large number of distinct views on both the specific legal nature and boundaries of white-collar criminality, and scholars traditionally observe the term from different perspectives and in various enforcements contexts. One approach even suggests that it is the government, not the businessperson, which becomes the “bad guy” for the purposes of economic enforcement—thus, white-collar crime can be associated with the government’s failure to effectively regulate competition.

In comparison, the term “international white collar crime” becomes even more confusing, since there are no “white collar crimes” terms defined by any body of international law. The term can, therefore, be interpreted best in the context of this paper by referring to non-violent, financially motivated crimes, which have a transnational element. Such multi-jurisdictional element can arise from the conduct of the perpetrators, the locations of the victims and witnesses, the nature of the crime, or the scope of governmental or corporate investigation.

Under such broad definition, surely any WCC can take on an international dimension. For example, U.S. federal law, as mentioned above, covers the range of conduct and burgeoning number of offenses that fall into the WCC category, including: fraud, bribery and corruption, money laundering, tax evasion, cybercrimes, price fixing, identity theft, and illegal exports. Ukrainian Criminal Code

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(Chapter VII of the Code’s Special Part) encompasses similar type of illegal behavior in the sphere of economic relations.

While positively accepting the idea of the priority of economic substance over legal form in addressing issues of criminal law protection of economic relations, we would like to note that the term “people’s economy” attracts some skepticism. On one hand, this term is used to denote the set of industries and areas of production, consumption and exchange (in the broader sense this is a historically conditioned set of industries of a specific country, interrelated between each other by division of labor). On the other hand, the mentioned concept became spread at the time of construction and operation of the Soviet model of command (planned) economy, which has proven to be unsustainable over time. Many experts and ordinary Ukrainians associate people’s economy with the previous (socialist) system of economy construction. People’s economy that presumes belonging of the entire economy of the state of its people, has long been a fiction. Actually business, if we refer to this term, belongs to some individuals or their associations.

Taking into account the fact that our government has chosen the path of building a developed model of market economy with guaranteeing freedom of entrepreneurship (as it follows, in particular, from the aforementioned Art. 42 of the Constitution of Ukraine), it makes sense to replace “people’s economy” with “national economy”, and even better – with “market economy”, as more will be discussed below.

We have repeatedly written about the ambiguity of the title of Chapter VII of the Special Part of the Criminal Code “Crimes Against Economic Activity”. Legislator can be criticized that this title does not reflect generic object of relevant offenses as the foundation for the Special Part of the Criminal Code, does not clearly show what exactly relations are put under protection by criminal law norms, that are incorporated in the mentioned chapter of the Criminal Code. The feeling of failure of the mentioned title increases, given the fact that there may be committed offenses that are not specifically busi-
ness-type (such as bribery of an official of private law entity, forgery, fraud, misappropriation or embezzlement) in the area of business activity. Following this logic, economic crimes in the broad sense of the term may include, for example, the murder on greed motives, that was aimed at preventing a group of shareholders from gaining an advantage while discussing the issue of dividend distribution at the general meeting.

Distinction between entrepreneurial and credit financial activities should be noted, that, in our opinion, is the result of proper understanding of economic legal nature of two groups of public relations.

Too broad approach, within which crimes against property are (especially without any warning) related to the economic offenses is unacceptable on criminal law point of view: it does not allow to clearly distinguish the scope of relations, which, being regulated by the state, covers production, distribution, exchange and consumption of goods and services among unspecified number of participants in the process of systematic and productive activities and requires proper criminal law protection. In this regard, M. Panov notes that social relations arising in the area of economic business activities include a wide range of relations that are closely connected between each other, stay in unbreakable unity and create a coherent whole. However, they differ from other groups of relations, including such economic relations as property, to which conducting business is not inherent (or conducting business activity). Therefore association of crimes against property and business crimes in one group sounds objectionable.

Taking all the above into account, neither the title of “crimes against business activity” nor the title of “crimes against economy” are able to claim absence of ambiguity so much desired for criminal

law. In order to search for the optimum title of Chapter VII of the Special Part of the Criminal Code we shall try to define the role and place of the relevant criminal law prohibitions in the coordinate system of the market economy, which while being officially declared, still remains in transition mode.

Now, turning to the “COVID-19” section of the article at hand (and economic threat vested in it), I would like to refer the following materials and analyses. The year 2020 has revealed yet another dimension of the globalized fabric of the modern world, the ones related to healthcare. As nations cooperate and compete in efforts to create vaccine, enhance national public healthcare regimes, regulate border control and passenger traffic etc., fraudulent behavior becomes more aggressive and white collar criminals operate on a bigger scale than ever before.

In the United States, even before the 2020, prosecutions of white collar crime were in steady decline for several consequent years, falling to lowest in 20 years. The prosecution of securities fraud, antitrust violations and other such crimes has hit a record low as the pandemic slows the courts. But even before the coronavirus outbreak, the numbers were falling under the Trump administration: the average annual number of white collar defendants was down 26% to 30% for Trump’s first three years in office from the average under President Barack Obama. The trend also showed up in fines on corporations, which fell 76%.

As one U.S. federal criminal case demonstrates, the challenging impact of the pandemic manifests itself even in the core elements of the national jurisprudence, like the right to a jury trial.

On August 26, 2020 Gary R. Brown, U.S. District Judge for the Eastern District of New York, issued a Memorandum & Order in United States v. Cohn allowing for a waiver of a jury trial despite

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strong government objection⁹. In the unusual move, under the extraordinary circumstances, he allowed for a securities fraud related case to proceed to a bench trial with the defendant’s consent, but without the government’s approval. As Judge Brown wrote in the preamble of the Memorandum & Order, we are living in an effectively unprecedented time. At this writing, the world continues to experience the effects of COVID-19, which has caused a historic pandemic of a kind not seen in more than century”⁹, further adding that “despite significant effort, research and investment by the Court, this district has not held a jury trial since March of this year, and in person proceedings have been limited. The court document sends a strong signal to the legal community, which reveals that the new major factor, global pandemic, from now on directly effects the flow of national system of justice, criminal justice in particular.

The “PwC’s Global Economic Crime Survey 2020: UK findings”, an expert overview prepared by PricewaterhouseCoopers, one of the “Big Four” global consulting firms, refers to the evolving “landscape” of fraud, which increasingly causes disruption to businesses. Economic crime has reached its highest level in the past 24 months with 56% of UK businesses surveyed stating that they have been impacted by fraud, corruption or other economic crime. This 2020 figure is the highest in the history of the Global Economic Crime Survey, and is well above the global finding of 47%¹⁰.

Also, the UK-based COVID-19 fraud watch group, a cross-sector and cross-industry coalition of transparent members (including the Cabinet Office and City of London Police) who meet to share information on emerging fraud threats and trends affecting business, warn that fraudulent behavior is growing in 2020 due to the global impact, caused by the pandemic.

In March 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was enacted by the U.S. Congress. It was designed to provide emergency financial assistance to the millions of Americans who are suffering the economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of up to $349 billion in forgivable loans to small businesses for job retention and certain other expenses, through the Paycheck Protection Program (PPP). In April 2020, Congress authorized over $300 billion in additional PPP funding.

White collar offenders immediately took on the PPP as a lucrative vehicle to exercise fraudulent schemes. In one case, two Florida residents and their co-conspirators were involved in a scheme to defraud a bank located in San Antonio, Texas. They used approximately 700 synthetic identities, in addition to stolen ones, in order to create bank accounts and shell companies. According to criminal case materials, fraudulent payments were made from accounts registered to synthetic identities to accounts registered to defendants. From about April through July of 2020, members of the conspiracy utilized the already-established synthetic identities and associated shell companies to fraudulently apply for assistance under the PPP. According to the complaint, the defendants fraudulently sought and received over $3 million dollars in PPP relief. This money was paid to companies registered to synthetic identities.

Now to Ukrainian realities and economic forecasts. Domestic academics have analyzed possible transformations of the economy and public relations as a result of the impact of the COVID-19 pandemic for Europe and Ukraine. Using the methods of intellectual analysis of large data, the regularity of the cyclical occurrence of

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12 Two Men Who Allegedly Used Synthetic Identities, Existing Shell Companies, and Prior Fraud Experience to Exploit COVID-19 Relief Programs Charged in Miami Federal Court. URL: https://www.justice.gov/usao-sdfl/pr/two-men-who-allegedly-used-synthetic-identities-existing-shell-companies-and-prior-0.

A study of the negative effects of the COVID-19 pandemic on the world economy and international business. An attempt was made to predict the transformation of the world, Europe and Ukraine after the end of the COVID-19 pandemic. Emphasis is placed on the fact that the pandemic will significantly weaken the old sectors of the economy, which are based on low-skilled labor and old technologies. Thus, over the past six months, travel agencies, logistics and transport, restaurant and hotel business, leisure and hospitality industry, as well as a large number of industrial sectors (except agriculture) have suffered significant losses.

Six UN-identified post-coronavirus development megatrends were analyzed. This is the field of big data analysis and hyper-communications; well-being, health and quality of life of people; low-carbon economy and green energy; waste-free production; economics of biological growth; economics of psychological comfort.

Finally, let us have a closer look at the border protection issues in both the U.S. and Ukraine, related to the coronavirus crisis.

Today U.S. Customs and Border Protection (CBP) is working closely with the Department of Homeland Security (DHS) and other federal, state, and local agencies to support the whole-of-government effort to slow the spread of COVID-19 and keep everyone safe.

This is just one of many federal agencies, that, on the one hand, deal with the virus crisis, while, on the other hand, maintain economic processes and free flow of commerce.

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14 CBP COVID-19 Updates and Announcements. URL: https://www.cbp.gov/newsroom/coronavirus.
On December 3, 2020, President Donald Trump signed a Memorandum on Extension of Governors’ Use of the National Guard to Respond to COVID-19 and to Facilitate Economic Recovery. This document provides, among other things, that it continues to be the policy of the United States to foster close cooperation and mutual assistance among the Federal Government and the States and territories in the battle against the threat posed by the spread of COVID-19. To date, activated National Guard forces around the country have provided critical support to Governors as the Governors work to address the needs of those populations within their respective States and territories especially vulnerable to the effects of COVID-19, including those in nursing homes, assisted living facilities, and other long-term care or congregate settings. Additionally, the States and territories will need assistance in fighting hot spots as they emerge15.

In comparison, in Ukraine the tasks of the border guards have remained the same as before Covid-19. For the Ukrainian State Border Guard Service (SBGS) that means the protection of the state border, border control of persons, vehicles and cargo at checkpoints, entry/exit control points in the area of the Joint Forces operation, combating cross-border crime, illegal migration, smuggling, drug trafficking and trafficking in human beings. Together with other state bodies we also take measures to counteract the spread of Covid-19 in Ukraine. These include border control at existing checkpoints, temperature screening of persons, communication and operational cooperation with colleagues at the national and international level on the return of our citizens, registration of humanitarian flights, etc.

It should also be noted that given the scale and consequences of Covid-19, it has become a test not only for Ukrainian society and border guards, but also a serious challenge for the whole world.

The SBGS met this challenge and carried out the assigned tasks as instructed\textsuperscript{16}.

3. CONCLUSIONS AND FURTHER RESEARCH PERSPECTIVES

The newest phenomenon of economic globalization has a direct effect on the developments of law in world jurisdictions and affects the patterns of white collar criminality in particular. As important changes in economic, social, political, cultural and other relationships take place between various countries, definition of new forms of legal regulation of such trends, including regulation by means of criminal law, is required more than ever before. Globalization of crime with economic globalization serving as a general background, requires experts in the field of comparative criminal law studies to strengthen international cooperation and elaborate on ways to solve a number of issues, related to combating criminal behavior beyond the scope of national criminal law systems.

The year 2020 has brought new challenges to the modern connected world: the COVID-19 pandemic, which indirectly made nations unite in the face of a major healthcare threat; also, in a somewhat secondary mode, new forms of white collar criminal behavior, which spreads across the state borders is caused, either directly or indirectly, by the pandemic. This requires law enforcement agencies to build up joint efforts in combatting new forms of WCC both on national and international levels.

LITERATURE


Дмитро Каменський. Глобальна економічна злочинність, пандемія коронавірусу (COVID-19 та-) та захист національних кордонів: комбінація нових загроз
У статті комплексно досліджено питання, пов’язані з трансформацією економічної злочинності в період світової глобалізації та, зокрема, глобального впливу пандемії COVID-19. Запропоновані аргументи на користь авторської ідеї про на- прями вдосконалення механізму кримінально-правової охоро- рони вітчизняної економіки в умовах нових викликів. Кон- статовано, що в сучасних суспільствах фіксується поява нових видів економічних злочинів, зростання економічної злочин- ності загалом та її адаптація до різноманітних соціально-еко- номічних змін.
Глобалізація злочинності разом із економічною глобаліза- цією, що слугує, так би мовити, загальним фоном, вимагає від експертів у галузі порівняльних кримінально-правових досліджень посилення міжнародного співробітництва та роз- роблення шляхів вирішення низьки питань, пов’язаних з про- тидією злочинній поведінці, що вже давно виходить за межі національних кримінально-правових систем. Зроблено висновок про те, що 2020 рік поставив перед сучас- ним інтегрованим світом нові виклики: пандемія COVID-19, яка опосередковано змусила нації об’єднатися перед великою загрозою для охорони здоров’я; також, у дещо другорядному режимі, нові форми злочинної поведінки “білих комірців”, яка поширюється через державні кордони, прямо чи опосе-
редковано спричинені пандемією, а також широким колом питань, пов'язаних з національними режимами охорони кордонів. Це вимагає від правоохоронних органів спільних зусиль для боротьби з новими формами злочинів “білих ко- мірців” як на національному, так і на міжнародному рівнях.

