Documentation

COUNTERING TRAFFICKING IN HUMAN BEINGS

TOWARDS A MORE COMPREHENSIVE APPROACH

315DT08 Riga, 10th – 11th of September 2015

Co-funded by the Prevention of and Fight against Crime Programme of the European Union

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C.04	Press Release 2936th Council meeting Justice and Home Affairs Luxembourg, 6 April 2009	Online
C.05	Council conclusions on Trafficking Human Beings - 2725th Justice and Home Affairs Council meeting Luxembourg, 27 and 28 April 2006	Online

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F.07	Eurojust Strategic Meeting on Trafficking in Human Beings, 26-27 April 2012: Outcome Report	Online
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F.09	Eurojust News, Issue No. 2 - April 2010	Online

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G.03	First General Report on GRETA's Activities Covering the Period from February 2009 to July 2011	Online
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I.03	Global Report on Trafficking in Persons 2012	Online
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I.05	Human Trafficking, Joint UN Commentary on the EU Directive – A Human Rights-Based Approach, November 2011	Online
I.06	Recommend Principles and Guidelines on Human Rights and Human Trafficking Commentary by the Office of the United Nations High Commissioner for Human Rights, 2010	Online
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J.04	Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking	Online
J.05	An evidence assessment of the routes of human trafficking into the UK; Home Office, 2012	Online
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J.09	IOM (International Organization for Migration) 2011 Case Data on Human Trafficking: Global Figures & Trends, February 2012	Online
J.10	Study on the assessment of the Extent of different types of Trafficking	Online

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J.11	Legal Frameworks and investigative tools for combating organized transnational crime in the Italian experience; Giuliano Turone, 2006	Online
J.12	The Italian system of assistance and integration of victims of trafficking in human beings; by Associazione On the Road, 11 August 2003	Online

K. Newspaper Articles

K.01	Human Trafficking by Myria Vassiliadou, 17 April 2012	Online
K.02	Human Trafficking: Europe's New Shame and Disgrace	Online

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L.01	European Commission – DG Home Affairs – Anti-Trafficking website	Online
L.02	EUROJUST	Online
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General Information

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Cilvēku tirdzniecības apkarošana

10. – 11.9.2015, Riga 315DT08

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Cilvēku tirdzniecības apkarošana

10. - 11.9.2015, Riga 315DT08

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Cilvēku tirdzniecības apkarošana

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Reimbursement can only be claimed for journeys directly related to the project activities and made by persons directly involved in or contracted for such activities. **You are requested to make every effort to use the most economic means of transport and to book the most favourable tickets available.**

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A reimbursement form with a deadline for its submission will be distributed during the seminar. ERA will only reimburse your travel costs if we receive the completed forms and the original tickets **before the deadline indicated** has passed. For accounting reasons we cannot accept any reimbursement requests after the deadline.

Please note that it is obligatory to **sign the attendance list** on each day of the seminar.

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For air travel only the most economical fare is accepted. Please note that reimbursement of your air travel costs will only be possible if we receive the original **flight tickets** and **invoice** as well as your **boarding passes**! If you only got an electronical boarding pass please print this one out or save them as a pdf-form.

Travel by train

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Travel by car

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Taxi costs are only reimbursed on the basis of a **legibly and completely filled in** receipt or invoice indicating **place of departure, destination, date, price and signature.**

Travelling expenses claim form

Original receipts only please

Seminar title	**Countering Trafficking in Human Beings**
Seminar date	**10th - 11th of September 2015**
Event number	**315DT08/KW**

Mr/Mrs					
Institution					
Address					
Postal code		City		Country	
Telephone		Fax		Email	

ACCOUNT INFORMATION

IBAN	
BIC/SWIFT	
Bank	
Address of the bank	
Account holder	
Address of the Account holder	

Participation as ☐ Speaker ☐ Delegate

Travel expenses:	**Number of vouchers**		**Amount in €**
Air ticket			
Rail ticket			
Car (€0,22/Km) (Please issue the attachment)		Km.	
Bus/Taxi			
Hotel			
Other expenses			
Total			

I have incurred the above expenses, and enclose original receipts and tickets. I vouch the form accuracy of this claim. Travel costs (for flights and trains up to €400 and for taxi expenses and busses up to 25€) and accommodation costs for two nights (9-11 September) up to €100 per night will be reimbursed by ERA after the seminar upon receipt of the original receipts, tickets, boarding passes or invoices. Please return this reimbursement form **until the 19th of October 2015**.

Place, Date		Signature	

To be completed by ERA!

ERA Ledger Entry	*Approved*	
	Date	
	Signature	

Attachment: Travel by Car

Name:

FROM
Address:

TO
Address:

Description: **315DT08/KW 'Countering Trafficking in Human Beings'**

DATE OF TRAVEL	DEPARTURE ADDRESS	ARRIVAL ADDRESS	DISTANCE (Km)
DATE OF TRAVEL	DEPARTURE ADDRESS	ARRIVAL ADDRESS	DISTANCE (Km)
		TOTAL DISTANCE	km
		PRICE PER Km (€)	0.22
		TOTAL AMOUNT DUE (€)	

I vouch for the accuracy of this attachment. I attach the route directions with kilometer indication for this journey (for example from: http://maps.google.de).

Place, Date: Signature:

Speakers’ Contributions

Pam Bowen

Pam Bowen CBE

Pam Bowen has worked for the Crown Prosecution Service since 1986, working in a number of CPS areas and CPS Headquarters. She joined Policy Directorate as a senior policy advisor in 2001 working on a wide range of topics, mostly supporting victim initiatives.

She is the CPS lead for human trafficking and organised immigration crime and has worked in developing policy for prosecutors and across government on human trafficking, organised immigration crime and prostitution since 2006 and on forced labour and slavery since 2010.

She has worked with international organisations, Ministers and government authorities in source and transit countries in negotiating and developing improved and collaborative responses to trafficking, including training, mutual legal assistance and capacity building. She has been a regular contributor to development of European and International guidance since 2009.

ERA Seminar 10 - 11 September 2015

ENSURING HARSHER PENALTIES AND EASIER PROSECUTION

THE UK EXPERIENCE

Pam Bowen
Crown Prosecution Service

MODERN SLAVERY ACT 2015

- Came into force 31 July 2015
- Repeals and replaces offences currently arising under:
  - Section 59A Sexual Offences Act 2003
  - Section 4 Asylum and Immigration (ToC) Act 2004
  - Section 71 Coroners and Justice Act 2009
- Where the offence is a continuing offence which straddles the date of commencement, the indictment should reflect the relevant legislation in force at the material time.

PART 1: OFFENCES

Section 1 Slavery, servitude, and forced or compulsory labour. Replaces s. 71 Coroners & Justice Act; similar wording but added:

- personal circumstances/ vulnerabilities of the victim should be considered;
- consent of victim not relevant;
- court can consider **any** work or services by the victim that amounts to exploitation under human trafficking offence, such as begging, pickpocketing – particularly by children

Penalties: increased max sentence from 14 years to life imprisonment. Lifestyle offence under POCA. Reparation Order if convicted and confiscation order made (compensation to the victim)

PART 1: OFFENCES

Section 2 Human Trafficking for exploitation. Replaces section 59A Sexual Offences Act 2003 and section 4 Asylum and Immigration Act 2004. The new consolidated offence retains the same core elements set out in the old offences. Additions:

- Irrelevant whether victim consents;
- All exploitation types set out in section 3: slavery and forced labour; sexual exploitation; removal of organs; securing services by force, threats or deception, securing services from children and vulnerable persons (by using them).

Penalties: increased max sentence from 14 years to life imprisonment. Lifestyle offence under POCA. Reparation Order if convicted and confiscation order made (compensation to the victim)

PART 1: OFFENCES

Section 4 Committing an offence with intent to commit an offence of human trafficking. Criminalises those who enable traffickers to operate.

Penalties: summary conviction 12 months imprisonment / unlimited fine. Conviction on indictment 10 years imprisonment. Reparation Order if convicted and confiscation order made (compensation to the victim)

PART 2: PREVENTION ORDERS & RISK ORDERS

Prevention Orders can be applied for:

- by prosecutor on conviction as part of the sentence, to protect the public by preventing or restricting defendant's activities. Eg. working as a gangmaster, travel to specified countries, working with children. Evidence in case likely to support application.
- by police/NCA/Immigration Officer (IO) at a magistrates' court to prohibit the defendant from doing anything described in the order. The defendant must have been convicted of a trafficking offence in the UK or any other country.

Risk Orders can be applied for by police /NCA /IO at a magistrates' court to restrict the activities of an individual who has not been convicted of a relevant offence, but where it is necessary to protect people from likely harm.

PART 2: PREVENTION ORDERS & RISK ORDERS

Both types of orders require evidence to the criminal standard (similar to existing sexual harm prevention orders and risk orders). They are retrospective (in terms of criminal conduct)

Police advised to seek CPS advice:

- **to establish whether the evidence might otherwise support a criminal offence; and**
- **to ensure the activities described are capable of being prosecuted in event of breach.**

Breach of Prevention and Risk Orders is an offence punishable with up to 5 years imprisonment

PART 3: ENHANCED ENFORCEMENT POWERS

Section 35 Enforcement powers for ships in international waters, or a foreign ship in English waters.

Section 38 Pursuit of ships in UK waters

Gives effect to UN Convention on Law of the Sea 1982

PART 4: THE INDEPENDENT ANTI-SLAVERY COMMISSIONER

- **Role and functions**
  - Encouraging good practice in prevention, detection, investigation and prosecution of offences; and identification of victims
  - Make recommendations about exercise of public authority functions
  - Provide information and training
- **Strategic plans and reports**
  - Strategic plan to be approved by Secretary of State
  - Annual report
  - Duty to co-operate

PART 5: STATUTORY DEFENCE

Section 45 Defence for victims of trafficking or slavery who commit a criminal offence.

- **For those aged 18 or over the defence applies where:**
  - **the person commits the offence because they were compelled to do so;**
  - **The person was compelled as a consequence of trafficking / slavery; and**
  - **A reasonable person in same position would have no realistic alternative**

PART 5: STATUTORY DEFENCE

- **For those aged under 18 the defence applies where:**
  - **the child commits the offence as a direct consequence of their trafficking / slavery situation; and**
  - **a reasonable person in same position with the same characteristics (including age) would have committed the offence.**

STATUTORY DEFENCE: HOW WILL WE KNOW?

- **Information from police / Immigration officer on file**
- **The circumstances or situation where suspect committed the offence might suggest they are a victim of trafficking or slavery, e.g. an unaccompanied foreign national child committing offences such as pickpocketing or cultivation of cannabis**
- **The statutory defence may be raised by the defence**

STATUTORY DEFENCE: HOW DOES IT APPLY?

- Where it is clear from the circumstances that a suspect is a victim of trafficking or slavery, the police may decide not to arrest or charge in minor criminal offences where the defence would apply.
- In all other cases, the CPS will decide.
- In cases referred to the CPS for which a defence could apply, a proper information to make an assessment required.
- If evidence does not support the statutory defence, or the offence committed is excluded from the defence, prosecutors should consult CPS guidance to consider the public interest to prosecute.
- For offences excluded from the defence (Sch 4 of the Act), the CPS guidance on non-prosecution will remain the only basis to decide not to prosecute.

PART 5: PROTECTION OF VICTIMS

NOT YET IN FORCE:

- Civil legal aid for victims – claims under employment law, or claims for damages against perpetrators
- Independent child trafficking advocates
- SoS must issue guidance to public authorities about victims (identification and support) and regulations for assistance and support.
- Presumption about age
- Duty to notify SoS about suspected victims
- Overseas domestic worker visas

PART 6 & 7: TRANSPARENCY IN SUPPLY CHAINS AND THE GLA

NOT YET IN FORCE:

- **A commercial organisation must prepare and publish statements each financial year to ensure that trafficking / slavery not taking place in its supply chains.**
- **Gangmasters Licensing Authority – role and remit.**

WHAT ELSE ARE WE DOING?

- **Strategic Government Plan**
- **Pursuing upstream investigation**
- **Other offences NOT under MSA:**
  - **Participating in activities of OCG – Serious Crime Act**
  - **Conspiracy to commit offences**
  - **Other disruptive strategies: fraud, benefits, tax**
- **Regional Asset Recovery Advisors overseas**
- **Use of experts**

THANK YOU AND
ANY QUESTIONS????

Pam.Bowen@cps.gsi.gov.uk

Dārta Cibule

CV Dārta Cibule

Dārta Cibule is legal programme officer at Latvian Judicial Traing Centre (LJTC) since September 2014. Ms Cibule is responsible for criminal law training programmes for judges and public prosecutors and also working with International Exchange programme. She has obtained master's degree in Law and qualified as a lawyer in 2013 at University of Latvia, Faculty of Law. During master studies she has studied in Adam Mickiewicz University in Poznan, Poland. From 2012 till 2014 Ms Cibule has worked in Riga City Ziemeļu District Court as a court secretary and assistant of a judge in criminal matters. Ms Cibule has been a member of Legal Aid and Practice center at University of Latvia and European Law Student Association „Elsa Latvia".

Short description

„Latvian Judicial Training Centre" (LJTC) is a foundation that based on the agreement with the Court Administration of the Republic of Latvia provides initial and on-going training on legal and non-legal matters for judges of the 1st and 2nd instance, land-book judges and court staff.

Since 2010 LJTC ensures comprehensive training for prosecutors and has become one of the major players when it comes to the judicial training for other legal professions – sworn advocates and practicing lawyers.

At the beginning of 2014 LJTC obtained ISO 9001-2008 quality management certificate that certifies that the organization has a good, transparent management system and processes that ensures client oriented training events and other offers.

Mission

LJTC strengthens the rule of law, ensures unified court praxis on national and EU level, provides services that improves the level of professional knowledge and legal ethics through training on legal matters and soft skills.

General objectives and activities:

- **Ensure regular training on all possible topicalities in all areas of law.**

As of 2011 LJTC offers training for judges and court staff on a thematic approach. That means – all judges based on their specialization chooses the priority topics from the curricula that are available for the whole coming year not later than October 1. All categories (judges of 1st and 2nd instance, court staff, land-book judges and chief judges) have minimum limits for available training days.

- **Ensure soft skills training for judges and court staff**

Soft skills trainings sometimes underestimated from the decision makers' side are highly important to judge's performance on a daily basis. Communication skills are important to master to ensure the quality of a case management before and in the court hearing; when dealing with parties involved only legal knowledge is not sufficient. Judge has to remember that there is a human being behind every case and application of an article of a law might change somebody's life forever. Judge has to have skills to present the decision, explain it (if it is foreseen by the law) and be sure that parties have understood it.

- **Involve other legal professions offering interdisciplinary training on legal matters**

Since 2009 LJTC seminars exclusively prepared for judges are opened to other legal professions with the main purpose - to ensure unified court praxis and common ground for understanding of legal matters; right interpretation of a law is essential for the correct application of it, discussions of a case law. It showed the added value of this approach not only from lawyers' side but also members of judiciary rated this approach very high as it shows the different perspective of a matter, brings new concepts for the professionals working in the legal area.

- **Develop further strategies to provide training for prosecutors**

LJTC signed cooperation agreement with the Prosecutor's General Office in early 2011 to deliver 5 training modules. Both parties have agreed to develop training strategies and continue deliver training for prosecutors.

- **Train the trainers seminars on new developments in adult learning**

Taking into consideration that judges rather prefer to have their colleagues as lecturers, these lecturers - judges have to be trained to be good trainers. Judge initially is not equipped with the understanding how the adult learning is or should be organized, why and how adults learn, what methods should be used to present different topics, e-tools and new technologies to be used for training purposes, therefore LJTC offers "Lecturers' school" that gives practical skills on presentation technics, language, methodologies, etc.

➢ **Develop new approaches and ideas to improve the work of judiciary**

LJTC introduced the concept of **quality management** in courts in 2009, organized conference on how the quality concept is understood in other EU member states and could be introduced to the Latvian Judiciary; One of the latest client satisfaction surveys presents that 95% of our clients are either satisfied or rather satisfied with the training service they received at the LJTC. LJTC has developed other programs that assist in building capacities of court management (i.e. supervision sessions for chief judges),

In 2004 LJTC became a member of the EJTN and since then takes an active part in some of the working groups as well as in other projects administered by the EJTN.

➢ **Developing and maintaining Training Information System**

Thematic approach is technically supported by Training Information System that is developed at the LJTC where all registered (in the system) can see their profile, sign for or decline participation in a seminar. The system automatically sends evaluation sheets to all participants of a seminar. Afterwards the summary of the evaluation is also sent to them, lecturers and the Curricula Development Working Group. Training Information System will be used as a technical platform for e-learning modules that will be developed in the near future.

Contact information

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Patricia Fernández Olalla

europass

EUROPEAN CURRICULUM VITAE FORMAT

PERSONAL INFORMATION

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Nationality	Spanish

WORK EXPERIENCE

' Dates (**November 2008- onwards**)	Prosecuting Attorney on Aliens.
' Name and address of employer	General Prosecution Service-Madrid.
' Occupation or position held	Deputy High Prosecutor on Aliens and human trafficking
' Main activities and responsibilities	Coordination and supervision at a national level of the activity of the Spanish Prosecutors on immigration including: prosecution of human trafficking, sexual exploitation and human smuggling; protection of victims of those criminal offences; and age determination and repatriation of Unaccompanied Alien Children (UAC).
' Dates (**July 1990-November 2008**)	Prosecuting Attorney to the Prosecutor's Office at Madrid Provincial
' Name and address of employer	Prosecutor's Office at Madrid Provincial Courts.
' Occupation or position held	Prosecutor.
' Main activities and responsibilities	Prosecution of criminal offences with special focus on White Collar Crimes and Jury
' Dates (**January 1989-July 1990**)	Prosecuting Attorney to the Prosecutor's Office at Ávila Provincial
' Name and address of employer	Prosecutor's Office at Ávila Provincial Courts.
' Occupation or position held	Prosecutor.
' Main activities and responsibilities	Prosecution of criminal offences being involved also in civil matters.
'Dates (**January 1988 -January 1989**)	Prosecuting Attorney to the Prosecutor's Office at Jaén Provincial Courts.
' Name and address of employer	Prosecutor's Office at Jaén Provincial Courts.
' Occupation or position held	Prosecutor.
' Main activities and responsibilities	Prosecution of criminal offences being involved also in civil matters.

EDUCATION AND TRAINING

• Dates **(1980-1985)**	Degree in Law
• Name and type of organization providing education and training	Oviedo University
• Principal subjects/occupational skills covered	Public and Private Law
• Title of qualification awarded	Degree

SOCIAL SKILLS AND COMPETENCIES

Living and working with other people, in multicultural environments, in positions where communication is important and situations where teamwork is essential (for example culture and sports), etc.

Wide international exposure gained by taking part in several summits, among others:

- *"Towards an external multidisciplinary approach in prevention of trafficking in human beings, prosecution of traffickers and protection of victims",* October 2010, Brussels.
- *"Combating trafficking for forced labor in Europe. the first steps","* Mirror Project", October 2010, Brussels.
- *"Regional workshop on mutual legal assistance to strengthen judicial co-operation among the western African countries with regard to illicit drug-trafficking and smuggling of migrants", May 2010,* Dakar.
- *"Investigation of trafficking for forced labor: Key indicators,* September 2009, Lisbon.
- *"UNODC protocol to prevent and combat the smuggling of migrants", March 2009, El Cairo and June 2009 Abuja.*
- *"Workshop in combating trafficking in human beings. TAIEX Program. Amman march 2011.*
- *"Preventing and Combating Trafficking in Human Beings- The Swedish Example" Swedish Institute. Stockholm June 2012*
- *"Project Discovering Trafficking for the purpose of labor exploitation". Czech Republic May 2011, and April 2013*
- *"Latest Developments in an EU Action on Human Trafficking. ERA. Trier June 2012*
- "*Strategic meeting on trafficking in human beings*" *Eurojust* The Hague .April 2012
- *"Eurojust Strategic meeting on trafficking in human beings" The Hague 16 and 17 April 2015*
- *Putting Rantsev into Practice. International Conference on strengthening multidisciplinary Operational cooperation to fight trafficking in human beings. Amsterdam April 2013*
- *Tools for the validation and utilization of EU statistics on human trafficking (Trafstat Project. Tilburg University. Sept 2013*
- *UNODC Expert Group Meeting on the Key Concept of Consent in Trafficking in Persons. Vienna 17 - 18 February 2014.*
- *Countering Trafficking in Human Beings. A more Comprehensive Approach) ERA Lisbon - Portugal 7- 8 Abril 2014.*
- *UNODC Expert Group Meeting on the role of recruitment fees and recruitment agencies in trafficking in persons" Vienna 22-23 October 2014.*
- *3rd Globat traffickin in human beings conference. Interpol. Lyon 12-14-november 2014.*
- *"Eurojust Strategic meeting on trafficking in human beings" The Hague 16 and 17 April 2015*

- *Spanish Counterpart in Care Proyect on Coordinated approach for the reintegration of victims of trafficking returning voluntary from Austria, France, Belgium, Portugal, UK and Spain. IOM. 2014-2015.*

ORGANIZATIONAL SKILLS AND COMPETENCIES

Coordination and administration of people, projects and budgets; at work, in voluntary work (for example culture and sports) and at home, etc.

- Coordination and supervision at a national level of the activity of the Spanish Network of Prosecutors on Aliens consisting of 50 prosecutors.
- Organization of trainings for Spanish Prosecutors, Police Officers, Civil Servants, Lawyers and NGOs
- Lecturer at conferences, summits and training courses.
- Several publications of human trafficking, protection of victims of human trafficking, protection of unaccompanied minor, deportation and control over detention centres

COUNTERING TRAFFICKING IN HUMAN BEINGS TOWARDS A MORE COMPREHENSIVE APPROACH

ERA - Riga
Sept 2015

PATRICIA FERNÁNDEZ OLALLA
DEPUTY PROSECUTOR
GENERAL PROSECUTOR OFFICE
SPAIN

CONTENTS

- Why protection of victims is essential to fight against human trafficking?
- How in-house cooperation works in Spain?
- Which are the achievements and challenges regarding the fight against THB?

WHY PROTECTION OF VICTIMS IS ESSENTIAL TO FIGHT AGAINST HUMAN TRAFFICHING?

- Humanitarian reasons- the protection of human rights.
- Legal and procedural reasons- the victim of human trafficking is a potential witness whose statement is usually essential at the trial.

Stages of protection	People or institutions concerned
a. Detection b. First aid c. Identification d. Recovery and reflection period e. Issue of residence permit f. Witness protection g. Compensation and legal assistance h. Voluntary return	1. Law enforcement officers 2. NGOs 3. Labour inspectors 4. Prosecutors 5. Judges 6. Immigration authorities 7. Civil society

MAL AGREEMENTS- THE SPANISH MEWORK PROTOCOL FOR PROTECTION OF IMS OF HUMAN FFICKING

JUDGES AND PROSECUTORS

NGO´S IALIZED IN THB

Red Española

SPECIALLY

INTER-COORDINATION LEVELS

NATIONAL LEVEL - cooperation between central representatives

REGIONAL LEVEL - cooperation between regional representatives

COLLABORATION IS

To share information from the beginning to the end

To be aware of the victims' rights and do the best to help them to understand these rights

To provide integral assistance even free legal assistance

To report any issue concerning victims' safety

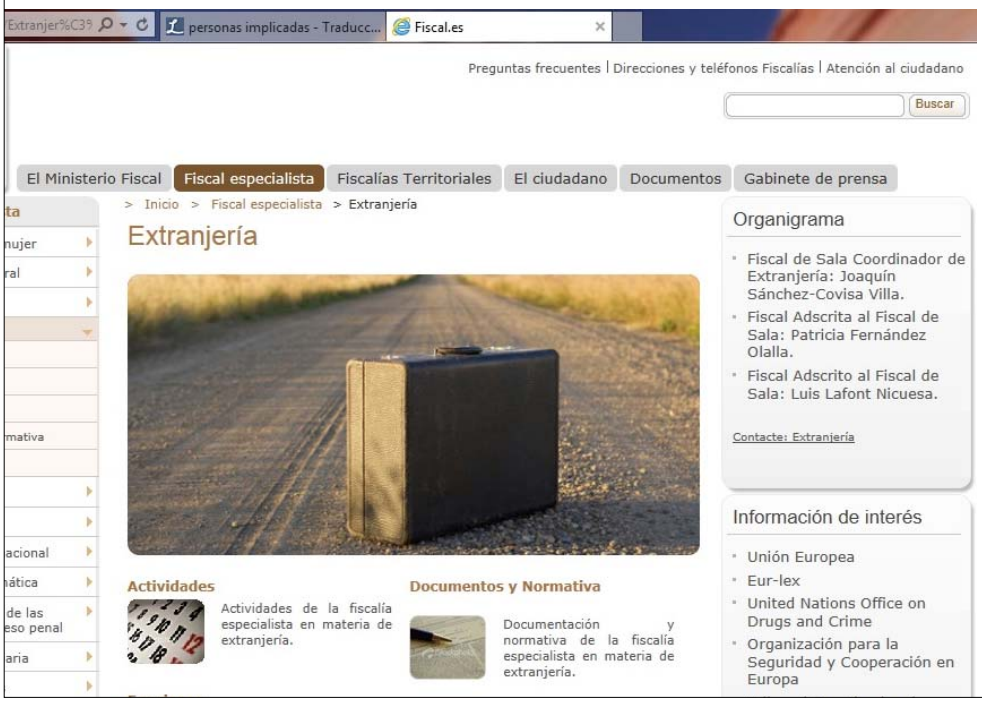
To protect victims as witnesses

To support Ngo's representatives and workers

http://www.policia.es/trata/index.html

http://www.policia.es/trata/pdf/diptico_ingles.pdf

http://www.redcontralatrata.org/



USEFUL INFORMATION ONLINE

panish National Police webpage
ww.policia.es

panish General Prosecutor's Office webpage
ww.fiscal.es

panish NGO's Network Against THB webpage
ww.redcontralatrata.org

panish Framenwork Protocol for protection of victims of
uman traffiking -english translation:
tp://www.msssi.geb.es/ssi/violenciaGenero/tratadeMujeres/Protocolo

Thank you very much for your attention

patricia.fernandezolalla@fiscal.es

Workshop Case
Investigation techniques

ERA SEMINAR
RIGA
SEPT 2015

Through intelligence information police officers get to know of a possible case of sexual exploitation under slavery conditions. The police contact reports that several women from Latin America are exploited in a big night club in the south of Spain

Police officers pay a visit to the night club on account of supposed immigration control and do no gather any evidence either of human trafficking or sexual exploitation given that the women do not want to say a word. However several women are detected working as prostitutes and the police officers keep their identities. Most of them are from Paraguay (Latin America)
Working as a prostitute is not illegal in Spain. Neither pimping is illegal. No arrest is made.

Taking into account the reliable intelligence information a more specific investigation on the owner of the club is conducted by the Spanish national police.

The financial investigation provides the following information: the owner of the night club and supposed trafficker live in big and luxurious house, owns two other ones in the cost, owns expensive cars, send his children to study abroad and maintain a standard of living not related to any known legal job. He and his wife keep high bank accounts and run several legal persons related to the tourism business.

Besides the Spanish police find out that four of the women identified in the night club are sending different amounts of money to their country of origin using the services of the western union. Money is delivered to a travel agency which are related to the potential victims because this is the agency which arranged their trip when they came to Spain.

The investigation conducted in Paraguay by a liaison officer provides information reinforcing the police suspicions regarding the involvement of the travel agency in a case of human trafficking as real recruiter of vulnerable women to be sent to Spain. A close contact between the agencies and the exploiters appears to be acceptable.

The investigating judge denies a telephone intervention. The lack of enough indicators and the few reliable information is taken into account to make this decision. So far no victim has been detected the judge points out in his decision.

Then the police officers in charge of the investigation decide to pay a second visit to the night club trying to get an accurate identification of the victims and to arrest the perps on grounds of money laundering as a related offense.
But they discover that the potential victims do not remain there anymore and have gone away.

Questions to discuss

Proactive investigation vs reactive investigation
No victim no case?
Perp rights at stake? What to do?
Investigation technics specific for human trafficking?
Tap records?
Surveillance?
Searches?
Gps tracking devices?
Undercover agent?
Controlled deliveries?
Financial investigation?

FRAMEWORK PROTOCOL FOR PROTECTION OF VICTIMS OF HUMAN TRAFFICKING

I.- OBJECT OF THE PROTOCOL

1. The object of his protocol is to establish operational guidelines for the detection, identification, support and protection of victims of human trafficking, to foster coordination among the institutions involved in these processes and to define the mechanisms for the relationship among authorities with responsibilities in the field, along with the processes for communication and cooperation with organisations and bodies with proven experience in attending to victims of trafficking, in particular those which provide comprehensive support and are involved in public administration programmes for victim support and protection.

This Framework Protocol aims in particular to:

a) Define the procedure for the identification of victims of human trafficking and to coordinate action by authorities and institutions with responsibilities in this process.
b) Establish guidelines for the evaluation of the alleged risks to which victims are prey and to establish protection measures.
c) Set out aspects regarding the reporting of alleged offences and/or notification of the judicial authorities.
d) Define the elements required to provide victims with appropriate information about their rights, services and resources.
e) Establish criteria for the proper evaluation of victim needs, allowing for appropriate support.
f) Provide for the inclusion of foreign victims of trafficking in voluntary return programmes.
g) Detail, in the case of foreign victims without the necessary legal papers, the procedure for granting the rehabilitation and reflection period and, where applicable, exemption from liability and granting of the corresponding residency and work permits, or the assisted return procedure.
h) Establish specific actions in the case of victims who are legal minors.
i) Define the involvement of organisations and bodies with proven experience in attending to victims of trafficking, in particular those providing comprehensive assistance and which are involved in public administration programmes for victim support and protection.

2. This protocol likewise develops the provisions set out in Article 140 of the Regulation for Organic Act 4/2000, on the rights and liberties of foreigners in Spain and their social integration, following the reform thereof by Organic Act 2/2009 and Organic Act 10/2011.

II.- GENERAL OPERATIONAL PRINCIPLES

1. The actions conforming the object of this Framework Protocol are focused on promoting and protecting human rights, giving priority to victim support and protection, avoiding secondary victimisation and encouraging victims to cooperate in criminal proceedings against traffickers.

Such actions will be approached from a gender perspective, furthermore guaranteeing that the measures implemented comply with an integrated approach and are appropriate to the gender, age and other situations of vulnerability of possible victims of trafficking, such as their state of gestation, state of health and disability.

Individuals with no other real or acceptable alternative except to accept abuse will likewise be considered as particularly vulnerable.

2. The institutions and public administrations with responsibilities in this field shall safeguard respect for the following principles:

a) Guarantee that victims are familiar with their rights and receive appropriate specialist information.
b) Adapting the support and protection mechanisms in accordance with the age, gender and needs of the victim of trafficking, guaranteeing consideration for the particular vulnerability of victims.
c) Multidisciplinary support, provided by agents with appropriate training and the involvement of civilian organisations.
d) Access to all victims to support and protection systems, irrespective of their cooperation in investigation of the offence.
e) Avoid secondary victimisation, ensuring the limitation of the suffering and
damage caused to victims, establishing measures to support their recovery and prevent traumatic experiences, in particular during criminal proceedings.
f) Guarantee their recovery and physical, psychological and social rehabilitation.
g) Protection for the privacy and identity of victims.

III.- DEFINITION OF HUMAN TRAFFICKING

1. For the purposes of this Protocol, human trafficking is defined in accordance with the terms of Article 177 bis of the Penal Code as the recruitment , transportation, transfer, harbouring, reception or housing of persons by means of the use of violence, intimidation or deceit, or abusing a situation of superiority, need or vulnerability on the part of a victim, whether Spanish or foreign, for any of the following purposes:

a) The imposition of enforced services or labour, slavery or practices similar to slavery, servitude or begging.
b) Sexual exploitation, including pornography.
c) The removal of bodily organs.

2. The consent of a victim of human trafficking shall be deemed irrelevant if any of the means listed in the above paragraph have been employed.

3. If the conduct refers to a person who is a legal minor, the action shall be classified as trafficking even if none of the stated means has been employed.

4. For the purposes of this Protocol a victim of trafficking shall be understood as any person revealing reasonable evidence that he or she has been subjected to the conduct described in the above paragraphs, even if the exploitation has not been consummated, and irrespective of whether or not the presumed victim has presented an allegation.

IV.- SCOPE OF APPLICATION

1. This Protocol shall apply to any persons who could be victims of the crime of human trafficking, subject to no form of discrimination on the basis of gender, nationality or legal status in the case of presumed foreign victims.

2. The territorial scope of application applies to the entire State, notwithstanding the approval of any regional and local protocols in furtherance thereof.

V.- DETECTION OF POSSIBLE VICTIMS OF HUMAN TRAFFICKING AND INITIAL ACTIONS

V.A.- DETECTION OF POSSIBLE VICTIMS OF HUMAN TRAFFICKING

1. In most cases the detection of possible victims of human trafficking is as a result of investigations undertaken by the Law Enforcement Agencies.

2. Nonetheless, detection may also occur as a result of an employment inspection, upon entry into the country, or otherwise when a suspected victim comes into contact with a public or private organisation as a result of accessing a health, social or education service, or otherwise following contact with an information resource (mobile or telephone response units).

3. Likewise, it may be the victim him or herself who reports the situation to other persons or organisations, or otherwise the latter may uncover such a situation by some other means.

4. Any individual learning by any means of the existence of a possible offence of

trafficking or a possible victim thereof, must present the corresponding allegation before the Public Prosecution Office, the competent court body or police authority, pursuant to the terms of Title I of Book II of the Criminal Proceedings Act.

V.B.- DETECTION BY THE STATE LAW ENFORCEMENT AGENCIES

1. When the law enforcement agencies responsible for the investigation of an offence of human trafficking or those responsible for supervision of immigration learn of the existence of a presumed victim, they shall inform the Public Prosecution Office thereof, notwithstanding a subsequent formal police statement.

2. Notification of the detection of a presumed victim must be sent to the Public Prosecution Office immediately, and wherever possible via electronic channels.

V.C.- DETECTION BY THE EMPLOYMENT AND SOCIAL SECURITY INSPECTORATE

1. The Employment and Social Security Inspectorate or any other competent regional body shall, within the scope of its functions, undertake all investigation procedures deemed necessary and within the remit of its competencies for the purpose of detecting situations of exploitation at work.

In particular, the actions performed by the Employment and Social Security Inspectorate or any other competent regional body on a scheduled basis in cases of offences of trafficking for exploitation at work shall be conducted in coordination with the State Law Enforcement Agencies, and preferably on a joint basis.

2. If during the course of a non-scheduled inspection the acting public servant should detect evidence of human trafficking, he or she shall immediately notify the Provincial Inspectorate Head thereof, who, pursuant to the terms of Article 10.3 of Employment and Social Security Inspectorate Regulatory Act 42/1997, of 14 November 1997, shall immediately, by means of the structural channels established in the regulations, inform the Public Prosecution Office which shall in all cases be in charge of coordination, and shall also inform the State Law Enforcement Agencies with regional responsibility.

3. With regard to the working conditions of victims of trafficking, public servants shall, while practicing their duties, perform all tasks incumbent on them under the terms of Employment and Social Security Inspectorate Regulatory Act 42/1997, of 14 November 1997, in terms both of supervision and the demand for compliance with social regulations, along with technical support. The public servants of the Senior Body of Employment and Social Security Inspectors, or the competent regional body, shall extend their functions to employment regulations, workplace risk prevention, Social Security and employment and immigration.

4. 4. A report on the actions performed and the outcome thereof shall be presented, via the Provincial Inspectorate Head, to the Public Prosecution Service,

together with the evidence obtained, notwithstanding notification to the competent court body. All the above notwithstanding any violation notice which may be served, if the conduct detected likewise constitutes a violation of employment regulations, and of the terms of Article 3 of the Revised Text of the Social Offences and Penalties Act, approved by Royal Legislative Decree 5/2000, of 4 August 2000, if criminal proceedings are instigated.

V.D.- DETECTION BY OTHER SERVICES OR BODIES

1. If detection of a presumed victim of human trafficking occurs at any of the migration centres administered by the General State Authorities, within a service in the field of health, care or social support of any of the authorities covered by this Protocol, or by organisations and bodies with proven experience in attending to victims of trafficking, they must notify the competent State Law Enforcement Agencies thereof in order for the circumstances to be investigated, along with the duty Court for the location where the situation was detected, or the Public Prosecution Office.

2. If detection occurs at a protection centre for legal minors, the procedure to be followed shall be that set out in Section XIV of this Protocol and in all other regulations applicable to legal minors.

3. If in the investigation of an application for international protection evidence is uncovered that the applicant could be a victim of human trafficking, the Asylum and Refuge Office shall notify the Asylum Section of the General Immigration and Borders Policing Office, in order for it to inform the competent police unit for the identification thereof, in case the circumstances could be subject to the terms of Article 59 bis of Organic Act 4/2000.

V.E.- DETECTION AT THE BORDER OR IN FOREIGN INTERNMENT CENTRES

1. If the presumed victim of human trafficking has been detected at the border, the police unit responsible for immigration control shall serve immediate notice of the circumstances to the corresponding Provincial Immigration Brigade which shall, with all possible haste, adopt the relevant measures for the victim to be identified by agents with specific training, and if applicable, initiate process of the rehabilitation and reflection period. Likewise, if the appropriate procedure is repatriation, this shall not be applied until the victim identification procedure concludes, pursuant to the terms of Article 59 bis of Organic Act 4/2000.

2. If detection occurs during internment at a Foreigner Internment Centre, the Public Prosecution Office and the Centre Management shall immediately be notified, and shall undertake the relevant proceedings with the competent immigration unit in order to proceed to identify the victim in accordance with the terms of this Protocol. Notice of the circumstances detected shall likewise be immediately served to the immigration unit of the National Police Force which requested internment and the General Immigration and Borders Policing Office, in order to prevent implementation

of expulsion until such time as the victim has been identified, in accordance with the terms of Article 59 bis of Organic Act 4/2000.

VI.- IDENTIFICATION OF PRESUMED VICTIMS OF HUMAN TRAFFICKING

VI.A.- POLICE UNITS RESPONSIBLE FOR IDENTIFICATION

1. The identification of victims of human trafficking shall be performed by police units with specific training in the prevention and combating of trafficking and victim identification and support.

2. From the point at which these units consider that there is reasonable evidence to believe that a person is a victim of human trafficking, and throughout the entire identification process, they must adopt the necessary measures in order to guarantee protection of the victim's rights, the absence of individuals associated with the presumed traffickers, medical and social care and, to the extent possible, the necessary legal support.