Ключові слова: глобалізація, пандемія COVID-19, економічна злочинність, кримінальне право, порівняльно-правові дослідження, охорона кордонів, національний кордон.
The scientific article examines the main ways of migration to Europe from 2014 to 2020. As a result of the conducted research, the following conclusions were made in the scientific article. The migration crisis of 2015 put the issue of migration on the political agenda and revealed the shortcomings of the European Union, Frontex and EU Member States in their border management mechanisms. In 2015, more than one and a half million illegal border crossings were detected at the EU’s external borders, an all-time record. At a crucial moment in the migration crisis, Turkey was one of the main points of entry, with around 800,000 illegal migrants. This circumstance indicates the current impossibility of the European Union to curb illegal immigration in the absence of a strategic plan agreed with the member states. poses a risk to internal security. The lack of a mechanism for solving such situations

17 This paper is partially based on the Doctoral Thesis "The borders of the European Union: Objectives and Measures to face its security" that Mr. Isaac de Toro Mezquita is researching at UCAM.

18 The author has been a SNE in FRONTEX and in the Frontiers Working Group.
in 2020 shows the weakness of the European Union, especially in the face of possible migration situations at its external borders, the situation with which still remains fragile and unstable. The need to advance legislative priorities to optimize the management of external borders to reduce or eliminate migratory routes has become objective, but the only measure adopted by the European Union that has managed to curb illegal entry was the EU-TURKEY Agreement, which can be considered a special measure, and that makes the EU dependent on the political will of the Turkish government. The European Union particularly focused on the Mediterranean migration routes, where various maritime operations were carried out. This protection of external borders has forced the search for or restoration of new migration routes, such as the West African route, which has seen a significant increase, but we can also see a slight increase in the Western Balkan route. This shows the inability of the European Union to provide equal protection at all external borders and that the measures taken by the European Border Guard appear to be ineffective.

**Key words:** migration, external border, FRONTEX, irregular entries, irregular migrants.

1. INTRODUCTION

In 2015 the European Union faced unprecedented migratory pressure. In the third quarter of that year, 615,462\(^{19}\) irregular crossings of external borders were recorded, a number that increased considerably in the following quarter to 978,525\(^{20}\). The main migration route was the Eastern Mediterranean, where 794,537 irregular crossings were detected in the last half of 2015, of which 443,340 were


of Syrian nationality\textsuperscript{21}, escaping “\textit{war, oppression or poverty}”\textsuperscript{22}. Faced with this dramatic situation, the European Union lacked a collective policy that could manage migration and at the same time respond to the pressure on external borders\textsuperscript{23}, which made it necessary to seek common solutions that could address the problems of irregular migration in the medium and long term and optimize the management of external borders with the European Migration Agenda\textsuperscript{24}.

The migration situation\textsuperscript{25} in September 2020 is at pre-crisis levels: the number of irregular arrivals is 90\% lower than in September 2015, and in the first nine months of 2020 only 85995 were detected. With regard to the number of people who died or disappeared on 12 December 2020 in the Mediterranean, the figure is 1054, but since 2014 20,857 people have died\textsuperscript{26}.

\textbf{Type of Research, Objectives and Design.}

The objective of this work is to analyze the use of migratory routes to Europe from 2014 to 2020, with a descriptive study with a longitudinal design.

\begin{itemize}
  \item \textsuperscript{25} Migration Map. FRONTEX. URL: https://frontex.europa.eu/along-eu-borders/migratory-map (accessed December 12, 2020).
  \item \textsuperscript{26} International Organization for Migration. Missing migrants. URL: https://missing-migrants.iom.int (accessed December 12, 2020).
\end{itemize}
Data Collection.
The information is based on primary sources which have been obtained from databases of Frontex.

2. RESEARCH RESULTS

MEDITERRANEAN ROUTES.
This was the most used route by irregular immigrants in the year 2015. As of 2020 the number of irregular entries has dropped drastically, but one of the main reasons for this has been the European Union’s agreement with Turkey.

Eastern Mediterranean Route.
The Eastern Mediterranean route can be considered as the main route of irregular entry of migrants into Europe and the one that suffered the greatest migratory pressure in 2015 when 885,386 people were counted.

If we compare this year with the previous one, where 50834 irregular entries were recorded, we can see that the figure was 17 times higher. To address this massive influx of irregular immigration, and at the request of the Greek authorities, Frontex coordinated the Poseidon Operation.

In 2016 there were 182,277 irregular entries, although the vast majority arrived in the first three months of the year. The implementation of the European Union’s agreement with Turkey marked

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a turning point and the number of irregular entries fell considerably from the end of the first quarter. With this agreement, Turkey closed its land and sea borders and accepted the return of irregular migrants from Greece.

Although the European Union Agreement with Turkey significantly reduced irregular entries in 2016 and 2017, we can see from Chart 1 that there was an upturn in the years 2018 and 2019. In the year 2018, 56,561\textsuperscript{31} illegal crossings were recorded, 34\% more than in the previous year, due to the increase in land crossings from Turkey to Greece. In the first ten months of 2019, “more than 47,500 arrivals were recorded in Greece, mainly in the Aegean islands, which is an increase of 29\% compared to the same period in 2018”\textsuperscript{32}. This increase resulted in the existing hotspots on the Aegean islands, designed for up to 8,000\textsuperscript{33} people, being widely surpassed, reaching 31,000\textsuperscript{34} immigrants and, as a consequence, the conditions in which the immigrants found themselves worsened. Although 20,000 were transferred to the peninsula, it was not possible to reduce the number to a maximum of 8,000\textsuperscript{35}. This upturn in 2019 did not occur again in 2020, with a total of 169,683\textsuperscript{36} up to December 13, 2020.


\textsuperscript{36} Migration Map. FRONTEX. URL: https://frontex.europa.eu/along-eu-borders/migra
tory-map (accessed December 13, 2020).
2.2. Central Mediterranean Route

The central Mediterranean route was widely used in 2014 when 170,664 irregular entries were registered with Nigerian and Guinean nationalities among others\(^{37}\), but it has been gradually decreasing until 2020, although, as we can see in Chart II, there was a rebound in 2016, where 181,376\(^{38}\) registered the highest figure since the beginning of the European migration crisis. The origin of irregular migrants was Libya, where smuggling networks were operating, favored by the different groups competing to control the country\(^{39}\).

The implementation of the European Union Agreement with Turkey, which entered into force in March 2016, led to a substantial decrease in irregular migrants at Italy’s borders, with 118,962 registered during 2017.

As we can see in the graph II, it was in 2018 that the use of this migratory route decreased drastically, that is, 80% less than the previous year, since only 23,485 irregular entries were registered.

2.3 Western Mediterranean Route

The Western Mediterranean route is the one that connects the African continent with Europe through Morocco and Spain, and which, in addition to being used for the irregular entry of migrants into the Iberian Peninsula, has also been used by gangs organized to introduce narcotic substances into Europe\(^{41}\).


In 2016, 864,142 irregular crossings were detected by sea, with departures from Morocco and Algeria, and 134,943 by land, making a total of 999,000, whose nationalities were mainly Moroccan, Algerian, and Guinean, that is, a majority African origin.

At the external land borders of the European Union in Ceuta in December 2016, some 900 migrants from sub-Saharan Africa used physical violence to cross the border, and 400 of them succeeded, but three Guardia Civil officers were injured.

Most of the detections were made around the Strait of Gibraltar, where most migrants opted for small and dangerous rubber boats to make the crossing, some equipped with a small engine.

In the year 2017, as can be seen in Chart III, there was a substantial increase in irregular entries, both by sea, 215,524, maintaining the land entry at the levels of the previous year with 151,146. The political instability in the Moroccan Rif, due to the repression of the Moroccan government, facilitated an increased in the number of

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44 Mas de 400 inmigrantes acceden a Ceuta en un asalto masivo a la valla (2017). El País. URL: https://elpais.com/politica/2017/02/17/actualidad/1487318490_091673.html


small boats leaving its coasts, but this time with a greater capacity to transport people\textsuperscript{48}.

The highest peak of migratory pressure occurred in 2018, which more than doubled the previous year, reaching 56,245\textsuperscript{49} people, of whom 5,420 did so by sea and 1,425 by land.

In 2019 the irregular arrivals fell to levels of 2017, accounting for a total of 23969 which meant a decrease of over 50\% over the previous year due to “investment in relations between the European Union and Morocco”\textsuperscript{50}. These included an important economic component so that the Moroccan government could strengthen border controls at the external borders and dismantle migrant trafficking organizations.

In the year 2020, with data up to October 2020, the trend continues to decline, with 13396 detected, of which 8807\textsuperscript{51} are Algerian nationals.

\textbf{2.4 Operations in the Mediterranean}

The European Union’s maritime operations in the Mediterranean are: INDALO, which from 2015 to 11 November 2020, has saved 96397 lives; THEMIS, saving 265812; SOPHIA, 44916 and POSEIDON with 129092\textsuperscript{52}.


The complex nature and objectives of these missions go beyond the scope of our paper, so we do not go into an analysis of them.

**Poseidon Operation.**
Since January 1, 2006, Operation Poseidon is being carried out with the area of operations centered on the maritime borders between Greece and Turkey.

**Themis Operation.**
Operation Themis, formerly known as Triton, began on February 1, 2018, under the command of the Italian Ministry of the Interior, with the aim of supporting Italy in surveillance, border control, search and rescue in the central Mediterranean, which has since saved 265,812 lives up to November 11, 2020.

**Irini Operation.**
Within the framework of the Common Security and Defense Policy, the European Union, following the completion of Operation Sophia, launched Operation EUNAVFOR MED IRINI, the main objective of which is to enforce the arms embargo on Libya in accordance with UN Security Council Resolution 2292 (2016) and which is scheduled to end on 31 March 2021.

2.5. **Missing or deceased in the Mediterranean**
The actions of the European Institutions to curb irregular immigration have always taken into account the humanitarian factor. With this humanitarian goal in mind, from 2015 until 14 December 2020, in addition to rescuing more than 536,217 people from the sea, migration “flows have been considerably reduced”\(^{54}\), “even so, it is estimated that 2,857 people have died or disappeared while crossing the Mediterranean” from 2014 until 14 December 2020, of which 1,054

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\(^{53}\text{Salvar vidas en el mar y luchar contra el tráfico ilícito de migrantes. } \text{Council of Europe.}


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died or disappeared last year, but in 2016 the highest figure was reached with 5,143\textsuperscript{55}.

**WESTERN BALKAN ROUTE.**

The Western Balkan Route, as reflected in Chart IV, was one of the main entry routes into Europe in connection with the Eastern Mediterranean route in 2015, with 764038\textsuperscript{56} records, but its use decreased dramatically until 2018 with 5869\textsuperscript{57} irregular crossings. In 2019, a slight increase was observed, reaching 15152\textsuperscript{58}, and this increase is being maintained in the year 2020, since until October it has been used by 19707\textsuperscript{59} people with nationalities, mainly Afghan and Syrian, but far from the situation in 2015.

The massive arrival of irregular immigrants to Greece in 2015, had as final destination Western Europe so they had to cross Northern Macedonia, Serbia, Hungary and Croatia, causing a massive use of the Western Balkan route, reaching 764038\textsuperscript{60} irregular crossings. This will cause, as we shall see below, some Member States to re-establish border controls at the internal borders of the Schengen area or even to erect fences at these internal borders.


In 2016 this route experienced a significant reduction being used by 130325\(^{61}\) people of Afghan, Syrian and Iranian nationalities, among others. The main reason was the coordinated restriction measures applied throughout the region, in the destination countries and in the Aegean Sea, which caused it to be used only by regional flows, “decreasing almost every month, from 128,000 illegal border crossings in January to about 3,000 in December 2016”\(^{62}\).

This downward trend was confirmed in 2017, with 12179\(^{63}\) records of irregular entries, and in 2018 with 5869\(^{64}\), but, despite this reduction in the number of irregular migrants, the route continued to be used by both regional and nonregional migrants, who reached it by crossing the common borders with Greece and Bulgaria. Once on European soil, they head north to cross the borders of Hungary, Croatia or Romania with Serbia.

This route appears to be closely related to the circular route from Albania to Greece, which we will analyze later.

**EASTERN BORDER ROUTE.**

The main entry routes to Europe are those of the Mediterranean, but we cannot forget that the European Union also has land borders whose length exceeds 6000 kilometers in Eastern Europe with Belarus, Moldova, Ukraine and the Russian Federation.

This terrestrial route, if we compare it with the maritime ones, is not very used for the irregular entrance in Europe, existing a decreasing tendency in its use as it is possible to be observed in Chart V.

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In 2014 there were 1275\(^{65}\) irregular entries, a figure that increases slightly in the following two years but begins to decrease in 2015, with 500 irregular entries up to November 2020\(^{66}\).

Most of them crossed the land border from Poland and Romania to Ukraine, more than for migratory reasons related to the smuggling\(^{67}\). In contrast, Afghans and Vietnamese did so for migratory reasons by crossing the borders between Hungary and Ukraine, and between Latvia and Russia, respectively\(^{68}\).

**WEST AFRICAN ROUTE.**

This route of irregular migration from Africa mainly affects the Canary Islands where we can observe the progressive increase of its use since 2017 where 421\(^{69}\) people were registered. This number increased slightly in the following years with 1323 and 2718 respectively. In the year 2020, with data, till October, a substantial increase has been observed with a total of 11422\(^{70}\) people of Moroccan nationality mainly. The data provided by the Spanish Ministry of Interior confirms the resumption of migration from the coast of West Africa to the Canary Islands since 2018, having detected between January


and December 15, 2020, 21452 people representing an increase of over 1,000% in arrivals compared to the same period in 2019\textsuperscript{71}.

Irregular immigrants arriving in the Canary Islands come from West Africa, the Sahel and the Maghreb. The economic instability produced by the COVID-19 pandemic is seriously affecting countries such as Senegal and The Gambia, forcing many people working in the tourism sector to emigrate. Another important factor is the political instability produced in Mali which favors the use of the migration route to the Canary Islands as it is considered the safest, even if you have to cross the Atlantic, and the one with the least border surveillance.

On November 14, 2020, the Polisario Front broke the ceasefire agreement that had been in effect since it was signed with Morocco in 1991. The trigger for this rupture is marked by the attack perpetrated at the Guerguerat border crossing by Morocco\textsuperscript{72}. This political instability, together with the economic instability produced by the pandemic, is forcing many Moroccans to join those coming from West Africa and the Sahel and to cross the Atlantic to the Canary Islands. As Carmen González, professor at the National University of Distance Education and researcher at the Real Instituto Elcano, points out, “The pandemic is throwing many young Africans into poverty, who find themselves without any hope of surviving in their country”\textsuperscript{73}.


BLACK SEA ROUTE.

The Member States and the European Union focused their efforts on strengthening the external borders, mainly those of the Mediterranean, which made it necessary to use a new route, the Black Sea.

In 2014 there were 43374 irregular entries, but that figure dropped drastically in 2015 when the Mediterranean Routes began to be used mainly. In the year 2016 there is only one person registered, but in 2017 the highest peak was detected with 537 persons, mainly due to the measures adopted on the Mediterranean Routes. This route, as indicated by the Romanian authorities, is more dangerous than the Mediterranean routes, so its use is increasingly scarce, with only two irregular entries recorded in 2019, and none in 2018 and up to October 2020.

CIRCULAR ROUTE FROM ALBANIA TO GREECE.

This route, located in the Balkans, was created as a result of the strengthening of border control on the Mediterranean Routes and the construction of fences at the internal borders. In 2015, as we have seen before, irregular immigrants were moving through Northern Macedonia and Serbia to reach Hungary, but Hungary’s fence and border controls gave birth to this new route.

In 2014 there were 8841 irregular entries, mainly of Albanian nationality, and 8757 of them were registered. These figures were

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maintained in 2015 with 8932, 8874 of which were of Albanian nationality\(^{79}\). From 2016, with 5121 entries, the general trend is downward, being used in 2019 by 1944 people, being 1867 of Albanian nationality, followed by Chinese and Indian nationalities\(^{80}\).

Until October 2020 it has been used by 1012 people, 986 of them being Albanian\(^{81}\).

**CONCLUSION.**

The analysis of the migratory routes towards Europe leads us to the following conclusions:

**FIRST.** The 2015 migration crisis highlighted the weakness of the European Institutions and the lack of coordination and cooperation among Member States. The European Union’s external borders are easily permeable, with more than 200,000 irregular crossings in October 2015, and, although this figure has been considerably reduced, especially on the Mediterranean Routes, we can see that the Western African route has experienced a rise of over 1000\% in 2020, indicating the current impossibility of the European Union to curb illegal immigration in the absence of a strategic plan coordinated with Member States what it represents a risk to Internal Security.

The absence of a mechanism for dealing with this type of situation in 2020 shows the weakness of the European Union, especially in the face of possible migratory situations at its external borders, whose situation is still fragile and volatile.

**SECOND.** It has become an objective the need to push legislative priorities for optimized management of external borders to


reduce or eliminate migration routes, but the only measure adopted by the European Union that has managed to curb irregular entries has been the EU-TURKEY Agreement, which we can consider an ad hoc measure, and which makes the EU dependent on the political will of the Turkish Government.

THIRD. The European Union focused especially on the Mediterranean migratory routes, where different maritime operations were carried out. This protection of the external borders made it necessary to seek or reactivate new migratory routes such as that of West Africa where there has been a substantial increase, but we can also observe slight increases in the Western Balkan route. This shows the inability of the European Union to maintain uniform protection at all external borders and that the measures being taken as the European Border Guard is proving ineffective.

LITERATURE


5. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Com-


науковий профіль видання
спеціальність 081 “Право”, 262 “Правоохоронна діяльність”


Ісаак де Торо Мескіта. Європейська міграційна криза: аналіз міграційних шляхів.
У науковій статті розглядаються основні шляхи міграції до Європи з 2014 по 2020 рік. У результаті проведеного дослідження в науковій статті зроблено наступні висновки. Міграційна криза 2015 року поставила питання міграції на політичний порядок денний і виявила недоліки Європейського Союзу, Frontex та держав-членів ЄС у механізмах управління кордонами. У 2015 році на зовнішніх кордонах ЄС було виявлено понад півтора мільйона незаконних перетинів кордону, що є рекордом за весь час. У вирішальний момент міграційної кризи Туреччина була однією з головних точок в'їзду, близько 800 000 нелегальних мігрантів. Зазначена обставина
вказує на нинішню неможливість Європейського Союзу приборкати нелегальну імміграцію за відсутності стратегічного плану, узгодженого з державами-членами. становить ризик для внутрішньої безпеки. Відсутність механізму вирішення подібних ситуацій у 2020 році свідчить про слабкість Європейського Союзу, особливо перед обличчям можливих міграційних ситуацій на його зовнішніх кордонах, ситуація з якими все ще залишається крихкою та нестабільною. Необхідність просування законодавчих пріоритетів для оптимізації управління зовнішніми кордонами для скорочення або ліквідації міграційних шляхів стала об’єктивною, але єдиним заходом, ухваленим Європейським Союзом, який спромігся стримати нелегальний в’їзд, була Угода ЄС-ТУРЕЧЧИНА, яку можна розглянути спеціальним захід, і що робить ЄС залежним від політичної волі уряду Туреччини. Європейський Союз особливо зосередився на середземноморських міграційних шляхах, де проводилися різні морські операції. Цей захист зовнішніх кордонів змусив шукати або відновити нові міграційні маршрути, такі як шлях у Західній Африці, де спостерігалося значне зростання, але ми також можемо спостерігати незначне збільшення на західнобалканському маршруті. Це свідчить про неспроможність Європейського Союзу забезпечити однакову охорону на всіх зовнішніх кордонах і про те, що заходи, які вживаються Європейською прикордонною службою, виявляються неефективними.

Ключові слова: міграція, зовнішній кордон, FRONTEX, нелегальні в’їзди, нелегальні мігранти.
SMUGGLING CIGARETTES TROUGH THE BORDER SECTION PROTECTED BY NADBUZANSKI BORDER GUARD REGIONAL UNIT AS A THREAT AND BORDER SECURITY PROTECTION CHALLENGE

Capt. Izabela GRZEGORCZYK
Expert in the Foreigners Department of the Polish Border Guard

The aim of this article is to present one of the vital problems Border Guard fights against – smuggling cigarettes through the borders, which has worldwide range but this article is focused on cigarettes smuggling routes from Eastern Europe through (and to) Poland, taking into consideration Polish border section protected by Nadbuzanski Border Guard Regional Unit (NBGRU).

The article also presents the peculiarities occurring in smuggling goods tendencies used by criminals, presents also the methods of fighting against this problem, as an efficient protection of EU external borders is an important part of European border protection system.

The tendencies indicated in this article, engagement mostly organized criminal groups in smuggling excise goods, their determination and brutality, clearly show that decisive steps are needed to fight against smugglers. In the future we should expect that Poland will be still not only the transit territory for smuggling cigarettes but also the recipient as OLAF experts claim.

The article is an attempt to indicate the problem of smuggling cigarettes through the borders which has worldwide range, on the ex-
ample of one section of Polish border protected by NBGRU, what of course, do not present all sides of the problem.
It is obvious to everyone that stopping this business is impossible, but what is real and all countries trying to tackle this problem should consider, is controlling this activity and limiting the scale of smuggling cigarettes by effective cooperation of all law enforcement institutions on both – national and international levels.

**Key words:** cigarettes smuggling, border guard, nbgru, border protection, organized border crime.

**1. INTRODUCTION.**

*Problem Actualization.* According to the estimates of the European Anti -Fraud Office (OLAF) the illicit trade in cigarettes causes annual financial losses of over EUR 10 billion in the budgets of the European Union and its Member States\(^\text{82}\).

Large - scale smuggling of cigarettes and alcohol into the EU takes place via its Eastern border and tackling the influx of smuggled excisable goods, especially cigarettes originating in particular from Moldova, Ukraine, Russia and Belarus has therefore become a priority for the European Commision\(^\text{83}\).

Globalization and regionalization also affect on organized crime. The tendencies in smuggling goods trough the borders have changed and instead individuals, there are specialized international organized groups of smugglers which control transportation of cigarettes from country of origin to the place of their destination. Smuggling cigarettes is one of the most profitable areas where organized crime groups operate and their activity influences directly

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\(^{82}\) Communication from the commission to the council and the European Parlament stepping up the fight against cigarettes smuggling and other forms of illicit trade in tobacco products – a comprehensive EU strategy.

\(^{83}\) European Commision Action plan to fight against smuggling of cigarettes and alcohol along the EU Eastern border SEC (2011)791 final, 24 June 2011.
on national security the state fighting against smuggling and smugglers. It is estimated that nowadays rather organized groups control illicit cigarettes market in Poland.

2. RESEARCH RESULTS.

On the picture below we can see the directions of cigarettes smuggling, where Belarus, Ukraine are the countries from which cigarettes enter to European Union. As a cause making smuggling cigarettes so profitable we can enumerate a huge disproportion in prices between EU and third countries, what is also indicated on the picture, and what is strictly connected to this, an incredible income to producers and smugglers.

As the Polish Border Guard Headquarters’ inform, among all goods seized by officers, the biggest and most valuable part are cigarettes and tobacco.

Table 1. The value of cigarettes and tobacco seized by Polish Border Guard in 2018 and 2019

<table>
<thead>
<tr>
<th></th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>cigarettes</td>
<td>77 625 724 PLN</td>
<td>95 100 775 PLN</td>
</tr>
<tr>
<td>tobacco</td>
<td>68 280 657 PLN</td>
<td>57 116 549 PLN</td>
</tr>
<tr>
<td>Seized goods in total</td>
<td>280 163 649 PLN</td>
<td>265 478 953 PLN</td>
</tr>
</tbody>
</table>

Source: Polish Border Guard Headquarters’ official site

1 EUR=4,50 PLN

As we can see, the total value of smuggled goods in 2019 is smaller when comparing to 2018, but the amount and value of cigarettes seized – increased.

Taking into consideration Poland’s geographical localization it is reasonable to mark that Poland is not only the country of destination for smuggled goods, but also a transit territory, as prices in so called “old EU” are even more than three times higher than in Poland – as it is indicated above, in the figure 1.
Figure 1. Tobacco smuggling routes and prices

Source: https://natemat.pl/183995,bialorus-ukraina-i-rosja-czym-ta-wschodnia-triada-zalewa-polski-rynek#
Although the illicit trade in tobacco products is a worldwide phenomenon, in this article we focus on European markets and present the role of Poland in fighting against this procedure to ensure safety of the whole region, presenting smuggling tendencies occurring on border section protected by NBGRU officers.

**THE SPECIFICITY OF THE BORDER SECTION PROTECTED BY NADBUZANSKI BORDER GUARD REGIONAL UNIT - GENERAL INFORMATION**

NBGRU is located on the eastern border of Poland which is also the external border of the European Union. On the map below the Polish Border Guard’s structure is presented and NBGRU area of responsibility in border protection system.
The total length of the border protected by NBGRU is 467.5 km (171.3 km with Belarus and 296.2 km with Ukraine) – 68 km of the land border (southern section with Ukraine) and 399 km river border (Belarus – 171.3 km, Ukraine – 227.7 km).

In the structure there are 20 border guard posts – 7 in the border with Belarus, 11 on the border with Ukraine and 2 inland posts in which structures there are 12 border crossing points – 7 road (3 with Belarus, 4 with Ukraine), 4 railway (1 with Belarus and 3 with Ukraine), 1 air. Posts marked as red have in their structure border crossing points, the other ones, protect only green border.

As we can see, most of the border protected by BGRU goes along the river Bug, which is left naturally wild, what makes it very unique and beautiful. A lot of people visit our border region, as stay-
ing by the border is not forbidden – everyone is allowed to spend time there, go fishing, canoeing along the river etc. It is very popular place to visit.

![Border river BUG](image)

*Photo 1. Border river BUG*

In border protection context, such circumstances cause huge difficulties and are a real challenge. Smugglers and illegal migrants take an advantage on this situation, as it very convenient to cross the border illegally or smuggle goods through the green border. Moreover, there are forests by the river, where criminals can easily move and hide smuggled goods.