3. If the presumed victim is a foreigner and does not have the appropriate legal papers, the competent immigration unit shall not instigate penalty proceedings based on a violation of Article 53.1(a) of Organic Act 4/2000, following the reform thereof by Organic Acts 2/2009 and 10/2011, in accordance with the terms of Article 59 bis (2) thereof. Penalty proceedings or implementation of expulsion or repatriation measures shall be suspended if these were ruled prior to the aforementioned evidence coming to light.

4. If there is evidence that the possible victim of trafficking is a legal minor, the police unit responsible for identification shall inform the Public Prosecution Office, and shall act in accordance with the terms of Section XIV of this Protocol.

VI.B. INTERVIEW PROCESS

1. The interview shall be conducted by personnel of the Law Enforcement Agencies responsible for investigation of these crimes , with specific training in the identification of victims of human trafficking, notwithstanding any cooperation which may be offered by the regional and local authorities and organisations and bodies with proven experience in attending to victims of trafficking, throughout the identification process.

2. The identification of the presumed victim of human trafficking requires an evaluation of different elements, beyond simply obtaining information about aspects connected with the crime of human trafficking and the perpetrators thereof.

3. Interviews shall be conducted on a private and confidential basis, in a language comprehensible to the victim and in the presence of an interpreter if necessary. As far as possible, the interview shall be conducted within a context appropriate to the gender, age and other personal circumstances of the interviewee. The necessary measures shall be taken in order to avoid contact with the presumed traffickers and

with persons directly or indirectly associated with them, the guidelines to be followed being those hereto attached in Annex 1 to this Protocol.

4. Upon conclusion of the interview, the presumed victim shall be informed of his or her right to free legal assistance in the absence of sufficient economic resources in accordance with the criteria set out in the regulations governing this right, notwithstanding the possibility of legal advice which may be offered by organisations and bodies with proven experience in attending to victims of trafficking. Interviewees shall likewise be informed of the possibility of contacting such specialist organisations for assistance and/or support.

VI.C.- DETERMINATION OF THE EXISTENCE OF REASONABLE GROUNDS OR EVIDENCE

1. In order to determine the existence of reasonable grounds to believe that a person is a victim of human trafficking, consideration should be given to the indicators set out in Annex 2 to this Protocol.

2. During the identification process all information available about the personal circumstances of the presumed victim shall be gathered. The organisations and bodies working in the territory and with proven experience in attending to victims of trafficking, and in particular those which provide comprehensive support and are involved in public administration programmes for victim support and protection, may offer any information they may deem relevant.

If the presumed victim declares familiarity with a specific body within the territory, the police unit responsible for identification shall contact this body in order to request that information be provided about the former.

Likewise, consideration shall be given to information provided by qualified professionals to evaluate aspects connected with the state of health of the presumed victim and his or her social circumstances.

3. Evaluation of the existing evidence shall be performed in accordance with the principle of utmost protection for the presumed victim, in order to guarantee their comprehensive support and safety and to further the investigation, in particular in the case of foreign victims who do not have the necessary legal papers, so as to guarantee that penalty proceedings will not be instigated, pursuant to the terms of Article 59 bis of Organic Act 4/2000.

4. The evaluation performed by the police unit responsible for identification must include a reference to the risks faced by the presumed victim and a proposal regarding the protection, safety and privacy measures required, along with family circumstances.

5. Upon conclusion of the identification process the police unit responsible for

identification shall draw up the corresponding report, to be attached to all remaining information gathered during the identification process. This information may be obtained by the aforementioned unit either in writing or verbally, and in the latter case a written record of the identity of the source and the contents of the information must be drawn up.

6. A record of all actions taken shall be set out in the corresponding police statement.

VII.- INFORMATION FOR VICTIMS

1. Following identification of the presumed victim, the police unit shall provide him or her with the following information in a clear manner and in a language which he or she understands:

a) Regarding the rights set out in Articles 109 and 110 of the Criminal Proceedings Act.
b) Regarding the right to benefit from any of the protection measures laid down in Protection of Witnesses and Expert Witnesses in Criminal Cases Act 19/1994, and specifically the right to be granted protected witness status.
c) In the event that the individual is also the victim of a violent crime or a crime against sexual liberty, information regarding the rights set out in Support and Assistance for Victims of Violent Crimes and Crimes against Sexual Liberty Act 35/1995, and if the trafficker is the partner or ex-partner of the victim, the rights set out in the Organic Comprehensive Protection Measures against Gender Violence Act 1/2004, of 28 December, as a victim of gender violence.
d) In the case of foreign citizens without the necessary legal papers, information regarding the right to a period of rehabilitation and reflection and the possibility of obtaining a residency and work permit or assisted repatiation, in accordance with the terms laid down in Article 59 bis of Organic Act 4/2000, of 11 January, and Article 142 and following the corresponding Regulation.
e) In the case of a foreign citizen who has the necessary legal papers but whose temporary stay or residency permit is close to expiry, information regarding the possibility of applying for the rehabilitation and reflection period without delay, immediately upon expiry thereof.
f) Regarding protection measures in accordance with the victim's risk status, as assessed by the police.
g) Regarding the possibility of referral to any of the support resources provided by the regional or local public authorities or organisations and bodies with proven experience in attending to victims of trafficking, in particular those which provide comprehensive support and are involved in public administration programmes for the support and protection of victims, included within the contents of Annex 4 to this Protocol.

VIII.- PROTECTION AND SECURITY MEASURES

1. Following an evaluation of the existing risks, the police unit shall inform the victim of the possible risks and of the protection and security measures which must be adopted. In the event that the victim expressly rejects all or any of the proposed protection and security measures, this refusal must be placed on record in an official document, to be signed by the acting public servant and by the victim, also recording where applicable if the victim's signature could be obtained.

2. Protection and security measures may involve providing a permanent contact telephone number for the personnel responsible for the investigation, informing the victim about self-protection measures, including the need to remain in secure accommodation or to move to another Autonomous Region, and advising that any change of address should be notified, along with any other measures deemed appropriate to the risk situation in question. Notwithstanding the above, the Law Enforcement Agencies shall, with regard to protection measures, comply with the terms dictated by the Public Prosecution Office.

3. Protection and security measures shall likewise be applied to under aged or disabled children of victims if they are located in Spain, and also, on an extraordinary basis, to any other persons located in Spain with whom the victim may have family or other ties, when it can be demonstrated that if they were to be left unprotected from the presumed traffickers, this would constitute an insuperable barrier preventing the victim from cooperating.

IX.- REFERRAL TO SUPPORT RESOURCES

1. The victim shall likewise be informed of the support resources available, in order to guarantee him or her appropriate and secure accommodation, where necessary, along with material assistance, psychological support, medical support, interpretation services and legal advice.

2. If the victim so agrees, he or she shall be provided with a referral to the competent regional or local authorities dealing with social support or the services of organisations and bodies with proven experience in attending to victims of trafficking, in particular those which provide a comprehensive support service and are involved in public administration programmes for victim support and protection.

4. All bodies involved must guarantee the confidentiality and informed consent of the victim.

X.- PREPARATION OF THE POLICE STATEMENT

1. The police unit responsible for the investigation shall inform the Public Prosecution Office for the region where the circumstances are uncovered, and send a

copy of the initial statement and any supplements thereto, notwithstanding referral thereof to the court body responsible for examination of the case.

2. The police statement must be delivered by the fastest means, either by hand or, where possible, via electronic channels, pursuant to Act 18/2011, of 5 July, governing the use of information and communication technologies in the Justice Administration, and must include information on the interviews, statements and other official records that provide evidence of the existence of an offence of human trafficking, along with the forms recording that the victim was informed on rights and offered the possibility of legal action. It shall likewise, where applicable, include the existence of any prior police interventions and/or allegations regarding the victim or the presumed trafficker, as well as the criminal record of the latter and any possible medical reports on injuries suffered by the victim submitted by the medical services.

If the presumed victim is a foreign citizen without the necessary legal papers, the police statement shall likewise include the official proceedings pursued under the terms of Article 59 bis of Organic Act 4/2000.

3. When the investigations undertaken by the Law Enforcement Agencies are pursued in locations where there may be employees in conditions involving exploitation at work, immediate notice of the investigation shall likewise be served on the Provincial Employment and Social Security Inspectorate or the equivalent regional body for the relevant purpose, and the cooperation thereof may in all cases be requested.

XI.- ACTION BY THE PUBLIC PROSECUTION OFFICE

XI.A.- LEGAL SAFEGUARD ACTIONS

The Public Prosecution Office, complying with its legal duty to safeguard victims, and in accordance with the regulatory instruments drawn up by the General State Attorney's Office in this regard, shall ensure that victims of human trafficking are regularly informed as to their rights, in a clear and accessible manner so that they understand, also offering them legal action under Articles 109 and 110 of the Criminal Proceedings Act, being obliged to inform them of any legal proceedings which could affect their safety (Articles 109 and 544 ter (9) of the Criminal Proceedings Act), and of the terms of Articles 59 bis of Organic Act 4/2000 and Article 140 and following articles in this Regulation.

XI.B.- COORDINATION ACTIONS

The Public Prosecution Office shall, through its bodies, maintain the institutional contact required with court, police, healthcare and support agencies, along with associations of lawyers and court agents and organisations and bodies with proven experience in attending to victims of trafficking, in order to enable effective

cooperation in the response given to human trafficking.

XI.C.- PROCEDURAL PROTECTION ACTIONS

1. The Clerk of the Court shall take particular care in ensuring that representatives of the Public Prosecution Office are duly summoned, sufficiently in advance, to attend statements given by detainees, defendants and witnesses as scheduled during the pursuit of criminal proceedings as a result of an offence of human trafficking.

2. The Public Prosecutors shall ensure that the statements given by victims during examination of the case are properly conducted so that they can be deemed valid as pre-constituted court evidence during the oral hearing, in cases where there are reasonable doubts on the person's future appearance at the oral hearing itself.

Likewise, Public Prosecutors shall where appropriate apply for the adoption of any of the remedies provided in Protection of Witnesses and Expert Witnesses in Criminal Cases Act 19/1994, and the use of any other resources which would help protect the victim in the oral hearing, such as the use of videoconferencing for statements.

XII.- ACTION BY FORENSIC DOCTORS

Within the sphere of their operations, forensic doctors shall ensure that the interview and examination of the victim is completed in full on one single occasion, avoiding secondary victimisation and repeat interviews, tests or additional examinations.

XIII.- SPECIFIC ACTIONS WITH VICTIMS WHO ARE ILLEGAL FOREIGNERS

XIII.A.- REHABILITATION AND REFLECTION PERIOD

1. In the event that the individual identified as a victim is a foreigner and does not have the necessary legal papers, he or she shall be in informed of the possibility of being granted a rehabilitation and reflection period, as laid down in Article 59 bis of Organic Act 4/2000 and Article 142 of the corresponding Regulation. Such victims shall expressly be informed that during this period they will be provided with the resources required for their physical, psychological and emotional recovery, and will be removed from the influence of the presumed traffickers, allowing them to take a considered and balanced decision on whether to cooperate or not with the authorities in the investigation and prosecution of the perpetrators of the offence.

2. Where identification has been performed by the police unit responsible for Immigration, it must, within a maximum period of 48 hours and with the victim's agreement, transfer the proposal to grant the period to the Government's Regional Delegation Office or Deputy Office in the province where identification was performed.

3. If identification was performed by other police bodies or units, they shall immediately notify the Immigration unit of the location where identification was performed, presenting a reasoned report stating the evidence of trafficking observed in accordance with this Protocol, together with any other information and documentation of interest, as well as, with the consent of the victim, the proposal for the rehabilitation and reflection period. The Immigration unit shall proceed to pass this proposal on to the Government's Regional Delegation Office or Deputy Office within a maximum period of 48 hours of receipt thereof.

4. The official notice of referral and proposal must also include:

a) A copy of all documentation containing all information to which the police unit may have had access, and in particular that provided by organisations or bodies with proven experience in attending to victims of trafficking.
b) Information on any statements which the victim may have given in response to the information on rights referred to in Annex 3 to this Protocol.
c) Information on the victim's legal status in Spain.
d) Information on the victim's personal circumstances.
e) Any other information deemed relevant for the ruling.

5. A proposal to grant the rehabilitation and reflection period may not under any circumstances be dependent on the victim giving a statement or cooperating with the police or court authorities involved in the investigation and prosecution of the offence. It must likewise expressly state the proposed duration deemed necessary in order to achieve the purpose of the period in question, which must be at least 30 days.

XIII.B.- IDENTIFICATION AT THE BORDER OR IN FOREIGNER INTERNMENT CENTRES

1. If identification of the presumed victim takes place at the border, the police unit responsible for this must immediately notify the Public Prosecution Office, the individual responsible for the border post and the General Immigration and Borders Policing Office, in order to guarantee that no repatriation procedures are applied until a ruling has been given regarding the granting of the rehabilitation and reflection period. This circumstance shall also be notified to the Judges authorising internment and supervising stay.

2. If identification takes place during the internment of the presumed victim at a Foreigner Internment Centre, the police unit responsible for this shall immediately notify the Public Prosecution Office, the Centre Management, the Immigration unit which requested internment and the General Immigration and Borders Policing Office in order to guarantee that expulsion is not implemented until a ruling has been

issued as to the granting of the rehabilitation and reflection period. This circumstance shall also be notified to the Judges authorising internment and supervising stay.

XIII.C.- RULING ON THE REHABILITATION AND REFLECTION PERIOD

1. Pursuant to the terms of the Regulation for Organic Act 4/2000, the competent Government Delegate or Deputy Delegate shall rule as to the proposed granting of the rehabilitation and reflection period and the duration thereof within a maximum of five days. Upon expiry thereof the period shall be understood to have been granted for the duration indicated in the proposal. Nonetheless, if at the time when the proposal in favour is presented before the Government's Regional Delegation Office or Deputy Office the victim was held at a Foreigner Internment Centre, the ruling must be issued within a period of 24 hours.

The periods set out in this paragraph shall be calculated from the date of receipt of the proposal at the competent Government's Regional Delegation Office or Deputy Office.

2. The ruling as to the rehabilitation and reflection period must be reasoned, with notice thereof being given to the person concerned immediately and by the fastest possible means, directly by the Government's Regional Delegation Office or Deputy Office or via the police unit responsible for identification and investigation, which shall in all cases be informed of the ruling. If this police unit is not the same as that which began the investigation, notice of the ruling shall likewise be given to the latter, and to that unit which has the victim in its custody.

3. If the ruling is favourable, among other particulars, express mention shall be made of the decision to not instigate penalty proceedings or, in the event that they have already been instigated, to temporarily suspend the penalty proceedings which may have begun or the expulsion or repatriation orders which may have been issued according to infringement detailed in Article 53.1(a) of Organic Act 4/2000.

In the event that the suspended penalty proceedings or the expulsion or repatriation orders s lie within the remit of another Government Regional Delegation Office or Deputy Office, notice of the ruling granting the rehabilitation and reflection period shall be served thereof, in order for the terms of the above paragraph to take effect.

4. The ruling granting the rehabilitation and reflection period shall authorise a temporary stay to the victim and any disabled or legally minor children who are in Spain, for the duration established for the victim.

XIII.D.- CONCLUSION AND POSSIBLE EXTENSION OF THE REHABILITATION AND REFLECTION PERIOD

1. Following conclusion of the rehabilitation and reflection period, the police unit performing identification shall contact the victim in order to establish whether or not he or she wishes to cooperate in the investigation and prosecution of the offence.

If the victim decides to cooperate, notice of this circumstance shall be served to the Public Prosecution Office and the competent court body, enclosing a copy of any statement given.

Should the victim decide not to cooperate, he or she shall be informed in a comprehensible manner of the possibility of applying to the competent Government's Regional Delegation Office or Deputy Office for exemption from official liability in accordance with his or her personal circumstances.

2. If the victim states the need for an additional period for rehabilitation and reflection, or if the police unit itself considers this to be the case, the possibility of a one-off extension to the period initially granted shall be offered.

For this purpose the police unit shall present the relevant proposal to the Government's Regional Delegation Office or Deputy Office which granted the initial period, including where applicable the duration of the extension period deemed necessary, to be accompanied by the available documentation and reports.

3. In ruling as to the granting of such an extension, the competent Government's Regional Delegation Office or Deputy Office shall take into consideration the personal circumstances of the victim and the information provided by those public authorities and bodies and organisations with proven experience in attending to victims of trafficking who are attending to the victim.

4. During the processing of the extension to the rehabilitation and reflection period, the victim's stay in Spain shall be understood to be extended, along with that of any children who are legal minors or have a disability.

Granting of an extension to the period in question shall constitute an extension to the temporary authorisation to stay for the time established therein.

5. Following conclusion of the extension to the rehabilitation and reflection period, the police unit shall proceed to act in accordance with paragraph 1 of this sub-section.

6. Following conclusion of the rehabilitation and reflection period or the extension thereto, if a residency permit has not been requested or has been refused, and as long as there are any legal impediments, the applicable terms shall be those governing stays and residency as laid down in Organic Act 4/2000 and the Regulation developing this.

XIII.E.- EXEMPTION FROM LIABILITY AND RESIDENCY AND WORK PERMIT GRANTED UNDER EXCEPTIONAL CIRCUMSTANCES

1. Any authority with which the victim may be cooperating within the context of the investigation of an offence or in criminal proceedings may propose to the competent Government Delegate or Deputy Delegate exemption from the liability thereof with

regard to infringement of Article 53.1(a) of Organic Act 4/2000, all the above notwithstanding the entitlement of the Delegate or Deputy Delegate him or herself to rule such exemption from liability ex officio in accordance with the personal circumstances of the victim.

2. In the event that the penalty proceedings or the expulsion or return order suspended lie within the remit of another Government Regional Delegation Office or Deputy Office, this shall be informed of the decision adopted regarding the exemption from liability.

3. If exemption from liability is ruled, the Government Delegate or Deputy Delegate issuing the ruling shall inform the victim that he or she is entitled to lodge an application for a residency and work permit based on exceptional circumstances, addressed to the head of the Department of Security or the Department of Immigration and Emigration, in accordance with the reasoning based, respectively, on the victim's cooperation in investigation of the crime or his or her personal circumstances.

4. The application for authorisation shall be presented by the victim or his or her representative before the Government's Regional Delegation Office or Deputy Office which ruled on the exemption from liability.

5. The Government's Regional Delegation Office or Deputy Office shall immediately pass the application on to the Government Department responsible for the ruling, enclosing a report as to the legal and personal status of the victim and the proposed ruling which, if favourable, shall involve the granting of a provisional residency and work permit both for the victim and for any children who are legal minors or have a disability and are in Spain (residency and work permit in the case of those aged over 16).

6. Within a period of one month of the authorisation being granted, the holder of the provisional authorisation must apply for a Foreign Citizen Identity Card at the corresponding Immigration Office or Police Station.

7. Following a favourable ruling in the proceedings regarding definitive authorisation by the head of the competent Government Department, the residency and work permit granted shall remain in force for 5 years, both for the victim and for any children thereof who are under the age of legal majority or are disabled and who are located in Spain (residency and work permit in the case of children aged over 16 years), notwithstanding the entitlement of the holder to gain long-term residency status.

XIII.F.- VOLUNTARY REPATRIATION

1. When it has been established that there are reasonable grounds to believe that a foreign person is the victim of human trafficking in accordance with the terms of this Protocol, the person in question may apply for assisted return to his or her country of

origin, both for him or herself and for any children who are legal minors or disabled, notwithstanding the possibility that repatriation may be postponed in order for the victim to remain in Spain for the period required to investigate the offence or for criminal proceedings.

2. The Department of Immigration and Emigration shall manage and provide support for the voluntary repatriation of the victim and any children who are legal minors or have a disability and who are in Spain, in accordance with the terms of Article 16 of the Council of Europe Convention. In all cases assisted return shall include an evaluation, prior to departure, of risks and security, transportation, and support at the points of departure, transit and destination.

3. Organisations and bodies with proven experience in attending to victims of trafficking may, in those cases where they may deem appropriate, propose inclusion of the victim under the social support voluntary return programme for immigrants in a situation of vulnerability because they are at risk of social exclusion, funded by the Integration of Immigrants Department of the Ministry of Employment and Immigration, with the support of the European Return Fund.

XIV.- SPECIFIC ACTIONS IN CASES OF VICTIMS OF HUMAN TRAFFICKING WHO ARE LEGAL MINORS.

XIV.A.- SUPPORT FOR VICTIMS WHO ARE LEGAL MINORS

1. Victims who are legal minors shall immediately be provided with assistance, support and protection. All measures adopted shall address their safety, physical and psycho-social recovery, education and the search for a lasting solution to their situation.

These measures must be based on the particularly vulnerable condition of victims of trafficking who are legal minors, and shall be pursued following an individual evaluation of the specific circumstances of the victim, taking into consideration his or her opinion, needs and interests.

2. The measures to assist victims who are legal minors must likewise establish support mechanisms guaranteeing accompanied return to the place of origin, including the return of victims who are legal minors arriving from EU countries, with the greater interest of the minor prevailing, and an evaluating among other conditions for return the benefits of recovering in a family context.

3. The public institution responsible for legal protection of a victim who is a legal minor, or the Public Prosecution Office, may propose referral to specific resources for victims of human trafficking for reasons of protection or specialist care. These resources must guarantee the due separation of those who are below and above legal age.

XIV.B.- UNACCOMPANIED FOREIGN VICTIMS WHO ARE LEGAL MINORS

1. The necessary measures shall be adopted in order to establish the identity, nationality and/or place of origin of the legal minor and, in the case of those who are not accompanied, the necessary resources shall be deployed in order to locate their families, and to guarantee they are represented.

2. In the case of victims of trafficking who are unaccompanied foreign legal minors, they must be given particular attention as they are especially vulnerable, and until such time as a permanent solution is found, appropriate fostering measures shall be applied in accordance with the minor's needs.

3. The lasting solution as to their future must be adopted at the earliest possible opportunity, and may comprise repatriation and reintegration in the country of origin, the granting of international protection status or the granting of a residency or residency and work permit, where applicable.

4. Notwithstanding the issues covered by this Protocol, victims of human trafficking who are unaccompanied foreign legal minors shall be subject to the terms of the Protocol referred to in Article 190.2 of the Regulation for Organic Act 4/2000.

XIV.C.- PROTECTION IN ACTIONS WITH VICTIMS WHO ARE LEGAL MINORS

1. Over the course of police investigations and criminal proceedings involving possible victims of human trafficking who are legal minors, the necessary measures shall be adopted in order to avoid secondary victimisation. A single interview protocol shall in all cases be adopted.

The interview shall be conducted immediately, under appropriate conditions, in the presence of the Public Prosecution Office, guaranteeing the presumption of legal minority in cases of doubt, and the adoption of the mechanisms required for the pre-constitution of evidence, if necessary.

2. Given the particular vulnerability of legal minor victims of trafficking, additional protection measures must be adopted during any interviews and examinations conducted in investigations and court proceedings, among others as follows:

a) Such procedures shall be performed without any unjustified delay as soon as notice of the circumstances has been served to the competent authorities.

b) They shall as far as possible take place on premises which have been prepared or allocated for this purpose.

c) All interviews shall, when necessary, involve professionals with the appropriate training.

d) The minimum number shall be performed, and only where strictly necessary. The legal minor's statements shall be recorded using technical means allowing for audiovisual reproduction wherever possible.

e) They shall be conducted in the presence of a legal representative, unless this individual has been excluded on reasoned grounds.

XV.- ACTION BY ORGANISATIONS AND BODIES SPECIALISING IN ATTENDING TO VICTIMS OF HUMAN TRAFFICKING

XV.A.- RESOURCES PROVIDED BY ORGANISATIONS AND BODIES SPECIALISING IN ATTENDING TO VICTIMS OF HUMAN TRAFFICKING

1. This Framework Protocol acknowledges the contribution of organisations and bodies with proven experience in attending to victims of trafficking, in particular those which provide comprehensive support and are involved in public administration programmes for victim support and protection.

2. Such organisations and bodies provide victims of trafficking with a network of specialist services supplementing the care provided by the existing public resources. Provision is therefore made for the involvement of such organisations and bodies in all processes described throughout this Protocol, in particular with regard to accommodation, protection and support for victims.

XV.B.- DETECTION OF PRESUMED VICTIMS BY ORGANISATIONS AND BODIES SPECIALISING IN ATTENDING TO VICTIMS OF HUMAN TRAFFICKING

Specialist organisations and bodies may detect situations of trafficking through their victim-attention resources, such as mobile units, telephone helplines and their support services.

Such detection is fundamental in allowing the competent authorities to instigate the procedure for identification of the presumed victim.

XV.C.- PROVISION OF INFORMATION ABOUT PRESUMED VICTIMS

Organisations and bodies with proven experience in attending to victims have access to relevant information for the identification of a presumed victim, both because of their knowledge of the trafficking situation in the region where the individual was located, and through an evaluation of their personal and social circumstances, based on the direct support they offer.

XV.D.- SUPPORT AND ASSISTANCE FOR PRESUMED VICTIMS

1. Bodies and organisations with proven experience in attending to victims of trafficking may accompany the presumed victim, wherever the circumstances should

make this advisable, in proceedings affecting the victim, and in particular in order to guarantee that victims properly understand their rights. To this end a request shall be lodged with the authorities responsible for the specific action in question.

2. These organisations and bodies shall provide any information they may deem relevant in all processes covered by this Protocol.

3. When victims are referred to them, they shall provide comprehensive support, including secure accommodation, healthcare, psychological care, psychiatric care, other social, educational and training resources, along with assistance for their social and professional inclusion, legal advice, interpreters or support to facilitate voluntary return.

XVI. INTER-INSTITUTIONAL RELATIONS

XVI.A.- COMMUNICATIONS

1. The Judicial Police units shall at all times provide information to the judicial body, the Public Prosecution Office and, where applicable, to Crime Victims Support Offices, regarding any incidents of which they may learn and which could affect the content or scope of the protection measures adopted.

2. The court body shall notify the Law Enforcement Agencies responsible for the region or, as applicable, the centralised reception points designated in each region, along with the Public Prosecution Office, of any rulings ordering interim remedies or other protection or security measures for victims, and the lifting and modification thereof.

XVI.B.- COORDINATION MEETINGS

1. A working meeting must be held in each province at least twice per year in order to monitor actions related to detected situations of trafficking, so as to ensure appropriate inter-institutional coordination.

The effectiveness of the measures adopted for the support, protection and safety of victims shall likewise be analysed.

2. The Public Prosecution Office shall be responsible for calling and organising the meeting.

3. The meeting shall be attended by the Public Prosecution Office, and the following will likewise be called upon: senior police officers specialising in the investigation of the offence of human trafficking, an individual on behalf of the Employment and Social Security Inspectorate or an equivalent regional body, and another representing the corresponding Government's Regional Delegation Office or Deputy Office. This

meeting may, by prior invitation, be attended by the Presidents of the Supreme Courts of Justice, the Presidents of the corresponding Provincial High Courts and any Senior Judges deemed appropriate.

The corresponding regional public administration shall likewise be called.

4. Depending on the issues to be discussed, the Public Prosecution Office may call on organisations and bodies with proven experience in attending to victims of trafficking, in particular those providing comprehensive support with an established presence in the region.

Małgorzata Kozłowska

The importance of non-punishment and non-prosecution when dealing with victims

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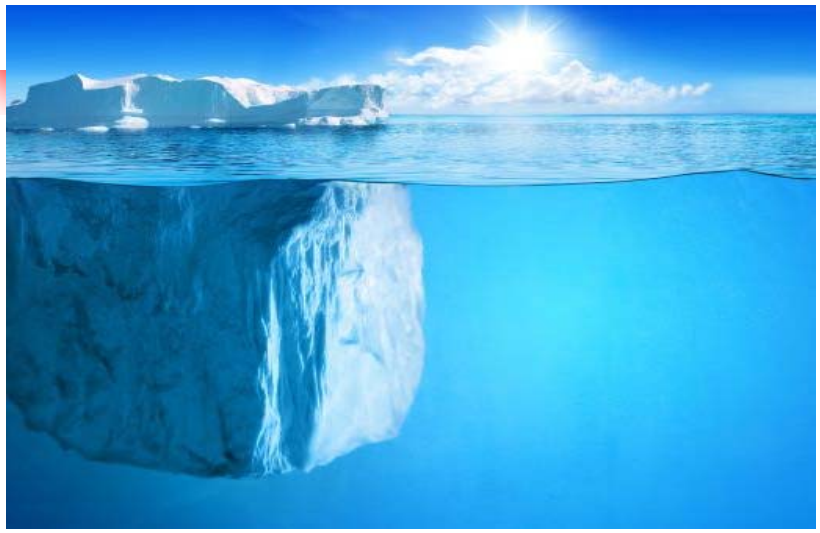
Riga, 11th September 2015

Content

- Genesis
- Legal basis
- The extent of protection
- Practice

Genesis

- Profile of the offence
- Features of the victim
- Profile of the perpetrator
- The relation between the offender and the victim



Roots of protection

Verdict of the European Court of Human Rights

The Rantsev case

- The States must adopt an effective policy against combating trafficking
- Impose obligation to conduct adequate investigation
- Create practical and effective protection of the rights and assistance of victims

The aims of protection

- to guarantee the human rights of victims
- to avoid further victimisation and re-traumatization
- to encourage them to act as witnesses in criminal proceedings against the perpetrators

This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.

International legislation Non-prosecution rule

- UN Resolution A/RES/55/67 31 January 2001

Invited Governments to consider preventing, within legal framework and in accordance with national polices, victims of trafficking, in particular women and girls, from being prosecuted for their illegal entrance or residence, taking into account that they are victims of exploitation

International legislation
Non-prosecution rule
Non-punishment rule

- Recommendation of working group to the Conference of Parties to the UNTOC
  - Appropriate procedures for identifying victims and giving them support
  - Consider non-punishing or non-prosecuting of victims for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or were compelled to commit such unlawful acts

International legislation
Non punishment rule

- Council of Europe Convention on action against trafficking in human beings
  - Article 26 – non-punishment provision

The obligation for countries to provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so

International legislation
Non-punishment rule
Non-prosecution rule

Directive 2011/36/EU - art. 8

- Member States shall take the necessary measures to ensure that competent national authorities are entitled
  - not to prosecute
  - not to impose penalties
- on victims of THB for their involvement in criminal activities
- the condition – compelled to commit as a direct consequence of being a victim

International legislation
Non-punishment rule
Non-prosecution rule

ILO – Protocol to the convention 29 (Forced Labour Convention)

- Member States shall take the necessary measures to ensure that competent national authorities are entitled
  - not to prosecute
  - not to impose penalties
- on victims of force or compulsory labour for their involvement in unlawful activities
- condition – being compelled to commit as a direct consequence of being subject to force or compulsory labour

General rule and practice Non-prosecution

- The offence has not been committed

Criminal proceedings shall not be instituted

Committing an act without consciousness of a victim (*vis absoluta)*

- The law says that the perpetrator has not committed an offence

Case of absolute necessity

Committing an offence under a threat or torture (*vis compulsiva)*

- The act constitutes an insignificant social danger

Practice Non-punishment

- Requirements to proceed – not impose of penalty

Disadvantage –

- criminal record for a victim
- cancel work permission,
- possibility of violation of *non refoulement* rule
- can make impossible to re-enter the country

Practice

- Examples:
  - illegal border-crossing
  - using false documents
  - growing cannabis
  - immigration offences
  - working without permits
  - theft, pickpocketing or shop-lifting
  - prostitution (in some States)
- Possibilities to overuse

- should we the have strict rules to be applied by MS
- appointed offences with general rule not to prosecute
- what offences
- discretion of judicial authorities should be left

?????

Advise UNDOC

- A victim of THB shall not be held criminally or administratively liable for offences (unlawful acts) committed by them, to the extend that such involvement is a direct consequence of their situation as trafficked persons
- A victim of THB shall not be punished for immigration offences established under national law
- The provisions of this article shall be without prejudice to general defences available at law to the victim

Advise OSCE

- open-ended list of offences typically related to THB, with regard to the commission of which victims will not be punished or penalized
- non-punishment rule applies to any offence so long as the necessary link with THB is established

GRETA Reports

- few countries adopted specific non – punishment provisions
- limited offences e.g. immigration offences
- problems or failures in effective protection of the victims
- reasons – failure to identify victims, inadequate implementation of non – punishment rule

- comments
- experiences
- questions

The EU Victims' Rights package:
from minimum standards on support and protection of victims to mutual recognition of protection measures

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Poland

Riga, 11th September 2015

Victims package

- Directive 2012/29/EU establishing minimum standards on the right of victims of crime (...)
- Directive 2011/99/EU on the European Protection Order
- Regulation No 606/2013 on mutual recognition of protection measures in civil matters
- Directive 2004/80/EC relating to compensation of victims
- Directive 2011/36/EU on preventing and combating human trafficking and protecting its victims

Victims package

- Provisions of information, assistance and support
  - The right to understand and to be understood
  - The right to be informed in understandable way about their case
- Participation in criminal proceeding
- Protection of victims and recognition of victims' specific protection needs
- Other provisions
  - The right to legal aid
  - The right to reimbursement and return of property

Protection measures

- Directive 2011/99/EU on the European Protection Order
- Regulation No 606/2013 on mutual recognition of protection measures in civil matters

11th January 2015

Protection measures Directive

Protection measure – the decision in **criminal mattes** imposing one or more prohibitions or restrictions on a person causing danger in order to protect a protected person against **a criminal act** which may endanger his/her life, a physical or psychological integrity, dignity, personal liberty or sexual integrity

Protection measures Regulation

- Protection measure – any decision in **civil matters** ordered by issuing authority of MS of a victim's origin in accordance with its national jurisdiction imposing obligations on the person causing **the risk** with a view of protecting another person whose physical or psychological integrity may be at risk

Directive

- the judicial or equivalent decision in the **criminal matters** with a view to protect a person against a **criminal act** (endanger of life, a psychical or psychological integrity, dignity, personal liberty or sexual integrity)
- transmitted to the competent authority of the executing State
- issued **on request** of a protected person who decides to reside in another MS
- time limit – set up by the national law

Regulation

- the judicial or administrative decision in the **civil matters** with a view to protect a person against another **person causing the risk** of physical or psychological integrity
- recognized and enforceable in the other MS without any specialized procedure in cross border cases
- the certificate issued **on request** of a protected person, with notifying a person causing the danger
- no formality needed
- time limit up to 12 months

Types of protection measures

- The prohibition or regulation on entering the place where the protected person resides, works, visits regularly or stays
- The prohibition or regulation of any form of contact with the protected person including telephone, mail, fax, etc.
- The prohibition or regulation on approaching the protected person closer than prescribed distance

Practice

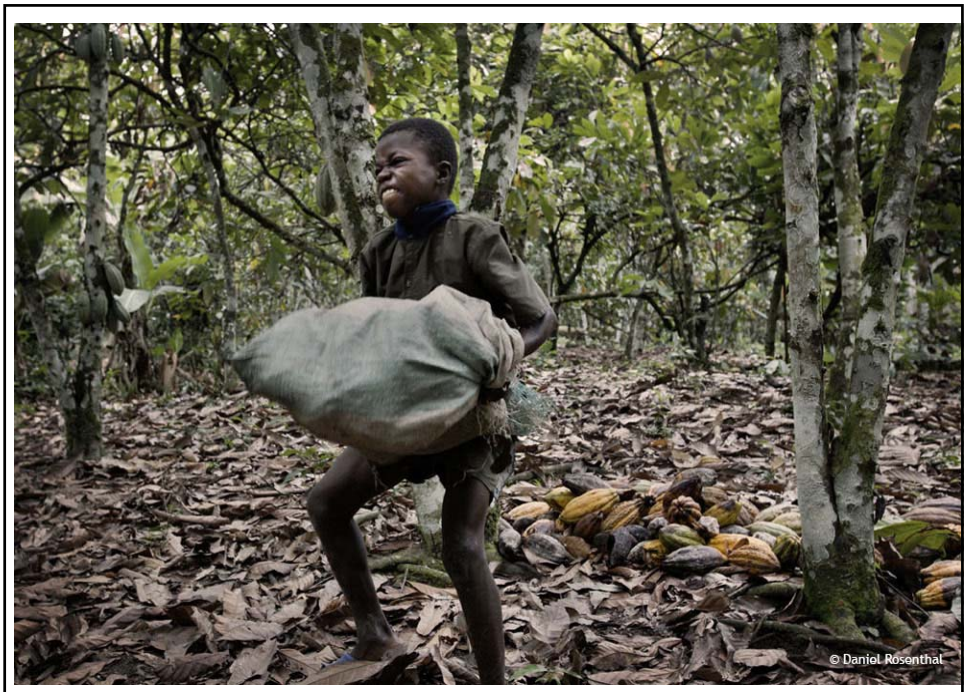
- No protection orders regarding THB victims
- Usually issued by courts or prosecutors in cases regarding threat, stalking or family violence
- Possibility to use that kind of measures during the criminal procedure and after
  - What are conditions

Statement of victims and non-punishment rule

Małgorzata Kozłowska
prosecutor
Department for Organized Crime
and Corruption
Prosecutor's General Office
Poland

Riga, 11th September 2015

- How to talk with the victim
- How to make them aware that they are exploited, that they are victims
- How to make them testify
- How to pursue them that they can be protected effectively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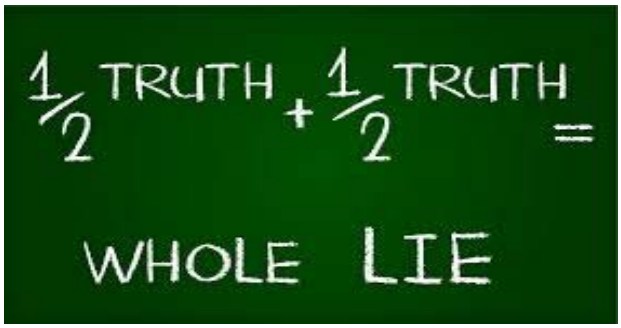
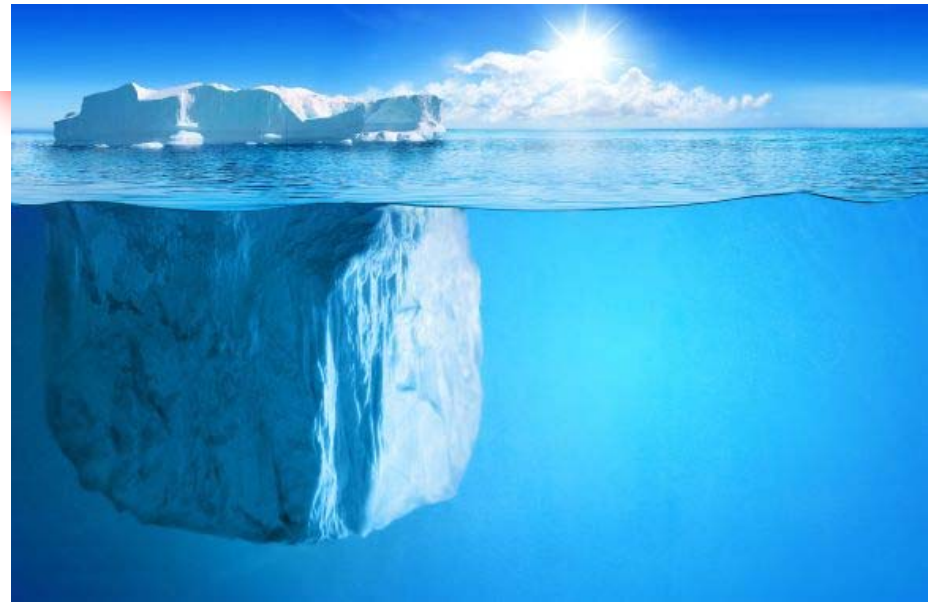
- The knowledge
- The awareness
- The sensitiveness
- Professionalism

Statement of victims

- important role of the evidence, especially the first contact and the first hearing
- risk of conflicted statements





- specific character of witnesses
  - not identifying themselves as victims
  - long term and intensive exploitation
  - strong relations with the perpetrator (the Stockholm syndrome)
  - negative response within society,
  - trauma, complex, shame

- need for multidisciplinary approach - proper cooperation with a prosecutor, a judge, law enforcement and NGOs
- hearing with a psychologist
- risk of disappearance or intimidation
- guarantee of the sense of security
  - testimony behind the screen or from separate rooms
  - voice distortion
  - anonymity
- danger of/possibility to abuse the rule of non punishment/non prosecution to avoid the criminal responsibility

Example

- a woman stopped by the Police with false documents
- identified as a human trafficking victim, exploited in prostitution
- accused of using false documents
- the sentence –
  - the woman found guilty
  - Judge refrains to impose penalty
  - the verdict - forfeiture of false documents instead of other penalty

Example

- An investigation on smuggling drugs
  - 2 Polish citizens were stopped at Warsaw Airport with drugs hidden in regular body spaces
- Charged with drug trafficking together with 2 other – organizers
- The investigation showed that the first 2 were recruited to drug trafficking (clear offer)
  - Poor living conditions
  - Unemployment
  - Lack of money
  - During smuggling they were forced to hide not only drugs but also money (misleading???)