**Characteristics of smuggling cigarettes methods used by criminals on border section protected by NBGRU.**

Methods and forms used by criminals to smuggle goods through the border vary and are limited only by imagination and needs to avoid goods takeover. But there are two main types:
smuggling goods on a large scale by organized criminal groups by the use different means of transport (road transport – lorries and railway transport). Those types of transport are convenient because of using mass transport devices like carriages and semitrailers. Specificity of this type of smuggling is usage so called “cover – up goods” like ore, peat, wood and other raw materials.

smuggling goods individually – in terms of international touristic flow. What is characteristic to this type – small amount of smuggled goods and range is limited to border region. Smuggled goods are mainly hidden in luggage or special hiding places in cars. It is worth to mention that nowadays this type of smuggling goods also has changed. Rarely goods are smuggled for personal use, it is now more often when goods are delivered to special places when they are illegally stored to be next transported further to the territory of Poland or other EU countries85.

To the first type we should add smuggling cigarettes trough the green border - trough the border river Bug - using dinghies or flying objects like drones and gliders. Such smugglers methods cause the biggest problem for NBGRU officers in border protection matters.

To describe the methods used by criminals to smuggle goods trough the border protected by NBGRU, we will divide them into groups, depending on the place of smuggling:

Smuggling cigarettes trough the border crossing points (road and railway)

In the NBGRU structure there are 7 road crossing points, opened 24/7 for passenger and truck transport.

In 2020 NBGRU officers disclosed and seized illicit cigarettes in border crossing points:

Table 2 The total value of disclosed and seized illicit cigarettes by NBGRU officers in 2020

<table>
<thead>
<tr>
<th>Type of traffic</th>
<th>Ukraine</th>
<th>Belarus</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road border crossing points (passenger and freight transport)</td>
<td>291 347,57 PLN (about 66498 EUR)</td>
<td>10 491 627,90 PLN (about 2 437 413 EUR)</td>
</tr>
<tr>
<td>Railway border crossing points (passenger and freight transport)</td>
<td>501 844,06 PLN (about 110 830 EUR)</td>
<td>1 692 411,22 PLN (about 443 166 EUR)</td>
</tr>
</tbody>
</table>

Source: NBGRU official statistics

In recent years we observe the increase of smuggling cigarettes from Belarus. The possible cause of such situation is Belarussian government’s strategy, which aim is increasing production of cigarettes. According to the data given by Belarussian government – the contingent of cigarettes production was increased from 400 million to 19.9 billion pieces\(^86\). The attempts to smuggle cigarettes using road transport vary and depend on the mean of transport used by smugglers. Organized crime smugglers more willingly use freight transport, as it gives possibility to transport a huge amount of illicit goods at once.

Individuals use cars in passenger traffic, where they hide cigarettes in already naturally existing places to hide like vehicle floor, doors, spare wheel, fuel tanks etc. For smuggling the bigger amount of cigarettes special hiding places are made additionally, what is the interference in vehicle construction. Smugglers adapt cars which are used only for smuggling and make on their own special hiding places like additional layers in floor or roof.

Polish customs law, as a punitive measure, allows to seize the vehicle which was used to commit customs crime and was specially

\(^86\) RILO ECE report „Przemyt papierosów w Polsce i krajach ościennych” http://surl.li/kxhoa.
adapted for smuggling purposes (art. 29 and art 49 Customs Penal Code)\(^8\). It is the additional measure of punishment for smugglers. Unfortunately, criminals buy old and almost worthless cars for smuggling purposes, what makes this measure not efficient in general.

![Photo 2. Cigarettes hidden in the vehicle adapted for smuggling purposes](source: NBGRU official site)

Individuals also use passenger railway transport for smuggling cigarettes purposes. It is low – risk activity because, in case of disclosure smuggled goods, it is impossible to find who is the owner, as no one takes the responsibility. It is strictly connected to the methods used by smugglers. Cigarettes, in general, are hidden in widely available places (seats, roof, toilets…) and the process of hiding is not complicated, not requiring any special equipment.

\(^8\) Kodeks Karny Skarbowy Dz. U 2020.0.19, 10. 09.1999 p. art. 29, art. 49.
It is so common trend used on Ukrainian as well as on Belarusian border. That is why railway carriers use old and destroyed trains for passengers traffic, as it is obvious that the new ones will be rapidly destroyed by smugglers hiding illicit cigarettes and services during border control.

The biggest amount of illicit cigarettes is revealed in passenger short-distance trains which start and end the journey in border regions on both sides of the border. The passengers of such trains are mostly border regions habitants – individual smugglers – citizens of Ukraine.

Photo 3. Cigarettes hidden in passenger train

Source: NBGRU official site

It is worth to mention that organized crime groups also use passenger trains. It is common tendency on border section protected by NBGRU (on both, Belarusian and Ukrainian border). Cigarettes are hidden in widely available places on neighboring side, then, after crossing the border (if goods are not confiscated during border control) Polish citizens – members of criminal groups - pack them in foil sacks and then throw it out of the train. Such method prevents taking over cigarettes by services waiting on the station.
However, organized crime groups much more willingly use freight transport (trucks and trains), as it is more convenient way of smuggling goods. The amount of smuggled cigarettes is huge (estimated value of one attempt is between several hundred thousand PLN and billion PLN).

Photo 4. Cigarettes smuggled in railway transport of wood

Source: NBGRU official site

Specificity of smuggling cigarettes in trains is usage so called “cover – up goods” like ore, peat, wood and other raw materials. This type of smuggling is “safe” - in case of disclosure there are no witnesses and responsible persons and only way to investigate, is operational work.

Criminals involve railway workers on both sides to smuggling, as only them, during loading are capable properly hide and then take out smuggled goods. To find the wagon where cigarettes were hidden, criminals used different GPS devices or telephones with SIM card left in it. Sometimes, to secure payments between criminal groups, the information about proper wagon is sent only if the payment is already made.
Smuggling cigarettes in trucks is also very popular – the methods are two: criminals hide cigarettes between legally transported goods or the only truckload are smuggled cigarettes.

Photo 5. Cigarettes smuggled in a truck.

Source: NBGRU official site

In case indicated above, NBGRU and Custom Service officers during border control on Polish – Belarussian BCP revealed 415 thousand packs of cigarettes worth 6 million PLN (1 329 498 EUR).

Smuggling cigarettes trough the green border
   smuggling cigarettes trough the border river Bug

The most characteristic to NBGRU border section way of smuggling cigarettes is throwing them trough the border river. It is the method used only on this section and only on the border with Ukraine. What is important in such method – is used only by organized crime groups. Criminals totally control this way of smuggling.

The modus operandi is always the same – directly before the smuggling on the Polish side of the border appear people who are called “ czujki” (“persons – detectors”) equipped with night vision goggles, phones, radiotelephones to listen Border Guards commu-
Communication and GPS devices and their task is to establish Border Guard troops localization and on their mark criminals on Ukrainian side start to move cigarettes. They use dinghy to move cigarettes on Polish side where are awaited by recipients with specially equipped cross country cars without seats, number plates, as they are not registered at all. Moreover, moving at night - do not use car lights, drivers wear night vision goggles.

In link indicated below, starting from 00:19 sec. the smuggling method is shown: https://www.polsatnews.pl/wiadomosc/2018-09-11/przemyczali-papierosy-pontonami-przez-bug-wsrod-zatrzymanych-m-in-zolnierze-i-pogranicznicy/

For this method is also characteristic huge brutality. Smugglers - recipients – often under the influence of drugs – are so determined as they never do not stop to BG road control, even during the chase. In case of blocking the road by BG vehicles, smugglers ram cars not regarding the fact they can hurt or kill BG officers. There were cases when smugglers cars were equipped with special bumpers – with a piece of metal railway truck in it to ram roadblocks more efficient and hurt or kill BG officers. There were no cases of killings but cases when officers became disabled were reported.

Criminals also used trou de loup and barbed wire to stop and destroy BG vehicles.

The estimated value of one such attempt of smuggling is about 150 – 200 thousand PLN that is why are so determined.

In 2018 leaders and members of criminal group responsible for the large – scale cigarettes smuggling were arrested by NBGRU officers. There was proven within 2 years of criminal activity they smuggled trough the river BUG and with the use of gliders 72,4 billion packs of cigarettes worth 49,8 million PLN (2 511 079 150 EUR).

Unfortunately, among apprehended smugglers were also Border Guard officers and soldiers. The total amount of cigarettes seized in 2020 by NBGRU officers smuggled trough the green border was 4 678.020 pieces of cigarettes which estimated value was 3 300 951 PLN (over 664 749 EUR).
Photo 6. Cigarettes seized after smuggling attempt through the border river BUG.

Source: NBGRU official site

smuggling cigarettes using flying devices – gliders and drones

This method of smuggling is common for both borders – Ukrainian and Belarussian – although gliders were reported only on Ukrainian border.

In 2020 NBGRU officers seized in total 1,072,560 pieces of cigarettes smuggled by the use of drones and gliders, worth in total 756,830 PLN (about 177,328 EUR) – on Ukrainian border – 705,968.70 PLN (over 155,162 EUR).

As indicated above statistics show, the most threatened by airspace violation is Ukrainian part of the border.

According to Polish law, for air border protection responsible is Polish Air Force, but Border Guards are also obliged to watch over the air border integrity by observing planes and other flying objects cross-

ing the border and immediately inform Polish Air Force about that fact. In most cases the same criminal organized groups smuggle cigarettes through the border river and through the air border. On Belarussian part of the border, where cases of smuggling using drones are much more rare (differences in border protection systems between Belarus and Ukraine), some cases of smuggling cigarettes by individuals were reported. On the Ukrainian border operate only organized groups.

One attempt of smuggling cigarettes is worth more or less 150,000 – 200,000 PLN (about 44,332 EUR).

Glider operators usually fly high, as do not want to be heard or seen by Border Guards and while crossing the border they turn off the engine to turn it again on Polish side, throw the packages with cigarettes and go back to Ukraine. The place of throwing the cigarettes is sometimes specially marked by recipients by flashlights, distress flares etc. or packages are equipped with GPS devices. It often happens that the place where the cigarettes are thrown is far from the border as criminals know it needs more time for BG to find it when the terrain to search is wider.

Photo 7. Glider’s accident during smuggling attempt

Source: NBGRU official site

Above we can see a glider crash which happened on December 2020. The glider operator had problems with the engine and finally the glider felt down with the packages.

One case of smuggling cigarettes by the use of a plane (An) was also reported on NBGRU border section in 2017.

3. CONCLUSIONS AND FURTHER RESEARCH PERSPECTIVES

Taking into consideration Polish Border Guard analysis and monitoring the threats for border protection, there is no risk in drastic increasing of smuggling cigarettes through the Polish territory. However, the tendencies indicated in this article, engagement mostly organized criminal groups in smuggling excise goods, their determination and brutality, clearly show that decisive steps are needed to fight against smugglers.

Taking into account the hostilities on the territory of Ukraine, the flow of cigarette smuggling has decreased somewhat, but in the future it is worth expecting that Poland will be still not only the transit territory for smuggling cigarettes but also the recipient as OLAF experts claim. According to them, there is no longer a term “only transit countries” existing in EU, as systematically increasing cigarettes’ prices cause that former transit countries are now very attractive market for cigarettes from illegal sources⁹⁰.

Moreover, the role of Poland as a transit territory for cigarette contraband to Western Europe is decreasing because of changing the center of gravity for smuggled goods, especially from Ukraine to Southern Europe. The role of transit trail, less controlled and more attractive to smugglers took Hungary, Bulgaria and Greece, when in the recent years we observe the increase of smuggled goods detections⁹¹.

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⁹⁰ “Ochrona ekonomicznych interesów państwa” K. Foryciarz p. 174-175.
⁹¹ Ibidem.
The effectiveness of Polish law enforcement agencies is also increasing. Thanks to internal cooperation between different agencies in combating smuggling and organized criminal groups, international cooperation and using the newest technologies to fight against smugglers, the amount of goods seized is increasing every year. However, the penalties in Poland and the rest of EU are still too low to deter people from this type of activity. The main problem and challenge for law enforcement agencies is to deal with the fact that in Poland illegal market of smuggled cigarettes is controlled by organized crime groups.

The provisions how to tackle the problem of smuggling in EU countries are contained in European Commission’s Action Plan to fight against cigarette and alcohol smuggling along the EU Eastern Border and include:

- operational cooperation, including joint investigations and exchange of intelligence and information;
- technical and financial assistance to Member States and third countries;
- engagement with legitimate cigarettes traders;
- negotiation of agreements with the neighboring countries and within a global context, approximation of excise rates and legal provisions concerning penalties;
- regional and cross-border measures;
- ensuring efficient and secure borders;
- supporting enforcement capacity with capacity building, technical assistance and training;
- strengthening the disincentives and raise awareness (make smuggling less profitable);
- fighting against corruption of border police and customs;
- strengthening enforcement through improved operational cooperation including shared intelligence.

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92 The factbook on the illicit trade in tobacco products – Poland www.transcrime.it
All the provisions included in mentioned above action plan are brought into force on national level.

The article is an attempt to indicate the problem of smuggling cigarettes through the borders which has worldwide range, on the example of one section of Polish border protected by NBGRU, what of course, do not present all sides of the problem.

It is obvious to everyone that stopping this business is impossible, but what is real and all countries trying to tackle this problem should consider, is controlling this activity and limiting the scale of smuggling cigarettes by effective cooperation of all law enforcement institutions on both – national and international levels.

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8. The factbook on the illicit trade in tobacco products – Poland.