Example

- Azerbaijani citizens stopped in illegal factory of cigarettes
- arrested and accused of tax offences
- during the criminal procedures – no information regarding the fact that they could be victims of THB
- the Court of the first instance – found them guilty and inflicted punishment of 1 year of deprivation of liberty and due to arrest time – released
- the same day – meeting with lawyers and NGOs and notice to the Police about the THB offence
- appeal to the second instance court – they have been charged with tax offence while being the victims of THB, exploited in illegal work for a cigarette factory
- the sentence was cancelled, case was remanded to the Court of the first instance for re-examination
- an independent case – refusal to start investigation on THB

Example

- Sri Lankans' (7) were stopped in Lithuanian and Polish border in bus driven by Lithuanian citizens on the way to Italy
- Illegal border-crossing charges
- Claims – escape from place of exploitation
- Identification of THB victims
- Certificate
- Initiation of investigation witch was sent to Lithuania to be continued
- Information of Lithuanian authorities – no features of THB found in the case

- experiences
- opinions
- suggestions
- difficulties while working with the victim of THB

Summary

- important role of the evidence, especially first hearing
- specific character of the witness
  - not identifying themselves as victims
    - long term and intensive exploitation
    - relations with the perpetrator (the Stockholm syndrome)
    - negative response within society, trauma, complex, shame
- need for proper cooperation between prosecutor, law enforcement and NGOs –multidisciplinary approach
- psychological support
- hearing with the psychologist
- guarantee the sense of security
- possibility of losing contact with victim
- danger of/possibility to abuse non punishment/non prosecution rule to avoid the criminal responsibility

Helena Ljungren

CURRICULUM VITAE

Personal information

Surname/first name	**LJUNGGREN Helena**
Address	**International Public Prosecution Office Malmö, Rättscentrum Malmö, 205 90 Malmö (Sweden)**
Telephone	**00 46 (0)10 56 261 66**
Mobile	**00 46 (0)768 98 52 89**
Fax	**00 46 (0)10 56 260 13**
E-mail	**helena.ljunggren@aklagare.se**
Nationality	**Swedish**
Date of birth	**12 March 1971**

Work experience

Dates	**May 2009 –**
Occupation or position held	**Senior Public Prosecutor**
Main activities/responsibilities	**Investigating and prosecuting grave cases of international organised crime, such as human trafficking and smuggling of narcotics.**
Employer	**International Public Prosecution Office Malmö, Rättscentrum Malmö, 205 90 Malmö (Sweden)**

Dates	**March 2007 – April 2009**
Occupation or position held	**Public Prosecutor**
Main activities/responsibilities	**Investigating and prosecuting various kinds of grave cases of criminality, in particular homicide.**
Employer	**Södra Skåne Public Prosecution Office, Rättscentrum Malmö, 205 90 Malmö (Sweden)**

Dates	**September 2006 – February 2007**
Occupation or position held	**Judge**
Employer	**Scania and Blekinge Court of Appeal, Box 846, 201 80 Malmö (Sweden)**

Dates	**September 2004 – August 2006**
Occupation or position held	**Public Prosecutor**
Main activities/responsibilities	**Specialised in crimes committed by minors**
Employer	**Södra Skåne Public Prosecution Office, Rättscentrum Malmö, 205 90 Malmö (Sweden)**

Dates	**May 2003 – August 2004**
Occupation or position held	**Public Prosecutor**
Main activities/responsibilities	**Specialised in crimes committed by minors**
Employer	**Söderort Public Prosecution Office, Box 1194, 141 24 Huddinge (Sweden)**

Dates	**November 1999 – April 2003**
Occupation or position held	**Assistant Prosecutor, appointed Public Prosecutor in August 2002**
Employer	**Malmö Public Prosecution Office, Rättscentrum Malmö, 205 90 Malmö (Sweden)**

Dates	**February 1999 – October 1999**
Occupation or position held	**Assistant judge**
Employer	**Scania and Blekinge Court of Appeal, Box 846, 201 80 Malmö (Sweden)**

Dates	**February 1997 – January 1999**
Occupation or position held	**Training judge**
Employer	**Malmö District Court, Box 265, 201 22 Malmö (Sweden)**

Dates	**June 1996 – December 1996**
Occupation or position held	**Internship**
Employer	**United Nations Crime Prevention and Criminal Justice Division in Vienna (Austria)**

COUNTERING THB IN SWEDEN

CURRENT STATE AND FUTURE CHALLENGES

Senior Public Prosecutor Helena Ljunggren
International Public Prosecution Office Malmö, Sweden

ÅKLAGARMYNDIGHETEN

From *The Swedish Penal Code*

Chapter 4, On Crimes against Liberty and Peace

Section 1 a – Trafficking in Human Beings

"A person who, in other cases than those referred to in Section 1 [kidnapping], uses unlawful coercion or deceit, exploits another person's vulnerable situation or by some other such improper means recruits, transports, harbours, receives or takes any other such action with a person with the intent that this person shall be exploited for sexual purposes, for the removal of organs, for military service or forced labour or be exploited in any other way that places that person in distress, shall be sentenced for trafficking in human beings to imprisonment, for at least two years and at most ten years.

A person who commits an act referred to in the first paragraph against a person who is under eighteen years of age shall be sentenced for trafficking in human beings even if none of the improper means described in that paragraph was used.

If an offence referred to in the first or second paragraph is less serious, the sentence shall be imprisonment for at most four years."

Trafficking in human beings in Sweden

- **Introduced in the Swedish Penal Code in 2002, amended 2004 and 2010**
- **Basis: The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Dec 2000), supplementing the United Nations Convention against Transnational Organized Crime**
- **Most common features: Sexual exploitation and forced labour.**

Chapter 6, On sexual offences

Section 12

" A person who promotes or improperly financially exploits a person's engagement in casual sexual relations in return for payment shall be sentenced for procuring to imprisonment for at most four years.

If a person who holding the right to the use of premises, has granted the right to use them to another, subsequently learns that the premises are wholly or to a substantial extent used for casual sexual relations in return for payment and omits to do what can be reasonably be requested to terminate the granted right, he or she shall, if the activity continues or is resumed at the premises, be considered to have promoted the activity and shall be held criminally responsible in accordance with the first paragraph.

If a crime provided for in the first or second paragraph is considered gross, imprisonment for at least two and at most eight years shall be imposed for gross procuring. In assessing whether the crime is gross, special consideration shall be given to whether the crime as concerned a large-scale activity, brought significant financial gain or involved ruthless exploitation of another person."

Chapter 6, On sexual offences

Section 9

”A person who, otherwise than as previously provided in this chapter, induces a child under eighteen years of age to undertake or endure a sexual act in return for payment, shall be sentenced for purchase of a sexual act from a child to a fine or imprisonment for at most two years.

The provision of the first paragraph also apply if the payment was promised or given by another person.”

Section 11

”A person who, otherwise than as previously provided in this chapter, obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual service to a fine or imprisonment for at most one year.

The provision of the first paragraph also apply if the payment was promised or given by another person.”

One single occasion is sufficient for criminal liability.

Also *attempt* to purchase sexual services is criminalised.

The sale of sexual services is <u>not</u> prohibited in Sweden. Why?

- In most cases, the person selling sexual services is in a weaker position and subject to exploitation.

- A ban would deter persons involved in prostitution to reach out for help and co-operate with police and other authorities.

The ban on purchase of sexual services

Introduced in Sweden 1 January 1999. A part of Government Bill Violence against Women (Kvinnofrid, 1997/98:55)

***Arguments for introducing the ban*:**

- Fighting prostitution was of pressing social interest. Prostitution entails serious harm to both individuals and to society. Need for new method to fight prostitution.

- The ban contains a shift of perspective, targeting the demand for sexual services. No demand – no prostitution.

- Deterring effect on prospective purchasers of sex. Also a way to protect those people who are, or who risk becoming, involved in prostitution/THB.

- Making Sweden a "bad market" for the establishment ofextensive organised prostitution and THB for sexual purposes.

Did it work?

In 2008, the Swedish government decided to evaluate the application of the ban on purchase of sexual services and its effects on prostitution and THB for sexual purposes.

Expert group headed by Chancellor of Justice Anna Skarhed. Period of study: 1999 – 2008. The results of the inquiry was published in June 2010 (SOU 2010:49)

Outcome of the Inquiry:

- No overall increase of prostitution in Sweden.

- More efforts made by police to act against procuring and THB for sexual purposes. The ban being used as an important instrument.

- The ban "acts like a barrier" to human traffickers and procurers.

- Few cases of large-scale procuring and THB for sexual purposes in Sweden.

- Increased public support for the ban.

Special features boosting THB investigations in Sweden

- The THB investigations are always headed by a prosecutor, specialised in the field of THB and gross procuring. Close work with the police.
- Assistance from the social services as regards the victims. The social services provide safe housing, clean clothes, medical care and therapy.
- Possibility to temporary residence permit for the victim. The prosecutor makes a request to the Migration Board.
- On request by the prosecutor, the District Court appoints a lawyer who is taking care of the victim's interests through out the investigation and the court proceedings, such as financial compensation.

Co-operation between authorities at a national level

January 2009 - the establishment of a National Task Force against Prostitution and Trafficking (NMT). Headed by the County Administrative Board in Stockholm.

Participants: Representatives from the County Administrative Board in Stockholm, the Swedish Police Authority, local police units, the Swedish Prosecution Authority, the Migration Board and the Social Services in Stockholm, Gothenburg and Malmö.

Meetings four times a year.

1-2 October 2015, planned visit by Dr. Myria Vassiliadou, The EU Anti-Trafficking Coordinator

NMT
National Task Force Against Prostitution and Trafficking

The task of NMT is to develop and facilitate co-operation between various national authorities which are dealing with THB issues.

Apart from regular meetings, NMT focus on supporting authorities in those counties where experience of countering THB is limited. NMT organises

* **Training and education programmes concerning THB**
* **Joint seminars and conferences, sometimes also involving NGO's and private establishments (hotels, taxi, bars and restaurants)**
* **Publishing relevant information material on THB issues**
* **Launching national campaigns addressed to the public and persons involved in prostitution.**

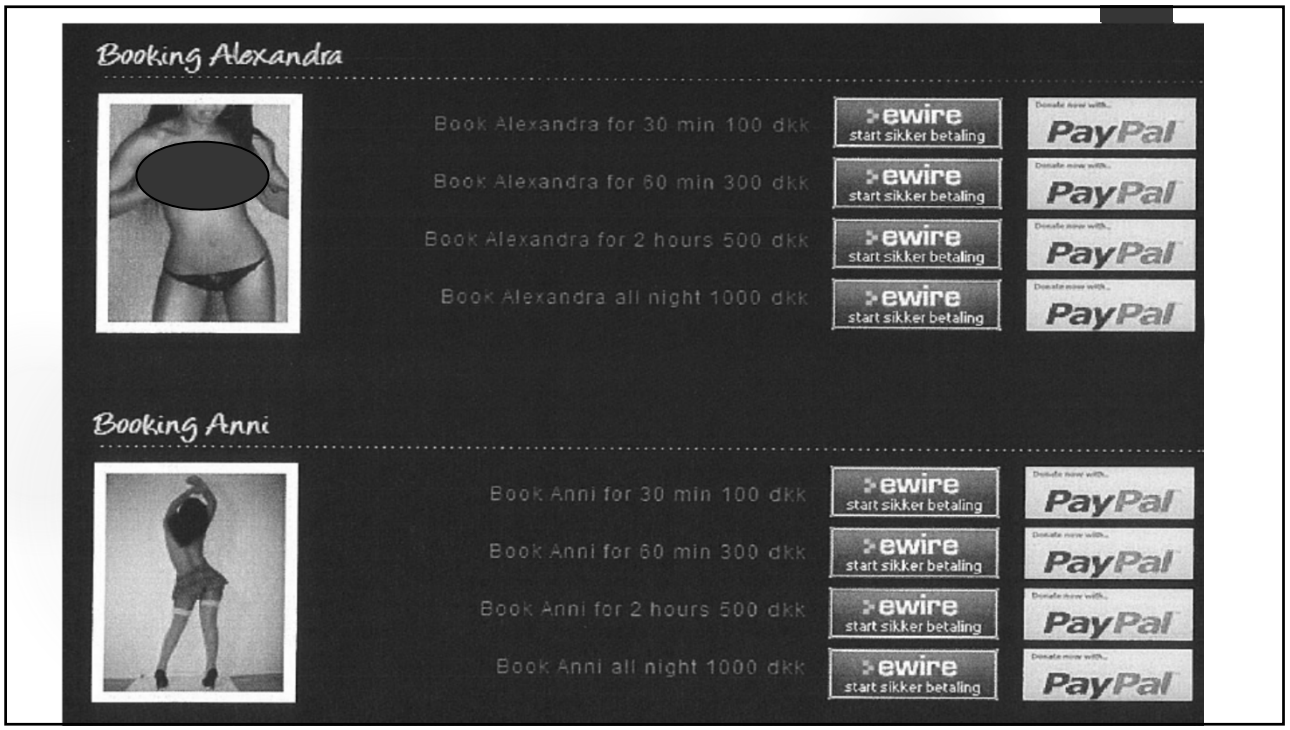
NMT has become an important institution for facilitating co-operation between those national authorities that are dealing with THB. Experience shows that success in fighting THB is dependent on an efficient co-operation between police/prosecutors/the social services/the Migration Board. A smooth co-operation doesn't exist automatically - it must be built up, developed and administered.

Current problems and challenges

A. The Internet and increased internationalisation

The human traffickers adapt themselves to current legislation and operate their business from other countries. Their criminal establisments also move around from one country to another, making them more difficult to track.

Increased need for intra-EU co-operation/ mutual legal assistance / JIT.

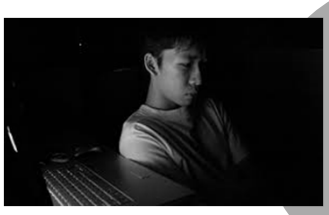


B. Human trafficking and forced labour

- **Large demand for "cheap" labour force combined with lack of public awareness**
- **A high degree of unenmployment**
- **Very difficult to detect THB cases concerning forced labour and obtain enough evidence**
- **Problem of legal definition**

C. New feature on the THB arena

The recruitment of young men and women to terrorist groups and the Islamic State.



THANK YOU FOR YOUR ATTENTION!

ÅKLAGARMYNDIGHETEN

Armands Lubarts
Vadims Nazarovs

Armands Lubarts, Head of Anti-Trafficking Unit of the State Police, Latvia.

Mr A.Lubarts started to serve at the National Security Service as a policeman; starting from 2000 he was an Inspector investigating particularly important cases at Unit for Fight against Armed Robberies of the Central Police Department in Riga City. In 2016 Mr Lubarts was invited to establish a special unit for fight against paedophilia and he was leading this unit till 2012 when he was appointed as a Head of Anti-Trafficking Unit of the Organised Crime Enforcement Department.

Education – higher legal education, in 2008 Mr Lubarts graduated Latvian Police Academy and acquired master's degree in legal sciences.

The Anti-Trafficking Unit deals with crimes of trafficking in human beings committed by organized crime groups. The work of the Anti-Trafficking Unit covers combating of all forms of trafficking in human beings and pimping.

Mr A.Lubarts represents the State Police at the national inter-institutional working group which coordinates elaboration and implementation of anti-trafficking policy. He participates in elaboration of legislative initiatives, development of best practise and methodological recommendations in the field of combating and prevention of trafficking in human beings for regional police offices. He provides cooperation with foreign law-enforcement agencies, as well as relevant stakeholders in municipalities and non-governmental sector in Latvia and abroad regarding reduce of risks of trafficking in human beings and support for victims.

State Police
Republic of Latvia

Trafficking in Human Beings in Latvia

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Republic of Latvia
11.09.2015

State Police
Republic of Latvia

General trends

- Population of the Republic of Latvia (at beginning of period 2013 /2014 /2015), thsd- 2011,3/ 1994,3/1985,6
- Personal money income 2012/ 2013/ 2014 (monthly average; EUR)- 685/ 716/ 765
- Share of unemployed 2012/2013/2014/ to the active population of the same age group- 16,3/ 11,4/ 10,7/

At-risk-of-poverty rate

	2008	2009	2010	2011	2012	2013
Total	26.4	20.9	19.0	19.2	19.4	21.2
18–24	19.4	21.0	22.3	20.1	19.8	16.9
25–49	19.1	19.9	19.3	18.7	17.4	17.4

2

State Police
Republic of Latvia

Trends of THB risk elements.

- Latvian consumer-economy led society and features of the country of THB origin.
- State Police *protect & prevent* approach to combat THB risks in the territory of Latvia.
- THB risk cases (sending, sham marriage) do not transform in THB cases with real victims and recruiters do not transform in traffickers.
- Close cooperation with foreign Anti-Trafficking Units in the countries of destination where Latvian nationals are being exploited.

3

State Police
Republic of Latvia

Combating trafficking in human beings in Latvia THB phenomenon

Year	Initiated proceedings CL Art. 154.[1] (forced marriage, sexual exploitation, forced labour)	Suspected persons
2009.	3 (2 FM, 1 – SE)	4 (2 M, 2 F)
2010.	3 (2 – SE, 1 – FM)	4 (2 M, 2 F)
2011.	0	0
2012.	3 (SE)	2 (2 M)
2013.	5 (SE)	6 (5 M, 1 F)
2014.	1 (FM, SE, FL)	14(10 M,4 F)
2015.	2 (FM)	

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State Police
Republic of Latvia

Combating trafficking in human beings in Latvia THB risk elements

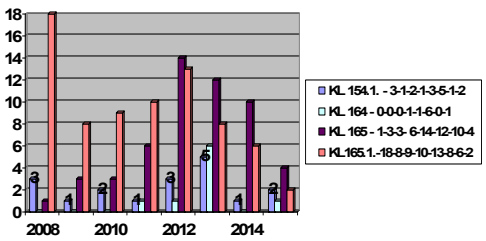
Year	Initiated proceedings CL Art. 165.[1]	Suspected Persons (males, females)	Initiated proceedings CL Art. 285.[2]	Suspected persons
2009.	31	35 (25 M, 10 F)	X	X
2010.	28	34 (19 M, 15 F)	X	X
2011.	21	34 (20 M, 14 F)	X	X
2012.	13	15 (8 M, 7 F)	X	X
2013.	8	12 (8 M, 4 F)	7	9 (3 M, 6F)
2014.	3	3 (2 M, 1 F)	13	12 (2 M, 10F)
2015.	2	4 (3 F, 1M)	4	7 (1 M, 1F)

5

State Police
Republic of Latvia

General peculiarities of the investigation

- After particular police undercover activities, recruiters of prostitutes & shame brides are arrested for violation of CL THB risk Art.
- Police by that does not allow that already recruited persons become victims of THB. It is also a main preventative measure of Human Trafficking as it is stated in CL Art.154[1].



6

State Police
Republic of Latvia

Combating trafficking in human beings in Latvia

- Reactive (proactive) phenomenon :
- CL Art.165. Living on the Avails of Prostitution,
- CL Art.165.[1] Sending a person for sexual exploitation,
- CL Art. 285.[2] Ensuring in Bad Faith with a Possibility to Acquire the Right to Stay in the Republic of Latvia Legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation

No necessity for real victim

Police ⟷ Criminals

7

State Police
Republic of Latvia

Operation Renda

- Year 2013 April. A Latvian national was looking for persons to conclude marriages in Ireland to provide 3rd country nationals with an opportunity to obtain legal right to reside in EU Member State.
- Year 2013 May recruiter was arrested.
- Year 2013 November was started ofender's criminal prosecution.
- Year 2014 recruiter got year suspended sentence.

8

State Police
Republic of Latvia

Operation Tanzanite

Year 2013. A Latvian national, previously worked on farms in Latvia picking fruit was recruited for work available in England to pick mushrooms and she did not need to speak the English.

Upon arrival in the UK an offer of employment failed. The victim has stayed at a number of addresses and was regularly moved between these addresses. Any moves were always made during the night.

The victim has been held against her will throughout her entire time in the UK, the offenders responsible for keeping the victim in the UK regularly locked her in premises before leaving with the keys, the victim was also regularly accompanied and prevented from leaving.

The victim's passport and ID documents were taken from her upon her arrival into the UK. Since arriving she was not allowed to use to any communication devices unless supervised- no more than one call per week allowed to her mother. Following calls been made the number would then be deactivated so calls could not be made back from the victim's mother- the only person she was permitted to contact.

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State Police
Republic of Latvia

Operation Tanzanite

- Year 2014. It was stated that a victim was sold for £3,800 and would be getting married.
- On the 18th July a victim made a call to her mother in Latvia explaining her plight and giving information about a location where she believed she was held.
- Cross-border cooperation with the UK. 3 persons arrested by Greater Manchester Police.
- Cooperation goals: information on 2 recruiters (Latvian citizens) was sent to the UK.

10

State Police
Republic of Latvia

Operation Basmani

- Year 2013. A Latvian national, proposed to schoolmate's ex-wife to go for work in England. She thought that job might be about agriculture or factory.
- Upon arrival into the UK, victim's passport was taken away. She was informed she was in debt of GBP 7000. She had to marry Pakistani citizen. Victim was raped many times.
- By "Skype" conversation on proposed job opportunity recruiter claimed she shouldn't complain to police on him. Victim was threatened by violence.

11

State Police
Republic of Latvia

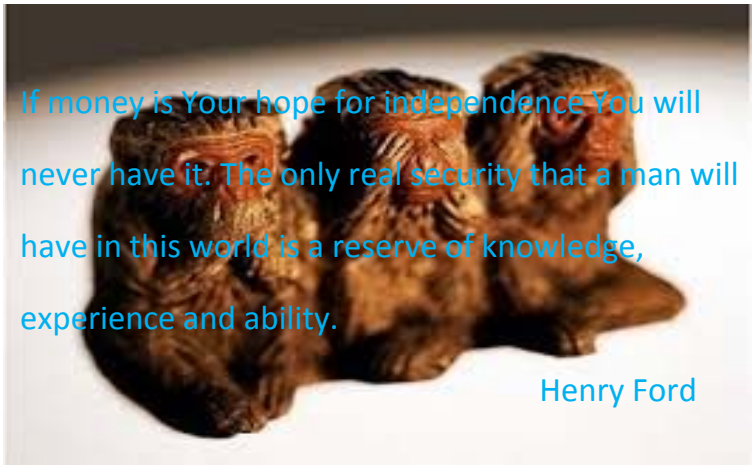
Operation Basmani

- Year 2014. OCG (9 Latvians and 2 Pakistani) was detained for recruiting people for forced marriage purposes using fraud, threats and violence
- Recruiters were looking for vulnerable adult victims with naïve & careless minds.
- Year 2015. Criminal prosecution was started .

12

State Police
Republic of Latvia

Combating trafficking in human beings. Chalenges.



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State Police
Republic of Latvia

Thank you for your attention!

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Nicola Piacente

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Nicola Piacente

Born in Italy 13.4.1961,

Public prosecutor

CAREER HISTORY

6.12.2011 until now: Deputy Chief Prosecutor at the Prosecution Office in Genova (Italy)- coordinator of the Financial Crimes Unit and of the counter terrorism Unit

From Nov. 2005 – Dec. 2011: Member of the Prosecution Office-anti terrorism Unit and Anti Mafia Unit in Milano, running major investigations and cases against criminal groups involved in drugs, cigarettes and human beings illegal trafficking, money laundering, racketeering, corruption; against criminal organizations associated to the Sicilian mafia groups, against criminal groups involved in the preparation and perpetration of terrorist attacks, in financing terrorist acts;

March 2002 - Nov. 2005:
Member of the Prosecution Office- Anti Mafia Unit in Genova –running major investigations and cases on human, cigarettes, drugs and weapons trafficking, racketeering, money laundering and islamic fundamentalist terrorist organizations

June 2001-February 2002:
member of the magistrates' and legal advice Unit at the European Antifraud Office/European Commission-Brussels

1 June 1999- 31 of May 2001:
Trial Attorney at the International Criminal for former Yugoslavia/Office of the Prosecutor in The Hague/Investigative Section

OTHER SIGNIFICANT PROFESSIONAL EXPERIENCES

October 2004-Ferruary 2005

Scientific expert (under special appointment of the Council of Europe) of the Committee of Experts on the Protection of witnesses and collaborators of justice. In this position I prepared a feasibility study on a possible convention in the field of witness protection and contributed to the elaboration of (2005) 9 Recommendation on the protection of witnesses and collaborators of justice and other related documents.

2008: Short term expert in the Twinning project between Ministry of Justice in Rome, the Public Prosecution of the former Yugoslav Republic of Macedonia and the European Agency for Reconstruction, for the implementation of a European-funded initiative aimed at contributing to the effectiveness of the fight against organized crime and corruption through a capacity building program.

2009: short term expert under appointment of the Ministry of Justice within the EU financed project JLS/2008/JPEN/028: “PROVIDING PROSECUTORS WITH THE NECESSARY TOOLS TO FIGHT CRIMINAL ACTIVITIES”

2010 short term expert under appointment of Consiglio Superiore della Magistratura within the Twinning Project AL 05 IB JLS.01 on the Albanian public Prosecutor (involving an analysis of the current National legislation on the Public Prosecutor

2011: short term expert under appointment of Consiglio Superiore della Magistratura within the EU financed project ”trafficking in Human beings”

Currently: Chair of Codexter (Committee of experts on terrorism) at the Council of Europe

ERA SEMINAR
COUNTERING TRAFFICKING IN HUMAN BEINGS
TOWARDS A MORE COMPREHENSIVE APPROACH

Riga, 10-11 September 2015

ITALY'S INNOVATIVE APPROACH: USING ANTIMAFIA LEGISLATION TO PUNISH TRAFFICKERS AND PROTECT VICTIMS

Riga, 10 September 2015

Nicola Piacente
Deputy Chief Prosecutor
Prosecution Office of Genova

FIGURES AT EU LEVEL

Since 2010 to 2012, 30.146 the 28 EU Member States identified and reported a huge number of victims (30146) of trafficking of human beings (hereinafter thb).

80% of victims are women.

16% of victims are juvenile and 1000 of them are sex exploitation victims

95% of sex exploitation victims are women

71%. of labour exploitation victims are women

Since 2010 to 2012, 8 551 criminal investigations on thb were initiated;

More than 70% of the alleged traffickers are men.

Since 2010 to 2012, 3 786 indictees were found guilty .

NATIONAL FIGURES

The Special Rapporteur on trafficking in persons, especially women and children, visited Italy from 12 to 20 September 2013. Pursuant to the report drafted after the visit,

2,650 victims of trafficking were assisted in Italy in 2012. The victims identified are mainly women and girls from Bulgaria, Hungary, Nigeria, Romania and Ukraine and, in smaller numbers, North Africa who are trafficked for sexual exploitation. Men are trafficked for forced and exploitative labour, mainly in the agriculture and construction sectors. Trafficked men generally come from Asia, North Africa and, to a lesser extent, sub-Saharan Africa.

A growing number of persons are trafficked to Italy from Latin America and Asia. Depending on the amount paid for transportation, victims arrive by sea, land or air, sometimes transiting through other European countries. The Arab uprisings in Egypt, Libya, the Syrian Arab Republic and Tunisia have further exacerbated the inflow of undocumented migrants, migrant smuggling and trafficking in persons, predominantly for labour and sexual exploitation. Human trafficking has been detected throughout the country

he victims of trafficking appear to be controlled by direct force and other means, such as debt bondage, psychological coercion and threats made against their family members. Victims are primarily lured in through deception and with promises of better employment opportunities, which ultimately lead to exploitation. Reports also indicate that some undocumented migrants were recruited in Italy and subsequently trafficked to other European countries

In Italy, anti-trafficking efforts mainly focus on trafficking for sexual exploitation. In the majority of those cases, the victims are women and girls from Nigeria and Eastern Europe, mainly Bulgaria, Hungary, Romania and Ukraine who are forced to engage in street prostitution.

17.27 per cent of the 5,276 foreign trafficking victims assisted by the Government of Italy and CSOs in 2011 and 2012 were trafficked for the purposes of labour exploitation.[1] The victims were mainly from Albania, Bangladesh, China, India, Morocco, Pakistan, Poland, the Republic of Moldova and Romania.

Adult male victims are often trafficked into labour exploitation in the agricultural and construction sectors in southern Italy, where they are subjected to unsafe working conditions, which often lead to casualties related to machine operation. Indian and Pakistani men are exploited in livestock production, especially on buffalo farms, working 10 hours a day for between 2.50 and 3 euros per hour — 40 per cent below the national standard for farm workers.

there is a lack of coherent data in the country on child trafficking. It is officially estimated that 15 per cent of trafficking victims are minors.[2] The country has been identified as a destination and transit country for child victims of sexual exploitation and labour exploitation. These victims are trafficked from African States, such as Morocco and Nigeria, and Eastern European countries, such as Albania, Bulgaria, the Republic of Moldova, Romania and Ukraine. There is also a market for transgender children, in particular from Brazil, as well as for Roma and Sinti boys.

An increasing trend of trafficking for the purpose of forced begging has been reported. Roma children are often linked to begging and petty-theft rackets, whilst Romanian-Italian networks have been reported to traffic disabled persons for forced begging.

189 assisted victims had been trafficked for participation in organized crime between 2011 and 2012. The victims are mainly from Romania and North Africa, especially Morocco, and are forced into selling drugs. The limited information available on this form of trafficking indicates that traffickers and victims are usually from the same country. The more traditional Italian crime organizations do not generally seem to engage directly in trafficking in persons but collaborate with traffickers indirectly.

Pursuant to the figures colleced by GRETA, aftyer a visit paid in Italy in 2013

there were 1 955 assisted victims in 2011, 1 650 in 2012 and 925 in 2013. The majority of them were women (1 417 in 2011, 1 094 in 2012 and 650 in 2013). There were 446 male victims in 2011, 420 in 2012 and 230 in 2013. As for child victims, there were 63 in 2011, 114 in 2012 and 45 in 2013

THE NATIONAL LEGISLATION

Italy ratified the Un Convention on Organized transnational crime and has recently implemented the 2011/36 EU Directive on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

Italy is a transit and destination Country for victims of trafficking of human beings (men, women, children) Victims are subject in Italy to forced labour, prostitution and begging. Source Countries are usually Nigeria, Romania, Morocco, Tunisia, Moldova, Slovak Republic, Ucraine, China, Brasil, Perù, Colombia, Pakistan, Bangladesh, Ecuador, Poland, Bulgaria, Egypt and India. Male victims are subject to forced agricultural labor (in Southern Italy). In Northern Italy they are exploited in the construction industry. Juvenile and female victims are forced to beg, or to prostitute or to commit thefts and other petty crimes.

The national relevant legislation refers to articles 600, 601, 602 of the penal code

Art. 600 of the national penal code: enslavement
"Whoever exerts on any other person powers and rights corresponding to ownership; places or holds any other person in conditions of continuing enslavement, sexually exploiting such person, imposing coerced labour or forcing said person into begging, or exploiting him/her in any other way shall be punished ….from eight to twenty years imprisonment. "Placement or maintenance in a position of slavery occurs when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty; or when money is promised, payments are made or other kinds of benefits are promised to those who are responsible for the person in question."

Pursuant to article 602 of the penal code, purchasing and selling enslaved individuals is punished from eight to twenty years imprisonment.

Pursuant to a new legislation that was passed by on 13 March 2014, implementing the 2011/36 EU Directive, enslavement includes forcing the victims the perpetration of illicit acts and imposing them to have their organs removed

Art.601 of the penal code: trafficking of Human beings: *"(Trafficking in human beings). – Whoever carries out trafficking in persons who are in the conditions referred to in article 600, that is, with a view to perpetrating the crimes referred to in the first paragraph of said article; or whoever leads any of the aforesaid persons through deceit or obliges such person by making use of violence, threats, or abuse of power; by taking advantage of a situation of physical or mental inferiority, and poverty; or by promising money or making payments or granting other kinds of benefits to those who are responsible for the person in question, to enter the national territory, stay, leave it or migrate to said territory, shall be punished with imprisonment from eight to twenty years."*

Pursuant to the new legislation that was passed by on 13 March 2014, Trafficking of human beings (hereinafter t.h.b.) includes the recruitment, facilitation of the illegal entry in the National territory, transfer outside the National territory, the sale of persons *who are in the conditions referred to in article 600*, and/or the perpetration of the same above mentioned misconduct by making *use of violence, threat, deceit, or abuse of power; or the taking advantage of a situation of physical or mental inferiority and poverty*, in order to induce of force or lead the victims to forced labor, begging, prostitution, perpetration of illicit acts, or subject the victim to the illegal removal of organs. The new legislation includes new misconduct (forcing the victims to commit crimes and have their organs removed, taking advantage of the position of vulnerability of victims[3]).

[3] Pursuant to the 2011/36 EU Directive, a position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved

The trafficking of children is often prosecuted under articles 600 bis of the Criminal Code (child prostitution), 600 ter (child pornography) and 600 quarter (possession of pornographic material), as well as under Law No. 228/2003. Penalties are increased by between one third and one half when victims are minors, destined for prostitution or intended for organ-harvesting.

More recently, a new crime relating to the exploitation of minors for forced begging has been introduced by Law No. 94/2009; the offence had previously been treated as a misdemeanour. Not only are those who make use of minors (aged 14 and under) in begging or allow them to beg punished, but also those who allow someone else to exploit minors under their authority or entrusted to their custody or guardianship for that purpose.
Victims of t.h.b. are now eligible to have access a special fund to get compensated as well as they may have access to special financial, psychological and medical assistance, irrespective of their willingness to cooperate with law enforcement agencies.

Pursuant to the most relevant national Case law, elements of the crime of enslavement are:

-the illegal exercise of property on an individual,

-the illegal purpose to exploit that property through forced labour, begging, prostitution.

This illegal aim had been deemed by the Supreme Court as the main difference between the crime of enslavement and any other illegal deprivation of the personal freedom.

Even before the official implementation of the 2011/356 EU Directive, vulnerability of victims was deemed by the Italian case law as one of the elements of the crime of T.H.B.

Pursuant to the Italian case law, the vulnerability of victims in these cases is any serious physical, moral or financial weakness that might jeopardize the victims' free will. All the times the free will of the alleged victim is not seriously jeopardized the crimes of enslavement and t.h.b. do not occur.

The inducement of juvenile victims to move to another country with the perspective to be legally employed, the deprivation of their passports, the threat to them they would have been killed and/or mutilated if they had not perpetrated thefts have been deemed by the National Courts as the elements of the crimes of t.h.b. and enslavement.

The previous enslavement is not deemed as a necessary prerequisite of the crime of T.H.B.

Pursuant to the National case law, t.h.b. may be committed by leading an individual to Italy through deceit, by taking advantage of his/her situation of physical or mental inferiority, and poverty; or by promising money or making payments or granting other kinds of benefits in order to enslave the victim once the victim has reached the National soil. Advertising on local media the perspective to find legal and properly remunerated jobs in Italy and inducing victims to move to Italy where they were forcedly transferred to various destinations and induced to forced labors and enslaved has been deemed as t.h.b.

The law thus provides severe penalties for trafficking-related offences. However, conviction rates are very low. According to the Ministry of Justice, Italy currently counts 154 persons convicted of the offence of trafficking, of whom 70 were given sentences ranging from 5 to 10 years, and 45

sentences ranging from 10 to 40 years

Pursuant to the U.E. Council Decision 2015/972, Italy is involved in the military operations named EUNAVFOR MED and Frontex. These operation are aimed at detecting and suppressing smuggling of migrants and entitle law enforcement agencies to destroy the shipyards of the traffickers

THE INVESTIGATIONS AND PROSECUTION OF THB CASES LEAD BY DIREZIONI DISTRETTUALI ANTIMAFIA

Trafficking of human beings cases are deemed as serious crimes and are, as well as many other organized crime cases, investigated, prosecuted and tried by twenty seven district independent prosecution offices (hereinafter Direzioni Distrettuali Antimafia) and by independent judges. There are no centralized Police and/or Judicial Authorities investigating, prosecuting and trying trafficking of human beings cases.