9. The factbook on the illicit trade in tobacco products – Poland www.transcrime.it.


Ізабела Гжегорчик. Контрабанда сигарет через ділянку кордону, що охороняється Надбужанським регіональним відділом прикордонної служби, як загроза та проблема захисту кордону
Метою цієї статті є представити одну з важливих проблем, з якою бореться прикордонна служба Республіки Польща – контрабанду сигарет через кордони, яка має світове поширення, але ця стаття зосереджена на маршрутах контрабанди сигарет зі Східної Європи через (і до) Польщу, беручи до уваги ділянку кордону з Польщею, що охороняється Надбужанським регіональним відділом прикордонної служби (NBGRU).
У статті також представлена особливості тенденцій контрабанди товарів, які використовують злочинці, а також представлено методи боротьби з цією проблемою, оскільки ефективний захист зовнішніх кордонів ЄС є важливою складовою європейської системи захисту кордонів.
Зазначені у статті тенденції, залучення до контрабанди підакцізних товарів переважно організованих злочинних груп, їх рішучість та жорстокість, яскраво свідчать про необхідність рішучих кроків у боротьбі з контрабандистами. Враховуючи воєнні бойові дії на території України потік контрбанда сигарет дещо знизився, проте у майбутньому варто очікувати, що Польща й надалі залишатиметься не лише транзитною територією для контрабанди сигарет, а й одержувачем, як стверджують експерти OLAF.
Стаття є спробою окреслити проблему контрбанда сигарет через кордони, яка має світовий розмах, на прикладі однієї ділянки польського кордону, що охороняється NBGRU, що, звичайно, не представляє всі сторони проблеми. Усім очевидно, що зупинити цей бізнес неможливо, але те, що є реальним і що повинні враховувати всі країни, які намагаються вирішити цю проблему, – це контроль над цією діяльністю та обмеження масштабів контрбанда сигарет шляхом ефективної співпраці всіх правоохоронних органів на обох – національних і міжнародному рівнях.
Констатується, що завдяки внутрішньому співробітництву між різними відомствами у боротьбі з контрабандою та організованими злочинними угрупованнями, міжнародній співпраці та використанню новітніх технологій для боротьби з контрабандистами кількість вилучених товарів щороку збільшується. Однак штрафи в Польщі та решті ЄС все ще занадто низькі, щоб стримувати людей від такого роду діяльності.

Ключові слова: контрабанда сигарет, прикордонна охорона, нбгру, охорона кордону, організована прикордонна злочинність.
THE MANAGEMENT OF FALSE UNACCOMPANIED MINORS IN EUROPE AND FRANCE

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CREDITS
Police officer “Olivier Berger” for the work done together on the subject of unaccompanied minors over the last 5 years.
Amelie SIAM, my daughter, for her help with proofreading and document layout.

The number of “unaccompanied” foreign minors entering Europe illegally is constantly increasing, as have the migration flows since 2015. States have a duty to take care of these minors under international and national laws, provided that the minority is established by an assessment. A large number of evaluations in France reveal that these migrants are actually adults who lie about their age in order to benefit from the favorable status of unaccompanied minors. It is therefore essential to develop the most reliable methods possible to evaluate the reality of the minority in a common manner throughout Europe.

The strategy to deal with this problem depends on different points of view, and must strike a balance between protecting the rights of the child and combating illegal immigration. Thus, if the current methods are sometimes criticized (in particular bone analysis) and
difficult to implement (problem of false documents obtained with the complicity of local authorities), they remain the best means to address fraud. The strengthening of the fight against the specific networks of smugglers, and the development of new assessment procedures combined with a positive strategy in this area should make it possible to address this issue more effectively: the creation of special units, the implementation of the international cooperation, and the use of new age determination technologies and databases.

**Key words:** migrants, combating illegal immigration, minors, unaccompanied minors, management.

1. **INTRODUCTION.**

**Problem Actualization.** The number of unaccompanied minors (UM) fleeing their countries has been continuously increasing in recent years. According to UNICEF, at least 300,000 unaccompanied children have been registered in about 80 countries in 2015 and 2016.\(^4\)

The treatment of these minors in Europe is a subject of debate, intensified by ideological convictions, the risks of human trafficking or terrorism, the sometimes violent delinquency of these young people, but also the very high financial cost of protection measures.

For the border police in France, especially in Montpellier, it is the main source of illegal immigration. Indeed, it is estimated that around 60% of these migrants are actually adults who hijack the process.

There is no definition of “unaccompanied minor” at international level, nor even at national level for some countries such as France. For the association “France Terre d’asile”, this is a “young person

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under 18 years of age who does not have French nationality and is separated from their legal representatives on French soil”95.

For the purposes of this article, he is defined as a foreigner in an irregular situation who declares himself to be a minor to the authorities, who has the nationality of a country outside the European Union, and who has neither of his parents with him.

The purpose of this study is to find the best solution to deal with the issue of migrants who have entered Europe by land (particularly in France) and declare themselves to be minors in order to be granted reception, when they are actually over 18 years old.

The subject of the presentation is mainly drawn from my professional experience and knowledge, but also from national or international studies.

The strategy to deal with this problem depends on different points of view, and must strike a balance between protecting the rights of the child and combating illegal immigration.

This is an important and complex issue of concern, which requires the implementation of assessment tools, the development of police investigations, and the continuous improvement of procedures.

2. RESEARCH RESULTS

False unaccompanied minors: an important issue of concern. The issue of unaccompanied minors continues to grow in France. It is estimated that their number has risen from 5,000 in 2013 to 17,000 today. This trend is also applicable in Spain, where more than 14,000 foreign minors are handled, particularly in the municipality of Barcelona. In Italy, police data indicate that 5,000 minors arrived in the

95 Delbos (France Terre d’asile), Poulou M (i-RED) Gallardo A & MARTIN P (El movimiento por la paz) Palmieri N & Benassi E (CIR) « the reception and care of unaccompanied minors in eight countries of the European Union » Synthesis october 2010. Project co-funded by the European Union’s Fundamental Rights and Citizenship Programme.
first half of 2020 (more than 7,000 for the same period in 2019, and 13,000 in 2018).

Greece is not spared with a large number of unaccompanied minors in the camps (more than 400 of them were evacuated from the Moria camp on the island of Lesbos after the fire of 8th September 2020). Germany is also impacted as well as Bosnia-Herzegovina (particularly the district of Tuzla).

Among these isolated minors are actually hiding many adults. In France, evaluations made by the child welfare services or the police indicate that around 60% of false declarations are reported.

In France, most of these “false unaccompanied minors” arrive from West Africa via Spain. They are mainly Guinean, Malian and Ivorian nationals (60% of the total number of UMs). But there is also an increasing number of Bangladeshi nationals.

How this issue of UMs can be explained?
They are mainly migrants over the age of 18 who are part of the usual migratory flows and who do not meet the conditions for obtaining asylum and refugee status.

Then, they declare themselves to be minors, abusing the system to obtain state protection. Indeed, national and international law protects any foreign minor who finds himself alone on European territory. If they are rejected for treatment of a foreign minor, they will move to another country or region until their case is accepted. In France, not only is the foreigner immediately treated (housing, food, care, education) but he also obtains a formal recognition of his administrative situation (residence permit or French nationality) once he has reached the age of majority (French interministerial Circular of 25 January 2016).

Henceforth, how to manage this flow of foreigners who are so-called minors? This is a tricky and complex issue.

**False unaccompanied minors: a complex problem.** The European Association for the Defense of Human Rights writes in a 20 June 2017 report “within the Member States, national standards
and practices are not sufficient to ensure their rights and sometimes even contravene their protection needs.

Age assessment procedures, reception conditions, the processing of files and the formalities they have to face vary from one Member State to another, without the principle of the best interests of the child being really taken into account(…) and should take precedence over them being nationals of a third country”96.

In Human Rights Review No. 7 it is reported that “Age identification procedures, the treatment offered, the accommodation facilities vary from State to State and do not always respect the best interests of the child as guaranteed by the International Convention on the Rights of the Child” 97.

In France, for some media and part of the population, as well as some unions of social educational staff, it is not acceptable that young foreigners who have crossed deserts and seas to flee war and poverty find themselves without treatment of their own, or even in prison or detention centres.

On the other hand, abuses are frequent and even flagrant. One example is the case of a 34-year-old Guinean who had participated in a conference in Geneva on telecommunications before presenting himself to the child welfare office in Montpellier with a birth certificate bearing the age of 17, on the basis of a suppletive judgment.

How should we respond to these situations?

The first principle is of course the treatment of these minors in application of international laws, including in particular:

The International Convention on the Rights of the Child
The Hague Convention of 5 October 1961
United Nations General Assembly Regulation 44/25

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96 ADEH -In Europe unaccompanied minors are not protected- 20 juin 2017. URL: http://www.aedh.eu/en/in-europe-unaccompanied-minors-are-not-protected/
The Council of Europe Regulation of 26 January 1967 on the treatment of unaccompanied minors.

Once the first emergency measures have been taken, there comes a phase of evaluation of the minority and the situation of isolation, based on the statements and documents provided. If the situation of isolation is almost always confirmed, the same does not apply to the minority.

**The minority assessment process.** It differs from country to country. In Germany, for example, there is provision for bone examinations and the study of identity documents\(^98\). In France, the verification officially lasts 5 days and also covers the intellectual maturity.

The pattern is complex (see the “Montpellier” protocol below).

Faced with the increase of arrivals on the territory, the education services are unable to manage the situation properly. There is a lack of accommodations and educators. More and more, local services refuse to provide care for people presenting themselves as minors when their physical appearance is clearly in contradiction with their statements after a check of only a few hours or less. The court can then be referred to them and ordered to do so.

The educators themselves are no longer able to deal with real minors as they are overwhelmed with an increasing number of “false minors”. Moreover, there are also the risks involved in having children and young adults co-existing in the same facilities (risk of sexual exploitation or abuse).

This is much more complicated because false unaccompanied minors do not leave the French territory for all that. Some of them run away as soon as they are summoned to the Border Police for investigation. This leads to the emergence of slums and precarious situations. It is therefore necessary to consider the process as part of a voluntarist and innovative strategy from a legal and scientific point of view.

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\(^{98}\) Hanan ZAHOUAN « Le traitement de Mineurs non accompagnés en Allemagne» (Treatment of Unaccompanied Minors in Germany) 2020. URL: https://lighthouseua.hypotheses.org/2381
a) The medical assessment
The medical examination, including exposing the intimate organs in order to assess the development of the migrant, is considered to be a violation of human dignity. Following complaints, doctors have stopped this practice in France.

Secondly, it is widely admitted that the results of analyses using bone analysis (which is based on the calcification and fusion of the bones of the wrist and hand known as “Greulich and Pyle” method)\(^99\) are unreliable and non-determining, both for the general public and for associations defending the rights of migrants, a section of the medical profession and even the administrative and judicial authorities. This is the point of view, for example, of the “French High Council of Public Health” or the “United Nations Committee on the Rights of the Child”. The margin of error is estimated around 1-2 years.

In the United Kingdom, these bone scans are prohibited in this context. In Spain, they are only allowed in the absence of a conclusive identity document.

The application of this examination also comes up against the reluctance of some assessment actors who believe that the minority should take precedence over nationality.

Some radiologists in France, for instance, refuse to carry out the examinations knowing the possible legal and administrative consequences for the patient, either for ideological reasons or under pressure and threats from associations for the defense of foreigners.

Some educators refuse to take part in the evaluation by the border police and to have the fingerprints taken from migrants who then risk being removed from the territory if it is discovered that they are of age.

However, another point of view argues that bone examinations are reliable as long as they are carried out in a comprehensive form.

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\(^{99}\) Hanan ZAHOUAN « Le traitement de Mineurs non accompagnés en Allemagne» (Treatment of Unaccompanied Minors in Germany) 2020. URL: https://lighthouseua.hypotheses.org/2381
This is an X-ray scan of the hand, wrist and arm, combined with a dental X-ray analysis (root growth and wisdom teeth).

There are studies and scientific literature on bone analysis (Evidence based medicine) with extensive national and international recommendations\textsuperscript{100}.

Dr Lossois, a specialist in the field of bone analysis, mentioned in his 1st November 2020’s report, the international study set up in Germany from 2008 to 2016 and the validation by the “Berman medical assembly” which has 134 members from 18 different countries and which takes into account in its studies and evaluations the differences due to the different ethnic and socio-economic indicators and individual development according to the life course, with accelerated or disrupted development\textsuperscript{101}.

Dr. Lossois also mentioned in an interview within the newspaper “Le midi libre” on May 24, 2019, that “the exams have been tested on thousands of subjects and the results have been consistent”.

Examinations of the clavicle, although more expensive, have considerable probative value. A result at level 3C or 4, for example, in the light of existing studies, proves the morphological development of an adult individual.

However, the point is that it is the accumulation of methods which is effective. In her work published on November the first 2020, Dr Lossois wrote: “as the age assessment is complicated and has serious consequences for the subject, all necessary precautions need to be taken... It is inadmissible to use only one method, or to base a decision on only one criterion”\textsuperscript{102}.


\textsuperscript{101} Lossois M, Baccino E. Forensic age estimation in migrants . Where do we stand ? WIREs Forensic Sci.2020;e1408. Https://doi.org/10.1002/wfs2.1408

\textsuperscript{102} Journal « Midi libre » vendredi 24 mai « Medecins du Droit d’asile » -Newspaper "Midi libre" Friday 24th May " Medecins du Droit d'asile " ("Doctors of the Right of Asylum")
These analyses are also well supported from a scientific and ethical point of view.

Examinations of unaccompanied minors are carried out in a language they understand.

They are carried out in a safe procedure (most studies have demonstrated that bone scanning is not dangerous for humans in terms of radiation, even for minors).

They are performed only with his or her consent and on the request of magistrates.