One centralized Authority, Direzione Nazionale Antimafia, placed in Roma, is responsible to coordinate the investigations of the twenty seven District Public Prosecution Offices (Direzioni Distrettuali Antimafia). This coordination is finalized to disseminate relevant information on the organized crime dynamics among the district Prosecution Offices and harmonize the investigation strategies if investigations involve two or more District Public Prosecution Offices (Direzioni Distrettuali Antimafia) at the same time.
Quite recently, Direzione nazionale Antimafia issued guidelines to be followed by Direzioni Distrettuali Antimafia, when investigating cases against criminal groups aimed at smuggling migrants. These guidelines included:
- a number of indicators/indicia that may lead to find the existence of criminal groups smuggling migrants;
- specific indications on the duty of all Prosecution Offices involved in the investigation on smuggling of migrants cases to disseminate and store in a national database any relevant information on the investigation. This information is subject to be communicated to International Institutions such as Europol and Eurojust;
- the close cooperation between law enforcement agencies and navy forces, in cases of smuggling of migrants by sea;
- a number of rules to be followed pursuant to the national law and the international binding instruments ratified by Italy (including but not being restricted to the pursuit of the ship, the search/forfeiture of the ship, the arrest of the crew members), when one or more ships sailing in International or domestic waters are under suspicion to be involved in smuggling of migrants.

Article 51 paragraph 3 bis of the criminal procedural code lists the serious crimes falling within the jurisdiction of the District Public Prosecution Offices- Direzioni Distrettuali Antimafia-such as crimes committed by so called mafia criminal organizations. Enslavement and trafficking of human beings are included in this list, as well as the crime of membership to a criminal group aiming at enslaving and trafficking of human beings and as well as the crime of membership to a criminal group aiming at smuggling migrants and facilitating the illegal entry of individuals in the national territory.

It must be taken into account that the smuggling of migrants/facilitation of the illegal entry of individuals in the national territory falls within the jurisdiction of Direzioni Distrettuali Antimafia only when it is perpetrated within the scope of a criminal group.

The procedural rules that are enforced in the T.H.B. cases are thus similar to those provided for

organized crime cases.

Enslavement, THB, organized smuggling of migrants can thus be investigated and prosecuted with the same tools and strategies as well as mafia cases. In some cases, criminal groups smuggling migrants have been considered and sentenced as mafia groups since they adopted criminal strategies similar to those adopted by mafia organizations (systematic dissemination of terror within the members of a specific community and within a specific area; the use of terror and intimidation to achieve the control and monopolization of certain financial activities).

In the national legislation smuggling of migrants, facilitation of the illegal entry in The Country and t.h.b are different crimes. Only the last falls within the jurisdiction of Direzioni Distrettuali Antimafia. It cannot be ignored however that membership to criminal groups aiming at perpetrating t.h.b. or smuggling of migrants and(or facilitating the illegal entry in the Country falls within the jurisdiction of Direzioni Distrettuali Antimafia.

Smuggling of migrants, facilitation of the illegal entry in The Country may be deemed as some of the elements of the crime of T.H.B.

However, the differences between illegal migrants and trafficked persons are often difficult to be detected. Trafficking in persons and smuggling of migrants often follow the same criminal dynamics. Smuggling and trafficking are often perpetrated by the same individuals and criminal groups. Moreover, an illegal migrant often becomes the victim of t.h.b.after he/she leaves the own country and once he/she reaches the national soil.

Investigations are led by independent prosecutors. Intrusive investigation techniques (such as electronic surveillance) must be ordered (and adequately reasoned) by an independent Court, as well as any arrest warrant. Arrest warrants, at the request of the accused, may be reviewed by an independent chamber (different than the Court that issued the warrant) and by the Supreme Court.

Witnesses need to be examined and cross examined by both parties before the Court. Anonymous testimony is neither contemplated nor allowed.

Victims, cooperating witnesses and collaborators of justice are provided, if deemed necessary for their security, with procedural and non procedural protection measures, but they cannot testify anonymously, since their credibility must be fully verified by both parties and by the Court.

Direzione Nazionale Antimafia maintains a database of information on trafficking crimes, cases under investigation and victim profiles for trafficking-related offences, in accordance with articles 600, 601 and 602 of the Criminal Code. Between 2009 and 2013, a total of 2,127[4] individuals were identified as having been victims of offences listed under the above-mentioned articles of the Criminal Code. However, recently, there has been a significant decrease in the number of trafficking cases investigated in Italy. According to DNA statistics, between 2009 and 2013, the number of investigations decreased by 54 per cent, reflecting the 84 per cent drop in the number of victims identified by DNA. Over that five-year period, the number of child victims identified decreased by 89 per cent, while the number of adult victims identified dropped by 83 per cent. Between 2009 and 2013, victims from 21 countries were identified, including Italy.

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Trafficking and smuggling are often cross-cutting and are often tied with other criminal dynamics. Such as terrorism and crimes against humanity. Smuggling of migrants and thb finance terrorist groups, as well as a number of smuggled and/or trafficked persons can also be victims of crimes against humanity perpetrated in their respective source Countries. These ties with terrorism and crimes against humanity need to be explored and investigated bey national law enforcement agencies.

LIABILITY OF LEGAL ENTITIES

Crimes of enslavement and t.h.b. are legislated as predicate offenses for the liability of legal entities. Investigations and prosecutions have so far targeted individuals

THE SPECIAL INVESTIGATION TECHNIQUES

All the special investigation techniques (techniques applied by the competent authorities in the context of criminal investigations for the purpose of detecting and investigating serious crimes and suspects, aiming at gathering information in such a way as not to alert the target persons) applicable to investigate and prosecute mafia and organized crime cases may be enforced in enslavement and T.H.B. cases, also with the purpose to seize and confiscate the proceeds of these crimes or property of the perpetrators having the corresponding value of the proceeds of these crimes.

a) UNDERCOVER OPERATIONS

A new legislation was recently passed by the Parliament (136/2010 Act).

The new legislation provides the possibility to run undercover operations within the criminal cases on a restricted number of serious crimes, including enslavement, t.h.b., smuggling of migrants. Not only police officers but also informants and/or individuals cooperating with police forces, in their position of double agents, may act in the position of undercover agents.

When investigating on the above mentioned offences, undercover agents (police officers and/or informants and/or individuals cooperating with police forces in their position of double agents) cannot be prosecuted if, in order to collect relevant evidence, they deal with illegal transactions concerning drug and/or money and/or weapons and/or forged documents or if they give assistance to the members of criminal groups. The transactions being granted immunity are confined to purchasing, obtaining, replacing, hiding, laundering money, weapons, documents, drugs or any other proceed of crime. No other misconduct is granted immunity.

Pursuant to the national case law, any infringement of this regulation is an inexcusable offence. The undercover agent has in fact the duty to inform oneself about the extension of the own powers. In case such an offence is committed, the undercover agent cannot be granted mitigating circumstances.

Pursuant to the case law, the undercover agent can never instigate the perpetration of any crime, including those transactions that are granted immunity.

In court they testify as witnesses about their undercover operations. In their position of witnesses, they can testify even on the self incriminating statements that they secretly obtained by the suspect. In case of testimony, undercover agents are granted protection measures (such as voice or face distortion) but they can never testify anonymously or avoid to be examined in chief and cross examined.

It might happen that undercover agents collect evidence on other crimes not included in the number of misconduct that can be investigated through undercover operations. The current case law states that the outcomes of the undercover investigations that have been regularly and legitimately authorized might be used as valid evidence in other proceedings, related to crimes that cannot in principle be investigated through undercover operations.

b) THE ROLE OF THE JUDICIARY IN THE UNDERCOVER OPERATIONS IN ITALY

Public prosecution and the Courts have a limited role in the undercover operations
Undercover investigations may be ordered only by a restricted number of law enforcement agencies (Judiciary are not included) and dealt with by police forces (Intelligence Agencies officers are not entitled to take part to undercover operations in criminal cases). Public Prosecutor must be only informed of the order to set up an undercover operation and if he/she so requests, of the name of those running undercover operations. The prosecutor must also be informed of the outcomes of the undercover operations
Provisions on Simulated [business] deals are not contemplated in the Italian procedural rules.
No order issued by the judge or the Public prosecutor is contemplated as a necessary prerequisite for undercover operations
Pursuant to the current law, the Public Prosecutor cannot forbid the police forces to run legal undercover operations. This can be deemed as a lacuna in the current system. In fact, pursuant to the current procedural rules, the public prosecutor has the power to issue directives to police forces and coordinate investigations. Undercover agents (police officers or other individuals) may in any case be subject to electronic surveillance, so that their actions and their contacts with the suspects are monitored.

Investigation techniques, such as the use of undercover agents and controlled deliveries are not mentioned in the directive 2011/36, as well as in other international Instruments, even though they are in principle admissible in the investigation of t.h.b., smuggling of migrants and enslavement. As far as it is has been ascertained, these investigation techniques are not triggered by national law enforcement agencies in the investigations on t.h.b., since i*n* cases of trafficking, the commodity to be delivered under controlled conditions consists of vulnerable human beings who, in case of controlled delivery operations may have their lives endangered and/or go on being physically and sexually abused in addition to being exploited. Moreover, we should wonder whether police officers acting as undercover agents have the obligation to act and reveal their identity if victims are abused and mistreated in their presence[5] or they have to remain passive if any reaction might jeopardize the success of the investigation. Undercover operations with former victims acting as undercover agents might imply a serious risk for their lives and security.

c) ELECTRONIC SURVEILLANCE

Surveillance is the collection and analysis of information about persons or organizations without being detected. Most surveillance has physical and electronic aspects, and is preceded by reconnaissance, and not infrequently, by surreptitious entry (to plant a monitoring device). Surveillance can be a valuable and essential tool in combating a wide range of sophisticated criminal activities, including offenses such as enslavement smuggling of migrants and t.h.b.

[5] female police officers would actually have to engage in sex work to be convincing as prostitutes (and might be subjected to violence), while male officers would in most countries actually have to have sex with prostitutes if trying to investigate and charge those suspected of trafficking for sexual exploitation.

Pursuant to the domestic legislation, the surveillance of communication and its duration are legislated and always under judicial control.
The Italian legislation provides (on a specific warrant issued by an independent judge, at a request filed by an independent public Prosecutor) the interception of telephone, sms, e mail computer systems or face to face communications among individuals for a range of time of 15 days (40 days in organized crime and terrorism cases). This range of time can be renewed, pursuant to a reasoned order issued by an independent judge, every 15 days (20 days in organized crime and terrorism cases). The communications intercepted can be used as evidence to submit the Court a motion requesting an arrest warrant and as evidence to be tendered in Court.

d) PREREQUISITES

The prerequisites for the issue of an order are the following:
The collection of relevant indicia (not evidence) that a crime has been perpetrated (also if the perpetrators have not been identified). The attempt to commit a crime is an offence pursuant the national law. Anonymous information cannot be deemed as indicia entitling a judge to issue an order;
The perpetrated crime must be serious;
No other investigative technique is viable;
Electronic surveillance is thus subject to the principles of:
Necessity: the use of electronic evidence gathering is necessary to gather the evidence or information required.
• *Subsidiarity:* other less intrusive forms of inquiry or investigation are not sufficient to gather the confidentiality: that there are mechanisms in place to protect the confidentiality of the information obtained, including the privacy of third parties not the subject of the authorization or warrant.
• *Judicial control and review:* the process of evidence gathering is overseen by a judge or independent other of a certain requisite and specified level of authority.
• *Proportionality:* the intrusion into privacy is proportionate to the seriousness of the suspected offence and the evidence it is anticipated will be obtained.
The communications between the suspects and the defence counsels cannot be intercepted.
Not only the suspect but also victims or witnesses may be subject to electronic surveillance and an order can be therefore issued also in order to identify the perpetrators of a crime falling within the law provisions.

e) USE OF THE EVIDENCE COLLECTED THROUGH LEGITIMATE ELECTRONIC SURVEILLANCE

The telephone and face to face conversations that have been intercepted during investigations (only police forces can carry on these operations, under judicial control and review, and within the premises of Prosecution Offices. Only computers and e mail communication interceptions can be carried on with private equipments, pursuant to a reasoned order issued by an independent judge who must decide whether there are the prerequisites-serious indicia, and the necessity to proceed to electronic surveillance) must be disclosed to the defence.

Defence and Prosecution offices may submit to the Court a reasoned list of communications that have been tapped that are deemed relevant for the own case; The Court issues a reasoned order on the number of intercepted conversations that are deemed relevant foe the case and must be therefore transcribed.

Taped conversations must be transcribed and if necessary translated by independent experts

appointed by the Court
After being transcribed, taped conversations can be used as evidence in Court. The biggest part of electronic surveillance operations in the Country is run within criminal proceedings, pursuant to an order issued by the judge.

The conversations that are not deemed relevant for the prosecution and defence case must be destroyed

f) VIDEO SURVEILLANCE IN PRIVATE AND PUBLIC PREMISES

Despite the Italian domestic legislation does not provide it, pursuant to the case law, video surveillance can be run in private premises under a specific reasoned order by the judge. Video surveillance can be carried on also in **public premises and, in this case,** pursuant to the case law, it is not subject to an order issued by the judge. Electronic surveillance in public premises is an operation that can be carried on by police forces (that usually act pursuant an order issued by the Public Prosecutor). The outcome of video surveillance in public premises is deemed as a document which can be tendered as evidence to the Court.

g) ELECTRONIC SURVEILLANCE TO PREVENT THE PERPETRATION OF SERIOUS CRIMES (INCLUDING ENSLAVEMENT, SMUGGLING OF MIGRANTS AND T.H.B.)

Law Enforcement agencies may run electronic surveillance in order to prevent the perpetration of organized crime offences. In these cases, an order issued by the Piublic Prosecutor (not by the judge) is necessary

These operations have completely different aims of those equivalent run by police forces within criminal investigations, since they are aimed at preventing (not at investigating) serious crimes. During investigations or in criminal proceedings, no use can be made in Court of the outcomes of the electronic surveillance carried on, pursuant the order issued by the Public Prosecutor, nobody can be subjected to an arrest warrant on the basis of the outcomes of these intercepts and they can be therefore used only for intelligence purposes. The results of these operations can be used only to prevent the perpetration of serious crimes and can just be a starting point of a criminal investigation.
It must be highlighted, however, that the biggest number of intercepts in the Country are carried on pursuant to an order issued by the judge and are thus supervised by an independent Authority.

COOPERATING WITNESSES AND COLLABORATORS OF JUSTICE IN T.H.B. CASES

Investigations on enslavement, t.h.b. and smuggling of migrants (as well as investigations on mafia cases) take advantage also from the contribution provided with by people being involved in these crimes. Among them two categories may be identified:

Witnesses (including victims) and collaborators of justice;

Some systems and law enforcement agencies know one big comprehensive category of witnesses. Other systems such as the Italian one and International Institutions such as the Council of Europe (CoE) make a distinction between those who are able to provide for relevant information and give relevant evidence in the proceedings in their position (for example) of victims and/or eye witnesses and those who can provide such information/evidence in their position of co

perpetrators/accomplices of the investigated crimes and/or in their position of members of a criminal group. Pursuant to the various systems, the latter witnesses are therefore identified as "assisted witnesses", or "cooperating witnesses" or "collaborators of justice[6]". Cooperating co perpetrators will be hereinafter called "collaborators of justice".

According to this distinction, "witness can be any person, including victims, who possesses information relevant to criminal proceedings about which he/she has given and/or is able to give testimony (irrespective of his/her status under national law and irrespective of the direct or indirect, oral or written form of the testimony), who is not included in the definition of "collaborator of justice"). "Collaborator of justice" can be any person who faces criminal charges, or has been convicted of having taken part in an association of criminals or other criminal organization of any kind, or in organized crime offences, but agrees to co-operate with criminal justice authorities, particularly by giving information or testimony about the criminal association or organization or any offence connected with organized crime or other serious crimes). This distinction has different impacts on the procedural rules.

Looking at witnesses, there are various reasons to decide to cooperate. In case of victims, one of these reasons might be the expectation that those responsible of the crimes committed against the victim are brought o justice and the expectation of a financial compensation.

As far as collaborators of justice are concerned, that is alleged criminals facing criminal charges or imprisonment sentences, they usually decide to cooperate in order to have their (long term) jail sentences mitigated or to get protection from a rival criminal group their own group is fighting with.

According to the domestic experiences, in recent years not many people facing charges for enslavement, t.h.b. and smuggling of migrants decided to cooperate with justice. Some of them decided to cooperate since they were caught while committing serious crimes; they expected to be subject to such severe punishment and wanted to be recognized as eligible for mitigating circumstances and/or mitigated punishment. Others, mainly foreign perpetrators, decided to cooperate in order to be eligible for a residential status (such as a permit of stay), for protective measures and in order to avoid to be expelled/deported to their home countries where they would have been (allegedly) subject to inhumane treatments.

A great contribution the conduct effective and successful cases on enslavement, t.h.b. and smuggling of migrants cases can be given by witnesses who decide to co-operate with justice and collaborators of justice.

The issues raised in this presentation are mainly focused on "collaborators of justice".

Looking at witnesses and co-operators of justice, co-operation can be solicited and encouraged only if persons who can provide useful information and testify in court and persons close to them are ensured adequate protection and support.

a) THE ELIGIBILITY FOR THE ADMISSION TO PROTECTIVE MEASURES

ASSESSMENT OF THE CREDIBILITY AND OF THE SUBSEQUENT RISKS

[6] Re: collaborators of justice see Council of Europe Recommendation Rec(2005)9 of the Committee of Ministers to member States on the protection of witnesses and collaborators of justice.

Strict criteria of admissibility to the protective measures are set up by the national legislation

Witnesses/Collaborators of justice are expected to give information on serious crimes (in this case the definition of serious crime in the UN Convention for the suppression of organized transnational crime should be taken into account and crimes of enslavement, smuggling of migrants, t.h.b can be included among the serious crimes).

They are expected to provide the law enforcement agencies with all the information they have within a reasonable time, in order to let the relevant authorities:

- assess timely the relevance and credibility of that information;
- assess timely the risk of intimidation/retaliation the witness/collaborator of justice may be subject to;
- identify the proper protective measures the witness/collaborator of justice and persons close to them may be eligible for.

Usually, law enforcement agencies deal with the assessment of the credibility/the relevance of the information and with the assessment of the risk to intimidation/retaliation.

Other agencies (usually governmental agencies that are not involved in the investigations) deal with the identification of the proper protective measures.

The assessment of the credibility of witnesses/collaborators of justice usually requires double checks. Law enforcement agencies need to collect pieces of evidence that corroborate the information given by the witness/collaborators of justice.

Usually, crime perpetrators and members of criminal groups who decide to cooperate with justice are deemed less credible that victims/eye witnesses.

The assessment of the credibility of the formers thus requires more demanding criteria such as:

- a timely guilty plea and/or spontaneous and detailed confession and acknowledgement of the crimes they committed;

- the supply of relevant information on their assets and proceeds derived from the perpetration of the crimes or being/having been used for the perpetration of crimes that can be forfeited/confiscated and on the assets and proceeds of the other members of the criminal group they belonged to;

- the supply of accurate and up-to-date information about the criminal organizations and the crimes perpetrated by their members;

- the supply of accurate and up-to-date information that would enable law enforcement and other relevant agencies to prevent criminal groups from committing further crimes.

When assessing the credibility and relevance of the contribution provided with by a collaborator of justice, the relevant Authorities need to consider that particularly relevant can be deemed the information/testimony, related to a serious offence:

- that is necessary (e.g. if it is the only source of evidence) to start an investigation or to

prevent a crime from being committed;

- that is credible (genuine and spontaneous);
- that is the crucial evidence available in order to prosecute a specific serious offence;
- that is needed to corroborate other evidence in order to successfully prosecute a specific serious offence;
- that is needed to challenge other evidence favorable to the accused (if the latter is considered mendacious);
- that is crucial in order to dismantle a criminal organization and detect the proceeds derived from the perpetration of crimes;
- that, despite other evidence available, is going to be subject to bribery or intimidation.

The evidence to be given by the witness/collaborators of justice must therefore be crucial, decisive and critical to the case. In other words, the law enforcement agencies could not reasonably take the matter before the courts without the evidence of the witness believed to be at risk.

The assessment of the credibility of the witness/collaborator of justice is therefore relevant for the success of the case in Court and the adoption of protective measures.

b) CORROBORATION OF THE STATEMENTS OF COLLABORATORS OF JUSTICE

One of the issues mainly related to the credibility of the collaborator of justice is the identification of the piece of evidence/information to be deemed as corroborant and confirmative of the information/testimony of the collaborator of justice.

Pursuant to the Italian case law, a collaborator of justice may be deemed credible (and accordingly eligible fort protective measures) and his/her testimony may lead to a successful prosecution case in Court, in principle, also when the allegations/testimony of a collaborator of justice are corroborated and supported by the allegations of other collaborators of justice.

When agreeing to this theory, the domestic Courts stated that all the collaborators that give evidence in the same case must however be found credible by the relevant Court. The prerequisite of this conclusion is that all the concerned collaborators of justice must be found having been subject to no interference/manipulation (reciprocal or by third persons such as investigators) before they testified.

This leads to the conclusion that it must be recommended that collaborators of justice being members of the same criminal group and testifying in the same case are kept separated as soon as they decide to cooperate with justice and before their testimony, do not talk each other about their statements/testimonies, so that they are not subject to any pressure, interference, influence.

One of the recommendations that may be retrieved from the national case law (the judges of District Courts and of the Supreme Court are very accurate and demanding when they have to find whether a collaborator of justice is credible or not) is that in the assessment of the credibility of the collaborator of justice it is necessary to investigate the reasons of his/her decision to cooperate with justice and to make allegations against his/her co perpetrators. It is advisable that these investigations and assessments are carried on at a preliminary stage, in order to avoid that previous conflicts between the collaborator of justice and his/her co perpetrators (that might have interfered with his/her decision to cooperate and lead the collaborator of

justice to make mendacious allegations) might come out in Court during cross examination by the defense and therefore undermine the credibility of his/her testimony before the Court.

It is legislated that staff dealing with the implementation of protective measures should not be involved either in the investigation or in the preparation of the case where the witness/collaborator of justice is to give evidence.

This will preserve the confidentiality of all operations related to the protection of witnesses, effectively stop any criminal effort to trace the protected persons, avoid any interference or influence in the statements and testimony the collaborator of justice and the witness are to give before the investigators, the prosecutor or the judges.

The other piece of evidence that the Courts would deem reliable and confirming the allegation of a collaborator of justice are the statements of victims; the outcomes of searches, electronic surveillance, undercover operations, etc.

c) HEARSAY

Another issue is the credibility of a witness/collaborator of justice when his/her relevant testimony/information is hearsay. Hearsay is deemed by the Italian case law as circumstantial evidence and needs in any case further corroboration. The domestic case law is usually quite demanding. In case of hearsay, credibility must be assessed non only regarding the witness/collaborator of justice, but also on the source of the information given by the witness/collaborator of justice. The source of the witness/collaborator of justice needs accordingly

- to be identified,
- to be interviewed by investigators and
- To be called to testify in Court.

d) RECORDING THE STATEMENTS OF WITNESSES/COLLABORATORS OF JUSTICE

LEGAL ASSISTANCE

The statements of witnesses/collaborators of justice need to be recorded. Looking at the previous definition of collaborators of justice, they need to be assisted by a defense counsel when they are interrogated by law enforcement agencies or testify in Court.

Sometimes witnesses and/or collaborators of justice may refuse/be reluctant to testify in Court or to be interviewed/interrogated by investigators on specific crimes/circumstances.

The refusal/reluctance to give statements and/or testify may have an impact n the assessment of the credibility of the witness/collaborator of justice and on his/her eligibility for the admission to and/or the preservation of protective measures.

It must be wondered whether investigators, while informally talking "off the record" with witnesses/collaborators of justice who refuse to have their statements officially recorded, can tape what witnesses/collaborators of justice say (the witness/collaborator of justice being unaware of being taped) and tender the tape as evidence in Court.

A general rule having been assessed by the Supreme Court is that in case of consensual

wiretapping (when one of the speaker provides himself with a taping machine), no order by the judge is necessary. That wiretapping will be deemed as a document by the judge and acquired to his/her file, at the request of one of the parties. This rule does not apply if the speaker taping is an investigator.

Pursuant to the Italian case law,
- if the investigators taped the statements of a witness, the tape can be tendered as evidence to the Court only if the taping was ordered by the Court;
- if the taping was not ordered by the judge, it can be tendered as evidence to the Court only if the other speaker (the reluctant witness) was conscious of being taped and accepted it.

The taping of the statements of a collaborator of justice cannot in any case be tendered as evidence in Court, since it is deemed an infringement of his/her rights of defense.

The infringement of these rules might jeopardize the process of assessment of credibility of the collaborator of justice.

Investigators being entitled to deal with organized crime cases (including enslavement, thb and smuggling of migrants cases) may have informal conversation with alleged mebers of criminal organizations being confined in detention facilities (not being assisted by their defense counsels) in order to collect relevant information aimed at preventing the perpetration of
criminal acts. All the information collected cannot be in any case be used in Court. That information, if relevant, pursuant to the Italian case law, may be deemed as a starting point for a new investigation.

e) RISK ASSESSMENT

Special protective measures must be adopted when there are concrete, objective indications (different from personal and subjective concerns) that the testimony will subject the witness/collaborator of justice or their immediate family or associates to serious and sustained retaliation and harm and any ordinary measure looks inadequate, due to the relevance of the testimony and the seriousness of the offence they can give testimony and/or information about.

The more the information is relevant according to the afore-mentioned criteria, the more these measures should make sure that the witness/collaborator of justice and the people related to them are not subject to any threat, intimidation, retaliation, harm or bribery aimed at preventing him/her from giving testimony.

The aim of these measures is to make sure that evidence is given in court by a fully protected witness/collaborator of justice and to ensure that this person is not thereafter harmed on account of his/her testimony.

f) PRINCIPLES RULING THE ADOPTION OF PROTECTIVE MEASURES

F1) WILLINGNESS

The witness/collaborator of justice should voluntarily accept to be protected. The principle implies also that the protective measures can also be revoked at the specific request of the witness/collaborator of justice.

Willingness implies the informed consent of the witness/collaborator of justice to the rules of security he/she has to respect and the extent of the limitations for him/her that follow from the adoption of protection measures.

Willingness is important because the witness/collaborator of justice must not only comply with but also voluntarily support all means taken to ensure his/her safety and prevent danger to personal life and limb of him/herself, as well as to the overall programme, which also has the responsibility to safely protect other witnesses, past and future. These means will include voluntary restrictions on his/her right to publish witness-protection related matters or speak about them with other persons or the media.

F2) SUITABILITY

Suitability refers to the psychological, social and medical condition of the person to be protected.

The criteria of seriousness of the danger, willingness and suitability should also be applied to people related to the witness/collaborator of justice to make them eligible for protective measures.

F3) APPLICABILITY OF THE PRINCIPLES OF SUBSIDIARITY, PROPORTIONALITY AND EQUALITY

Since the adoption and implementation of special protective measures implies a considerable amount of human and economic resources, the decision to adopt protective measures is subject to the respect of the principles of subsidiarity and proportionality.

According to the principle of subsidiarity, protective measures can only be adopted when the testimony meets the above mentioned standards regarding the relevance of the testimony and there is no other evidence available that can be deemed sufficient to establish a successful case related to an enslavement, t.h.b. and smuggling of migrants offence.

The principle of proportionality is the evaluation and the comparison of the relevance of the testimony of the witness/collaborator of justice together with:

- the seriousness of the threats and dangers (not to be confused with the personal and subjective concerns) to the witness/collaborator of justice;
- the protective measures that must consequently be taken; and
- the aim of the protection to be adopted.

There must therefore be a rational connection between the measures adopted and the objective of these measures.

The number and the type of protective measures to be taken is the product of the

aforementioned evaluation and comparison. Special protective measures shall be adopted only if any other measures are not deemed sufficient to protect the witness/collaborator of justice and his/her immediate family members and associates.

As the adoption of special protective measures implies a restriction of the freedom and the privacy of the protected person, the principles of subsidiarity and proportionality might help identify the boundaries of these restrictions.

In fact, the underlying objectives of the measures that would limit rights should be pressing and substantial.

The following should also be required:

- a rational connection between the measures adopted and the objective of these measures;
- a minimal impairment of the rights and freedoms in question;
- proportionality between the effects of the measures and the objective that has been identified

(see Supreme Court of Canada, *R.v. Oakes (1986)* 1 S.C.R. 103.

F4) EQUALITY

Another principle should inspire the adoption of the special protective measures: equality.

Witnesses/collaborators of justice giving testimony of equivalent relevance in equivalent cases on serious crimes and being subject to equivalent threats and dangers should be entitled to equivalent protective measures and therefore to comparable treatment.

The adoption of different, unjustifiable treatments (e.g. in the case of two collaborators of justice giving evidence against the same criminal organization) might make some witnesses and collaborators of justice and people related to them more vulnerable than others facing the same threats.

This principle is better implemented if the type of protective measures and the procedures for their adoption, modification or revocation is provided for by a legal basis.

The principle of equality would be more easily implemented if they were provided by a sole agency operating at the national level.

F5) INSTITUTIONS INVOLVED

In almost all countries the institutions involved in the protection of witnesses and collaborators of justice are police and other ministry of the interior forces, prosecutors' offices, courts and penitentiary institutions. Usually, prosecution offices and police forces (that can better appreciate the relevance of the contribution and the seriousness of the danger to which the witnesses might be exposed) are entitled to assess the credibility of the witness/collaborator of justice, the subsequent risks and recommend the adoption of protective measures.

Other (usually governmental) Institutions or special commissions and/or agencies are competent to issue decisions on the adoption, modification or revocation of the protective measures.

Prosecution authorities may deal with witness protection issues when negotiating agreements for a person to give testimony (such as testimony provided by a former accomplice of an accused person that may trigger such a person's entry into a witness protection programme).

Non-police government departments and agencies play a role by facilitating the obtaining of new documentation for persons who undergo changes of identity.

F6) PROTECTIVE MEASURES: DISTINCTION BETWEEN PROCEDURAL MEASURES AND NON PROCEDURAL MEASURES

Witnesses/collaborators of justice protection represents a process in which those who testify in criminal trials are provided with specific procedural and non-procedural measures aimed at effectively ensuring their safety before, during and after their testimony.

The procedural protection measures are directly related to the testimony of the witness and are designed to ensure the physical and psychological integrity of the witness and consequently, safe circumstances for a relevant statement. Having as final purpose obtaining relevant pieces of evidence by the judicial authorities, the procedural measures are taken during the investigation (prosecution) stage of the criminal proceedings and also during the actual trial before the court

F7) PROCEDURAL MEASURES

Procedural protective measures can be defined, in a broad sense, as all the measures which operate within the scope of criminal procedure and which affect its rules.

Protection for witnesses can be provided at any stage of criminal proceedings. It is decided pursuant to the decision of the judge which can be issued ex officio, or at the request of the prosecutor and/or investigating police forces.

With reference to legal assistance, most of the systems ensure legal representation for the victims and collaborators of justice. In some systems, the expenses related to legal assistance are covered by the State if the witness/collaborator of justice being subject to protective measures cannot afford them.

Pursuant to the Italian case law, the cooperation with justice does not in itself entitle collaborators of justice to have a defence counsel paid and financed by the State. Legal assistance will be provided and financially supported by the Government only if it is proved that the collaborator of Justice and/or the victim seeking financial compensation cannot afford to be legally assisted

Several national legislation provide that courts can allow witnesses/collaborators of justice to testify behind a curtain, with voice and/or face distortion, in closed session, by video conference and by telephone-conference. In some cases, courts can exclude the accused and/or the public from the courtroom, especially when witnesses and collaborators of justice during testimony have been intimidated, threatened in the courtroom.

F8) PROBLEMS RAISED BY THE HEARING OF WITNESSES/COLLABORATORS OF

JUSTICE BY VIDEOCONFERENCE

THE IMPACT OF VIDEOCONFERENCING ON THE QUALITY OF JUSTICE

A careful evaluation of the impact of hearing witnesses by videoconference on the quality of justice is required.

The most important facility brought by videoconferencing is that it makes it possible for judges and counsels to interact in a live and direct manner with witnesses/collaborators of Justice as if the they were in the actual courtroom.

Consequently, a hearing via videoconference can be successfully used when a witness is located outside the court's jurisdiction and it would be too burdensome, financially or physically, to transport the witness to the courtroom in order to obtain the testimony in question.

The advantages of videoconferencing are even more evident when witnesses/collaborators of justice are being held in custody or are executing a jail sentence.

Such advantages are among others, the reduction of escape risk and enhanced courtroom safety, reduction in custodial transport personnel[9].

This protective measure also raises certain questions and challenges concerning its appropriate use.

F9) ISSUES RELATED TO VIDEOCONFERENCE AND TO THE EXAMINATION IN CHIEF AND CROSS EXAMINATIONS OF VICTIMS/COLLABORATORS OF JUSTICE

One of the challenges of using videoconferences in this area is ensuring that the examination of the witness/collaborator of justice by video conference state follows, as closely as possible, the practice adopted for a witness as if he/she were present in the courtroom.

These issues raise when the witness/collaborator of justice testifying by video conference is requested to identify persons (such as the accused) or objects or in the courtroom or authenticate documents.
In order to reach this goal several demands must be met.

Firstly, the participants must be provided with an accurate picture of what is happening in the place where the witness/collaborator of justice is placed.
Secondly, the audiovisual equipment must be highly reliable and safeguarded against loss, intrusion or any unlawful form of processing.

Finally, eye contact must be imitated as far as possible during the hearing.

Videoconferencing also poses the challenge of the principle of fair trial. This challenge does not only emerge from the practical limitations of videoconferencing but also from its possible effects on the behavior and perceptions of the witness/collaborator of justice, defendant, judge, and other courtroom participants.

Therefore, the technology at hand should be used in such a way to ensure that the quality of the criminal proceedings is not affected and all the rights of the accused person are respected.

Any disruption of the link with the place where the fitness/collaborator of justice requires of course an adjournment by the Court

Nevertheless, the use of videoconference in hearing witnesses/collaborators of justice brings forth certain issues concerning both the person that is to testify and the accused person and also the way in which the criminal proceedings, as a whole, are affected.

If a collaborator of justice has to testify, he must be properly assisted and has the right to communicate with the own defense counsel when it is deemed necessary. The same rule must be applied to the testifying victim, if he/she is assisted by a defense counsel and to the accused. This leads to the issue whether the defense counsel must sit in the courtroom or close to the victim/collaborator of justice

Video conference may be extremely useful when witnesses and collaborators of justice who are expected to testify are placed in a foreign country. Not all the countries have ratified yet the relevant binding instruments on judicial cooperation and mutual legal assistance ruling on the testimony by videoconference. Italy is one of these Countries.

The Italian case law on this issue provides that the testimony of a collaborator of justice being jailed in a foreign Country is in any case admissible, being irrelevant the ratification by the requesting and the requested Country of a binding instrument, if the Authorities of the requested Country decide to comply with the request of videoconferencing.

The Italian Case Law deems admissible the testimony of a collaborator of justice by video conference (his identity having been certified by a court officer) when for safety reason the collaborator of justice turns his back to the accused, the defense counsels and the public prosecutor.

During investigations and at any pre trail stage, victims of enslavement and t.h.b., if deemed vulnerable or subject to bribery, threat, retaliations, or repatriation, as well as collaborators of justice may be, pursuant to a reasoned order issued by the Court, under motion filed by the Public Prosecutor, examined in chief and cross examined in close session (the accused have however the right to be present in the courtroom) The record of the examination in chief and cross examination is deemed as valid evidence in Court. Juvenile victims of enslavement and t.h.b. as well as any victim being found or deemed particularly vulnerable (e.g. women being sexually abused) may be examined in chief and cross examined During investigations and at any pre trail stage in protected structures through video link conference with the courtroom.

Quite often after being interviewed by Police officers and making allegations against the traffickers, victims refuse to testify and/or become hostile witnesses to the Prosecution when they are called to testify in Court, since they fear that after testimony they might be returned to their source countries, or since they are scared by possible retaliation against their families, have been subject to threats

Pursuant to specific procedural rules, after the testimony in Court of the victims, if there are inconsistencies with the previous statements given during the investigations, these statements can be tendered as valid evidence to the Court, if sufficient evidence is provided with that the witness had been bribed or subject to violence or threats.

Pursuant to the most recent case law, any threat and /or illegal pressure against the witness do not need to be proved beyond any reasonable doubt. The evidence of the illegal pressure the witness has been subject to might be provided with by a police report, or can be retrieved from his/her own

behavior in and outside the Court (such as making allegations against police officers and NGOs staff members and alleging to have been forced by them to make allegations against the accused, giving unfounded and unbelievable reasons to explain why their testimony differs from their statements before the police) and/or from other indicia. It would be highly recommendable to monitor, before and after the Court testimony the victims, in order to detect any threat or pressure against them. Cooperation, when possible, with source country Authorities, in order to enable them to verify whether the family of the victim has been or is being subject to thereat or any illegal pressure is triggered.

FORFEITURE AND CONFISCATION OF ASSETS

Proceeds of the crimes of enslavement, t.h.b. and smuggling of migrants, without prejudice for the right of victims to be compensated, are subject to forfeiture and confiscation. Property of the perpetrators having a corresponding value of the proceeds of the above mentioned crimes can be also confiscated. This rule applies to individuals and legal entities in whse interest crimes of enslavement, t.h.b. have been perpetrated.

Pursuant to a recently amended legislation (art. 12 sexies 356/1992 act) In case of conviction as well as plea bargaining and guilty plea, a special *"actio in rem"* can be triggered, aimed at confiscating assets belonging or being available to the perpetrators, whose value is deemed disproportionate to the value of their legal incomes.

Pursuant to 159/2011 Act, The same action may be undertaken against the assets of those individuals being under concrete and serious suspicion to be actively involved in crimes of enslavement, t.h.b. and smuggling of migrants and the same individuals may be subject to restrictions of their freedom of movement

Most of the accused in enslavement, thb and smuggling of migrants cases do not reinvest or launder in Italy the proceeds of the crimes they committed. Judicial cooperation aimed at confiscating the proceeds of these crimes or properties having the corresponding value becomes crucial. The same can be said on judicial cooperation related to "*actiones in rem"*

The confiscation of property having corresponding value of the proceeds of crimes is contemplated in many international binding Instruments such as the United Nations Convention against Transnational Organized Crime and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime) and a new directive has been drafted on the forfeiture and confiscation of the proceeds of the crimes, including the property having corresponding value, also in cases of absence of a criminal conviction, thus opening new perspectives of judicial cooperation also within the confiscation of the assets of those being reached by strong suspicions of being involved in enslavement, thb and smuggling of migrants.

The drafted consideranda state:
As a consequence, competent authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime. However, the effective prevention of and fight against organized crime should not be limited to neutralizing the proceeds of crime but rather be extended, in other cases, to any property deriving from activities of a criminal nature. Mutual recognition of freezing and confiscation orders of proceeds of crime is not effective enough. An effective fight against economic crime, organised crime and terrorism would require the mutual recognition of

measures taken in a different field from that of criminal law or otherwise adopted ***in the absence of*** *The main motive for cross-border organised crime, including mafia-type criminal organization, is* ***a criminal conviction in the circumstances defined in Article 5 and having as their object, more broadly, any possible asset or income attributable to a criminal organization or to a person suspected or accused of belonging to a criminal organisation.***

Ryszard Piotrowicz

CV - Ryszard Piotrowicz

Ryszard Piotrowicz is professor of law at Aberystwyth University, and an elected member of GRETA, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings. He is also a member of the European Commission's Group of Experts on Trafficking in Human Beings. He has acted as a consultant on the legal aspects of human trafficking to various international organisations and countries, on topics including the possible entitlement of trafficked people to refugee status (UNHCR), trafficking for forced begging (Government of Romania)and the non-punishment principle (OSCE). He has published extensively on migration law and in particular on human trafficking. He previously taught international law at the Universities of Tasmania (where he was the Dean of the Law Faculty), Durham and Glasgow.

Trafficking in Human Beings

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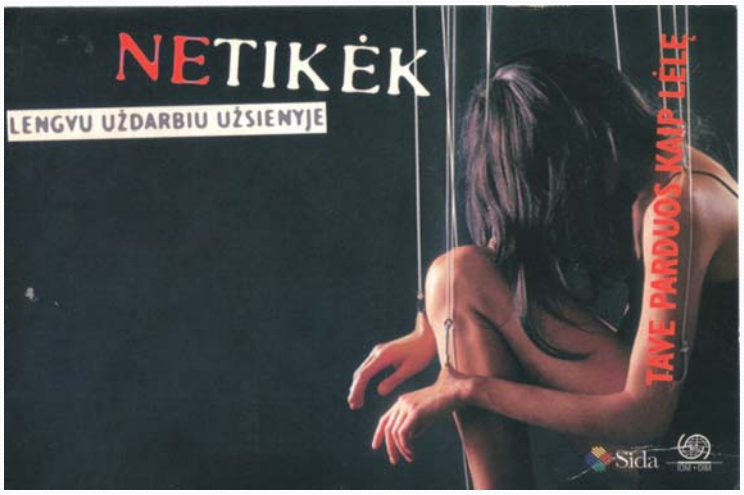
Countering Trafficking in Human Beings. Towards a More Comprehensive Approach

10 September 2015

Latvian Judicial Training Centre, Riga



Trafficking of human beings

- Prostitution
- Sweat shops
- Domestic labour
- Forced marriage
- Agricultural labour
- Construction
- Hospitality
- Sport
- Adoption
- Organ transplants
- Begging
- Forced criminality

Trafficking and smuggling

- Trafficking is enforced
- Smuggling involves consent
- Trafficking is a process with several actors involved:
  - Recruitment agencies
  - Friends or relatives
  - Hotels
  - Sub-contractors
  - Bar owners
  - Exploiters/clients

Legal regime of trafficking

- Human rights
- Criminal law
- Immigration law
- Employment law
- Laws on prostitution

International legal regulation of THB

- International regime
  - United Nations Convention on Transnational Organised Crime 2000
    - Protocol to Prevent, Suppress and Punish Trafficking in Persons, in Particular Women and Children (Palermo Protocol) (167 parties-August 2014, including Latvia – ratified 2004)
  - Council of Europe Convention on Action against Trafficking in Human Beings 2005 (43 parties – August 2015, including Latvia – ratified 2008)

Palermo Protocol

- Article 3
  - (a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;
  - Only applies to transnational THB

Three elements

- The act
- The method
- The motivation

- Consent of victim not relevant where any of methods in Article 3(a) are used – one cannot consent to be trafficked
- Where victim is under 18, there is trafficking if only act and motivation are present
  - None of the methods need to be proved

Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework decision 2002/629/JHA

- THB – same definition as Palermo Protocol.
  - A serious crime
  - A gross violation of fundamental rights
  - Directive adopts "an integrated, holistic, and human rights approach to the fight against trafficking in human beings"

Exploitation

- Directive, Article 2.3
  - Exploitation shall include, as(t) a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude , or the exploitation of criminal activities, or the removal of organs
  - Definition of exploitation is the same as in Palermo Protocol except for additional parts in red
  - But is not restricted to transnational trafficking

Combating Trafficking

- Criminal law *and* human rights
  - not one or the other

Prevention, Protection, Prosecution

The role of the victim

- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities
  - Creates common European minimum standards
  - Concrete obligations of States
  - Links assistance/protection to cooperation
  - Residence permit limited by duration of criminal proceedings
  - Inadequate social provision

Human Rights

- International protection regime
  - Convention relating to the Status of Refugees 1951
    - Narrow definition of 'refugee'
    - Principle of non-refoulement
  - Council Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and the content of the protection granted (recast) (Qualification Directive)
  - Article 6 – persecution by non-state actors
    - Article 15 – entitlement to subsidiary protection based on named threats including torture or inhuman or degrading treatment or punishment in the country of origin

Rantsev v Cyprus and Russia

European Court of Human Rights
Application No. 25965/04, Judgment of 7 January 2010

- Para. 284:

The State's human rights obligation includes having in place legislation "…adequate to ensure the practical and effective protection of the rights of victims or potential victims of trafficking. Accordingly, in addition to criminal law measures to punish traffickers, Article 4 requires member States to put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a State's immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking."

Rantsev v Cyprus and Russia

- Para 286
- "...Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking... In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 ... where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation of risk".

Group of Experts on Trafficking in Human Beings

- Opinion No.6/2010 of the Group of Experts on Trafficking in Human Beings of the European Commission, On the decision of the European Court of Human Rights in the Case of *Rantsev v Cyprus and Russia*, 22 June 2010
  - http://ec.europa.eu/home-affairs/doc_centre/crime/docs/opinion_expert_group_10_06_22_en.pdf

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EU Anti-Trafficking Measures

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10 September 2015

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims

- THB is
  - A serious crime
  - A gross violation of fundamental rights
  - Directive adopts "an integrated, holistic, and human rights approach to the fight against trafficking in human beings"

THB under the Directive

- Article 2.1 - following acts to be punishable:
  - The recruitment, transportation, transfer, harbouring or receipt of persons, including the exchange or transfer of control over those persons,
  - by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person,
  - for the purpose of exploitation.

Exploitation

- Article 2.3
  - Exploitation shall include, as a minimum,
    - the exploitation of the prostitution of others or other forms of sexual exploitation,
    - forced labour or services, including begging, slavery or practices similar to slavery,
    - servitude,
    - or the exploitation of criminal activities,
    - or the removal of organs

Position of vulnerability

- Article 2.2
  - A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

Criminal Law

- Directive
  - Article 4
    - maximum penalties: at least five years' imprisonment
    - stronger penalties where victims are "particularly vulnerable"
      - Includes "at least" child victims: maximum at least ten years

Liability of Legal Persons

- Article 5 – legal persons can be liable for THB offences where those with sufficient authority commit such offences for the benefit of the organisation

Non-Punishment

- Article 8
  - State to take necessary measures to ensure that competent national authorities "are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2" – ie, being trafficked

OSCE

- Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking (2013)
- https://www.osce.org/cthb/101002

L, HVN, THN and T v R, [2013] EWCA Crim 991

- Para 13:

"… when there is evidence that victims of trafficking have been involved in criminal activities, the investigation and the decision whether there should be a prosecution, and, if so, any subsequent proceedings require to be approached with the greatest sensitivity. The criminality, or putting it another way, the culpability, of any victim of trafficking may be significantly diminished, and in some cases effectively extinguished, not merely because of age (always a relevant factor in the case of a child defendant) but because no realistic alternative was available to the exploited victim but to comply with the dominant force of another individual, or group of individuals."

Prosecution

- Investigation: Article 9
  - Investigation and prosecution not dependent on accusation by victim or co-operation of victim
  - Use of investigative tools typical for organised crime cases such as phone tapping and tracing proceeds of crime
- Jurisdiction: Article 10
  - Offence committed in territory of the Member State
  - Offence committed by a national of the member State

Victim Support

- Mechanisms for early identification and assistance to victims
- Based on individual needs assessments
- Based on co-operation between law enforcement and civil society organisations, providing victims with shelters, medical and psychological assistance, information, interpretation services

Victim Assistance, Support and Protection

- Article 11
- Victims to be treated as such as soon as there is an indication (reasonable grounds) of trafficking and to be provided with assistance before, during and for an appropriate time after criminal proceedings: Art.11.2
  - Assistance and support for victim should not be dependent on their co-operation: Art.11.3
  - Assistance and support should at least ensure standards of living capable of enabling subsistence: Art.11.5
    - Safe accommodation
    - Material assistance
    - Medical treatment
    - Translation and interpretation services

Victims' Rights in Criminal Proceedings

- Right to legal advice: Art. 12.2
- Individual risk assessments for victims to provide best protection: Art 12.3
- Avoid secondary victimisation: Art.12.4
  - No unnecessary repetition of interviews
  - Avoid visual contact between accused and victim
  - Avoid unnecessary questioning about victim's private life

Children

- Special regime to protect child victims: Articles 13-16
  - Child's best interests "a primary consideration": Art.13.1
  - Special measures of support: Art.14.1
  - Guardian to be appointed once child victim identified: Art.14.2
  - Support in criminal investigations and proceedings: Art. 15
  - Support for unaccompanied child victims: Art.16

Prevention

- Article 18:
  - Discourage demand – eg, employers hiring trafficked persons
  - Consider criminalising use of services of victims
  - Training for officials likely to come into contact with victims
  - Awareness-raising measures to warn potential victims about risks of being trafficked

Co-ordination

- Establish a national rapporteur or equivalent mechanism to assess trends, measure results and provide data: Article 19
- Member States to facilitate work of the EU Anti-Trafficking Co-ordinator in co-ordinating and consolidating EU policy: Article 20
- ATC shall contribute to a report by the Commission every two years on progress made

Anti-Trafficking Co-ordinator

- ATC – Ms Myria Vassiliadou – started mandate in March 2011
- Main task – to improve co-ordination and coherence between EU institutions, EU agencies and Member States, third countries and international actors in anti-trafficking

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016

http://ec.europa.eu/home-affairs/doc_centre/crime/docs/trafficking_in_human_beings_eradication-2012_2016_en.pdf

- Five priorities
  - Identifying, protecting and assisting victims of trafficking
  - Stepping up the prevention of trafficking in human beings
  - Increased prosecution of traffickers
  - Enhanced coordination and cooperation among key actors and policy coherence
  - Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings

Lāsma Stabiņa

Ministry of the Interior
Republic of Latvia

The need to collect, analyse and disseminate information: the work of the LV NATC

Workshop «Countering Trafficking in Human Beings»

Riga, 10 - 11 September, 2015

Information collection, analysis, dissemination:

- **BY WHOM?**
- **HOW?**
- **WHY?**

Information collection, analysis, dissemination:

BY WHOM?

Legal Framework

Article 19

National rapporteurs or equivalent mechanisms

Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

/DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA/

Legal Framework

- **Article 29 Paragraph 2: measures as may be necessary to ensure co-ordination of the policies and actions of their governments' departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies**
- **Article 29 Paragraph 4: National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements**

COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING IN HUMAN BEINGS

- **National Rapporteurs – considered as independent body**

(The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children is an independent actor (the Netherlands; Security Policy Department, the Ministry of the Interior (Czech Republic); the CNCDH: Commission nationale consultative des droits de l'homme (France))

- **Equivalent mechanisms – National Anti-Trafficking Coordinator, Multidisciplinary Working Group, Anti-Human Trafficking Monitoring Committee**

Main Responsibilities

National Rapporteur

- reports on the nature and extent of human trafficking and sexual violence against children in the NL, and on the effects of the government policies pursued
- information gathering, analysis and continuous monitoring; coordination of anti-trafficking policies; and submission of reports and policy papers to the government
- drafts the annual implementation reports of the National Action Plan and reports accordingly to Government members

Main Responsibilities

National Coordinator

- coordinates, evaluates and monitors the implementation of anti-trafficking policies by the responsible authorities and drafts annual reports
- collects statistical data from various stakeholders
- prepares annual reports and strategic documents that are submitted to the Government

Conclusions

No differences between a role and tasks of National Rapporteur and National Coordinator

National Coordinator acts as National Rapporteur, National Rapporteur exercises a role of National Coordinator

Information collection, analysis, dissemination:

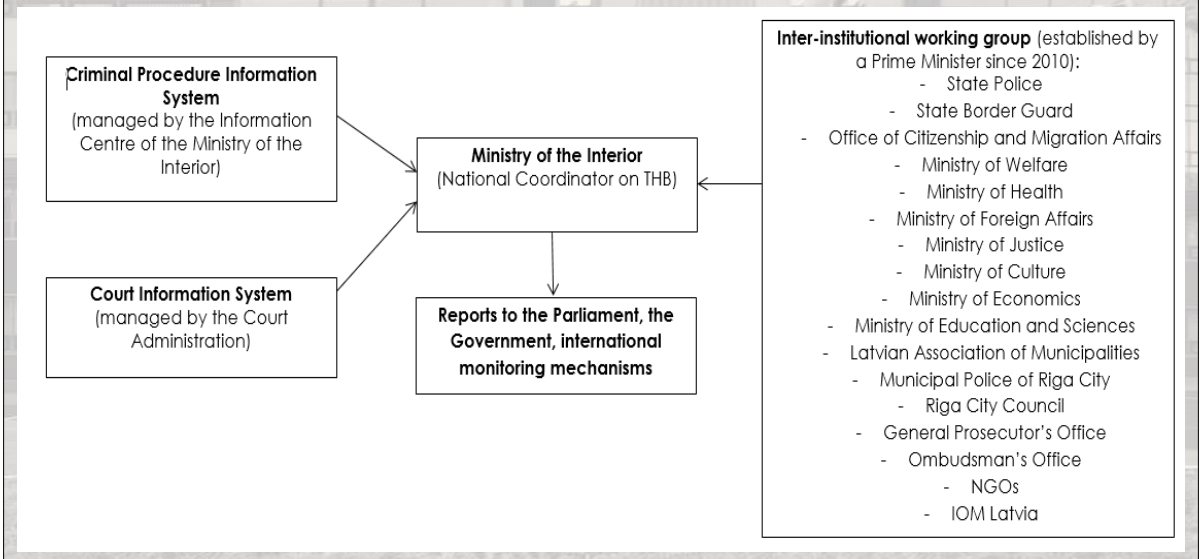
HOW?

- **Data collection is the process of gathering and measuring information that enables to answer stated questions, and evaluate outcomes.**
- **The goal for all data collection is to capture quality evidence that is followed by data analysis and allows the building of a convincing and credible answer to questions that have been posed.**

Data and information used for analysis and reporting should be reliable

- **national Information Systems**
- **data and information provided by public and municipal bodies, law enforcement agencies, NGOs and partners of civil society**
- **researches, studies**

Information collection mechanism in Latvia



- **Criminal Procedure Information System**

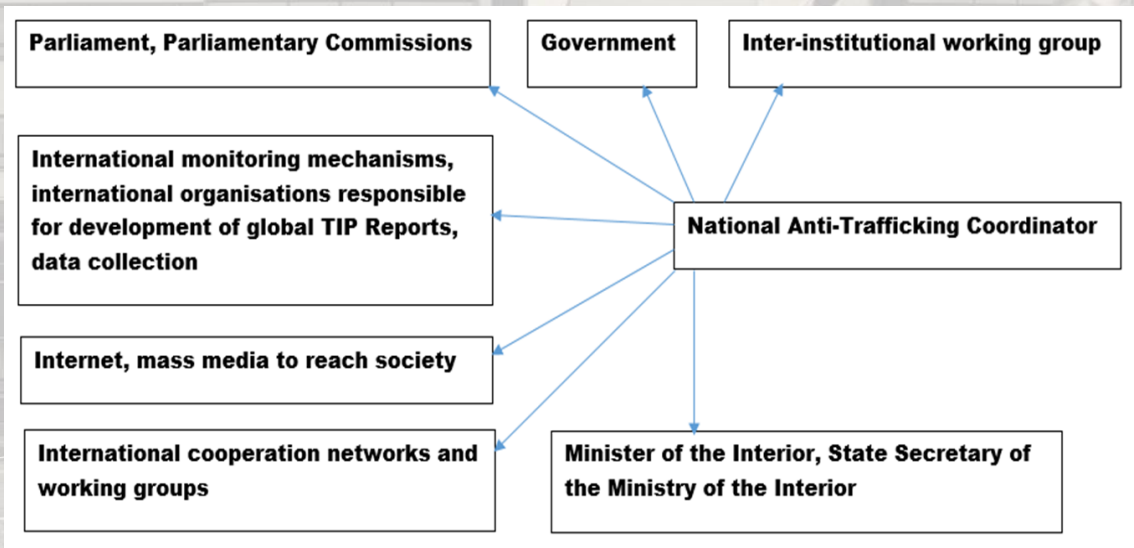
Information regarding the initiated criminal proceedings are compiled in the System.

- **Court Information System**

The System contains information regarding civil cases, administrative cases, administrative violation cases, criminal cases, materials which are considered in the order of criminal proceedings.

- Stakeholders report actual data and information
- National Anti-Trafficking Coordinator does analysis comparing data with previous reporting period and expected results indicated by national policy planning document
- Information dissemination is provided through different levels (Parliament, Government, experts, practitioners, society, regional and international cooperation networks, projects) using various means (reports, events, Internet, mass media)

Information dissemination in Latvia



Information collection, analysis, dissemination:

WHY?

- assessment of trends in trafficking in human beings
- nature and extent of human trafficking
- measuring of results of anti-trafficking actions
- assessment of efficiency of legislation and policy
- assessment of needs (financial and human resources)

Ministry of the Interior
Republic of Latvia

The Latvian National Anti-Trafficking Coordinator – effective reporting on THB

Workshop «Countering Trafficking in Human Beings»

Riga, 10 - 11 September, 2015

Policy Planning

National anti-trafficking policy planning document

The National Strategy for the Prevention of Trafficking in Human Beings 2014 – 2020 approved by the Government on January 21, 2014.

Based on 4 «P»: prevention, protection, prosecution, partnership.

Two main policy goals:

- **To promote awareness of society and understanding about trafficking in human beings and to provide assistance and support for the victims of human trafficking.**
- **To achieve the reduction of latency of trafficking in human beings, to develop capacity of law enforcement agencies and relevant stakeholders to combat trafficking in human beings.**

Position of National Rapporteur is not established

Ministry of the Interior provides:

- **implementation of a role and tasks of National Anti-Trafficking Coordinator**
- **coordination of the implementation of anti-trafficking policy**
- **organization of work of inter-institutional working group**
- **representation of Latvia at regional and international working groups and networks**

Tasks of Latvian National Anti-Trafficking Coordinator:

- **policy planning, coordination of implementation, evaluation, elaboration of proposals for amendments**
- **reporting (Parliament, Government, international monitoring mechanisms)**
- **participation in legislation elaboration processes**
- **organization of work of inter-institutional working group, preparation of meeting minutes, coordination of implementation of decisions taken**
- **participation at meetings organized by the Parliament, branch ministries, institutions**
- **planning, organization and implementation of workshops, meetings, conferences**

- development of transnational projects (STROM, HESTIA), provision of partnership in projects (Safety Compass)
- provision of daily cooperation and communication with stakeholders, including mass media
- administration of national anti-trafficking web page cilvektirdznieciba.lv (trafficking.lv) and its Facebook account
- participation at international and regional working groups and networks, workshops, conferences, representing Latvia's best practise in combatting trafficking in human beings
- provision of international cooperation

National Anti-Trafficking Coordination Mechanism

Inter-institutional working group established by a Prime Minister consists of representatives from:

- **7 branch ministries;**
- **2 law enforcement agencies;**
- **9 governmental and municipal institutions;**
- **5 NGOs (National Coalition of NGOs is represented);**
- **1 civil society partner.**

Work of inter-institutional working group is based on 3 P principle: public-private partnership

Tasks of inter-institutional working group

- Implementation of anti-trafficking policy
- Monitoring
- Data collection
- Trend analysis
- Evaluation
- Reporting
- Training and awareness raising
- Identification of challenges

Work of inter-institutional working group

- 4 meetings a year
- An agenda is proposed by the MoI
- Each member reports on results, statistics and future plans
- Detailed minutes are prepared – quarterly report

Work done:

- **A number of awareness raising campaigns has increased**
- **A number of training has increased**
- **A number of joint projects has increased**
- **A number of legislative initiatives are passed**
- **A trust and cooperation between governmental institutions and NGOs is developed**

Thank you for your attention!

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(Cabinet
Order No. 29 of
21 January 2014)

Guidelines for the Prevention of Trafficking in Human Beings 2014-2020 (Informative Part)

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ABBREVIATIONS USED

UN	United Nations Organization
MoD	Ministry of Defence
USA SD	State Department of the United States of America
MoFA	Ministry of Foreign Affairs
CBSS	Council of the Baltic Sea States
CBSS EGCC	Council of the Baltic Sea States Expert Group on Children at Risk
CBSS TF-THB	Council of the Baltic Sea States Task Force Against Trafficking in Human Beings
Directive 2011/36/EU	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
Shelter "Safe House"	Association "Shelter "Safe House""
EU	European Union
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
MoI	Ministry of the Interior
MoES	Ministry of Education and Science
CL	Criminal Law
CPL	Criminal Procedure Law
MoC	Ministry of Culture
MoW	Ministry of Welfare
NLL	National Library of Latvia
LVL	Latvian lat
RCW Marta	Association "Resource Centre for Women "Marta""
Cabinet	Cabinet
No	Number
SEA	State Employment Agency
NGO	Non-governmental organisation
OCMA	Office of Citizenship and Migration Affairs
RMP	Riga municipal police
CA	Court Administration
CIS	Court Information System
MoJ	Ministry of Justice
JTC	Judicial Training Centre
State programme	Programme for the Prevention of Trafficking in Human Beings 2009-2013
SIPCR	State Inspectorate for Protection of Children's Rights
SLI	State Labour Inspectorate
NCE	National Centre for Education
SYIC	State Youth Initiative Centre
SC	State Chancellery
MoH	Ministry of Health

INTRODUCTORY PART

1. Introduction

Trafficking in human beings is a serious crime, which is frequently performed within the framework of organised crime, and it is a severe violation of human rights, unequivocally prohibited by the EU Charter of Fundamental Rights[1].

One of the purposes of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, is to protect the victims of trafficking in human beings and to help them, completely conforming to their human rights[2]. In addition thereto one of the purposes of the United Nations Convention against Transnational Organized Crime is to protect the human rights of victims of trafficking in human beings[3].

Norms of Chapter 8 "Fundamental Human Rights" of the Constitution of the Republic of Latvia[4]prescribe that everyone has the right to liberty and security of person, that no one may be deprived of or have their liberty restricted, otherwise than in accordance with law, that torture or other cruel or degrading treatment of human beings is prohibited, that everyone has the right to freely choose their employment and workplace according to their abilities and qualifications, and forced labour is prohibited.

The basic definition of trafficking in human beings is laid down in Article 3 of Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

This definition is supplemented by the signs of the definition of trafficking in human beings included in Article 4[5] of the Convention on Action against Trafficking in Human Beings and in Article 2[6] of Directive 2011/36/EU.

[1] EU Charter of Fundamental Rights (2010/C 83/02), EU OJ 30.03.2010. C 83/389, http://eur-lex.europa.eu/lv/treaties/dat/32007X1214/htm/C2007303LV.01000101.htm

[2] Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. Available at: http://www.likumi.lv/doc.php?id=87670

[3] Council of Europe Convention on Action against Trafficking in Human Beings. Available at: http://www.likumi.lv/doc.php?id=210786

[4] Law of 15 February 1922, Constitution of the Republic of Latvia (*Latvijas Vēstnesis*, No. 43, 1 July 1993) [shall come into force from 7 November 1922], http://www.likumi.lv/doc.php?id=57980

[5] "Trafficking in human beings" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

[6] "Offences concerning trafficking in human beings:

The requirements of the abovementioned international and EU legal acts have been incorporated in Section 154.[2] of the Criminal Law[7].

In order to ensure purposeful and planned approach to the prevention of and action against trafficking in human beings in Latvia, the first policy planning document in this field – "National Programme for the Prevention of Trafficking in Human Beings 2004-2008" – was approved by Cabinet Order No. 132 of 3 March 2004.

"Programme for the Prevention of Trafficking in Human Beings 2009-2013" was approved by Cabinet Order No. 590 of 27 August 2009[8], the main purpose of which is to plan and implement measures in order to prevent trafficking in human beings. The MoI and the MoW have been appointed as the institutions responsible for implementation of the programme. The MoI as the co-ordinating institution is responsible for aggregating information regarding the progress of implementing the National Programme and the submission of an informative report to the Cabinet for examination by 1 March in 2011 and 2014. The programme provides for five action directions – data compilation and research, improvement of laws and regulations, implementation of preventive measures, improvement of co-operation between State authorities and NGOs, improvement of the operation of law enforcement authorities, and implementation of 26 tasks subject thereto for achieving the results of the programme.

On 17 March 2011 the Prime Minister approved the "Informative Report on Implementation of the Programme for the Prevention of Trafficking in Human Beings 2009-2013 in 2009 and 2010". Taking into account that the term of operation of the Programme for the Prevention of Trafficking in Human Beings 2009-2013 ends on 31 December 2013, the ex-post assessment report on the introduction of this programme has not been prepared yet.

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:
The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.
2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.
3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.
4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

[7] The Criminal Law. Available at: http://www.likumi.lv/doc.php?id=88966.
Section 154.[2] of the Criminal Law. Meaning of Human Trafficking
(1) Human trafficking is the recruitment, transportation, transfer, concealment, accommodation or reception of persons for the purpose of exploitation, committed by using violence or threats or by means of deceit, or by taking advantage of the dependence of the person on the offender or of his or her state of vulnerability or helplessness, or by the giving or obtaining of material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent.
(2) The recruitment, transportation, transfer, concealment, accommodation or reception of a minor for the purpose of exploitation shall be recognised as human trafficking also in such cases, if it is not connected with the utilisation of any of the means referred to in the Paragraph one of this Section.
(3) Within the meaning of this Section, exploitation is the involvement of a person in prostitution or in other kinds of sexual exploitation, the compulsion of a person to perform labour, to provide services or to commit criminal offences, the holding of a person in slavery or other similar forms thereof (debt slavery, serfdom or compulsory transfer of a person into dependence upon another person), and the holding a person in servitude or also the illegal removal of a person's tissues or organs.

[8] Cabinet Order No. 590 of 27 August 2009, On the Programme for the Prevention of Trafficking in Human Beings 2009-2013 (Latvijas Vēstnesis, No. 138(4124), 1 September 2009) [shall come into force from 27 August 2009], http://www.likumi.lv/doc.php?id=196802

In order to continue the policy for the prevention of trafficking in human beings implemented by the Programme for the Prevention of Trafficking in Human Beings 2009-2013, Guidelines for the Prevention of Trafficking in Human Beings 2014-2020 (hereinafter – Guidelines), which is a medium-term policy planning document, have been drafted. The Guidelines have been drafted in co-operation with the competent State and local government authorities, law enforcement authorities and non-governmental sector, taking as the basis the GRETA Report concerning the Implementation of the Liabilities of the Council of Europe Convention on Action against Trafficking in Human Beings by Latvia[9], the assessment report of the UN Independent Expert Dr Cephas Lumina on human rights, the general report of the UN Human Rights Council on human rights, the annual reports of the USA SD on actions against trafficking in human beings and the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016. The Guidelines are based on four internationally acknowledged basic principles of the policy for action against trafficking in human beings: 1) preventive actions; 2) protection of victims; 3) criminal investigation, prosecution and trial; 4) co-operation of competent authorities and organisations at national and international level (prevention, protection, prosecution, partnership).

Drafting of the Guidelines took place in accordance with the Order No. 85 of the Prime Minister of 8 March 2013, On the Working Group for Co-ordinating the Implementation of the Programme for the Prevention of Trafficking in Human Beings 2009-2013.

2. BASIC PRINCIPLES AND OBJECTIVES OF THE POLICY FOR THE PREVENTION OF TRAFFICKING IN HUMAN BEINGS

Basic principles of the policy:

Intersectoral principle – prevention of trafficking in human beings is based on four internationally acknowledged basic principles of the policy for action against trafficking in human beings: prevention, protection (of victims), criminal investigation, prosecution and trial (prosecution), co-operation of competent authorities and organisations at national and international level (partnership).

Principle of human rights – everyone has the right to liberty and security of person, protection of honour and respect, to freely choose their employment and workplace according to their abilities and qualifications.

Principle of observing the rights and interests of children – all institutions act and treat a child according to the best interests of the child and, upon examining any issue, it must be evaluated from the perspective of the rights and interests of the child, and decisions that are in contradiction with this principle are inadmissible.

Principle of participation – all sectors, institutions and organisations must be involved and co-responsible, within the scope of their competence, in prevention of trafficking in human beings.

Principle of efficient policy planning – upon existence of a wide range of policy initiatives, there is a risk that initiatives may overlap and duplicate, therefore, the intent of such policy planning document is to create a cohesive framework for the current and planned activities.

[9] Published on the website of the Council of Europe on 31 January 2013, recommendations approved on 15 February 2013.

Policy objectives:

1. to promote awareness and understanding of the society regarding trafficking in human beings and to ensure care for victims of trafficking in human beings;
2. to achieve that the latency of trafficking in human beings is decreased and the capacity of law enforcement authorities and competent partners for combating cases of trafficking in human beings is developed.

3. LINK OF THE GUIDELINES WITH OTHER POLICY PLANNING DOCUMENTS

The Guidelines have been co-ordinated with the following EU documents:
1. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 (COM(2012) 286 final)[10], which was approved on 19 June 2012, and with its help the EU Commission wishes to concentrate on specific measures that will help the Member States to transpose and implement Directive 2011/36/EU.
2. European Parliament Resolution of 10 February 2010 on preventing trafficking in human beings (2010/C 341 E/05)[11].
3. The Stockholm Programme – An open and secure Europe serving and protecting citizens (2010/C 115/01)[12].
4. The Strategy EU 2020 (approved at the European Council on 17 July 2010), which continues the objectives laid down in the Lisbon Strategy.

The Guidelines have been co-ordinated with the following UN documents:
1. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000. The purpose of the Protocol is to prevent and combat trafficking in persons, paying particular attention to women and children; to protect and assist the victims of such trafficking, with full respect for their human rights; and to promote cooperation among States Parties in order to meet those objectives. It came into force in Latvia on 29 April 2004.
2. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted on 25 May 2000. Protocol to this Convention came into force in Latvia on 22 March 2006. By this Protocol States Parties prohibit sale of children, child prostitution and child pornography.
3. UN Convention on the Rights of the Child, adopted by the UN General Assembly on 20 November 1989. This Convention came into force in Latvia on 14 May 1992. The Convention embraces the civic, political, social, economic and cultural rights of children from birth up to reaching legal age. The Convention recognises the child as an independent legal entity, also introducing the principle of priority of the interests of the child.
4. Convention on the Elimination of All Forms of Discrimination against Women, adopted by the UN General Assembly on 18 December 1979, determining an internationally unified standard of the human rights of women. It came into force in Latvia on 14 May 1992.

The Guidelines have been co-ordinated with the following documents of the Council of Europe:
1. Council of Europe Convention on Action against Trafficking in Human Beings, which was adopted in Warsaw, on 16 May 2005, and the purpose of which is to prevent and combat trafficking in human beings, while guaranteeing gender equality, to protect the human rights

[10] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0286:FIN:LV:PDF
[11] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:341E:0018:0025:LV:PDF
[12] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:lv:PDF

of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution; to promote international cooperation on action against trafficking in human beings. The Convention has been in force in Latvia since 13 February 2008.

2. Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings (AOP), approved by the Council of the European Union on 30 November 2009.

3. European Convention for the Protection of Human Rights and Fundamental Freedoms, which was adopted by the Council of the European Union on 4 November 1950. In accordance with this Convention the enjoyment of the rights and freedoms set forth in law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status. The Convention has been in force in Latvia since 27 June 1997.

The tasks included in the Guidelines conform to the following policy planning documents of national level:

1. Sustainable Development Strategy for Latvia until 2030[13] (hereinafter – Latvia 2030), which was approved by the *Saeima* on 10 June 2010. The task of Latvia 2030 is to find a way for rational use of the capital of Latvia or the national wealth, determining a human being as the main capital.

2. National Development Plan of Latvia 2014-2020[14], which was approved by the decision of the *Saeima* of the Republic of Latvia on 20 December 2012. The vision of NDP2020 is of Latvia as a state of active and responsible citizens, in which people will be willing and able to take care not only of themselves and their closest people, but also of other peers who need help.

I. CHARACTERISATION OF THE SITUATION AND FORMULATION OF PROBLEMS

1. General Information

On 24 January 2008 the *Saeima* adopted the Law On Council of Europe Convention on Action against Trafficking in Human Beings[15] (hereinafter – Convention). In accordance with Article 38 of the Convention GRETA (group of experts on action against trafficking in human beings) shall take measures in order to evaluate how the parties to the Convention are implementing the obligations of the Convention. GRETA performed evaluation activities, evaluating how Latvia has implemented the obligations of the Convention in the time period from 2008 to 2012. During the evaluation process on 31 August 2011 Latvia sent written replies to a questionnaire prepared by GRETA; in the time period from 14 February 2012 to 17 February 2012 State evaluation visit took place; the comments of Latvia and additional information regarding the report prepared by GRETA were sent on 25 September 2012 and 21 January 2013.

[13] Sustainable Development Strategy for Latvia until 2030. Available at: http://www.latvija2030.lv/upload/latvija2030_saeima.pdf

[14] National Development Plan of Latvia 2014-2020. Available at: http://www.nap.lv/images/NAP2020%20dokumenti/20121220_NAP2020_Saeimā_apstiprināts.pdf

[15] Law of 24 January 2008 On Council of Europe Convention on Action against Trafficking in Human Beings (*Latvijas Vēstnesis*, No. 23 (3807), 12 February 2008, *Ziņotājs*, No. 5, 13 March 2008) [came into force on 13 February 2008]

On 15 February 2013 Committee of the Parties to the Convention[16]approved Recommendations No CP(2013)2 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings in Latvia. The efforts of Latvia in action against trafficking in human beings are welcomed in recommendations, in particular:

- the appointment of a National Co-ordinator for Combating Trafficking in Human Beings and the setting up of the Inter-Institutional Working Group for co-ordination of the implementation of the Programme for Prevention of Human Trafficking 2009-2013,
- the development of the national legal framework related to action against trafficking in human beings,
- the efforts to develop the aspect of prevention through awareness-raising campaigns, education in schools and training of professionals involved in action against human trafficking,
- the setting up of a multi-disciplinary commission of specialists for the identification of victims of trafficking,
- the availability of a six-month programme of State-funded social rehabilitation of victims of trafficking.

Concurrently Recommendations pay attention to the areas where further action is required in order to improve the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, in particular:

- strengthening the aspect of prevention of human trafficking through social and economic empowerment measures for vulnerable groups and ensuring the registration of all children at birth,
- improving the identification of victims of trafficking by setting up a formalised mechanism for their identification and referral to assistance, and by pursuing a proactive approach to victim identification, in particular as regards cases of trafficking for labour exploitation,
- providing all victims of human trafficking with effective access to assistance for the duration necessary to achieve their rehabilitation, taking into account their specific circumstances and regardless of their participation in criminal proceedings,
- ensuring that all victims of trafficking are systematically informed of the recovery and reflection period and are effectively granted such a period,
- facilitating access to compensation for victims of trafficking, including by providing them systematically with information on the right to compensation and ensuring their effective access to legal aid,
- taking measures to ensure that crimes related to human trafficking are investigated and prosecuted effectively, leading to proportionate and dissuasive sanctions.

From 14 May 2012 to 18 May 2012 Dr Cephas Lumina,UN Independent Expert, was visiting Latvia, and the purpose of this visit was to survey the ability of the State to establish and implement policies and programmes for exercising all human rights. It was particularly evaluated how the events of the previous years have affected economic, social and cultural rights of people.

On 18 January 2013 Latvia received an evaluation report, which was presented to a wider audience during the 23rd Session of the UN Human Rights Council from 27 May 2013 to 14 June 2013. It is pointed out in the report that as a result of unemployment, poverty and

[16] In accordance with Article 37 of the Council of Europe Convention on Action against Trafficking in Human Beings – Committee of the Parties: the Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the member States Parties to the Convention and representatives of the Parties to the Convention, which are not members of the Council of Europe.

immigration increasing during the previous years in Latvia the extent of trafficking in human beings has increased. The action of the government of Latvia in this direction is appreciated:
- the increase in the financing for the support of victims of trafficking in human beings,
- the implementation of campaigns for informing the society,
- the establishment of an interinstitutional working group for co-ordinating the implementation of the Programme for the Prevention of Trafficking in Human Beings 2009-2013.

Concurrently it is emphasised in the report that modest progress is observed in relation to criminal prosecution and punishing of persons engaged in trafficking of human beings.

The UN Independent Expert expresses the following recommendations to Latvia in the report:
- in co-operation with countries of destination of trafficking in human beings to strengthen measures in order to prevent trafficking of human beings,
- to ensure efficient support and compensations to victims of trafficking in human beings,
- to investigate cases of trafficking in human beings and to subject the persons who have committed the criminal offence to criminal prosecution,
- to strengthen efforts as regards increasing public awareness regarding forced prostitution and trafficking in human beings.

On 22 September 2011 the UN Human Rights Council (HRC) took a decision by which the process of evaluating the human rights situation in Latvia was closed within the scope of the first cycle of the UN Universal Periodic Review. The HRC approved the report on evaluation process of Latvia within the scope of the 11th session of the Universal Periodic Review Working Group on 5 May 2011, as well as the written opinion submitted by Latvia and appended thereto on the recommendations received within the scope of the UN General Periodic Review, which was approved by the Cabinet of the Republic of Latvia on 6 September 2011.

It is indicated in the report that:
- Latvia has established an effective system to combat human trafficking,
- Latvia has taken the steps towards the Palermo Protocol (Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime), determining that use of coercive measures against potential victims of sexual exploitation is not a pre-condition for initiating criminal proceedings against traffickers,
- s system for identification of victims of trafficking in human beings has been established in Latvia,
- funds from the State budget for identification and rehabilitation of victims of trafficking in human beings are being granted,
- Latvia is implementing the national policy planning document in prevention of trafficking in human beings,
- Latvia is organising informative campaigns, also regarding risks of marriages of convenience,
- the police is working with groups of persons who are easy subject to trafficking in human beings,
- border guards are trained to identify the possible cases of trafficking in human beings.