The result is based on the “minimum age” and not a precise age.

It always benefits the person.

Finally, whether it is a question of scientific methods or legal prescriptions such as the Decision of the “Constitutional Council” French court of 21 March 2019 which validates bone investigations under certain conditions, the determination of a person’s age cannot be based exclusively on medical analyses and must be accompanied by other investigations.

b) The clue bundle

Judicial investigations into suspicions of fraud (major who declares himself a minor to obtain benefits) are thus based on a clue bundle: medical evaluation but also an investigation by social workers and, in case of doubt, by the police.

It is also interesting to mention that the result of the police investigation is shared with the doctors in order to refine their results and studies a posteriori.

The clue bundle content:

It is rarely about confessions because migrants follow the instructions of silence given by the smugglers. But the interviews make it possible to reveal contradictions in the declarations.

Moreover, it is essential to study the documents provided by the minor in order to establish his or her minority. On many occasions, the research carried out by specialists in document fraud has provided decisive elements for the investigation.
However, recently, passports, falsified or counterfeit identity cards that are easy to analyze have given way to false birth certificates. Documentary analysis then turns out to be more difficult, especially when the document is drawn up with complicity in the source country (civil records or the police). These investigations require additional, often lengthy investigations with the help of non-EU countries.

Consultation of databases is also a determining factor in this kind of file.

Actually, it often happens that the so-called minor is identified by fingerprints as an adult who has already obtained a visa. Therefore, consulting VISABIO is an essential part of the process. The same applies to EURODAC, because some minors have already applied for asylum as an adult in Italy or Spain before coming to France pretending to be a minor. Some migrants are also registered as offenders in France or in other countries (SIS).

Finally, the investigation of the respondent’s immediate background may also prove successful. It is not unusual to find, for example, surprising elements in the mobile phone or on social networks. For example, a foreigner who had declared himself to be a minor published on Facebook the pictures of his 18’s birthday. Recent photos or conversations with parents who are supposed to have died a long time ago may also be found.

Once the scheme is in place with all the stakeholders, the evaluation policy is efficient, while also respecting the rights of the child.

However, proving the reality of the majority is actually not enough and it is necessary to step up the investigations aimed at dismantling the networks which organize this traffic.

**Combating the smugglers.** In the course of investigations with UMs, the police forces therefore look for evidence on the smugglers through interviews and mobile phone analyses. After all, migrants, even if they are adults, are nonetheless victims of smuggling networks.

The investigations carried out in this field have revealed the existence of real networks of smugglers who sell undetectable
“unaccompanied minor packages” (documents registered on local administrative databases, false school reports, judgments of convenience).

In 2019, the border police of Montpellier dismantled a criminal network involving Portuguese, Guinean and French traffickers. The main organizers were providing false civil status documents to Guineans of legal age in order to be treated as unaccompanied foreign minors by the children’s home or to obtain visas to remain on the National Territory. The search of the home carried out revealed a fake Guinean driving license, Portuguese passports bearing fake Guinean visas, fake birth certificates, certificates from a football club involved in the case, as well as declarations of fraudulent acknowledgement of paternity.

Another file was carried out in the Cameroonian community. It led to the detection of a communication between a Cameroonian police officer offering to fraudulently obtain a genuine Cameroonian passport in exchange for cash, and an employee of the Cameroonian Consulate in Madrid. Unaccompanied minors were sent by post or e-mail a Cameroonian birth certificate under the identity of a minor. With this document they then obtained a Cameroonian passport through the embassy.

A similar network was dismantled with Ivorian minors from Douala. At the end of the investigation in France, the information was transmitted to the country of origin and several perpetrators were arrested by the Ivorian authorities for making and issuing forgeries. At the head of the network, an officer of the public prosecutor’s office admitted the facts before being arrested.

Between the evaluation process and the judicial investigations, the process in Montpellier is effective but could be improved. And new proposals could be made.

**The continuous improvement of the process.** Faced with the ingenuity of the smugglers, the reticence, and the evolution of migratory flows, it is requisite to improve the methods through a voluntarist approach.
In spite of scientific progress (especially on the clavicle) bone scans are not carried out everywhere in Europe and are still contested. It is therefore planned to develop the determination of an individual’s age based on his or her genetic profile (DNA), with the study of telomeres and even more so the methylation of DNA (epigenetic method) which is less costly and simple (mouth smear) with a lower estimated margin of error than bone analysis. This is the subject of the VISAGE (Visible Attributes through genomics) project. This project is funded by the Horizon 2020 program (EU research and innovation funding) and involves members of universities and forensic services in several Member States103.

Another way of improving the system is to increase the efficiency of the databases.

In order to create national uniformity in the assessments carried out by local child protection services, a national database known as “Aide à l’évaluation des mineurs” (addressing the assessment of minors) has been established and approved by the french “Council of State” court104. This new electronic tool holds the fingerprints of the individuals assessed, during one year. Unfortunately, its implementation is subject to a local decision, and depending on the political party affiliation of the elected representatives, the file may or may not be implemented. The extension of this database at national and European level could be a very efficient instrument against fraud.

The creation of groups of experts (specialized unit) to deal with this topic is an additional measure. Within the Montpellier Border


Police service, a taskforce has been set up (a unit for unaccompanied minors), including a specialist in documentary fraud and two inspectors. Their specific knowledge of this topic and their daily relations with stakeholders have produced significant results. Although not provided for in the French system, this initiative has the potential to be developed in France and in Europe105.

It is also crucial to develop international cooperation within the European Union. Some countries reply more easily than others to requests for information. Moreover, some national laws sometimes stipulate that it is not possible to exchange information between countries on the minors’ issues. Bilateral or European agreements might be developed to allow such cross border sharing.

The same applies to cooperation with the sending countries. Thus France, Sweden, Spain and Germany have developed a partnership with Morocco on the issue of unaccompanied minors. Delegations from foreign countries (particularly in West Africa) could be deployed in the cities faced with this problem.

3. CONCLUSIONS AND FURTHER RESEARCH PERSPECTIVES

While the acceptance of unaccompanied foreign minors is a fundamental principle, the fight against fraud committed by adults pretending to be minors must be continued in order to reduce the impact of unaccompanied foreign minors trafficking. Despite the difficulties in establishing the evidence of fraud, it is possible to meet the challenge with effective, innovative and human rights-friendly processes.

This approach should also be part of the more global management of unaccompanied minors, which includes the problem of the acts of delinquency they may commit, attempts to enter the territory by air or the treatment of those claiming for asylum.

105 VISAGE Project. URL: http://www.visage-h2020.eu/
LITERATURE


Лоран Сіам. РОБОТА З УЯВНИМИ НЕПОВНOLІТНИМИ БЕЗ СУПРОВОДУ В ЄВРОПІ ТА ФРАНЦІЇ
Кількість неповнолітніх іноземців без супроводу, які нелегально в'їжджають до Європи, постійно зростає, як і міграційні потоки з 2015 року. Держави зобов'язані піклуватися про цих неповнолітніх згідно з міжнародним і національним законодавством, за умови, що меншість встановлена оцінкою. Велика кількість оцінок у Франції показує, що ці мігранти насправді є дорослими, які брешуть про свій вік, щоб скористатися сприятливим статусом неповнолітніх без супроводу. Тому важливо розробити найнадійніші можливі методи оцінки реального становища меншини загальним способом у всій Європі.
Стратегія вирішення цієї проблеми залежить від різних точок зору та повинна знайти баланс між захистом прав дитини та боротьбою з нелегальною імміграцією. Таким чином, якщо поточні методи інколи піддаються критиці (зокрема, аналіз кісток) і важко реалізувати (проблема фальшивих документів, отриманих за співучастю місцевої влади), вони залишаються найкращим засобом боротьби з шахрайством. Посилення боротьби з окремими мережами контрабандистів, розробка нових процедур оцінки в поєднанні з позитивною стратегією в цій сфері має дати змогу більш ефективно вирішувати це питання: створення спеціальних підрозділів, здійснення міжнародного співробітництва та використання нових технологій визначення віку та баз даних.
Ключові слова: мігранти, протидія нелегальній імміграції, неповнолітні, неповнолітні без супроводу, управління.
CHALLENGES IN COMBATING THE TRAFFICKING IN HUMAN BEINGS IN THE CONTEXT OF MIGRATION FLOWS – STRATEGY FOR IMPROVED APPROACH IN IDENTIFICATION OF VICTIMS AMONG MIGRANTS

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The paper gives overview on the current state of play in combating the Trafficking in Human Beings in Europe. It evaluates the efficiency of the existing EU approach for contesting this phenomenon in the context of mixed migration flows. The paper identifies the main reasons for low number of registered victims of human trafficking among irregular migrants in the transit countries through the experiences of the countries along the so-called “Western Balkans Migration Route”. In addition, it offers a view on possible actions for improvement in identifying victims and potential victims among migrants in transit countries.

Key words: combating, Trafficking in Human Beings, migration, victim, migrants, European Union, Western Balkans Migration Route, transit countries.

1. INTRODUCTION

Problem Actualization. The world faces many global threats that have significant impact on security, but not many of them unite the countries in their willpower to respond jointly and decisively as
Trafficking in Human Beings (THB) does. It is a multidimensional threat that not only reinforces other types of organized crime and endangers global health, but also deprives the most valuable fundamental rights and violates the human dignity. Moreover, in most cases it targets the most vulnerable categories, women and children.

This, along with the fact that it affects all countries, regardless if they are developed, developing or underdeveloped, strengthens the unity not only between the states, but also with the non-state actors in their determination to take joint action against it. Having that in mind, it is not a surprise that unlike some other threats where there is a lack of international consensus on determining priorities, approach, in some cases even in agreeing universally accepted definition of the threat (such as terrorism), the fight against THB is one of the best structured areas in terms of widely accepted, precisely defined and standardized approach.

Subsequently, broadly supported and efficient tool was introduced, which is first global legally binding instrument with an agreed definition on trafficking in persons. Alignment of national approaches has been secured, along with appropriate set of requirements for creating national referral mechanisms.

In Europe, the instrument is additionally strengthened by EU legislation. The EU approach is built on a compact ground, based on international (UN) instruments, reinforced with variety of additional EU tools and relied on coordination and coherence upon which National Mechanisms are built. It is also accepted by non-EU countries, so it can be considered as European approach.

While it achieves solid results in combating domestic THB (within the countries and within EU), current EU approach struggles in combating transnational type of THB, particularly in delivering expected results in identification of victims of THB among the migrants.

Numbers of prosecutions and convictions of traffickers and number of identified victims on European level in the past years did not correspond to migration trends, particularly due to the fact that nearly half of the registered victims are EU citizens and the number of pros...
executions and convictions of perpetrators remained low. Although on a per-capita basis the EU’s overall detection rate in 2016 was amongst the highest in the world, it didn’t follow the developments in the irregular migration since those 11,385 victims were registered in the year when number of detected illegal crossings of EU external border reached more than a half million (2016 – 511,046), and year after almost two million illegal crossings were detected (2015 – 1,822,337).

These indicators urge on immediate action. In order to do that and to determine the further steps for improvement it is necessary to identify the main reasons for this trend and to answer the question is it result of National Mechanisms failure to consistently follow and implement EU requirements, or the EU approach itself needs certain adjustments.

2. RESEARCH RESULTS

1. GENERAL OVERVIEW ON NATIONAL SYSTEMS FOR COMBATING THE TRAFFICKING IN HUMAN BEINGS IN THE WESTERN BALKANS. All Western Balkans (WB) countries clearly stated their aspiration to join EU. Although they are formally at different levels of EU integration, countries are at very similar level in the area of Justice, Freedom and Security, especially in the field of Border Management and Fight against Organized and Serious Crime. This is largely due to the fact that apart from Albania all the other countries derived from former Yugoslavia, having same legislation basis as starting position, all six WB countries committed to full EU accession and finally most of the international and regional projects aimed to strengthen national capacities in alignment with EU standards includes all six countries as beneficiaries.

Therefore, in the past decades a solid platform has been developed and used for continuous cooperation, exchange of information and experiences, joint actions and mutual assistance in the process of achieving EU and international standards in the past decades.

The area of Fight against the THB is no exception. All WB countries are dedicated to efficient fight against the THB, all receive similar support in strengthening the national capacities and as a result,
all of them developed similar national capacities for combating THB. National systems are set in line with the international standards and requirements, consisted of all elements necessary for strategic planning, implementation, monitoring and evaluation of the activities in all areas - prevention, prosecution and protection of the victims of THB. International cooperation in this area is on a very high level not only between the WB Countries, but also in the wider region.

It is implemented both on strategic and on operational/expert level, through regular meetings, exchange of experiences, mutual assistance and operational cooperation. Both state authorities and National Rapporteurs issue regular Annual Reports and the progress is evaluated by relevant bodies. According to the US State Department’s Trafficking in Person Report from 2020, WB countries are classified on Tier 2, which is also an overall trend for the last decade.

Table 1. Trafficking in Persons Report tier placements of WB Countries 2011-2020, based on US State of Department’s Annual Trafficking in Persons Reports

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Evaluation Reports indicate that there is a lot of room for further improvement, but also confirm the continuous progress and significant efforts by national authorities of WB countries in the area of fight against THB. The progress is visible not only by the number of detected victims, but also in activities taken in other areas as noted in the Reports (rising awareness, rehabilitation of victims etc.).