The following recommendations were put forward to Latvia in relation to prevention of and action against trafficking in human beings within the scope of the first cycle of the UN General Periodic Review:
- continue taking measures to eliminate human trafficking (Czech Republic),

- continue to take the necessary measures to end trafficking in human beings, including through the implementation of the national program on combating trafficking in human beings (Palestine),
- pursue its efforts to combat trafficking in human beings, especially women and children (Algeria),
- step up efforts to combat trafficking in human beings, including developing international cooperation with interested governments, international organizations and NGOs (Belarus),
- continue its efforts to combat trafficking in human beings, and pay special attention to its victims (Costa Rica),
- continue to adopt appropriate measures to prosecute and punish perpetrators of trafficking in human beings and develop effective systems for the timely prevention of sexual exploitation and trafficking in children (Republic of Moldova),
- prioritize the implementation of human trafficking protection and rehabilitation programmes (Norway),
- further develop and strengthen its programs and services to promote the rehabilitation of victims of trafficking (Canada),
- prioritize training for the judiciary and the police on how to treat victims of trafficking as well as domestic violence (Norway).

Since 2002 the USA SD has been evaluating the efforts of Latvia and other states in prevention of and action against trafficking in human beings, taking the standards laid down in the Trafficking Victims Protection Act 2000 (TVPA)[17]as the basis for action against trafficking in human beings. Hitherto Latvia was assigned Level 2 of the USA SD annual trafficking in persons report[18], thus assuming that Latvia takes measures in order to improve the current situation in prevention of and action against trafficking in human beings and provision of support to victims of trafficking in human beings, however, they are insufficient.

[17] The minimum standards laid down in the Trafficking Victims Protection Act 2000 (TVPA): the government of the country should prohibit severe forms of trafficking in persons, prescribe punishment commensurate with that for grave crimes and that is sufficiently stringent to deter; should protect victims; should encourage their assistance in investigation and prosecution; should ensure training of laws enforcement and immigration authorities regarding identification of and treatment towards them; should take measures for educating and informing the public; should co-operate with the governments of other states in investigation of cases of trafficking in human beings; should extradite such persons to the governments of other states, who have committed the crimes of trafficking in human beings; should monitor immigration and emigration patterns which might attest to trafficking in human beings; should carry out an investigation, criminal prosecution and punish the officials who participate or promote trafficking in human beings; should systematically evaluate their efforts and ensure that these evaluations are accessible to the public; should implement efforts to reduce demand for commercial copulations and participation in international sex tourism. Available in English at: http://www.state.gov/j/tip/rls/tiprpt/2012/192370.htm

[18] TIER 1 (Level 1) Countries whose governments fully comply with the TVPA minimum standards.
TIER 2(Level 2) Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards.
TIER 2 Watch List (Level 2 with status of observation) Countries whose governments do not fully comply with the TVPA's minimum standards, but are making significant efforts to bring themselves into compliance with those standards and: a) the absolute number of victims of severe forms of trafficking is very significant or is significantly increasing; b) there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year; or c) the determination that a country is making significant efforts to bring itself into compliance with minimum standards was based on commitments by the country to take additional future steps over the next year.
TIER 3 (Level 3) Countries whose governments do not fully comply with the minimum standards and are not making significant efforts to do so. Available in English at: http://www.state.gov/j/tip/rls/tiprpt/2012/192363.htm

It is indicated in the USA TIP Report 2012) that the Government of Latvia does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so:

- by continuing to improve its anti-trafficking efforts, including by developing criteria for the identification of labor trafficking victims,
- by improving mechanisms to ensure that the foreign ministry referred trafficking victims to state-funded care,
- by strengthening efforts to address marriages of convenience, which create a vulnerability to trafficking,
- Latvian anti-trafficking working group provided strong leadership of the government's anti-trafficking policy and enhanced transparency of the government's efforts through reporting,
- by increasing State funding for NGO-provided victim assistance,
- by investigating and prosecuting several former anti-trafficking police officers for corruption.

Concurrently the weak points of the policy implementation of Latvia are indicated in the USA TIP Report (2012), identifying the low activity of law enforcement authorities, the results of the different practice of law enforcement institutions and NGOs in identification of victims of trafficking in persons, the practice of legal qualification of the severity of applicable criminal punishments and criminal offences committed in the field of trafficking in persons as deficiencies.

Also the recommendations expressed in the USA TIP Report (2012) and based on the deficiencies established for Latvia coincide with the abovementioned recommendations[19] received within the scope of GRETA and UN General Periodic Review.

The judgment of the European Court of Human Rights (hereinafter – ECHR) of 10 January 2010 in case of Rantsev versus Cyprus (application No 25965/04)[20] is considered the first historical judgment in relation to cross-border trafficking in human beings in Europe. The ECHR recognised several violations of Cyprus and Russia in non-conformity with human rights. The ECHR confirmed in this judgment that trafficking in human beings is not compatible with the values laid down in the European Convention on Human Rights[21]or the values of democratic society, and took the opportunity of explaining the duty of countries to protect persons from trafficking in human beings, as well as to investigate criminal offences related to trafficking in human beings. The ECHR confirmed thereby that trafficking in human beings is an infringement of human dignity and human rights, and it is prohibited by the European Convention on Human Rights. The ECHR has imposed a duty on countries to protect thousands of victims of trafficking in human beings throughout Europe and has demanded to increase the efforts of countries in investigating this cross-border crime. The case of Ratsnev very clearly shows the significance of intersectoral co-operation in prevention of and action against trafficking in human beings and the provision of support to victims of trafficking in human beings.

[19] Section of the USA SD TIP Report (2012) regarding Latvia is available at: http://photos.state.gov/libraries/latvia/5/Reports/2012_TIP_LATV_LV.pdf. Full text of the report in English is available at: http://www.state.gov/j/tip/rls/tiprpt/2012/

[20] Judgment of the European Court of Human Rights in case of Ratsnev versus Cyprus and Russia, available in English at: http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/CAR_Serbia/ECtHR%20Judgements/English/RANTSEV%20v%20CYPRUS%20%20RUSSIA%20-%20ECHR%20Judgment%20_English_.pdf

[21] European Convention on Human Rights: http://www.echr.coe.int/NR/rdonlyres/56D2C838-7133-4010-8D00-99BE58570B95/0/Convention_LAV.pdf

2. Tendencies of Trafficking in Human Beings in Latvia

Trafficking in human beings, particularly trafficking in women, is considered the second most lucrative criminal business in the world after drug trafficking. Latvia has become the country of origin of victims of trafficking in human beings. Social exclusion and economic migration involving search for a better life in wealthier countries are the main factors promoting trafficking in human beings. Majority of victims are young women who are recruited, transported, sold and exploited by individual buyers, persons living on the avails of prostitution and traffickers for the purposes of sexual exploitation, forced labour and concluding marriages of convenience. Women find themselves in the situation of uncontrolled violence, their human rights are not conformed to, therefore, they become victims or a merchandise bringing in huge profit for groups of organised crime. Citizens of Latvia mainly find themselves in circumstances of exploitation in Ireland, Great Britain, Germany, the Netherlands, Greece, Belgium, Sweden. Mainly young women, single mothers, unemployed persons, persons from large families and poor families, orphanages and social care institutions, persons with low level of education and credit liabilities are subjected to the risk of becoming a victim of trafficking in human beings.

Such cases of trafficking in human beings become more frequent when recruiters of people are acquaintances, friends or even family members of people, who abuse the trust of the people close to them. Work placement agencies, advertisements on the Internet and social networks are used for trafficking in human beings and luring of people into exploitation. Job advertisements with good remuneration are one of the most frequently used methods of recruitment. Persons are offered an opportunity of going to a foreign country in a very short period of time and commencing employment relationship. Marriage is also one of methods of purposeful recruitment when a recruiter, most frequently on social networks, addresses a specific person using his or her social vulnerability. Marriages of convenience are concluded so that third-country nationals could receive a residence permit of a family member of a EU citizen, which would give the right to free movement and residence in EU Member States. As a result of marriages of convenience persons are frequently both exploited in forced labour in a household and sexually abused.

Trafficking in human beings and exploitation are not a widespread type of criminal offences in the territory of the State of Latvia. It is anticipated that Latvia will still remain a country of origin of victims of trafficking in human beings, and this tendency will remain because of the crisis in national economy. In wishing to improve their financial state, as well as to find an opportunity to continue living abroad, citizens of Latvia will voluntarily go to the most developed countries of the EU.

Similarly as in the previous years citizens of Latvia will henceforward be recruited for being sent for sexual exploitation with the consent of such persons, on the basis of the principle of mutual financial profitability, with the perspective that recruited persons will regularly return abroad in order to earn money and to engage in prostitution. Although the CL of Latvia provides for criminal liability for sending persons for sexual exploitation with the consent of the person, the recruited persons do not consider themselves as victims of a criminal offence because the possibilities of good profit abroad by engaging in prostitution are of great significance in such cases.

The tendencies of the previous years show that the number of cases of potential trafficking in human beings for the purpose of sexual exploitation increases when persons are intentionally misled regarding the actual work conditions abroad. The case when a person consented to go to England in order to find work, however, instead of an actual work was forced to conclude a

marriage of convenience and was raped in a group of persons serves as an example. Such case attests to the overall poor social and financial situation in our country, which compels people to leave the country in search of a better life, and the role of the State Police in such cases is mostly dealing with the consequences.

Although recruiters in Latvia receive remuneration for the persons recruited, which is not equivalent to the profit earned by human traffickers for exploitation of victims of trafficking in human beings abroad, as a result of the continuing crisis in national economy recruiters in Latvia might be ready to continue receiving remuneration, which, in their opinion, is an easy profit without involving great risk.

Hitherto no cases of forced labour exploitation, which would conform to the constituent elements of a criminal offence provided for in Section 154.[1] "Human Trafficking" provided for in the CL, have been detected in the territory of the State of Latvia. It may be foreseen that the situation will remain unchanged because employers do not use such means against employees, which would attest to human exploitation; in turn, inappropriate working and residence conditions, delayed or unpaid remuneration, long working hours are not the grounds for initiating criminal proceedings regarding trafficking in human beings.

Organised action against the avails of prostitution is one of the priorities of the 3rd Division for Action against Trafficking in Human Beings and Living on the Avails of Prostitution of the Organised Crime Enforcement Department of the Central Criminal Police Department of the State Police. In 2012 operation of four organised groups of persons living on the avails of prostitution was discontinued within the scope of criminal proceedings. In 2013 nine criminal proceedings regarding living on the avails of prostitution were initiated and 33 persons (10 of them men and 22 – women) were applied the status of a suspect. Preservation of similar tendencies in the field of living on the avails of prostitution may be foreseen henceforward in Latvia.

Taking into account that the number of women from Latvia who conclude marriages of convenience abroad has increased during the last years and the fact that in majority of cases the women found themselves in the situation of being exploited, which conforms to the definition of trafficking in human beings, Latvia has recognised marriages of convenience as a risk of trafficking in human beings. On 1 April 2013 amendments to the CL of Latvia came into force, introducing legal framework which provides for criminal liability for malevolent provision of a person with an opportunity of legally acquiring the right to reside in the Republic of Latvia, another European Union Member State, state of the European Economic Area or the Swiss Confederation. The State Police has already initiated five criminal proceedings regarding recruitment of persons for marriages of convenience[22], applying the status of a suspect to three women.

Since 2008 the 3rd Division for Action against Trafficking in Human Beings and Living on the Avails of Prostitution of the Organised Crime Enforcement Department of the Central Criminal Police Department of the State Police is carrying out in-depth investigations in order to fully encompass all fields of operation of organised sexual exploitation and to hold the organisers to criminal liability in accordance with Section 195 "Laundering of Proceeds from the Crime" of the CL. In 2013 attachment was imposed on movable and immovable

[22] In accordance with the definition provided in Council Resolution No.97/C 382/01 of 4 December 1997 on measures to be adopted on the combating of marriages of convenience "marriage of convenience" means a marriage concluded between a national of a Member State or a third-country national legally resident in a Member State and a third-country national, with the sole aim of circumventing the rules on entry and residence of third-country nationals and obtaining for the third-country national a residence permit or authority to reside in a Member State.

properties, as well as financial resources of the suspects and their relatives in order to ensure a solution for financial issues in criminal proceedings in the amount of more than LVL 611 182.

As the globalisation continues, the tourism develops, the poverty and social marginalisation increases, the economic and demographic segregation increases, the demand for and offer of sexual services and cheap labour force increases, the extent of trafficking in human beings, which is significant in the whole world, will not decrease. It is foreseeable that the extent of trafficking in human beings and exploitation in Latvia will not decrease. Therefore, such a policy planning document is necessary, which includes measures and activities the purpose of which is to ensure implementation of sustainable, co-ordinated and planned State action policy for the prevention of trafficking in human beings – to prevent and take action against trafficking in human beings, to protect and help the victims of trafficking in human beings, fully conforming to their human rights, and to promote intersectoral co-operation in order to achieve this objective.

3. Preventive Measures of Trafficking in Human Beings

Preventive measures of trafficking in human beings are very important because they are an important precondition for a person not to become a victim of trafficking in human beings. In the aspect of a policy planning document the overarching objective of preventive measures is to maximise the overall efforts in prevention of trafficking in human beings.

The main task of preventive measures of trafficking in human beings is to direct purposeful informative and educational measures and activities towards groups of persons who are the most susceptible and easy subject to exploitation.

3.1. Education and Information

3.1.1. Education

The MoES in co-operation with the subordinate institution NCE is continuously carrying out preventive measures, the objective of which is to educate pupils and teachers regarding problems and risks of trafficking in human beings.

Publications dedicated to the issues of prevention of trafficking in human beings are periodically published on the youth policy portal www.jaunatneslietas.lv administered by the Sports and Youth Department of the MoES, mainly informing regarding current events of non-governmental sector of Latvia in this field. The portal has developed good co-operation with the youth organisation "Youth Against AIDS".

In accordance with Cabinet Regulation No. 1027 of 19 December 2006, Regulations Regarding the State Basic Education Standard and Basic Education Subject Standards, and Cabinet Regulation No. 281 of 21 May 2013, Regulations Regarding the State General Secondary Education Standard, Subject Standards and Sample Education Programmes, issues related to trafficking in human beings have been included in the content of general education subject standards, for example, "Social Sciences", "Policy and Rights", "Health Studies" and sample subject programmes.

The basic requirements for the acquisition of the subject "Social Sciences" include a condition that upon graduating from the 3rd grade the educatee, for example, is able to evaluate his or her actions and actions of others, characterise them as good or bad, and to justify his or her evaluation; understands that every action has consequences; knows how to keep himself or

herself and other people safe at home, on the street, at school; knows what is violence, the types of violence; knows where to look for help in emergencies and how to act in cases of violence.

The basic requirements for the acquisition of the subject "Social Sciences" include a condition that upon graduating from the 6th grade the educatee, for example, is able to understand the connection between action and consequences, knows how to see and evaluate correlation between causes and consequences in different life situations; knows what is violence, the types of violence; knows where to look for help in emergencies.

The basic requirements for the acquisition of the subject "Social Sciences" include a condition that upon graduating from the 9th grade the educatee, for example, is able to name fundamental human rights and is aware of their inviolability; knows the types of conflicts and is able to offer his or her way of solving a conflict; knows the difference between lawful and unlawful action; knows about sex industry; knows what is violence, the types of violence; knows where to look for help in emergencies and how to act in cases of violence.

For successful implementation of the basic requirements laid down in regulatory documents the NCE ensures teachers with methodological support. Support material for parents and teachers *„Vesels un drošs - interaktīvi par veselības un cilvēkdrošības jautājumiem pirmskolā un sākumskolā"* [Healthy and Safe – Interactively on Health and Human Safety Issues in Pre-school and Elementary School] are available on the NCE website, using the linkhttp://visc.gov.lv/vispizglitiba/saturs/dokumenti/metmat/vesels_un_dross.pdf.

By supplementing the basic requirements laid down in the content of general education standards for subjects "Policy and Rights" and "Health Studies", the mandatory study content includes topics which are related to improvement of issues of trafficking in human beings. The basic requirements for the acquisition of the subject "Health Studies" include a condition that upon graduating from the 12th grade the educatee, for example, knows about sexual offences and the liability laid down in the Criminal Law for them; expresses his or her opinion on measures for restricting the spread of HIV infection and the causes and consequences of sex industry; knows what precautions should be taken when travelling abroad.

Basic education subject standards and general education subject standards, as well as sample general education subject programmes are made public on section "*Vispārējā izglītība*" [General Education] of the website of the National Centre for Education – www.visc.gov.lv.

Upon organising the methodological work of teachers teaching social sciences, every year the NCE address issues related to the prevention of trafficking in human beings in methodological seminars and courses for vocational in-service training of teachers. Moreover, in order to prevent prejudiced attitude towards victims of trafficking in human beings, the NCE is offering methodological material "*Vadlīnijas mācību grāmatu vērtēšanai no dzimumu līdztiesības aspekta*" [Guidelines for Evaluation of Study Books from the Point of View of Gender Equality].

Upon organising work with upbringing specialists of local governments in 2012, the Interest-related Education and Upbringing Work Division of the Department of Interest-related Education and Continuing Professional Development of the NCE has included issues related to the prevention of trafficking in human beings.

The content of the methodological aid "Klases stundu programmas paraugs 1.-12.klasei" [Sample Programme of Class Lessons for Grades 1-12] includes issues related to the

prevention of trafficking in human beings, including protection of minors from criminal offences against morality and sexual inviolability

The 2009 methodological recommendations of the NCE for authors of study books (available here:
http://visc.gov.lv/vispizglitiba/saturs/dokumenti/metmat/mac_lit_izstrade_20100202.pdf)
include the main guidelines for the creation and evaluation of study literature (regulatory grounds and scientific justification, didactic principles of creating the study content, as well as methodological, legal, ethical and perceptibility aspects), which are also of significance as regards issues concerning educating pupils regarding issues related to trafficking in human beings.

3.1.2. Informing of the Society

Hitherto sectoral ministries have not organised informative campaigns on issues related to trafficking in human beings, which would be financed from the funds from the State budget. Sectoral ministries and the institutions and services supervised thereby have supported informative and social activities organised by the competent NGOs by participating therein, as well as ensuring information and lecturers, if necessary. The State programme does not provide for State financing for implementation of regular measures for informing the society, and basically the implementation of this task is based on the ability of NGOs to attract additional financing.

The MoFA is regularly participating in measures of informative campaigns in order to inform the society regarding safe travelling and the possibilities of receiving consular assistance abroad, regarding action in emergencies, possibilities of registering with the Consular Register, risks related to seeking employment abroad.

No.	Title of the project	Year	Source of financing	Target group	Amount of financing	Project implementer
1.	"Sold Freedom"	2012	Philip Morris International	environmental posters of 2 types were created: "Marriages of convenience – Sold Freedom" and "Forced labour – modern slavery", which were displayed in 5 largest cities of Latvia, as well as 4 round table meetings took place in local governments in Daugavpils, Rēzekne, Liepāja and Valmiera, and in Human Rights and Public Affairs Commission of the 11th *Saeima*	LVL 6 254.02	Shelter "Safe House"

				of the Republic of Latvia.		
2.	Youth programme-project for leisure time activities "A human being is not for sale!"	2012	Education, Culture and Sports Department of the RCC	more than 200 young persons from socially vulnerable youth groups from social institutions participated in reality games concerning the topic of trafficking in human beings, a film on the reality game was created	LVL 2 686.02	Shelter "Safe House"
3.	Information regarding topics related to marriages of convenience and trafficking in human beings was displayed in co-operation with portals www.anglobalticnews.co.uk and http://baltic-ireland.ie established in Great Britain and Ireland.	2012	Shelter "Safe House"	Latvians living abroad		Shelter "Safe House"
4.	Training of pupils within the scope of co-operation of "Safe House" with employees of the State Police and the Prosecutor's Office	2012	Shelter "Safe House"	more than 50 pupils educated, including 20 pupils who live in social care institutions of Riga		Shelter "Safe House"
5.	Booklet "*Cilvēku tirdzniecības novēršana*" [Prevention of Trafficking in Human Beings] in Latvian and Russian (45 000 copies)	2012; 2011; 2010	RCC foundation for maintaining public order	Booklets were distributed at seminars of professionals and pupils, social service offices, embassies of Latvia abroad, the Consular Department and elsewhere as much as possible.	LVL 1 992 26	RCC WD
6.	"*Atver acis!*" [Open Your Eyes!] and conference "Preventive Measures for Reduction of Trafficking in Human Beings", topical weeks regarding trafficking in human beings were prepared	2011	Philip Morris International	To 185 libraries and 118 pupils from Rīga, Rīgas district, Tukums, Vecpiebalga, Vecumnieki, Skrunda, Sēja, Smiltene, Dundaga, Tērvete, Talsi, Baldone, Strenči,	EUR 4 794.77	Shelter "Safe House"

				Salacgrīva, Saldus, Krāslava, Lubāna, Dobele, Limbaži, Amata, Madona municipalities, Valmiera, Preiļi un Jelgava		
7.	Alumni project competition "Be Aware! – Promoting Human Trafficking Awareness in Latvia" – a film "*Plaisa*" (Gap) and 3 videos on trafficking in human beings were created	2011-2012	USA Embassy in Riga	1066 pupils in different regions of Latvia	LVL 12 123.82	Shelter "Safe House"
8.	Representative materials within the scope of seminars organised for young persons regarding prevention of trafficking in human beings	2011	USA Innovation Award	pupils in different regions of Latvia, including pupils living in social care institutions of Riga		Shelter "Safe House"
9.	Informative campaign "Marriages of Convenience – A Trap!" and a press conference "In 2011 Latvian brides have rapidly increased the number of victims of trafficking in human beings"	2011	Philip Morris International	the society was informed regarding risks of becoming victims of trafficking in human beings by concluding marriages of convenience with third-country nationals with or without remuneration, a survey was performed in order to find out the level of awareness of the society regarding marriages of convenience; extensive interactive activities took place in place from which people leave Latvia to go abroad	LVL 2 241	Shelter "Safe House"
10.	Conference "Co-operation between the State and NGOs in Reduction of Trafficking in Human Beings"	2010	USA Embassy in Riga; MoI – premises	137 persons representing different professions, including public prosecutors, employees of	LVL 1 268.53	Shelter "Safe House" in co-operation with the MoI

				the State Police and social workers, border guards and representatives of NGOs were educated		
11.	Project of the Åland Islands Peace Institute and RCW Marta "Change the Traditional Gender Roles – Prevent Trafficking in Human Beings!".	2010-2012	Central Baltic Sea Region "INTERREG IV A" programme 2007-2013	Within the scope of the project informative activities and social campaigns took place in order to attract the attention of the society to issues related to the prevention of trafficking in human beings, legalisation of prostitution and punishing of people purchasing sexual services	LVL 44 726	RCW Marta
12.	Websites www.meitenes24.lv, www.izglabvalsti.lv and www.seksapolicija.lv created within the scope of the social campaign "Buy a Girl – Save the Country"	2010	Central Baltic Sea Region "INTERREG IV A" programme 2007-2013	society	LVL 6 527.95	RCW Marta
13.	Project "Training of Law Enforcement Authorities in Co-operation"	2010	Riga office of the International Organisation for Migration, USA Embassy in Riga	40 officials of law enforcement authorities	LVL 4 500	Riga office of the International Organisation for Migration
14.	Informative campaigns, press conferences on safe travelling and seeking employment abroad	2009-2012	Balttour, EU House, co-financing of the MoFA	Society, representatives of mass media	Within the scope of the budget	MoFA
15.	Campaign "Safety Days at Schools", within the scope of which pupils are informed and educated regarding risk factors and threats related to trafficking in human beings within the scope of other preventive measures on legal upbringing	2009-2010	State Police	Pre-school, basic education and secondary education institutions, special and vocationally oriented education institutions throughout the territory of Latvia were involved in the campaign – in total 3607	Within the scope of the budget	State Police

				educational institutions		

State institutions and NGOs co-operate with mass media of Latvia ("*Diena*", "*Neatkarīgā Rīta Avīze*", "*Patiesā dzīve*", *LTV Panorāma*, LNT, TV3, TV5, BNS, LETA, *Latvijas Kristīgais radio, Latvijas Radio* 1,2,4, BaltcomRadio) and foreign mass media ("*The Irish Times*", "*Financial Times*", *Newstalk Radio*, TV3, *BBC Russian* office) in order to inform the society regarding issues related to trafficking in human beings. During the preceding years the topic of marriages of convenience has been an especially recurring topic in mass media, and it was acknowledged in the programme "*Nekā personīga*" of Channel TV3 that marriages of convenience as the form of trafficking in human beings and solving of issues related thereto is one of the most important topics to be solved in 2012 in Latvia.

As a result of regularly implemented informative and social campaigns and activities, including the portal www.draugiem.lv, the number of victims of trafficking in human beings has a tendency to increase. Taking into account that the topic of trafficking in human beings is being constantly brought up, people are aware of themselves as victims of trafficking in human beings, are more frequently reporting on cases or potential cases of trafficking in human beings when there are risks for a person to become a victim of trafficking in human beings, as a result of which it is possible to take corresponding preventive measures before the actual trafficking in human beings has occurred.

No.	Training	Year	Source of financing	Target group	Amount of financing	Project implementer
1.	Project "Preventive Measures for Reduction of Trafficking in Human Beings"	2012	Riga City Council foundation for maintaining public order	25 social workers from Riga, 20 employees of municipal police, 50 social pedagogues, each social pedagogue received a DVD disk of the film "*Plaisa*" [Gap] created within the scope of the project "Be Aware!" with an explanation and recommendations for work with pupils of different ages; different training programmes were drawn up	LVL 2 559	Shelter "Safe House"
2.	Training of would-be social work specialists regarding the topic of trafficking in human beings	2012	Shelter "Safe House"	30 would-be social work specialists of the State social work institution of higher education "*Attīstība*"		Shelter "Safe House"
3.	Project "Preventive Measures for Reduction of Trafficking in Human Beings"	2011	Riga City Council foundation for maintaining public order	60 managers and social workers of Riga social institutions; 2 different training programmes were drawn up	LVL 2 010	Shelter "Safe House"
4.	Project "Preventive Measures for Reduction of Trafficking in Human Beings"	2010	Riga City Council foundation for maintaining public order	training of 60 social workers in two 3-day seminars	LVL 1 950	Shelter "Safe House"

It is very important to promote the understanding of such specialists regarding trafficking in human beings, the risks and consequences of trafficking in human beings, the identification of the current and potential victims of trafficking in human beings, who most frequently come into contact with members of the society most subjected to the risk of trafficking in human beings. The specialists who are able to identify the victims of trafficking in human beings are social work specialists, employees of medical treatment institutions. According to the statistics of the implemented training, training is mostly organised only for social workers, employees of municipal police and social pedagogues of schools in Riga. However, only half of persons who have been formally recognised as victims of trafficking in human beings and have received State funded social rehabilitation service have lived in Riga local government before they became victims of trafficking in human beings and were exploited abroad. Other victims of trafficking in human beings are from regions of Latvia: Ludza, Daugavpils, Nereta, Viesīte, Madona, Smiltene, Alūksne, Balvi, Vangaži, Salacgrīva, Sigulda, Rūjiena, Strenči, Valmiera, Ogre, Ķekava, Bauska, Iecava, Brocēni, Saldus, Nīca, Grobiņa, Liepāja, Kuldīga, Kandava, Tukums, Jelgava, Jūrmala. However, training of specialists in regions of Latvia is almost non-existent, moreover, taking into account the turnover of specialists, such training should take place regularly.

Problems detected:

- Financial resources from the State budget for organising and implementing informative and social campaigns are not granted.
- Resources from the State budget for organising training of specialists are not granted.
- Training of specialists in regions of Latvia is not organised.
- Responsibility for training of specialists mainly is imposed on NGOs.

3.1.3. Studies

Extensive studies in relation to the problems in the field of trafficking in human beings took place in Latvia in the time period until 2007. Studies were conducted on stereotypes regarding trafficking in human beings and characterisation of the situation in Latvia (2005), trafficking in human beings in the context of transnational organised crime, causes for, prevention of and action against it in the Baltic States (2005), on reintegration of victims of trafficking in human beings (2006/2007), on investigation, trial processes and legal regulation of crimes of trafficking in human beings in Latvia (2006), the awareness of young persons regarding work abroad and risks of trafficking in human beings (2007).

Since 2007 no study has been conducted in Latvia specifically on trafficking in human beings, its scope, risks, threats, recruitment mechanisms, victims of trafficking in human beings. However, the society has access to information regarding actual amounts and tendencies of trafficking in human beings, the work of law enforcement authorities, social rehabilitation services to victims of trafficking in human beings, preventive work, education and informative campaigns:

- On 26 March 2009 Informative Report on the Course of Implementation of the National Programme for the Prevention of Trafficking in Human Beings 2004-2008 in 2008[23]was approved.
- On 26 February 2010 Informative Report on the Evaluation and Results of the Operation of the MoI and the Institutions Subordinate Thereto in the Field of Prevention of and Action against Trafficking in Human Beings in 2009[24] was published.
- On 17 March 2011 the Prime Minister approved the Informative Report on Implementation of the Programme for the Prevention of Trafficking in Human Beings 2008-2013 in 2009 and 2010, prepared by the MoI.

In 2009 the United Nations Office on Drugs and Crime (UNODC) and the CBSS Secretariat in co-operation with 11 CBSS Member States, by interviewing officials of sectoral ministries, laws enforcement authorities, prosecutor's offices and representatives of NGOs and international organisations, prepared a report "Human Trafficking: Assessing Cooperation between State Actors and Civil Society in the Council of the Baltic Sea States Region with respect to Victims' Assistance and Protection Measures". The basic purpose of the study was to provide support to 11 member states of the CBSS by identifying the best practices, problematic fields and possible ways for improving co-operation both on national level and regionally, using purposeful and consistent approaches.

In 2010 within the scope of CBSS TF-THB study "Hard Data" was conducted on collection and collection of data on trafficking in human beings in all 11 members states of the CBSS. This study provides the current capacity evaluation of data collection in all member states of the CBSS. "Hard Data" is the first publication of such kind in the region, which reflects the national data flows and acquisition of the analysed data. Concurrently the study provides a comprehensive and comparative regional report on data collection instruments, national questionnaires, information regarding institutions participating in data collection and the best practice examples. The study reminds that without comprehensible, provable and clear data it is not possible to perform analysis of tendencies or impact of trafficking in human beings for the policy-making and practical work.

[23] http://polsis.mk.gov.lv/LoadAtt/file47743.doc
[24] Informative Report on the Evaluation and Results of the Operation in the Field of Prevention of and Action against Trafficking in Human Beings in 2009, http://www.iem.gov.lv/lat/nozare/in/

The embassy of Latvia in Ireland conducted a study in 2011 on potential participants of marriages of convenience, whose intention was to register marriage with third-country nationals in Ireland. The tendency of 2011 shows that female citizens of Latvia get involved in marriages of convenience by fraud or using their social vulnerability. Female citizens of Latvia who wanted to register marriage were less than 20 years of age, disabled, with low level of education, from poor or socially unfavourable large families, had been under guardianship or in care of social institutions of Latvia until reaching legal age, or whose parent or event both parents had died early in the childhood. Similarly female citizens of Latvia who wanted to register marriage had minor children, in several cases mothers had been revoked the child custody rights or also children were left with relatives in Latvia.

Problems detected:

- There is a lack of regular and comparable data to be obtained in studies, which would ensure proof-based conclusions and recommendations for improving the policy for the prevention of trafficking in human beings.

3.2. Identification of Victims of Trafficking in Human Beings

In accordance with Sub-paragraph (e) of Article 4 "Definitions" of the Council of Europe Convention on Action against Trafficking in Human Beings a "victim" shall mean any natural person who is subject to trafficking in human beings.

In accordance with the Law On Social Services and Social Assistance a victim of trafficking of human beings is a person who has been recognised as a victim in the criminal offence of trafficking of human beings or who the State Police has issued a statement that he or she is a victim of trafficking of human beings in a foreign state, as well as a person who has been recognised as conforming to victim of trafficking of human beings criteria by a social service provider.

The procedures, by which a person who has been recognised a victim of trafficking in human beings shall receive social rehabilitation services from the resources of the State budget, and the criteria for recognising a person as a victim of trafficking in human beings in Latvia is determined by Cabinet Regulation No. 889 of 31 October 2006, Regulations Regarding the Procedures, by Which Victims of the Trafficking in Human Beings Receive Social Rehabilitation Services, and the Criteria for the Recognition of a Person as a Victim of the Trafficking in Human Beings. In accordance with that regulatory enactment a person may receive State funded social rehabilitation services, if he or she has been recognised as a victim in criminal proceedings regarding trafficking in human beings or are activities are performed, which may be the grounds for taking a decision that a person complies with the criteria for a victim of trafficking in human beings.

"Guidelines for Identification of Trafficking in Human Beings for the Purpose of Labour Exploitation"[25]have been drawn up for identification of trafficking in human beings in Latvia for the purpose of labour exploitation.

Employees of diplomatic and consular missions of Latvia use the electronic version of the Handbook for Diplomatic and Consular Personnel on how to Assist and Protect Victims of Human Trafficking, issued by the CBSS TF-THB, in which information is provided on how

[25] The document was published on 6 January 2012 on the website of the Ministry of the Interior http://www.iem.gov.lv/files/text/identificesanas vadlinijas.pdf

to recognise victims of trafficking in human beings and how to act in order to provide the necessary help to them. By becoming acquainted and using the abovementioned handbook consular officials get an opportunity to supplement their professional knowledge regarding the criteria for identification of victims of trafficking in human beings and the actions to be taken in order to provide aid with as less delay as possible.

According to that laid down in the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 Member States should ensure that official, functional State advisory mechanisms are established. Within the scope of such mechanisms procedures should be described in order to identify victims as well as possible, to consult them and provide protection and aid to them; all respective State institutions and civic society should be involved therein. Also criteria for identification of victims, which would be used by all parties involved, should be included. In accordance with Directive 2011/36/EU, on the basis of individual assessment of risk and needs, victims should enjoy appropriate protection and assistance. Such evaluations should be performed within the scope of national advisory mechanisms. Also such issues as compensations and safe return should be solved within the scope of such mechanisms. The roles and duties of all parties involved should be clearly determined. Currently in cases when victims move across borders, problems are usually solved bilaterally according to ad hoc procedures. It often takes a lot of time and is inefficient. According to victim-oriented approach the EU Commission will draw up a sample model of EU cross-border advisory mechanism, which will link national advisory mechanisms in order to identify victims more successfully, to consult them and to provide protection and aid to them.

Problems detected:

- To improve the national advisory mechanism in order to better identify victims of trafficking in human beings, to consult them and to provide protection and aid to them

3.3. Aid and Support to Victims of Trafficking in Human Beings

Social rehabilitation services to victims of trafficking in human beings from the State budget funds are ensured since 2006 in accordance with Cabinet Regulation No. 889 of 31 October 2006, Regulations Regarding the Procedures, by Which Victims of the Trafficking in Human Beings Receive Social Rehabilitation Services, and the Criteria for the Recognition of a Person as a Victim of the Trafficking in Human Beings, which prescribes the procedures, by which a person who has been recognised a victim of the trafficking in human beings shall receive social rehabilitation services for the State budget funds, and the criteria for the recognition of a person as a victim of the trafficking in human beings. Thus support services to victims of trafficking in human beings have been introduced in the State, ensuring access to psychosocial support services. Organisation of the provision of social rehabilitation services and administration of the financing granted by the State is within the competence of the MoW.

The Social Integration State Agency (SITA) is a State administrative institution supervised by the MoW, which ensures the co-ordination of the provision of social rehabilitation services from the State budget funds, takes a decision to provide services or to refuse to provide services, and creates the database of the services provided.

The shelter "Safe House" has been providing State funded social rehabilitation services to victims of trafficking in human beings since 2007 according to public procurement procedures. A procurement contract was entered into 18 April 2013 by and between the MoW

and the shelter "Safe House" regarding provision of social rehabilitation and support services to 48 victims of trafficking in human beings in relation to the participation of the victims of trafficking in human beings in criminal proceedings in 2013 and 2014. The total sum of the contract is LVL 174 252.

Information source: Shelter "Safe House"

No.	Reporting year	Planned financing	Planned number of persons for the receipt of the State funded social rehabilitation service	Financing actually utilised	Number of persons to whom social rehabilitation service from State budget funds is provided	Service provider
1.	2012	LVL 38 880	24	LVL 61 701	30	Shelter "Safe House"
2.	2011	LVL 17 000	12	LVL 29 898	14	Shelter "Safe House"
3.	2010	LVL 17 000	12	LVL 34 132	14	Shelter "Safe House"
4.	2009	LVL 17 000	12	LVL 28 264	12	Shelter "Safe House"

RSW Marta ensures the provision of social rehabilitation services to victims of trafficking in human beings within the scope of the financing attracted by the association.

Information source: RCW Marta

No.	Reporting year	Number of persons who have received social rehabilitation services	Service provider
1.	2012	4	RCW Marta
2.	2011	4	RCW Marta
3.	2010	4	RCW Marta
4.	2009	4	RCW Marta

The provider of social services to victims of trafficking in human beings selected according to the procedures of public competition (hereinafter – service provider) within the scope of social rehabilitation attracts a team consisting of different professionals (psychologist, psychotherapist, lawyer, medical employee, employee of the State Police) and, as necessary, also other specialists (stomatologist, gynaecologist, psychiatrist, etc.), as well as offers a safe house to victims of trafficking in human beings as rehabilitation place throughout the service time or for a time period, which is selected by the client, if it is necessary to the client. In case when it is necessary to change the safe location (for example, recruiters have received information regarding the location of the victim), it can be carried out owing to the co-operation of the service provider with several other institutions and NGOs. Minors who are victims of trafficking in human beings have access to aid according to general procedures with the service provider. The service provider also, within the scope of its possibilities, provides support to a victim of trafficking in human beings in seeking employment.

Long-term aid is possible with the participation of social service offices of local governments, with which, if necessary, co-operation at the initial stage of rehabilitation of the victim is established by NGO specialists, however, a special programme has not been created for victims of trafficking in human beings, which would provide for additional services, for example, State funded long-term aid for provision of a dwelling or another long-term aid, which is necessary for integration of the victim in the society and access to the labour market.

State ensured rehabilitation programme for victims of trafficking in human beings lasts up to six months. In this time period main attention is paid to reducing the consequences caused to the victim of trafficking in human beings. This programme does not include integration (inclusion) of victims of trafficking in human beings in the society, thus, official data on inclusion or non-inclusion of victims of trafficking in human beings in the society is not aggregated. Shelter "Safe House" has only unofficial information at the disposal thereof as to where former victims of trafficking in human beings are and what do they do, however, such information is not available regarding all victims who have received the social rehabilitation service.

In practice NGOs come across situations where victims of trafficking in human beings request aid electronically, by telephone or in person, however, they do not want to make their name public and to identify for the receipt of the social rehabilitation service from the State budget funds. Resources from the State budget for the provision of individual consultations to victims of trafficking in human beings who refuse to be identified are not provided for. Shelter "Safe House" provided such aid in 89 cases in 2011 and in 106 cases in 2012.

High-level guarantee of human rights has been incorporated in the criminal proceedings of Latvia and a person may be recognised a victim only with the consent of the particular person. In majority of cases victims of trafficking in human beings gladly co-operate with the State Police, providing important testimonies regarding organisers of trafficking in human beings and sending of persons for sexual exploitation, however, due to personal reasons they refuse from the possibility of receiving State ensured social rehabilitation for victims of trafficking in human beings in the status of witnesses, because, in their opinion, they do not need such rehabilitation. In each case of trafficking in human beings the State Police and NGOs motivate a person to consent for the receipt of State funded social rehabilitation services.

Upon introducing the requirements of Directive 2011/36/EU the MoW drafted corresponding amendments to Cabinet Regulation No. 889 of 31 October 2006, Regulations Regarding the Procedures, by Which Victims of the Trafficking in Human Beings Receive Social Rehabilitation Services, and the Criteria for the Recognition of a Person as a Victim of the Trafficking in Human Beings, which came into force on 1 January 2013. The abovementioned amendments to Cabinet Regulation prescribe changes in duration of receipt of services for such victims of trafficking in human beings who need support due to participation in criminal proceedings, as well as in the content of the service and in the procedures for recognising a person as a victim or trafficking in human beings. In many cases after establishing the fact of trafficking in human beings and during receipt of the social rehabilitation service criminal proceedings in which the client is involved are not initiated. However, it does not preclude a possibility that the former recipient of the service is later involved in criminal proceedings as a victim or witness. Henceforward such clients will have an opportunity to receive such services as psychosocial assistance and support (including individual consultations of a lawyer, social worker, psychologist), services of an interpreter, assistance in drawing up of legal documents, also, if necessary, representation in a court, without exceeding 150 hours per year (throughout the criminal proceedings). Similarly, if necessary, an opportunity of receiving five consultations will be ensured to family members of minor victims of trafficking in human beings, if they reside in Latvia. If a person does not receive the abovementioned support during criminal proceedings, he or she will be offered an opportunity to use five one-hour consultations of a service provider within two years after receipt of the service. In addition to the abovementioned support to a person during criminal proceedings and for the provision of psychosocial support to minor family members of victims of trafficking in human beings amendments to the Cabinet Regulation also provide for such new support

measures as organising arrival of a victim or potential victim of trafficking in human beings being abroad, as well as his or her minor children (if they are with the victim or potential victim) to the service provider and accompanying of the victim or potential victim from abroad, if the victim or potential victim is unable to travel without assistance. Amendments also prescribe changes in the procedures for recognising a person as a victim of trafficking in human beings, providing for an opportunity for the commission of specialists to perform an evaluation of the person also without the person being present, using electronic means of communication.

On 1 January 2013 amendments to Cabinet Regulation No. 291 of 3 June 2003, Requirements for Social Service Providers, came into force, which specify more precisely the duties of a provider of social services to victims of trafficking in human beings in provision of services.

The MoW, according to public procurement procedures, chooses a service provider, which is registered with the register of social service providers and conforms to the requirements laid down in the laws and regulations regarding social service providers, for the provision of social rehabilitation and support services during criminal proceedings to victims of trafficking in human beings. Taking into account the increase in the number of victims of trafficking in human beings, since 2011 a situation arises regularly where the number of victims exceeds the financing provided for in the State budget for the provision of social rehabilitation services, as a result of which it is necessary to announce a new procurement competition, therefore, a queue of victims of trafficking in human beings for the receipt of services has formed, and such queue is basically inadmissible. Both in 2011 and 2012 a queue formed, in which six persons were waiting for the receipt of the social rehabilitation service.

Problems detected:

- Sometimes victims of trafficking in human beings receive State funded social rehabilitation services in order of a queue and not at the time when the need for receiving the service has arisen.
- Sectoral ministries do not have a uniform idea of what measures should be ensured for successful integration of victims of trafficking in human beings in the society in order to avoid that a person is repeatedly subjected to trafficking in human beings.

3.4. Legal Protection of Victims of Trafficking in Human Beings

In accordance with Section 17 of the State Ensured Legal Aid Law a person who, in accordance with the law, has the right to defence and representation may request legal aid until the time of the coming into effect of the final court adjudication. In turn, in accordance with Section 20, Paragraph one of the State Ensured Legal Aid Law a State-ensured advocate for the representation of a person in criminal proceedings shall be invited in the cases and according to the procedures specified in the Criminal Procedure Law. Therefore, the procedures for inviting a State-ensured representative of the victim are laid down in Section 104 of the CPL.

The Legal Aid Administration disburses remuneration to the providers of legal aid (lawyers) in accordance with the procedures and in the cases specified in laws and regulations and cover other expenses related to the provision of legal aid from the State budget resources granted for legal aid. The types, amount, payment amount of State-ensured legal aid and the expenses related to the provision of legal aid and to be reimbursed, their amount and payments procedures are laid down in Cabinet Regulation No. 1493 of 22 December 2009, Regulations

Regarding the Amount of State-ensured Legal Aid, the Amount of Payment, Reimbursable Expenses and the Procedures for Payment Thereof.

3.5. Legal Aid

Section 104, Paragraph five of the CPL prescribes the rights of a victim to State-ensured legal aid, Paragraph six of this Section provides for the procedures by which services of a lawyer are ensured to a victim. Taking into account the abovementioned, the Law provides for specific time periods to be conformed to both by the person directing the proceedings and the senior sworn advocate. The MoJ, the Legal Aid Administration, the persons directing the proceedings and the Latvian Council of Sworn Advocates regularly meet and discuss issues regarding the procedures for providing legal aid in criminal proceedings.

Statistical data regarding the number of victims who have suffered from trafficking in human beings and have received State-ensured legal aid are not aggregated separately in the State. The Legal Aid Administration, which is the institution responsible for the provision of State ensured legal aid, has information[26], at the disposal thereof, regarding notifications submitted and paid by advocates regarding provision of legal aid in criminal proceedings (together regarding both the offenders and the victims).

3.6. State Compensation to a Victim of Trafficking in Human Beings

In recognising a person as a victim, the person directing the proceedings informs the victim regarding his or her rights, including to State compensation to victims. The right of a person to State compensation arises from the Law On State Compensation to Victims, the purpose of which is to provide a natural person who, in accordance with the procedures laid down in the CPL, has been recognised as a victim with the right to receive a State compensation for moral injury, physical suffering or financial loss resulting from an intentional criminal offence. The Legal Aid Administration, which is the competent authority in disbursement of State compensation, is regularly organising seminars and training for the persons directing the proceedings and social workers, as well as widely informs the society regarding the possibility to request and receive State compensation (in newspapers, on the Internet www.jpa.gov.lv, www.tiesas.lv, as well as a free-of-charge telephone information line 80001801 has been established, a free-of-charge request form is available; 25 000 booklets have been distributed in a year in all regions, to the persons directing the proceedings, NGOs, also social service offices of local governments, etc.).

In the time period from 2009 to 2012 7 persons who have suffered from trafficking in human beings have turned to the Legal Aid Administration.

Information source: Legal Aid Administration

Year	Number of victims who have turned to the Legal Aid Administration	Number of cases when State compensation was disbursed
2009	5	2 (gender inviolability was violated)
2010	2	0
2011	0	0
2012	0	0

On 1 January 2013 the Law "Amendments to the Law On State Compensation to Victims" came into force, in which, inter alia, the Law was supplemented with a new case of granting State compensation due to the initiatives of Directive 2011/36/EU, if the victim has suffered

[26] http://www.jpa.gov.lv/statistika

from trafficking in human beings (previously victims of such criminal offences could receive State compensation, if the consequences specified in the Law had set in). The new regulation ensures that a person who has been recognised as a victim in criminal proceedings regarding trafficking in human beings, may receive, until 31 December 2013, State compensation in the amount of 70% from the maximum amount of the compensation to the disbursed by the State – LVL 800 (four minimum monthly wages), in turn from 1 January 2014 the amount of State compensation will be calculated, taking the amount of the maximum State compensation as the basis – five minimum monthly wages. A victim may receive State compensation in uncompleted criminal proceedings only on the basis of a statement issued by the person directing the proceedings that the person has been recognised as a victim in criminal proceedings regarding trafficking in human beings. In turn, if criminal proceedings are completed or a decision of the person directing the proceedings has entered into effect to terminate criminal proceedings due to circumstances not exonerating the person, the victim must add an adjudication of the person directing the proceedings, which has entered into effect, to the State compensation request form.

Upon carrying out the requirements of the Criminal Procedure Law, victims are informed regarding their rights, including the right to receive compensation for the harm caused. Mostly persons who have the right to be recognised as victims in criminal proceedings related to the living the avails of prostitution or sending a person for sexual exploitation, are not aware of the criminal offence committed against them and do not identify themselves as victims of trafficking in human beings, therefore, they do not submit a claim for compensation for the harm caused, but refuse to be recognised a victim in criminal proceedings. It may be explained by the fact that majority of women have voluntarily engaged in prostitution and have intentionally consented to criminal proposals, conditions and demands of the persons related to trafficking in human beings, therefore, they do not perceive the harm caused to them as a criminal offence. In turn, in criminal proceedings according to Section 154.[1] "Human Trafficking" of the CL where persons have been involved in human trafficking using violence, threats, fraud or the dependence of the person on the criminal, persons exercise their right to submit a compensation application for the receipt of compensation for the harm caused by the criminal offence. In 2012 none of the victims had submitted such an application for the criminal offence provided for in Section 154.[1] of the Criminal Law in the criminal proceedings sent to the court.

3.7. Return of the Victims of Trafficking in Human Beings

Upon identifying a potential victim of trafficking in human beings, at first embassies of Latvia ascertain the physical safety of the person, if necessary, involve the local security services, ascertain whether medical and/or psychological aid, as well as accommodation is needed. If the person consents, the State Police, NGOs and the family of the victim are informed regarding the case without delay in order to solve the issue of return of the person in Latvia. Usually embassies in co-operation with local authorities make sure that the person safely leaves the foreign country, concurrently ensuring that the person is met in Latvia. The embassy always informs the person regarding opportunities of receiving social rehabilitation in Latvia in order to prevent potential repeating of the case of trafficking in human beings.

The expenses related to repatriation to Latvia are usually covered by relatives, local governments or NGOs. In practice in the interests of a victim of trafficking in human beings representations of the Republic of Latvia abroad immediately contact the service provider and agree on purchase of return tickets. In cases when the return expenses of a person are covered by the provider of social rehabilitation services, travel expenses from the budget of the social service provider are covered for both the victim and, if necessary, also for the person who is

going to the foreign country after the person who has suffered from trafficking in human beings. Expenses from the State budget are reimbursed after the social service provider submits corroborative documents to the MoW.

Return of persons from abroad to Latvia may be implemented, using a loan from the MoFA in accordance with Cabinet Regulation No. 322 of 8 May 2012, Procedures for Provision of Material Assistance to Persons who have Found Themselves in an Emergency Situation[27], however, in such case covering of return expenses from the budget of the MoW is not provided for. This Cabinet Regulation is not the main instrument for ensuring return tickets from abroad to a victim of trafficking in human beings.

Problems detected:

- There is no specific general action procedure (risk assessment and necessary co-operation) in cases when return to Latvia of a victim of trafficking in human beings identified abroad is implemented in order to ensure the safety of the victim and to prevent potential repeat subjecting of the person to trafficking in human beings.

3.8. Staying of a Victim of Trafficking in Human Beings who is a Third-Country National in Latvia

In order to transpose the requirements of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, it is prescribed in Section 3 of the Law On Residence of a Victim of Trafficking in Human Beings in the Republic of Latvia that "if a third-country national provides information that possibly might aid in the disclosure and elimination of trafficking in human beings, but it is not sufficient in order to decide the matter regarding commencement of criminal proceedings or in order to decide the matter, within the framework of the commenced criminal proceedings, regarding recognition of such third-country national as a victim of a criminal offence that is related to trafficking in human beings, the State Border Guard, investigative institution, the person directing the proceedings or the social rehabilitation service provider shall inform in writing such third-country national regarding the possibility of the granting of the reflection period and rights that he or she accordingly would obtain". In accordance with Section 1, Paragraph two of the abovementioned Law "reflection period" is a period of time that is granted to a person who has been recognised as a victim of trafficking in human beings so that he or she would consider a possibility to provide information, which would promote the disclosure or elimination of the cases of trafficking in human beings, to the investigative institution or the person directing the proceedings, who fulfils the functions specified in this Law".

Thus, a victim of trafficking in human beings has an opportunity of receiving a residence permit in the Republic of Latvia, even if initially such person is considered an illegal immigrant. In accordance with Section 5, Paragraph four of the Immigration Law a foreigner who is not a Union citizen and who has been recognised as a victim of trafficking in human

[27] Cabinet Regulation No. 322 of 8 May 2012, Procedures for Provision of Material Assistance to Persons who have Found Themselves in an Emergency Situation, prescribe the procedures by which material assistance is provided to a person who has a Latvian passport and who has found itself in an emergency situation in a foreign country, in order to ensure the return of the person to Latvia. In cases when a person has found itself in an emergency situation in a foreign country and it does not have access to another possibilities of receiving aid, the person or its relatives may use the possibility provided for in these procedures for covering the return expenses. After return the resources granted must be repaid to the MoFA.

beings, as well as minor children accompanied by him or her has the right to reside in the Republic of Latvia without a visa or residence permit until the specified reflection period has ended or terminated or a decision to issue a temporary residence permit has entered into effect. The person directing the proceedings requests a temporary residence permit for such foreigners for a period, which is not less than six months (Section 23, Paragraph six of the Immigration Law).

In turn, in relation to such third-country nationals who are victims of trafficking in human beings and who were not specified a reflection period, in accordance with Section 23, Paragraph one, Clause 21 of the Immigration Law "a foreigner has the right to request a temporary residence permit for a period of time not exceeding one year if it is necessary for pre-trial investigation institutions or a court that the foreigner resides in the Republic of Latvia until a criminal case investigation is finished or adjudicated in a court".

Moreover, in accordance with Sub-paragraph 13.16 of Cabinet Regulation No. 553 of 21 June 2010, Regulations Regarding Work Permits for Foreigners, if the abovementioned foreigner has received a temporary residence permit as a victim of trafficking in human beings, he or she is entitled to work with any employer in the Republic of Latvia.

In accordance with Section 35, Paragraph one, Clause 22 of the Immigration Law a residence permit shall be annulled if the person directing the proceedings has informed the OCMA in writing that the foreigner no longer needs to reside in the Republic of Latvia in the status of a victim of trafficking in human beings.

Hitherto there has been one case when three foreigners (three female citizens of Thailand) were issued temporary residence permits as victims of trafficking in human beings. After cancellation of residence permits all persons have voluntarily left the country.

3.9. Eemergency Numbers

Help and informative telephone lines established in Latvia and dealing with issues of trafficking in human beings, in order to promote prevention of trafficking in human beings and identification of victims of trafficking in human beings, fully ensure provision of consultations and help, transfer of information to the competent units in cases when a potential case of trafficking in human beings is suspected.

Currently any person may provide information on potential cases of trafficking in human beings, using the single emergency telephone number, or contacting directly the 3rd Division for Action against Trafficking in Human Beings and Living on the Avails of Prostitution of the Organised Crime Enforcement Department of the Central Criminal Police Department of the State Police (hereinafter – SP CCPD OCED 3rd Division) or the NGO that provides support to victims of trafficking in human beings.

Employees of the 24-hour free-of-charge emergency number of the State Police 110 (02) and of the single emergency telephone number of the rescue service 112 are capable of identifying the potential cases of trafficking in human beings and to take appropriate measures for directing information to the competent units. Upon implementing the international project "A Safety Compass – signposting ways to escape trafficking" (No HOME/2011/ISEC/AG/4000002172) Union supported by Directorate General of Home Affairs of European Commission (EC) "Prevention of and Fight against Crime Programme" 300 operators of emergency and emergency numbers and employees of on-duty divisions of the State Police will be trained on trafficking in human beings, on how to recognise and

communicate with a potential victim of trafficking in human beings during conversation, and to direct him or her for receipt of help and support to the competent State, local government authority or NGO.

The Consular Department of the MoFA ensures free-of-charge informative telephone line to travellers in order to provide consultations on safe travelling, work abroad and other consular issues. Also it is possible to call the 24-hour emergency number for receipt of assistance when finding oneself in an emergency situation abroad.

NGOs ensure emergency numbers by calling which a victim of trafficking in human beings or his or her relatives are provide support and consultations by telephone.

3.10. Non-punishment Principle

The amendments to the CL and CPL, which came into force on 1 April 2013, prescribe that a person may be released from criminal liability if he or she has committed a criminal offence during a period when he or she was subjected to human trafficking and was compelled to commit it. The persons who have suffered from trafficking in human beings should be protected from being held criminally liable or from punishment for criminal activities, if they were compelled to perform the abovementioned activities and such compulsion has been the direct consequences of them being subjected to trafficking in human beings. The purpose of the abovementioned regulation is to protect the human rights of the victims, to prevent that they are repeatedly victimised, and to motivate them to become involved in criminal proceedings as witnesses against the persons who committed the crimes. Such legal order does not preclude a possibility of holding the person criminally liable or punishing for offences, which have been committed by the person or in which the person has participated voluntarily.

Compulsion means such situation when the person did not have the opportunity of choosing his or her action, because violence, threats or other form of influencing was used against him or her, which interdicts the person of avoiding the committing of a criminal offence.

4. Combating of Trafficking in Human Beings

4.1. Legal Framework

In accordance with the CL of Latvia[28]trafficking in human beings is classified as a serious or especially serious crime.

Section 7. Classification of Criminal Offences

(4) A serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding three years but not exceeding eight years, as well as an offence, which has been committed through negligence and for which this Law provides for deprivation of liberty for a term exceeding eight years.

(5) An especially serious crime is an intentional offence for which this Law provides for deprivation of liberty for a term exceeding eight years or life imprisonment.

[28] The Criminal Law, http://www.likumi.lv/doc.php?id=88966

In the CL the liability for trafficking in human beings is included in the Chapter "Criminal Offences against Personal Liberty, Honour and Dignity", which unequivocally shows that this criminal offence is considered a violation of human rights.

Section 154.[1] "Human Trafficking" of the CL

(1) For a person who commits human trafficking, the applicable punishment is deprivation of liberty for a term up to eight years, with or without confiscation of property.

(2) For a person who commits human trafficking if it has been committed against a minor, or if it has been committed by a group of persons pursuant to prior agreement, the applicable punishment is deprivation of liberty for a term of three years and up to twelve years, with or without confiscation of property and with or without police supervision for a term up to three years.

(3) For a person who commits human trafficking if it has endangered the life of a victim or serious consequences have been caused thereby, or it has been committed involving particular cruelty or against an underaged person, or it has been committed by an organised group, the applicable punishment is deprivation of liberty for a term of five years and up to fifteen years, with or without confiscation of property and with or without police supervision for a term up to three years.

Regulation of Section 154.[1] of the CL completely incorporates that laid down in Directive 2011/36/EU that Member States must provide for the punishment of deprivation of liberty to at least ten years, if the offence deliberately or by gross negligence endangered the life of the victim, if it was committed by use of serious violence or has caused particularly serious harm to the victim.

Section 154.[2] "Meaning of Human Trafficking" of the CL

(1) Human trafficking is the recruitment, transportation, transfer, concealment, accommodation or reception of persons for the purpose of exploitation, committed by using violence or threats or by means of deceit, or by taking advantage of the dependence of the person on the offender or of his or her state of vulnerability or helplessness, or by the giving or obtaining of material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent.

(2) The recruitment, transportation, transfer, concealment, accommodation or reception of a minor for the purpose of exploitation shall be recognised as human trafficking also in such cases, if it is not connected with the utilisation of any of the means referred to in the Paragraph one of this Section.

(3) Within the meaning of this Section, exploitation is the involvement of a person in prostitution or in other kinds of sexual exploitation, the compulsion of a person to perform labour, to provide services or to commit criminal offences, the holding of a person in slavery or other similar forms thereof (debt slavery, serfdom or compulsory transfer of a person into dependence upon another person), and the holding a person in servitude or also the illegal removal of a person's tissues or organs.

In order to take action against the recent tendencies of trafficking in human beings, by Directive 2011/36/EU a more extensive concept was adopted on what should be considered trafficking in human beings as it was in accordance with Framework Decision 2002/629/JHA,

therefore, it includes additional expressions of exploitation. Exploitation of a person in criminal activities is taken over in the CL, which means that a victim of trafficking in human beings is compelled to commit crimes – to sell drugs, to pick pockets, etc.

In practice it is necessary to separate cases of trafficking in human beings for the purpose of exploitation of labour force from civil legal disputes that have arisen in employment relationship. Quite often the abovementioned may be established only during the course of investigation, because the person who wishes to recover the promised remuneration may provide inadequate interpretation of facts, circumstances and action of other persons.

The most essential differences between forced labour and disputes of employment legal relations are violence or threats of violence to a person. I.e., in case of forced labour a person is compelled to perform work or to provide services against his or her will, applying violence, threats, fraud, as well as using the dependence of the person on the guilty party or his or her state of helplessness. Accordingly there is no violence present in disputes of employment legal relations, but there is a conflict of legal nature between the employer and the employee.

Information source: State Police and Office of the Prosecutor General

Year	Criminal proceedings initiated	Suspects	Criminal proceedings sent for trial	Number of persons against whom criminal proceedings have been sent for trial
2009	3 (2 – forced marriage, 1 – sexual exploitation)	4 (2 men and 2 women)	3	10 persons
2010	3 (2 – sexual exploitation, 1 – forced marriage)	4 (2 men and 2 women)	3	4 persons (3 men and 1 woman)
2011	0	0	0	0
2012	3 (sexual exploitation)	2 persons (2 men)	1	1 person (1 man)

In 2012 no cases of trafficking in human beings were detected in Latvia, also to Latvia or within the country. The State Police identified four cases of trafficking in human beings with five victims of trafficking in human beings (five citizens of Latvia were intentionally misled regarding the actual work abroad), from whom three persons were recognised victims. In Latvia in total three criminal proceedings regarding cases of trafficking in human beings according to Section 154.[1] "Human Trafficking" of the CL were initiated, two criminal proceedings regarding cases of trafficking in human beings to Germany and one criminal proceeding regarding the case of trafficking in human beings to Cyprus were initiated.

On 21 May 2009 amendments were made to **Section 165.[1] "Sending a Person for Sexual Exploitation" of the CL**, prescribing a more extensive explanation to the concept of trafficking in human beings, which provides for a punishment for sending a person with his or her consent for sexual exploitation, that is, for any act which facilitate legal or illegal movement, transit or residence of a person for such purpose within the territory of one country or several countries. Such normative regulation does not exist in majority of EU countries where sending of a person with his or her consent is not considered trafficking in human beings.

In Court Practice Summary 2006[29] the Supreme Court of the Republic of Latvia recognised sending of a person with his or her consent for sexual exploitation as a type of trafficking in

[29] "Analysis of the definitions included in international legal acts [1][1] leads to the conclusion that from the point of view of international law the criminal offences included in Section 154.[1] and 165.[1] of the Criminal Law (hereinafter crimes according to the classification given in Section 7 of the CL) should be evaluated as

human beings. In accordance with the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949 any activities defined in definitions of trafficking in human beings are punishable and any activity of this section of the chain – beginning with initial recruitment until the moment when the respective intention or result (exploitation of the person or labour exploitation of the victim) is achieved – is punishable. Within the scope of an operational experiment for resolving criminal offences related to sending of persons for sexual exploitation, with involvement of specially trained female employees of the State Police, and as a result of activities of accused persons, which have been recognised as proven, no harm was caused to any person, because no person foes abroad for engaging in prostitution when fulfilling the conditions of operational experiment. As a result of such criminal activities the guilty person is convicted for the intention of sending any person for sexual exploitation. Very often the intention of a person is related to sending of another person to countries where sexual exploitation without the element of compulsion upon free will of the person is permitted.

The MoJ acknowledges that the offence provided for in Section 165.[1] of the CL should not be considered as trafficking in human beings in accordance with Section 154.[2] "Meaning of Human Trafficking" of the CL, however, concurrently according to international legal acts the offence provided for in Section 165.[1] of the CL should be recognised as one of the sub-types of trafficking in human beings. In Latvia the offence provided for in Section 165.[1] of the CL has been separated from Section 154.[1] of the CL, because a person is subjected to sexual exploitation with his or her consent, which is perceived as less dangerous criminal offence and milder sanctions are to be determined for it accordingly. It is important that in any case criminal liability is provided for such actions in Latvia. In the UN General Period Review of 22 September 2012 on the situation of human rights in Latvia it is highly appreciated that Latvia has gone beyond the requirements of the Palermo Protocol, because the use of violence against the potential victim of trafficking in human beings for the purpose of sexual exploitation is not a pre-condition for initiating criminal proceedings against organisers of trafficking in human beings.

Information source: State Police and Office of the Prosecutor General

Year	Criminal proceedings initiated	Suspects	Criminal proceedings sent for trial	Number of persons against whom criminal proceedings have been sent for trial
2009	31	35 persons (25 men and 10 women)	12	16 persons
2010	28	34 persons (19 men and 15 women)	24	35 persons (20 men and 15 women)
2011	21	34 persons (20 men and 14 women)	16	27 persons (20 men and 7 women)
2012	13	15 persons (8 men and 7 women)	9	11 persons (8 men and 3 women)

Latvia has gathered information regarding marriages of convenience[30]as a potential risk for subjecting of a person to trafficking in human beings. Marriages of convenience are concluded without the intention of creating a family; the purpose of such marriages is to ensure the status of a family member (spouse) of a EU citizen to third-country nationals, a residence permit in the relevant EU state and the right of free movement in the EU. Mostly marriages of convenience are concluded with citizens of Pakistan, India and Bangladesh.

Usually marriages of convenience are concluded in Ireland, Cyprus and Great Britain. Since 2004 female citizens of Latvia have concluded significantly more than 1000 marriages with third-country nationals in Ireland alone (in the time period from 2009 to 2012 834 marriages were registered in Ireland alone, including 124 marriages in 2011, 108 – in 2012), from which part or even majority may be considered marriages of convenience. The tendencies of the previous years show that, upon arising of different complications, the marriage procedure in Ireland becomes longer, and female citizens of Latvia are married out in other countries (Pakistan, India, Nigeria, Spain, Denmark, Cyprus, France, even Tanzania, as well as Latvia) in order to ensure a residence permit to the foreigners staying in Ireland illegally. Taking into account the abovementioned, as well as that since October 2010 when the embassy started collecting data regarding female citizens of Latvia who have been noticed by the embassy in relation to planned marriage of convenience or marriage of convenience already concluded, their number already exceeds 450 persons. According to the estimates of the embassy, in total approximately 1500-1600 citizens of Latvia (including also men who have registered marriage of convenience mostly with citizens of Nigeria and China) are involved in marriages of convenience with the intention to obtain a residence permit in Ireland.

It is not possible to determine a specific number of marriages of convenience in Great Britain with female citizens of Latvia, because the authorities of Great Britain do not inform the embassy regarding marriages concluded by citizens of Latvia with third-country nationals.

The embassy of Latvia in Greece has information at the disposal thereof regarding 258 marriages concluded in Cyprus between female citizens of Latvia and third-country nationals in the time period from 2009 to 2012. According to the estimates of the embassy, 80-100 of these marriages may be considered marriages of convenience. Moreover, the embassy of Latvia does not have at the disposal thereof the whole information regarding marriages concluded by citizens of Latvia in Cyprus because persons do not notify either the embassy of Latvia or the OCMA regarding part of marriages concluded[31], or notify the OCMA without the intermediation of the embassy of Latvia.

trafficking in human beings, and one of its sub-types has been criminalised in Section 165.[1] of the CL when a person is subjected to sexual exploitation with his or her consent as opposed to that laid down in Section 154.[1] of the CL. In turn, trafficking in human beings within the meaning of Section 154.[1] of the CL is characterised by committing activities forming it, using violence or threats or by means of deceit, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness, or by the giving or obtaining of material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent.[1][2] It should be noted here that only fraud was detected as the only means used in trafficking in human beings in the materials researched.

[1][1] See, for example, UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 2 December 1949. – Human Rights. Collection of International Treaties. Volume 1 (Part one). Universal Treaties. United Nations: New York and Geneva, 1994, pp. 223-241; Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime // *Latvijas Vēstnesis*, 28 April 2004; Recommendation R (2000) 11 of the European Council of 19 May 2000 to member states on action against trafficking in human beings for the purpose of sexual exploitation and the explanatory memorandum. – http://www.coedriga.lv/tulkojums/MKRek/R11(2000).htm, Framework Decision 2002/629/JHI of the Council of the European Union of 19 July 2002 on combating trafficking in human beings. – http://www.ttc.lc./index.pxp?id+58&dirid+443.

[1][2] For more information see the Comment of V.Liholaja for Sections 154.1 and 165.1 of the CL. – Krastiņš U., Liholaja V., Niedre A. Krimināllikuma zinātniski – praktiskais komentārs. 2. Sevišķā daļa. Rīga: firma "AFS', 2003, pp. 298.-305.

[30] "Marriage of convenience" means a marriage concluded between a national of a Member State or a third-country national legally resident in a Member State and a third-country national, with the sole aim of circumventing the rules on entry and residence of third-country nationals and obtaining for the third-country national a residence permit or authority to reside in a Member State; Council Resolution of 4 December 1997 on measures to be adopted on the combating of marriages of convenience (97/C 382/01).

[31] Section 190.[3] of the Latvian Administrative Violations Code provides for administrative liability for not notifying of information to be included in the population register to territorial offices of the OCMA in due time, providing for a fine from 10 to 25 lats.

All previous efforts of Latvia to attract the attention of foreign countries to the problem of marriages of convenience have not been efficient. Therefore, in order to prevent active recruitment of fiancées and fiancés in the territory of Latvia for concluding marriages of convenience, to deter the potential fiancées and fiancés from concluding marriages of convenience for the purpose of receiving remuneration, in order to prevent and take action against the phenomenon of marriages of convenience already in the territory of Latvia, without waiting for the setting-in of consequences abroad, a proposal for amendments to the CL was drafted, providing for a new legal norm that came into force on1 April 2013:

Section 285.[2] of the CL Ensuring in Bad Faith with a Possibility to Acquire the Right to Stay in the Republic of Latvia Legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation

(1) For a person who commits provision in bad faith with a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation,
the applicable punishment is deprivation of liberty for a term up to three years or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits provision in bad faith with a possibility to acquire the right to stay in the Republic of Latvia legally, other Member State of the European Union, Member State of the European Economic Area or Swiss Confederation, if it has been committed for the purpose of acquiring property or if such a possibility is ensured for two or more persons, or if it has been committed by a group of persons,
the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property.

This norm of the CL provides for holding to criminal liability of both the persons who have ensured another person, in bad faith, with an opportunity of lawfully obtaining the right to reside in the Republic of Latvia, in another European Union Member State, in a state of the European Economic Area or the Swiss Confederation, and the persons who organised the abovementioned criminal offences.

Section 165 "Living on the Avails of Prostitution" of the CL

(1) For a person who commits taking advantage, for purposes of enrichment, of a person who is engaged in prostitution,
the applicable punishment is deprivation of liberty for a term up to five years or temporary deprivation of liberty, or community service, or a fine, with or without confiscation of property and with or without probationary supervision for a term up to three years.

(2) For a person who commits the same acts if they have been committed by a group of persons, or with respect to a minor,
the applicable punishment is deprivation of liberty for a term up to eight years, with or without confiscation of property and with probationary supervision for a term up to three years.

(3) For a person who commits the same acts if they have been committed by an organised group or if commission thereof is with respect to a person who has not attained the age of sixteen years,

the applicable punishment is deprivation of liberty for a term of five years and up to fifteen years, with or without confiscation of property and with probationary supervision for a term up to three years.

In comparison to the previous years the number of persons who are suspected of living on the avails of prostitution has increased almost by half. Both women and men are among the suspected organisers of living on the avails of prostitution. In the area of sexual services men mainly fulfilled the functions of a guard and manager, in turn, women – the functions of an operator; some of the detained women themselves had been previously engaged in prostitution.

Similarly, several organised groups were detained, which had been engaged in living on the avails of prostitution for several years, including for the first time – a group of three persons organised by a foreigner (a citizen of the Netherlands), which specialised in servicing foreigners only and engaged several tens of young women in prostitution.

In none of the cases of living on the avails of prostitution it was established that persons were forced to engage in prostitution or they had previously suffered in trafficking in human beings. Similarly no minors engaged in prostitution were identified.

Information source: Information Centre of the Ministry of the Interior

Year	Criminal proceedings initiated	Suspects	Criminal proceedings sent for trial	Number of persons against whom criminal proceedings have been sent for trial
2009	5	26 persons (20 men and 6 women)	3	21 persons (16 men and 5 women)
2010	8	30 persons (15 men and 15 women)	6	26 persons (13 men and 13 women)
2011	9	32 persons (18 men and 14 women)	5	23 persons (11 men and 12 women)
2012	15	29 persons (10 men and 19 women)	10	20 persons (9 men and 11 women)

Intensified attention is paid to action against living on the avails of prostitution, including to action against criminal organised groups related to such criminal offence. The abovementioned criminal offence is becoming more latent and is masked behind legal commercial activity.

The State Police, in carrying control of the persons engaged in prostitution, verify their identity. If it is detected that a foreigner is engaged in prostitution, an in-depth interview is carried out in order to ascertain that there is no link to trafficking in human beings for the purposes of sexual exploitation or that any person has not organised his or her sexual exploitation in Latvia or in other countries. If necessary, employees of the State Border Guard may be involved, information may be checked, using information channels of the Europol or Interpol.

Taking into account that living on the avails of prostitution is based on earning profit, the next challenge for action against criminal offences related to trafficking in human beings is investigation of criminal proceedings in part related to laundering of proceeds from crime. Movable and immovable property is imposed an attachment in criminal proceedings in large scale, because there is a reason to consider that it has been purchased using criminally obtained financial resources, including from living on the avails of prostitution. The attached property is being hidden, corroborating the ownership rights in the name of the spouse or

other persons, thus complicating solving of financial issues in criminal proceedings, however, investigators and public prosecutors do everything in their power to prove the criminal origin of such property.

According to that decided in the Cabinet meeting of 28 February 2012 (protocol No. 11, Section 30, Paragraph 1), in order to survey and aggregate foreign experience in the field of restricting prostitution and to prepare proposals for further action directions for reduction of prostitution in Latvia, by Order No. 1-1/118 of the Minister for Justice of 30 March 2012 an interinstitutional working group was established, in which representatives from sectoral ministries, State Police and NGOs were involved. In aggregating information regarding foreign experience in the field of restricting prostitution, special attention was paid to the issue of punishing the buyers of sexual services and general prohibition of prostitution. Upon clarifying the situation in 30 states of the EU and European Economic Area, it was concluded that only in three of them (Sweden, Norway and Iceland) criminal liability specifically for buying sexual services is provided for, in turn, general prohibition of prostitution is determined in Lithuania, Romania and Lichtenstein.

Upon discussing whether such solutions would be appropriate and efficient for reduction of prostitution in Latvia, majority of members of the working group agreed that general prohibition of prostitution or criminalisation of buying sexual services does not merit support. Implementation of such repressive measures would not achieve the goal, because the reasons for prostitution and the circumstances promoting it will not disappear. By implementing such repressions, the State will basically reject any possibility of controlling the field of prostitution, moreover, as a result of prohibitions prostitution will become more latent and more difficult to detect. It was concluded that trafficking in human beings is not prostitution. Trafficking in human beings is a crime, but prostitution is a legal way of earning income, in relation to which a range of restrictions has been specified, however, such occupation at large is permitted. In accordance with Cabinet Regulation No. 32 of 22 January 2008, Regulations for Restricting Prostitution (hereinafter – Regulations for Restricting Prostitution) prostitution is provision of sexual services for a fee. A decision to provide sexual services to a third party for a fee may be taken only by the person voluntarily. Any compulsion or intermediation of third parties in provision of such services is prohibited and punishable (involvement of a person in prostitution or compelling to engage in prostitution (Section 164 of the CL); living on the avails of prostitution (Section 165 of the CL); establishment, maintenance, management and financing of brothel (Section 163.[1] of the CL); sending a person for sexual exploitation (Section 165.[1] of the CL); human trafficking (Section 154.[1] of the CL); encouraging to involve in sexual acts (Section 162.[1] of the CL); violation of provisions regarding the demonstration of a pornographic performance, restriction of entertainment of intimate nature and handling of a material of pornographic nature (Section 166 of the CL)). In turn, in case of trafficking in human beings actions of third parties can be detected in order to achieve, to promote exploitation of another person.

It is necessary to implement such measures for reduction of prostitution in Latvia, which are directed towards prevention of the causes and circumstances promoting prostitution (for example, informative measures, awareness-raising campaigns, stricter control of the content of publicly accessible information (particularly the information intended for minors), improvement of the study materials and the content of education, training of specialists, aid/support measures for persons involved in prostitution, etc.).

Taking into account that victims of trafficking in human beings may be employed in prostitution, according to that decided in the Cabinet meeting of 5 March 2013 (protocol No. 13, Section 30, Paragraph 2), the MoJ will evaluate the necessity of amendments to the CL

regulation, providing for a punishment for the use of sexual services of victims of trafficking in human beings. Concurrently the MoJ in co-operation with the MoI and the Office of the Prosecutor General, upon receipt of the study on causes why women get involved in prostitution within the scope of the project "A Safety Compass – signposting ways to escape trafficking" of the RCW Marta, the necessity of amendments to the CL regulation will be evaluated, providing for a punishment to buyers of sexual services.

Since 16 June 2011 **Section 280 "Violation of Provisions Regarding Employment of Persons" of the CL** provides for criminal liability for a violation of restrictions or provisions regarding employment of persons provided for in law if commission thereof is by the employer and if significant damage is caused thereby, as well as for the employment of such person who is not entitled to remain in the Republic of Latvia if commission thereof is by the employer and if a minor is employed or if more than five persons are employed, or if a person is employed in particularly exploitative working conditions, or if a victim of human trafficking has knowingly been employed. A punishment is specified for the abovementioned criminal offence – deprivation of liberty for a time period up to one year or custodial arrest, or community service, or a fine up to one hundred minimum monthly wages. In accordance with the data of the Punishment Register no person has been held criminally liable for the criminal offence provided for in the abovementioned norm.

In relation to "sex tourism" laws and regulations of Latvia do not contain a definition of such concept; also the criminal law system does not provide for a separate substance of such criminal offence. Concurrently it is covered, to a large extent, by criminal liability for participation or unfinished crime. For example, a person who organises trips with the purpose of ensuring an opportunity to commit a criminal offence may be held criminally liable for participation in the relevant criminal offence, for the committing of which the trip was organised (supporting), in turn, a person who goes on such trips for the purpose of committing a criminal offence may be held criminally liable for the preparation for the relevant criminal offence, if it may be classified as a serious or especially serious crime.