The total number of identified victims of THB in WB in 2018 was 185: Serbia – 76, Albania – 60, Bosnia and Herzegovina – 36, North Macedonia – 9, Montenegro – 4.\textsuperscript{106}

Despite these positive indicators, if analyzed more thoroughly the overall trends do not look so optimistic. Namely, in the same period the region was severely hit by the migration crisis. According to Frontex, in 2015 and 2016 combined the region recorded almost 900,000 detected illegal crossings. Furthermore, the “WB Migration Route” has been opened for legal transit since 2015 until March 2016, in which period North Macedonia registered nearly 800,000 migrants that met conditions for entry and transit. And finally, most of the identified victims in this period were either domestic or citizens of neighboring countries. GRETA Country Reports from that period among the other urge WB countries, especially Serbia and North Macedonia, “to pay increased attention to detecting potential victims of trafficking among migrants and asylum seekers” and that “there are concerns that efforts to identify victims of trafficking have diminished as the authorities, in particular the Border Police, have been overwhelmed by the migration situation”. Further improvements of national capacities were undoubtfully needed in many areas, but was that the main reason for such a small number of identified victims in the WB countries? Would the fully developed, 1st Tier National System produce significantly higher numbers of identified victims among

\textsuperscript{106} Trendovi i izazovi u borbi protiv trgovine ljudima na Zapadnom Balkanu. URL: https://www.astra.rs/trendovi-i-izazovi-u-borbi-protiv-trgovine-ljudima-na-zapadnom-balkanu/
the migrants or there are other factors that needs to be taken into consideration?\textsuperscript{107}

Proper identification of reasons why potential victims among the migrants are “invisible” for the authorities in transit countries is crucial in order to determine proper course of action that will strengthen the international mechanism, and more importantly, to rescue, protect and rehabilitate as many victims as possible.

2. IDENTIFICATION OF VICTIMS OF TRAFFICKING OF HUMAN BEINGS ALONG WESTERN BALKANS ROUTE. The number of identified victims among the migrants in WB countries in the past period was low. Since the solid development of national systems has been recognized and verified as described above, the next question is if it is implemented properly into the practice and one of the ways to do that and to determine how exactly low the number of identifications was is to compare it with better developed systems. Part of the “WB Migration Route” are not only the WB Countries, but also EU Member States. In 2020 TIP Report of the US State of Department some of them are placed also on Tier 2 (Greece, Bulgaria, Croatia, Hungary). Romania and Bulgaria are among the TOP 4 EU countries that reported most registered victims in the period 2017-2019. In the period 2011-2015 Romania identified 4622 victims of THB, out of which only 15 foreign nationals. Among those 15, only 1 was from non-European country. There is no information for identified victims among the foreigners in Bulgaria in the same period. In 2013 and 2014, as result of the humanitarian crisis triggered by the conflicts in Syria, nearly 18.000 persons applied for asylum in Bulgaria, but there were no identified victims among the asylum seekers.

Croatia, Slovenia and Austria are directly affected by the trends on the WB Route and although not formal part of the region, they...

\textsuperscript{107} Western balkan route URL: https://frontex.europa.eu/along-eu-borders/migratory-routes/western-balkan-route/
are considered as part of the route and transit countries toward the Western European countries (Austria is both transit and destination country). In the period 2015-2019 Croatia identified 200 victims, out of which 86 foreigners. However, among them only 6 could be connected with the migration flow on the WB Route (3 from Pakistan, 2 from Afghanistan and 1 from Nigeria). Slovenia and Austria are placed on Tier 1, and according to GRETA Evaluation Reports in the period 2013-2016 Slovenia identified 119 victims of whom 114 were foreigners, all from European countries (GRETA (2017)38, p.7), while in the period 2015-2018 Austria identified 1226 victims of THB. Victims mainly originated from Eastern Europe, Asia and Africa, but it is not clear how many of them can be connected with the WB Route since data are not disaggregated by nationality (GRETA (2020)05, p.9). Finally, EU’s overall detection rate in 2016 on per-capita basis reached 2.2 per 100,000 which was amongst the highest in the world.

However, this number was achieved in a year when number of detected illegal crossings of EU external border reached more than a half million (2016-511.046), and year after almost two million illegal crossings were detected (2015 - 1.822.337). Moreover, the biggest contributors in the number of detections were UK and Netherlands, which are predominantly destination countries, as well as Bulgaria and Romania, which are mainly countries of origin, and which, according to the GRETA Reports, in 2013 and 2014 detected in total 1 foreign victim from non-European country combined. Obviously, the increase of number of registered victims in EU does not follow the developments in the area of irregular migration and recent migration crisis and this constatation applies not only to EU, but entire Europe.

Based on this, it is evident that in terms of identification of victims among the migrants, trends in WB Countries does not differ from the trends in EU MS and in entire Europe. Deeper analysis on various relevant Country Reports on TiP indicates that systems are at various level and they face various specific challenges in combating THB, but when it comes to combating THB in the context of
migratory movements the efficiency also largely depends on the fact if it is a transit or destination country.

3. CHALLENGES IN COMBATING THE TRAFFICKING IN HUMAN BEINGS IN TRANSIT COUNTRIES. The biggest challenge for transit countries in combating THB in migration flows is the first step – identification of the victim of THB. Without proper identification, large part of the National System (in the part of prosecution and protection) becomes useless since there is no one to prosecute or to protect. Some non-state actors find the reasons in lack of interest or insufficient training of the law enforcement agencies, low awareness and failing to recognize indicators for potential victims, which is not a case. Having well developed, efficient National Mechanism for combating THB is obviously ultimate goal for every country and activities in mentioned areas are essential part of every relevant National Strategy. Real causes for this challenge lay in the specifics of the transit countries.

Many factors combined contribute to low numbers of identified victims of THB, but among the most important ones are insufficient time for identification and insufficient cooperation from migrants - due to characteristics of THB as a crime, migrant goals and specifics of the transit countries. In the area of prosecution, lack of element of exploitation significantly decreases number of convicted traffickers.

3.1. Insufficient time for identification. Formal identification of victims of THB is a process that takes time, and time is a resource that in most cases authorities in the transit countries does not have at their disposal. Initial identification of presumed victims faces same challenges. Countries accommodate migrants in open type facilities (reception centers, asylum centers, shelter houses, etc.), while detention is applied only when necessary and in individual cases. Persons can leave those facilities anytime and this is what happens in transit countries on a regular basis, regardless of the formal status of the person. The average time of their stay in such facilities depends on various factors (weather, health conditions, personal reasons – mi-
grants are waiting for the rest of their group or money transfer from relatives, etc.). However, most of them leave the facility as soon as, in their opinion, conditions are met to continue their trip to Western Europe. This interrupts all ongoing processes (educational, support processes, asylum procedures etc.), including the process of identification.

Period of stay in the centers in various transit countries also differs due to other factors - size of the country, living conditions and opportunities to earn money on the grey market, possibilities to connect with smugglers, etc. In the countries along WB Route migrants stay longer (some of them for years) in Turkey, Greece, Serbia, and Bosnia and Herzegovina (in Bosnia mainly due to significantly strengthened measures on Croatian border), while they stay much shorter in Albania, North Macedonia and Montenegro. In terms of identification of victims of THB, authorities in the first group of countries have more time to work with the persons and consequently have bigger numbers of identified victims.

3.2. Insufficient cooperation from migrants. In most cases migrants are reluctant to cooperate with the authorities due to various reasons, both personal and practical.

First set of reasons is connected with the characteristics of THB as type of crime. In order to minimize the risks during the transport, traffickers aim not to show the real intentions until reaching the destination point. In such cases, in the phase of transit migrants are not aware that they are possible victims of HT. Even if authorities recognize indicators, they are not able to obtain more information since migrants believe that traffickers are only smugglers that help them to reach destination point. Biggest challenge for authorities and NGO staff in these situations is to convince the persons that they are exposed to risk. These attempts are mostly with modest success, and the best that competent authorities can do is to act success, success, so authorities can only act preventively, to raise persons awareness, and, if the perpetrator is available, to the law
enforcement to prosecute him according to other charges (i.e. for human smuggling).

Migrants also decide to remain “invisible” from practical reasons. In such cases they are aware of the fact that they are exploited during the transit, but they don’t cooperate either because they are afraid that entire process will delay their travel to destination country, or they accept their exploitation (sexual, labor exploitation, exploitation through their involvement in criminal activities) as a mean to reach desired destination. Also, sometimes they decide to remain silent because of their local community or the group they are traveling.

In all cases, main reason for their reluctance for identification is that it will prolong their stay in the transit country, which is not their interest. Moreover, they are not willing even to reveal their real identity, since they are afraid that it will decrease their chances to obtain protection and legal stay in desired destinations and they might be returned in some of the transit countries. Once they reach their final destinations these persons are much more cooperative with the authorities of destination countries, they reveal their identity and speak openly about their experiences. All of these, in addition to the fact that they stay there for a longer period, makes the identification process in countries of destination much more easier than in the transit countries.

3.3. Lack of element of exploitation. This factor derives from previous two and it’s mostly connected with the formal classification of the cases. In cases where exploitation starts at the destination point this element is lacking, while in others it is hard to prove it due to insufficient time and reluctance of potential victims to cooperate. Migrants still have full access to medical, humanitarian and other support needed, especially the vulnerable categories, and potential traffickers might be prosecuted and sentenced upon charges for other crimes. Nevertheless, such cases are not counted in official HT statistics, which is the reason why the lack of the element of exploitation needs to be considered as a factor for the low number of identified victims.
3. CONCLUSIONS AND FURTHER RESEARCH PERSPECTIVES

Considering the connections between THB and migration, the extreme vulnerability of migrants and anticipated number of victims among them, the number of identified victims of THB among the migrants in Europe is extremely low. Although the EU’s overall detection rate per capita is amongst the highest in the world, it is mostly due to the identified domestic victims of THB or foreign victims that are not directly connected with the recent migration crisis.

Combating THB in the context of migration movement largely depends on timely identification on victims and initial identification of presumed victims. Failure in this area means that other capacity of the systems can’t be used regardless how well developed they are. The analyses suggest that despite the diversities, transit countries face common challenges in identification of victims, primarily due to lack of time and lack of cooperation from the migrants caused by their desire to reach their destinations as soon as possible. Formal identification brings many benefits for them in the transit country, but this is not in line with their ultimate goal to arrive in Western Europe.

The EU approach (that can also be considered as joint European approach) to the fight of THB provides solid platform for combating this type of crime. However, it needs adjustments in order to meet current challenges, especially in identification of victims among migrants, through measures necessary for eliminating the roots for their reluctance to cooperate while in transit countries.

In order to achieve that, steps to regain migrant’s thrust needs to be taken. In that direction, measures in following areas might be considered:

Further support of National Referral Mechanisms: This measure is necessary in order to maintain and improve the capacities for rising awareness and for efficient initial identification of possible victims, quality of rehabilitation process and protection.

Increased formal use of Transnational Referral Mechanism: Regardless how well-developed are, National Referral Mechanisms es-
especially in the transit countries can hardly complete the process of formal identification of victims and prosecution of traffickers without intensive international cooperation because of the reasons mentioned above. In most cases, contribution of authorities from two, three, even more countries is necessary for efficient outcome.

Increased joint operational activities in dismantling Organized Criminal Groups in the area of THB, coordinated or supported by relevant EU and international Agencies.

Strengthened border control: Although repressive, this area improves the possibilities for more efficient identification through detection and prosecution of perpetrators and providing more time for identification of potential victims.

Measures and activities in areas mentioned above would increase the efficiency of fight against THB through decreasing the capacities (human and financial) of OCG’s, raising the awareness among migrants and enhancing their resilience. The key for success remains the cooperation, especially between transit and destination countries.

LITERATURE


мігрантів у країнах транзиту уздовж так званого “Західнобалканського міграційного шляху”.
Окрім зазначеного пропонується напрямки удосконалення процесу ідентифікації жертв і потенційних жертв серед мігрантів у країнах транзиту.

**Ключові слова:** протидія, торгівля людьми, міграція, жертва, мігранти, Європейський Союз, Західнобалканський міграційний шлях, країни транзиту.
The practical recommendations for the application of Advance Passenger Information and Passenger Name Record System (API / PNR) were described in the article with the aim to use such system as a counteracting cross-border threats tool. Biometrics establishes a strong link between a document and its holder only if all electronic security features (signatures) are reviewed. That’s is the critical point of all system. Many EU countries don’t have Public key infrastructure in place and can’t use the mentioned security functions. There no joint EU system. Only ICAO has a commercial Public key directory, which provides PKI functions to some countries. Specific digital algorithms know and do many things better, like people, and can make a significant improvement. The order of actions for system implementing is proposed. He will be responsible for Risk assessment, Biometric verification accuracy, and Document verification.

It is mandatory to improve data management, mostly to cover all fields and flows of data. Improve legislation related to data management for the mentioned purpose and GDPR. Besides, we have to invest more in automatic border control systems infrastructure. It is mandatory to centralize Public Key Infrastructure and Certificates masterlist management and validation.

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State Border Guard Service of Lithuania

ENTRY-EXIT SYSTEM SCOPE, API/ PNR CAPABILITY WEAKNESS
All measures will increase public security and save innocent lives from cross border crimes.

**Key words:** border security, entry-exit system cross-border crime, border control, air BCPs, API/PNR, biometrics.

1. **INTRODUCTION**

**Problem Actualization.** The European Union has experienced significant pressure on its external borders in the last few years. There will likely continue to be high numbers of third-country nationals crossing Schengen borders in the future. A study for the European Commission has estimated that the total number of regular crossings will rise to 887 million in 2025, up by more than half in a little more than a decade. Consequently, there is a need to modernize border controls, migration, and security processes.

In the current situation, we have to remember our past failures and learn lessons very carefully. For instance, September 11, 2001 - New York – Washington DC showed the whole World that every society is vulnerable; October 12, 2002 - Bali/Indonesia: 188 people killed during terrorist bomb explosion; March 11, 2004 - Madrid/Spain: over 190 people killed during several bomb explosions.

As you know, some of the World’s policymakers try to exploit terror activity as the main instrument to reach their political goals. Terror usually has different stages and some parts of it in one, some elements in another country. Main actors try to hide their real identity from public security players, especially when they try to cross a Border. That is an essential part of the success of all operation.

The twenty-first century is an era when digital algorithms start to look over big data, things network, object location, and recognize individuals by this Face, fingers, or iris. Passengers API and PNR data are regularly collecting. Why fake identity phenomena still exist, make a breach in our security networks, and is one of the main threads in the twenty-first century?

Analyses of the recent research and publications.
Issues related to comparative context and also partially related to border protection issues covered in this article, devoted, in particular, to the research of Han, CR., McGauran, R. & Nelen, H.108, Bellanova, R. O. and Duez, D.109, Kęsek, R., Boroda, M., & Joźwik, Z. (Eds.)110.

The goal for this publication lies in the comprehensive and comparative analyses of a set of issues related to the border control and national borders protection with a specific focus on the entry-exit system scope, API/PNR.

2. SITUATION ANALYSIS API/PNR

Let us start review form data analysis:

Do we have a sufficient amount of advance information about travelers who intend to cross our borders?

EU Directive 2004/82/EB (L 261/24) requires public passenger transportation companies to collect passenger data before traveling to the EU and sent it to Border authorities, but there many exclusions in case of land traffic. There no obligation for Train and Bus transport111.

PNR Directive (EU) 2016/681 on the use of passenger name record (PNR) data for the prevention, detection, investigation, and prosecution of terrorist offenses and serious crime is ground for col-

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lection more passenger data before the travel. Still, such data is restricted to use widely, and if we don’t have intelligence information related to that particular traveler, it is useless\textsuperscript{112}.

Did we get information at a sufficient time prior?

Air companies should send data before a flight, but they’re no systematic approach in the EU to manage such data. Member States must build a national API data analysis system. It is a manual procedure in some countries, some automatic, but mostly everyone has trouble with data management and risk assessment. Different data standards used for companies create additional issues. Automatic PNR data management systems have only a few countries.

What kind of information we have about travelers?

Usually, risk assessment is based on official historical data. There no many risk factors or software solutions in place for analysis. No Biometrics indentificators.

We have the resources and bits of knowledge to analyze data qualitatively?

One of the essential things is qualified resources. Lack of professional analytics decrees the importance of all processes. As I know from My personal experience, it is the key in many EU countries.

\textbf{3. SITUATION ANALYSIS. BIOMETRICS}

The first legal act related to digitalized biometric verification was Recommendation for travel documents physical security features laid down in the ICAO doc. 9303 (Machine Readable Travel Documents) and Council Regulation (EC) No 2252/2004 of December 13, 2004, on standards for security features and biometrics in passports and travel documents issued by the Member States which

formed the basis for the upcoming European “Intelligent passport”

A combination of the two will lead to enhanced biometric security. Both features are stored on a contactless radio frequency (RF) chip. They held as images in JPEG format — deadline for introduction - June 2009.

Reasons to introduce electronics in passports (and other travel E-documents) were to increase document security (more difficult to forge), start using cryptography, and establish a more vital link between the document and holder.

The RFID information is the same as printed on a travel document’s data page. The EU countries are not allowed to store additional information not published in the booklet (except fingerprints). Information is stored in the form of files. Data groups containing data (DG1 - DG16).

RFID is protected from fraud. Active Authentication (AA) is based on a cryptographic challenge-response algorithm that can verify if the RFID contains in its secure memory a secret key stored during the personalization by the issuing country. Optional security feature to prevent RFID cloning. The result of the AA is simple: PASS / FAIL. Fail suggests a forgery.

Privacy protection – EAC. Fingerprints (stored in DG3) in the 2\textsuperscript{nd} generation European passports are protected with an additional mechanism called Extended Access Control (EAC). EAC requires an extra secret key and certificate provided by the issuing country of the passport. Authorized border authorities can only read EAC-pro-

ected data. Only fingerprints (DG3) are EAC protected. All remaining data (DG1-2,5-16) is BAC-protected. Cooperation between States on an exchange of EAC certificate isn’t sufficient.

After that, no strong need for improvement of travel documents’ physical security features anymore (if the minimum-security level has been achieved).

I have to underline that biometrics increase security of a document ONLY if it is checked in the right way. Biometrics establishes a strong link between a document and its holder ONLY if all electronic security features (signatures) are reviewed.

That’s is the critical point of all system. Many EU countries don’t have Public key infrastructure in place and can’t use the mentioned security functions. There no joint EU system. Only ICAO has a commercial Public key directory, which provides PKI functions to some countries. The better solution is to build a Masterlist of certificates and validation mechanism, but that aspiration doesn’t finalize yet.

4. SITUATION ANALYSIS. ENTRY/EXIT SYSTEM

EU Entry/exit Regulation (EU) 2017/2226 established a new digital biometric system. The Entry/Exit System (EES) will be an automated IT system for registering travelers from third-countries, both short-stay visa holders and visa-exempt travelers, each time they cross an EU external border. The system will record the person’s name, type of travel document, biometric data (fingerprints and captured facial images), and the date and place of entry and exit, in full respect of fundamental rights and data protection.

It will also record refusals of entry. EES will replace the current manual stamping system of passports, which is time-consuming, does not provide reliable data on border crossings, and does not allow a systematic detection of over-stayers.

EES will contribute to prevent irregular migration and help protect the security of European citizens. The new system will also help bona fide third-country nationals travel more quickly while also identifying more efficiently over-stayers and cases of document and identity fraud. The system will also enable us to use automated border control checks and self-service systems, which are quicker and more comfortable for the traveler.

That system shall compensate for breaches in the security network and pay the related state’s trustworthiness to fake identity, document fraud, and human verification mistakes. Because humans are subject to error and therefore, it is possible that a traveler can pass the border with a forged/falsified travel document.

5. SITUATION ANALYSIS. ARTIFICIAL INTELLIGENCE (AI)

AI applications exist in the area of criminal investigation and law enforcement. However, it was clear that this is contrary to many other areas, such as migration and border control. Therefore, the EU decided to launch a study to analyze and describe how AI can be leveraged in border control, migration, and security. According to the study, we have to extract the main pros of using AI:

*They improved the risk assessment of TCNs. AI will ensure that every applicant is thoroughly examined, limiting the risk of granting visas to travelers with bad intentions (also called ‘mala fide travelers’). The border security will be enhanced by using AI to support risk assessment and decrease the dependence on the individual bor-

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nder guard (to mitigate against potential variation between personal border guards). AI should also ensure consistency in selecting travelers being called for the second line border check by using a data-driven decision process.

Better resource management. They were expected to increase the operational efficiency of the border resources allocation. A staffing mechanism that balances the risk of under- (capacity and hence security risk) or overstaffing (increased cost) is aligned to this concept of intelligent and efficient operations.

Humans require fewer manual tasks. Employing automating the process, both applicants and visa workers can spend less time on manual low-value-added tasks and focus on priorities (i.e., assessing an individual traveler posing a higher potential risk).

They are strengthening the internal security (of the Schengen Area) through improved background checks. Background data for risk analytics, requirements for future smart borders focusing on the human factor, and a Decision Support System (DSS) enable border guard practitioners to assess the potential impact of implementing new solutions for Smart Borders. These deliverables may provide handy guidance for deploying and scaling AI opportunities.

Improve accuracy in biometric matching, more specifically for facial images. The facial image is a new biometric identifier to be used in the context of the systems managed by Eu-Lisa, (either new or existing) together with the fingerprints. In particular, the use case would seek to add robustness and accuracy to existing biometric approaches. This could occur by developing models to augment biometric data (e.g., by training a neural network to pre-process an image so that the biometric information is enhanced) or developing models to perform or support the matching directly (e.g., with a convolutional neural network trained on face images).

AI systems can detect the use of forged travel documents.

To do so, it would analyze the captured image of the provided documents and assess if the physical characteristics of the document match an original one, if the information provided in the documents
6. VIEW FROM BORDER CHECK PERSPECTIVE

The process starts when the traveler shows intent to enter the Schengen Area (or somewhere). Here, the first step will be to check the traveler’s identity, based on a visual comparison between the travel document provided and the person trying to enter the Schengen Area. If the identity is not valid, the entry will be rejected. If the person’s identity is validated, they are triaged to a different step depending on nationality (either as a TCN or EU citizen).

If the traveler is a TCN, then both travel documentation and visa/permits are required (in the future, a traveler from a visa-exempt country will have to have a valid ETIAS authorization). If the traveler is an EU citizen, only a travel or identity document is required for crossing the external borders. In either case, the authenticity and validity of the document must be confirmed. At this stage, the border guards will check the documents to see if they are either falsified (an altered original document, potentially for use in a ‘lookalike attack’ where a lookalike tries to use a real document that does not belong to them) or forged (an artificial document designed to look like an original one).

If any of the requisite documents or authorizations are not valid, the process will not proceed, and the traveler will not be able to enter the Schengen Area. On the other hand, if the documents and the authorizations are valid, the entry process can proceed.

In the future, the traveler’s entry will be recorded in the Entry-Exit System (EES). First, the check is done to assess whether the traveler is already recorded in the EES (this first-line assessment can only be made to TCNs). If it is the case, the traveler’s entry record is registered, otherwise, the traveler’s individual file is created first and the entry record subsequently. The traveler’s travel document is then compared against the SIS and the stolen and lost documents database. Most often, in parallel, the border guard will repeat the same
activity against the national databases. If there is no hit, the traveler meets the conditions to enter the Schengen Area. The border check for TCN’s continues with a short interview where the border guard will question the traveler on whether the person can be considered a threat to the public policy, internal security, public health, or international relations with a third country. Here, the border guard might analyze travel information (such as the point of departure, the destination, and the purpose of the journey), if the traveler has sufficient means of subsistence for the duration of the stay, and if the return trip or transit to a third country is absolute (in case it is a TCN). If the border guard considers the information provided to be valid, the traveler will cross the Schengen border.

In case some of the conditions for accessing the Schengen Area are not entirely fulfilled, the traveler is likely to be put through a second line border check. This second part of the process can be applied to both EU citizens and TCN, but it is much more common in the latter. This second line of border checks either concludes that access to the Schengen Area can be granted or needs to be denied. Refusals of entry can only occur for TCN’s and are currently recorded in the passport and will also be recorded in the EES in the future.

On exit, the process starts with the traveler’s intention to exit the Schengen Area. As in the Entry process, the first step is to check the traveler’s identity to confirm that the traveler who wants to leave the Schengen Area is the valid owner of the documents presented. Following this step, the documents’ authenticity and associated permits will be assessed through the process explained before.

If no issue is found, the exit will be registered in the EES, and the traveler can exit the Schengen Area. Otherwise, the exit will be denied.

7. CONCLUSIONS

Fake identity is the main tread in the fight against cross-border crime. In my view, specific digital algorithms know and do many
things better, like people, and can make a significant improvement. He can learn the topic and will be better Humans soon. Why not build such an artificial intelligence algorithm for border control purposes? He will be responsible for Risk assessment, Biometric verification accuracy, and Document verification.

It is mandatory to improve data management, mostly to cover all fields and flows of data. Improve legislation related to data management for the mentioned purpose and GDPR. Besides, we have to invest more in automatic border control systems infrastructure. It is mandatory to centralize Public Key Infrastructure and Certificates masterlist management and validation.

All measures will increase public security and save innocent lives from cross border crimes.

LITERATURE


Сігітас Раткевічус. Слабкі місця в спроможності системи контролю в’їзду – виїзду та API/PNR
У статті запропоновано практичні рекомендації щодо застосування системи попередньої інформації про пасажирів та реєстрації даних пасажирів (API / PNR) з метою використання такої системи як інструменту протидії транскордонним загрозам.
Біометрія встановлює міцний зв’язок між документом і його власником лише за умови перевірки всіх електронних засобів захисту (підписів). Це критична точка всієї системи. Багато країн ЄС не мають інфраструктури відкритих ключів і не можуть використовувати згадані функції безпеки. Немає спільної системи ЄС. Лише ICAO має комерційний каталог відкритих ключів, який надає функції РКІ для деяких країн. Спеціальні цифрові алгоритми функціонують у багатьох випадках краще людей, і можуть значно покращити ситуацію. Запропоновано порядок дій щодо впровадження системи. Вона відповідатиме за оцінку ризиків, точність біометричної верифікації та перевірку документів.
Обов’язковим є вдосконалення управління даними, переважно для охоплення всіх полів і потоків даних. Необхідно удосконалити законодавство щодо управління даними для зазначенії мети та GDPR. Крім того, ми маємо більше інвестувати
в інфраструктуру систем автоматичного контролю на кордоні. Централізоване управління і перевірка інфраструктури відкритих ключів і основних списків сертифікатів є обов'язковим.
Дані заходи посилюють громадську безпеку та врятують невинні життя від транскордонних злочинів.

Ключові слова: прикордонна безпека, система в'їзду-виїзду, транскордонна злочинність, прикордонний контроль, пункти пропуску для авіаційного сполучення, API/PNR, біометрія.