Until 2012 no cases of sex tourism were identified in Latvia when persons from other countries would have come to Latvia in order to sexually exploit minors, as well as no cases were identified when persons from Latvia would travel to other countries for the purpose of sex tourism in order to exploit minors in the target countries. In 2012 one case of "sex tourism" was identified in Latvia when three persons from Sweden had arrived to Latvia in order to sexually exploit minors (up to 18 years of age), one criminal proceedings were initiated, one citizen of Sweden, originally from Pakistan, was detained who organised sex tourism to Latvia.

Drawing up of tourism laws and regulations and policy planning documents in Latvia is based on the values included in the Global Code of Ethics for Tourism (hereinafter – Code) prescribing that exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism. As such, in accordance with international law, it should be energetically combatted with the cooperation of all the States concerned. Although application of the norms of the Code is based on voluntarism and unanimity, conformity with the principles included therein is of the essence to sustainable development of the tourism sector. Tourism policy of Latvia is created and implemented so that Latvia would be positioned as a safe and trustworthy tourism destination.
Children are recognised as a group of persons to be specially protected, in relation to which special normative regulation is provided for. In large part of the Special Part of the CL intensified criminal liability for criminal offences is provided for, if they are committed

against a child (minor). According to the principle of non-discrimination corroborated in the UN Convention on the Rights of the Child, unjustified prevailing of the rights of any specific group of children over the rights of other children are not provided for in laws and regulations of Latvia. Protection of the rights of the children takes place in conformity with the principle of equality. Only children up to fourteen years of age (underaged persons) are distinguished, It is justified by the particularly vulnerable state of the children of such age, due to which they are considered as equivalent to persons in the state of helplessness. Especially severe punishments are provided for criminal offences committed against an underaged person.

4.2. Law Enforcement and Controlling Authorities

Since 2003 a dedicated unit has been created in the State Police, the work of which is oriented towards action against trafficking in human beings and living on the avails of prostitution. 19 employees are working in Division 3 of the Organised Crime Enforcement Department of the Central Criminal Police Department of the State Police (SP CCPD OCED), in turn, in total 4 employees are working in regional departments.

The State Police is efficiently using the opportunity provided for in laws and regulations, to hold criminally liable for sending a person to be sexually abused, providing for prevention of actual violence against actual victims because specially prepared female employees of the State Police are used during criminal proceedings. Thus setting in of consequences of trafficking in human beings abroad is prevented, protecting people from the risks of violence, as well as saving funds from the State budget for return and identification of victims and provision of their rehabilitation.

The Task and Co-ordination Group of Tactical Level of Criminal Intelligence of the State Police regularly draws up tactical evaluation on criminal activities which are related to prostitution, living on the avails of prostitution, trafficking in human beings and activities related thereto. All regional departments of the State Police provide information regarding all crimes which are possibly related to violations of the regulations governing trafficking in human beings, living on the avails of prostitution or prostitution, thus ensuring wider possibilities for uncovering cases of trafficking in human beings in a more timely manner, or to take preventive measures for prevention of trafficking in human beings.

Division 3 of the SP CCPD OCED pays special attention to action against living on the avails of prostitution in the state, co-operating with regional departments of the State Police, departments of the local government police, NGOs and carrying out more intense operational work involving street and apartment prostitutes.

Riga Regional Department of the State Police continues to implement co-ordination of control and measures for restricting prostitution in Riga region and co-ordination of thematic checks at entertainment sites of Riga region.

In 2010 Division 3 of the OCED drew up and sent methodological materials to regional departments of the State Police on identification of victims of trafficking in human beings and action in case when a potential victim of trafficking in human beings is identified: “Guidance Document for Identification of Persons Related to Prostitution, Living on the Avails of Prostitution, Trafficking in Persons” and “Guidance Recommendations for Police Employees for the Investigation of Cases of Trafficking in Persons/Living on the Avails of Prostitution”.

The SPC provides acquisition of the vocational in-service training programme “Investigation of Cases of Trafficking in Human Beings/Living on the Avails of Prostitution”, which was

prepared on the basis of the annual plan on implementing priorities of the State Police, which is prepared based on public interests – to live in a safe environment, taking measures for the promotion of public safety and provision of public order, including for the prevention and combating of crime. The programme is implemented in regional study classes of the College. Since 2010 until now 239 officers of the State Police have acquired the programme, implementing the programme in 12 study groups.

For comparison:
in 2010: Riga regional study class of the SPC (one group, 22 officers acquired the programme);

in 2011:
1) Riga regional study class of the SPC (one group, 18 officers acquired the programme);
2) Kurzeme regional study class of the SPC (one group, 27 officers acquired the programme);
3) Latgale regional study class of the SPC (two groups, 30 officers acquired the programme);

in 2012:
1) Riga regional study class of the SPC (three groups, 54 officers acquired the programme);
2) Kurzeme regional study class of the SPC (one group, 28 officers acquired the programme);
3) Latgale regional study class of the SPC (two groups, 40 officers acquired the programme);
4) Vidzeme regional study class of the SPC (one group, 20 officers acquired the programme).

In the time period from 2009 until 2012 the SPC ensured implementation of several studies/seminars on themes which are closely related to trafficking in human beings issues:
1) Protection of the Rights of the Child (104 officers in 2009, 31 officers in 2010, 242 officers in 2011, 80 officers in 2012);
2) Psychological Special Features of Interrogating a Victim (93 officers in 2011, 94 officers in 2012);
3) Action of a Police Officer in Cases Related to Domestic Violence (86 officers in 2012);
4) Identification and Prevention of Hate Crimes (44 officers in 2010, 64 officers in 2012);
5) Criminal Offences against Morals and Sexual Inviolability (28 officers in 2009, 42 officers in 2010, 45 officers in 2011, 10 officers in 2012);
6) Human Rights. Racial Problems (20 officers in 2010);
7) Conformity with Human Rights in Police Work. The training course was organised by the Office of the Ombudsman (179 officers in 2012).

The SPC has drawn up vocational in-service training programmes “Liability of Police Officers for Violating the Rights in Fulfilment of Service Duties when Providing Public Order” and “Psychological and Legal Aspects of the Action of a Police Officer in Cases of Sexual Violence”, implementation of which was commenced in 2013.

In addition to the vocational in-service training programmes which are intended for implementation to officers of the State Police, the SPC implements study subjects and study courses that include topics on the issue related to different types of violence in the industrial

education programme of the State Police College "Police Work" and in the first level vocational higher education programme "Police Work".

In accordance with Section 13, Clause 15 of the State Border Guard Law the task of the State Border Guard is to control the conformity with the provisions regarding entry, staying, exit and transit of foreigners in the territory of the Republic of Latvia. Persons who cross external border in order to enter Latvia or to exit from it are subjected to checks at the border crossing points. Border guards deny entry into the State to persons who cannot produce valid travel documents, visas.

Taking into account that quite often trafficking in human beings is concealed as committing of another criminal offence (for example, a promise to a person to move him or her across the State border illegally or to provide support for accessing a specific state may be only part of the actual intent – to use this person as a victim of trafficking in human beings), the State Border Guard takes measures for discovering and preventing such cases. Upon evaluating information regarding 2012, the State Border Guard has concluded that the number of using legal entry methods for illegal attempts of entering and staying in EU states has significantly increased, i.e., non-conformity of the actual purpose of entering with the previously indicated purpose. In 2012 in comparison to 2011 the amount of such cases has increased by 250%. The nationality of the persons who have received the refusal of main entry – Russia, Belarus, Kyrgyzstan. The State Border Guard does not have information at its disposal that victims of trafficking in human beings have been identified among the persons who have been identified in the Republic of Latvia as having illegally crossed the border or who have requested asylum. The main purpose of such persons – search for better living conditions in economically more developed EU states.

One of the tasks of immigration units of the State Border Guard is combating illegal employment of foreigners. The State Border Guard, within the scope of its competence and in co-operation with the OCMA, State Police and SEA, takes measures in order to detect violations of the norms for employing foreigners and to identify foreigners who are illegally staying in the state and who are potentially at risk of becoming victims of trafficking in human beings.

In 2012 4296 checks were performed in enterprises, institutions, tourism organisations, hotels, checking all potential violations in the field of immigration control, for example, working after expiry of the term of validity of a visa or residence permit. As a result of such checks also potential cases of trafficking in human beings may be discovered and victims of trafficking in human beings may be identified.

In order to improve the ability of border guards to identify the potential victims of trafficking in human beings during border control, border guards are regularly ensured the opportunities to participate in training regarding issues of preventing trafficking in human beings, identifying victims of trafficking in human beings, possibilities of helping the victims, unaccompanied children who are victims of trafficking in human beings. Representatives of the State Border Guard regularly attend meetings organised by the Risk Analysis Unit of Frontex Agency regarding profiles of organisers and victims of trafficking in human beings.

Topics regarding constitutional rights and freedoms of people and citizens, entry and staying of minor foreigners in the Republic of Latvia, rights and obligations of an asylum seeker (unaccompanied minor) are viewed within the scope of the SPC study programme.

In order to ensure the implementation of the human rights guaranteed in the Constitution and to ensure that forced labour is not used, the SLI performs supervision and control to which the following are subjected: employers, any persons who are considered employers in actual circumstances, as well as merchants and their authorised persons, enterprises (organisational units in which employees are working) and working places in which an employee or any other person who is considered an employee in actual circumstances performs work, as well as any other place within the scope of the enterprise, which is accessible to the employee during work or in which the employee is working with the permission or by an order of the employer.

Taking into account the cross-border nature of the criminal offence of trafficking in human beings, law enforcement authorities of Latvia participate in joint investigations of criminal offence and ensure exchange of information. Joint investigation teams (JIT) and law enforcement agencies of the EU – Europol, Interpol, Eurojust, Frontex Agency (European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) have been recognised as an efficient instrument for the performance of cross-border investigations. Hitherto law enforcement authorities of Latvia have not been involved in joint investigation teams.

Taking into account that the majority of victims of trafficking in human beings are women, particularly young women, who are sent to other states, mainly in order to provide sexual services, and in order to prevent the possibility that the attitude and action of specialists of law enforcement and control authorities upon coming into contact with victims of trafficking in human beings are affected by the stereotypes existing in the society regarding such persons, it is important to educate the specialists also regarding different types of violence, also gender-based violence. Gender-based violence is a violation of human rights and one of the types of discrimination. It is violence that is directed towards a person due to his/her gender, thus promoting inequality. As it arises from Directive 2011/36/EC, trafficking in human beings is a gender-specific phenomenon because women and men are often trafficked for different purposes. Therefore, it is particularly important to educate specialists so that upon coming into contact with victims or potential victims of trafficking in human beings specialists would be able to identify cases of trafficking in human beings, provide the necessary support and prevent the risks of potential trafficking in human beings.

Problems detected:

- Due to the turnover of the staff, officials of the State Police, State Border Guard and State Labour Inspectorate have hindered formation of knowledge and practical skills in issues related to trafficking in human beings and different types of violence, also gender-based violence.
- It is necessary to continue ensuring of training for officers of the State Police and local government police, border guards, labour inspectors in issues related to trafficking in human beings.
- Co-operation of law enforcement authorities is insufficiently developed for investigating cases of cross-border trafficking in human beings.

4.3. Criminal Prosecution

Hitherto the chief prosecutor of the Criminal Legal Department of the Office of the Prosecutor General has determined trafficking in human beings as an especially current criminal offence alongside such types of criminal offences as murder, smuggling and laundering of proceeds derived from criminal activity. One of the priority action directions of

the Prosecutor's Office as a State authority and one of the individual work quality indicators of a public prosecutor is the efficiency of action against such criminal offences, which is related to trafficking in human beings.

One of the mechanisms for providing targeted investigations is implementation of supervision of public prosecutors in accordance with the procedures laid down in the Criminal Procedure Law, including in criminal proceedings related to trafficking in human beings. Public prosecutors are actively exercising the rights of a public prosecutor supervising investigation provided for in Section 37, Paragraph two of the Criminal Procedure Law to give instructions regarding the selection of the type of proceedings, the direction of an investigation and the performance of investigative actions, in order to ensure as quick, complete, comprehensive and impartial investigation in criminal proceedings as possible.

During the preceding years such cases of trafficking in human beings have been discovered and investigated, which are based on complicated action schemes of organised criminal groups. The Prosecutor's Office has established practice that criminal proceedings related to trafficking in human beings, supervision of investigation and criminal prosecution is organised by public prosecutors of the Specialised Prosecutor's Office for Organised Crime and Other Matters. Co-operation between the State Police as the investigation authority and the Prosecutor's Office as the authority supervising investigation has developed productively, ensuring efficient course of criminal proceedings. Investigators and supervising public prosecutors exchange information, directly and continuously, regarding the direction in which investigation should be performed, as well as regarding investigatory actions to be performed in criminal proceedings in order to ensure as quick discovery and investigation of a criminal offence and holding of the guilty persons criminally liable as possible.

Efficiency and quality of operation of the investigatory authority and of supervision implemented by the Prosecutor's Office in investigating such criminal proceedings which are related to trafficking in human beings are improving, and it is of significance for fair regulation of criminal legal relationship in criminal proceedings at large.

Criminal offences related to trafficking in human beings are mostly committed in a group of persons or in an organised group exhibiting distribution of different roles, differing nature of the offence and the damage caused. Therefore, criminal punishment should be determined individually, carefully evaluating the degree of liability and role of each person in the particular criminal offence. Co-operation of suspects or accused persons with law enforcement authorities is important in discovering and investigating criminal offences related to trafficking in human beings, which may be one of the circumstances for applying a lighter punishment to a person.

However, in cases if the punishment imposed by the court is significantly different from that requested by the public prosecutor and the punishment imposed according to the position of the State prosecutor does not ensure achievement of the objective of the punishment provided for in law, public prosecutors exercise their rights provided for in law and submit a protest to the court regarding the judgment rendered. According to internal regulatory enactments of the Prosecutor's Office issued by the Prosecutor General in situations if the court has adjudged conditional punishment of deprivation of liberty contrary to the opinion of the State prosecutor that an actual punishment of deprivation of liberty should be imposed, the public prosecutor has a duty to decide on submitting a protest in the particular criminal proceedings. The abovementioned procedures ensure that upon evaluating the work quality of the public prosecutor attention is also paid to how consistently the public prosecutor is implementing his or her rights provided for in law and how regularly the public prosecutor uses the legal means

provided for in law for implementation of the functions of the public prosecutor in the respective criminal proceedings.

Raising of qualification and improvement of professional skills of public prosecutors is the priority of the Office of the Prosecutor General, for ensuring of which special attention is paid.

The Prosecutor's Office has commenced a long-term co-operation with the Judicial Training Centre, thus the possibilities of the Prosecutor's Office to ensure regular raising of qualification and improving of professional skills of public prosecutors have significantly expanded.

Information source: Office of the Prosecutor General

No.	Year	Training organised by the foundation "Centre Dardedze" for public prosecutors "Inter-institutional Co-operation in Case of Violence against Children". Basic Principles for Establishing Communication According to the Specific Age Features of Children" (number of public prosecutors)	Participation in conferences and seminars (number of public prosecutors)
1.	2008-2009	90	3
2.	2010.	32	27
3.	2011.	30	17
4.	2012.	30	61 and 23 candidates for the office of a public prosecutor

Problems detected:

- It is necessary to continue the provision of training of public prosecutors and candidates of public prosecutors regarding trafficking in human beings.

4.4. Case Law

The task of courts of Latvia is to continue to ensure that uniform legal norms are applied in matters of trafficking in human beings, so that upon adjudicating analogical matters the punishment imposed by the court conforms to the nature and harm caused by the criminal offence.

Customary law does not exist in the criminal law system of Latvia. At the same time judges, in adjudicating matters and concurrently to application of laws, also take into account case law established in the particular category of matters, thus promoting uniform application of the law in the state.

The Division of Case-law of the Supreme Court aggregates and studies case law in separate issues related to the application of legal norms, selects, processes and publishes court judgments in the data base of case-law which are of significance for the promotion of coherence, research and development of case law. The purpose of establishing case law is to provide support to judges in examining a matter in analogical cases, to reduce the time of examining matters, as well as to promote uniform and stable case law. In accordance with Section 28.[6], Paragraph four of the Law On Case Law the Supreme Court is creating a data base of case-law within the scope of the JIS. The data base of case-law of the Senate is also available to the society on the website of the Supreme Court www.at.gov.lv and the official Judicial Portal of Latvia www.tiesas.lv. Currently the case-law in matters related to trafficking in human beings is formed by three decisions of the Department of Criminal Cases of the Senate of the Supreme Court. The summary of case law of 2006 of the Department of

Criminal Cases of the Senate of the Supreme Court and the Department of Case-law "Case Law in Cases Related to Trafficking in Human Beings and Sending of Persons for Sexual Abuse", in which in total court judgments in 41 criminal proceedings are analysed, and it is available at all courts of general jurisdiction of Latvia. Also reports of Prof. Dr.iur. Valentija Liholaja, Head of the Criminal Law Sciences Department of the Legal Faculty of the University of Latvia, on case-law findings have been published with the purpose of promoting the formation of uniform and correct case law: "Comments on Case Law of Latvia in Criminal Cases" [*Komentāri par Latvijas tiesu praksi krimināllietās*], "Principles for Determination of Punishment: Law and Practice" [*Soda noteikšanas principi: likums un prakse*], "Trafficking in Human Beings Crimes: Essence and Case Law" [*Cilvēku tirdzniecības noziegumi: būtība un tiesu prakse*], as well as other editions and publications.

The Supreme Court, in years 2014 and 2015, is planning to draw up summaries of case law on organised criminal offences.

The CA has performed a textual analysis of the court judgment of JIS on the persons convicted for trafficking in human beings in order to clarify the reasons for not applying confiscation of property. The CA has come to a conclusion that the reasons for not applying the punishment of confiscation of property are as follows:
a) it has been ascertained during the process of adjudication that the convicted person does not have a permanent place of residence or has not property that could be confiscated;
b) Section 49.1 of the CL regarding determination of a milder form or lesser form of a punishment has not been applied during the process of adjudication, if the right to termination of criminal proceedings within a reasonable period of time are not conformed to.

Moreover, there is no mentioning of the amount or content of the property to be confiscated from the convicted persons in texts of the full judgment added in the JIS.

The main reason for the small number of the convicted persons in comparison to the number of criminal proceedings initiated or examined in the first instance is the incommensurably long pre-trial period and period of proceedings, which is related to subjective reasons and not the work capacity of courts. In accordance with Section 154.1 of the CL the criminal proceedings initiated are characterised by large number of victims, frequent postponing of court hearings due to non-arrival of victims at the court or their being abroad, as well as frequent discontinuation of court proceedings due to the accused persons being in inpatient medical treatment institutions due to an illness. For example, on 14 July 2012 a judgment of conviction entered into effect in relation to one person in criminal proceedings that were initiated in 2004 and were examined in the first instance on 22 January 2008. In 2010 one case was received in courts of first instance, three terminated criminal proceedings were examined rendering a judgment of conviction, however, the judgment of conviction has entered into effect only in one criminal proceedings initiated in 2006. Court proceedings are still continuing in courts of higher instance in two remaining cases of trafficking in human beings examined in the first instance, in which a judgment was rendered. Therefore, it may be concluded that the small number of convicted persons in proportion to the number of initiated criminal proceedings is not related to acquitting the accused, terminating cases or other types of final judgments, as well as that the number of initiated criminal proceedings in the relevant reporting period cannot be compared to the number of persons in relation to whom a judgment of conviction has entered into effect.

The JTC in co-operation with other organisations is performing training of judges in relation to issues related to preventing trafficking in human beings. The training programme of 2013 of the JTC for judges and court employees includes a lecture "Directive 2011/36/EU on

preventing and combating trafficking in human beings and protecting its victims", in which 65 judges and court employees will participate.

However, the topic of trafficking in human beings is not included in the annual training programme for judges because according to the JIS data within the time period from 1 January 2008 until 31 December 2012 in total two criminal proceedings were terminated in district (city) courts in the first instance in relation to trafficking in human beings, concluding that criminal proceedings of the abovementioned category form a very small number of cases undergoing legal proceedings and assuming that training regarding trafficking in human beings issues are not topical for judges.

Problems detected:

- Comparatively small number of adjudicated criminal proceedings related to trafficking in human beings in Latvia creates the risk of judges and lawyers being poorly prepared in issues related to the most widespread forms of trafficking in human beings and the importance of the infringement of rights caused thereby to a person.

5. Co-operation and Co-ordination

It is determined in Paragraph 16 of Table in Chapter 5 "Main Tasks for Achieving Results of the Programme" of the "Programme for Prevention of Trafficking in Human Beings 2009-2013" approved by Cabinet Order No. 590 of 27 August 2009 that, upon evaluating the usefulness, in case of necessity an advisory council is established for co-ordinating the operation of State administration institutions, local governments and NGOs in prevention of trafficking in human beings (hereinafter – task of the programme). In carrying out the task of the programme, the first working group for co-ordinating the implementation of the "Programme for Prevention of Trafficking in Human Beings 2009-2013" (hereinafter – working group) was established by Order No. 77 of the Prime Minister of 3 March 2010. The working group was re-established on 10 June 2011 when the working group was approved by Order No. 207 of the Prime Minister in an updated composition. The working group includes representatives from the MoI, MoFA, MoW, MoJ, Ministry of Economics, MoES, MoH, the Office of the Prosecutor General, the Prosecutor's Office of Liepāja, the Welfare Department of Riga City Council, the Committee on Safety, Order and Corruption Prevention Issues, RLGP, State Police, State Border Guard, OCMA, shelter "Safe House", resource centre for women "Marta" and Latvian Office of the International Organisation for Migration.

It was concluded in 2012 that a new order of the Prime Minister on the working group is necessary because changes in the staff of sectoral ministries and institutions have occurred. Representatives of GRETA who performed the initial assessment on how Latvia is implementing the Convention on Action against Trafficking in Human Beings, and after meeting with representatives of the competent ministries and authorities during the assessment visit of Latvia in February 2012 gave a recommendation to expand the composition and competence of the working group approved by Order No. 207 of the Prime Minister of 10 June 2011, On the Working Group for Co-ordinating the Implementation of the Programme for Prevention of Trafficking in Human Beings 2009-2013, involving representatives of the Office of the Ombudsman, MoC and Information Centre of the Ministry of the Interior in the working group.

Representatives of GRETA gave a recommendation not only to expand the composition and competence of the working group, but also to ensure high level representation in the working group for the prevention of trafficking in human beings. It was concluded that in the particular

case the composition of the expert working group should be approved, thus ensuring efficient carrying out of the tasks of the programme, operational exchange of information regarding activities in the field of prevention of and action against trafficking in human beings and action in issues related to provision of support and aid to victims of trafficking in human beings. The abovementioned format of the working group has proved its efficiency, moreover, activities of State authorities of Latvia, local governments, as well as NGOs have been expanded to a wider extent than provided for in the State programme, because the trends in the development of violations and criminal offences related to trafficking in human beings create a necessity to include officials of corresponding competent authorities in the working group in order to ensure efficient co-operation in exchange of information and action.

By Order No. 85 of the Prime Minister of 8 March 2013, On the Working Group for the Programme for Prevention of Trafficking in Human Beings 2009-2013 such working group was approved, in which representatives from the MoI, MoW, MoFA, MoES, Ministry of Economics, MoJ, MoH, State Police, State Border Guard, OCMP, Information Centre of the Ministry of the Interior, the Office of the Prosecutor General, the Prosecutor's Office of Liepāja, the Office of the Ombudsman, the National Library of Latvia, the Welfare Department of Riga City Council, shelter "Safe House", resource centre for women "Marta" and Latvian Office of the International Organisation for Migration are appointed.

Access to timely and complete information regarding issues related to the prevention of and action against trafficking in human beings is an essential precondition in order to co-ordinate the introduction of the programme. Basically information and data regarding different fields related to the prevention of trafficking in human beings is aggregated and analysed by each responsible sectoral ministry, institution and NGO individually. During the previous years collection of information and data has improved, however, there is still no uniform understanding and approach to data collection, therefore, the collected data is insufficient in order to perform evaluation of trends in trafficking in human beings and assessment of the results of measures directed towards trafficking in human beings.

In accordance with the requirements of Article 19 of Directive 2011/36/EC prescribing that Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms, the tasks of which shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close co-operation with relevant civil society organisations active in this field, and reporting, the MoI according to that laid down in the programme co-ordinates the introduction of the programme, once in two years aggregating the information provided by the institutions responsible for carrying out the tasks of the programme and submitting it to the Cabinet for consideration. The MoI is also responsible for organising the work of the working group. The director of the Sectoral Policy Department of the MoI manages an inter-institutional working group and implements the functions of the National Co-ordinator in the field of trafficking in human beings. Thus, it is deemed that the co-ordination mechanism of Latvia in issues related to trafficking in human beings conforms to the status of the equivalent mechanism referred to in Article 19 of Directive 2011/36/EC.

The MoI actively continues ensuring the participation of Latvia in CBSS[32]TF-THB. In order to ensure the participation of Latvia in CBSS TF-THB and the opportunity to obtain its

[32] CBSS (http://www.cbss.org/main), founded on 5-6 March 1992 in Copenhagen, is a general political regional inter-governmental co-operation forum. CBSS is formed by 11 states of the Baltic Sea Region – Sweden, Finland, Estonia, Latvia, Lithuania, Germany, Poland, Denmark, Norway, Iceland and Russia, as well as the European Commission. Currently 10 states hold the status of CBSS Observer. They are Belarus, France, Italy, Slovakia, Romania, Spain, Ukraine, Great Britain and the United States of America. CBSS identifies the political

support for interest projects of Latvia, participation of Latvia in CBSS TF-THB was supported by Cabinet Order No. 657 of 15 December 2011, On Participation of Latvia in the Working Group of the Council of the Baltic Sea States. A decision was taken by the abovementioned Cabinet order to make payments into the CBSS TF-THB budget in the amount determined for the respective economic year from the resources of the MoI budget programme "Planning of Internal Affairs Policy". Making of payments of Latvia into the CBSS TF-THB budget is an essential precondition for promoting co-operation with the states of the Baltic Sea Region in the field of action against trafficking in human beings because this co-operation mechanism for the prevention of and action against trafficking in human beings should be considered as unique in the Baltic Sea Region. In long-term such co-operation provides contribution to improving the overall situation in prevention of trafficking in human beings in Latvia because the projects implemented by the CBSS TF-THB promote exchange of experience and information among the states involved therein, assessment of trends in trafficking in human beings at regional level and improving the work quality of the competent authorities in the field of action against and prevention of trafficking in human beings and the authorities responsible for protecting the rights of victims of trafficking in human beings.

The competent State authorities of Latvia and non-governmental organisations have take active part in all activities of the working group, participating in studies on co-operation between State authorities of the Baltic Sea States and non-governmental organisations, on data exchange mechanisms, organising seminars for representatives of diplomatic and consular missions in Riga, in which altogether 70 participants from foreign embassies participated. In turn, the handbook drawn up jointly by the working group and the International Organisation for Migration for employees of diplomatic and consular missions on providing aid to victims of trafficking in human beings is used by employees in all diplomatic and consular missions of Latvia abroad. Taking the sample of the memorandum of understanding drawn up by the working group as the basis, co-operation agreements have been entered into regarding action against trafficking in human beings and support to victims of trafficking in human beings between the association "Shelter "Safe House"", which ensures State funded social rehabilitation to victims of trafficking in human beings, and the State Police and State Border Guard.

The MoI ensures representation of the National Co-ordinator for working in CBSS TF-THB, within the scope of which co-ordination of co-operation and exchange of information is ensured on international level in the Region of the Baltic Sea States, as well as ensures the operation of National Contact Point for Unaccompanied and Trafficked Children in order to ensure co-ordination of co-operation and exchange of information between the 11 member states of CBSS, Belarus, Ukraine and Moldova.

According to Cabinet Order No. 729 of 14 December 2010, On Participation of Latvia in the Working Group of the Council of the Baltic Sea States, the MoW ensures representation of Latvia in the CBSS Expert Group for Co-operation on Children at Risk, the priorities of which are protection of children against any form of sexual exploitation and sexual violence, protection of children subjected to trafficking in human beings and children involved in

objectives (summits of prime ministers and meetings of ministers for external affairs, conferences of sectoral ministers), draws up action plans (committee of senior officials and expert groups), suggest and implement strategical projects of significance to the region in areas which were put forward as five long-term priorities in the CBSS Reform Declaration adopted in June 2008 in Riga (education and culture; energy; environment; economic development; public safety and humanitarian dimension), as well as serves as the forum for exchange of opinions and ideas on issues topical for the region. Preparation of the agenda of summits of prime ministers and meetings of ministers for external affairs, as well as committee of senior officials is ensured by the presidency of CBSS, which is undertaken, on a rotational basis, by one of the members states each year (from 1 July to 30 June). Latvia has presided CBSS twice – in years 1996-1997 and 2007-2008.

migration processes and protection of their rights, early intervention and prophylaxis as the means for ensuring the rights of children to protection against any kind of violence, forms of violence and negligence. Within the scope of German presidency of TF-THB, it was decided during the CBSS TF-THB meeting which took place from 13-16 March 2012 in Berlin, Germany, that one joint meeting with CBSS EGCC will be organised within the scope of the presidency of each state.

Problems detected:

- The mandate of the inter-institutional working group does not conform to the actual range of issues to be solved in the field of preventing and combating trafficking in human beings.
- Inter-institutional co-operation in preventing trafficking in human beings at regional level is not implemented within sufficiently consistent and constant framework.

II. POLICY OUTCOMES, RESULTS OF THE ACTIVITY AND PERFORMANCE INDICATORS FOR THE ACHIEVEMENT THEREOF

Hierarchy of objectives, results and performance indicators thereof

Objective defined by the policy: To promote awareness and understanding of the society regarding trafficking in human beings and to ensure care for victims of trafficking in human beings.				
		Year 2012	**Year 2017**	**Year 2020**
Policy outcome A1: awareness and understanding of the society and the involved institutions regarding situation in the field of trafficking in human beings, regarding risks, threats and consequences of trafficking in human beings increase	***Performance indicator***: increase in implemented informative measures (number)	8	9	10
	Performance indicator: increase in studies performed (number)	0	2	2
Policy outcome A2: stability of access to services for meeting the needs of victims of trafficking in human beings is ensured in order to promote their integration in the society	***Performance indicator:*** number of victims of trafficking in human beings who have received the State funded social rehabilitation service	24	24	24
	Performance indicator: State financial contribution (euro)	88949	88949	88949
Activity result A1: educating of pupils regarding risks, threats and consequences of trafficking in human beings is implemented	***Performance indicator***: number of educated pupils	35,702	36,000	37,000
	Performance indicator: number of educating measures (number of lessons in social sciences in the basic education programme)	35 – 70>	35 – 70>	35 – 70>
Activity result A2: vocational in-service training courses and seminars for teachers on issues related to prevention of trafficking in human beings and prostitution are ensured	***Performance indicator:*** number of teachers who have acquired vocational in-service training courses	55	60	100
	Performance indicator: changes in proportion of positive self-evaluation of the knowledge of teachers regarding issues related to prevention of trafficking in human beings and prostitution	+5%	+10% (in comparison to 2012)	+15% (in comparison to 2012)
Activity result A3: inter-institutional co-operation in recognising	***Performance indicator***: number of persons who have received consultations	118	120	120

victims of trafficking in human beings is improved	***Performance indicator:*** number of persons who have received the reflection period	0	1	1
Activity result A4: guidelines for reintegrating victims of trafficking in human beings are drawn up and introduced	***Performance indicator***: guidelines drawn up and introduced	0	1	0
Activity result A5: measures for reducing health risks for persons employed in prostitution are drawn up and introduced	***Performance indicator***: a plan of measures drawn up	0	0	1
Activity result A6: National Referral Mechanism for identifying victims of trafficking in human beings is created and its operation is ensured	***Performance indicator:*** co-operation mechanism created (regulatory enactment)	0	1	0
Objective defined by the policy: To achieve that the latency of trafficking in human beings is decreased and the capacity of law enforcement authorities and competent partners for combating cases of trafficking in human beings is developed.				
Policy outcome B1: activity of the competent State authorities is increasing in order to address trafficking in human beings and promote action against criminal offences related to trafficking in human beings	***Performance indicator:*** number of criminal offences discovered in relation to trafficking in human beings (criminal proceedings initiated)	30	31	33
	Performance indicator: number of criminal proceedings initiated in relation to trafficking in human beings, which have been sent for adjudication	19	20	20
Policy outcome B2: understanding of employees of the competent authorities regarding criminal offences related to trafficking in human beings increases	***Performance indicator:*** proportion of victims of trafficking in human beings identified by employees of State and local government institutions (% from all identified victims of trafficking in human beings)	15%	+2% (in comparison to 2012)	+3% (in comparison to 2012)
	Performance indicator: number of measures for educating employees of State and local government institutions	4	6	6
Policy outcome B1: vocational in-service training courses and seminars for officials of law enforcement authorities and judges regarding trafficking in human beings are ensured	***Performance indicator:*** number of officials of law enforcement authorities and judges who have acquired vocational in-service training courses and seminars	193	200	200
	Performance indicator: number of courses and seminars	15	15	15
Policy outcome B2: cross-border co-operation in investigating criminal offences related to trafficking in human beings is ensured	***Performance indicator:*** number of the joint cross-border investigation groups created	0	2	3
	Performance indicator: proportion of criminal proceedings investigated jointly with law enforcement authorities of other states (% from the total number of criminal proceedings investigated with other states)	6	7	8
	Performance indicator: number of requests to extradite a person received from abroad and sent abroad	3	3	3
	Performance indicator: number of requests for legal assistance received from abroad and sent abroad	9	14	19
Activity result B3: wholesome participation of Latvia in the implementation of Priority F "Trafficking in Human Beings" of the Annual Operational Action Plan of the European Union is ensured	***Performance indicator:*** number of activities of the Action Plan, in which law enforcement authorities of Latvia have participated	0	5	5
Activity result B4: taking of control measures for reduction of cases of trafficking in human beings and identification of victims of trafficking in human beings is ensured	***Performance indicator:*** number of potential cases of trafficking in human beings established during checks performed within the scope of the competence of the SLI	1	2	4
	Performance indicator: number of checks performed at model agencies	0	1	2
	Performance indicator: number of checks performed in the field of immigration	4296	4300	4300

III. PLAN OF TASKS AND MEASURES PROVIDED FOR IN THE GUIDELINES

Policy objectives defined in the Guidelines: **To promote awareness and understanding of the society regarding trafficking in human beings and to ensure care for victims of trafficking in human beings.**				
I Action direction: ***Preventive Measures of Trafficking in Human Beings***				
Tasks and main measures for achieving the objective brought forward	**Term for execution**	**Responsible institution**	**Involved institutions**	**Necessary financing and sources thereof**
1. To organise informative campaigns and activities regarding trafficking in human beings for the purpose of sexual abuse, exploitation of the labour force, entering into fictitious marriages and organ harvesting, in order to promote the public awareness and reduce the offer.	Permanently	State Police	MoI, MoFA, MoW, MoES, NLL, MoJ, NGOs, local governments	State Police In 2015 and hereinafter every year: EUR 7 114 – State budget financing (grant)
2. To draft an informative material regarding trafficking in human beings, which should be taken into account in order not to become a victim of trafficking in human beings, regarding the rights of victims of trafficking in human beings, support and aid possibilities for a victim of trafficking in human beings.	1st half of 2017	MoW	MoI, MoFA, MoC, MoES, NGOs, local governments	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
3. To conduct regular educating and informing of pupils and students regarding problems of trafficking in human beings: causes, risks, consequences.	Permanently	MoES	MoW, MoI, NGOs, local governments	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
4. To conduct training of officers of the State Police and local government police, border guards, public prosecutors, social workers, consular officials, labour inspectors, employees of Orphan's courts, SIPCR and OCMA, persons involved in the tourism sector regarding trafficking in human beings and issues related to the protection of the rights of children.	Permanently	State Police	MoI, MoW, MoFA, MoE, Office of the Ombudsman, NGOs, local governments	State Police In 2015 and hereinafter every year EUR 4 089 – State budget financing (grant)
5. To conduct training of judges and employees of the judicial system regarding issues related to trafficking in human beings.	Permanently	MoJ	JTC, CA, Office of the Ombudsman, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
6. To conduct training of the military staff before missions abroad regarding trafficking in human beings.	Permanently	MoD	MoI Office of the Ombudsman NGO	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
7. To improve the competence of teachers in issues related to forming awareness of educatees regarding the significance of ethical and moral values, principles and expressions of norms.	Permanently	MoES (NCE)	Local governments	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
8. To take the necessary measures in order to ensure the operation of the website regarding issues related to trafficking in human beings www.cilvektirdznieciba.lv, creating the site in an easy language so that it would be more accessible to people with special needs (creating a section "Easy to Read"), as well as to popularise it, also providing a possibility to notify only regarding cases of recruiting persons on Internet social networks or	1st half of 2014 Permanently	MoI	MoW, State Police	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.

to provide information regarding potential cases or attempts of trafficking in human beings.				
9. To organise a conference for heads of State and local government institutions, high-level officials of law enforcement authorities, senior officials of the CA in order to shape and strengthen understanding regarding trafficking in human beings.	2nd half of 2015	MoI	MoFA, MoES, MoW, MoC, local governments, NGOs, Office of the Ombudsman, MoJ	MoI in 2015 EUR 4 269 – State budget financing (grant)
10. To ensure State funded social rehabilitation services to identified victims of trafficking in human beings in co-operation with NGOs.	Permanently	MoW	NGOs, MoI, local governments	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
11. To ensure regular informing of the society regarding services to be provided by responsible authorities to persons who have suffered from trafficking in human beings.	Permanently	MoW	MoH, MoI, local governments, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
12. To draw up and distribute clear and easy to use information regarding the rights of victims of trafficking in human beings in the field of employment and social field, the status of victims and rights of immigrants.	2nd half of 2014	MoI	MoJ, MoW	MoI In 2014 within the scope of the financial resources provided for in the Law On the State Budget for the current year; in 2015 EUR 2 846 and in 2016 EUR 1 423 – State budget financing (grant)
13. To draft guidelines for risk assessment of	1st half of 2014	MoI	MoW, MoFA, NGOs	Within the scope of the

victims of trafficking in human beings.				financial resources provided for in the Law On the State Budget for the current year.
14. To conduct training of officers of the State Police and local government police, public prosecutors, social workers, border guards, labour inspectors, consular official, employees of Orphan's courts regarding work with a victim of trafficking in human beings taking into account the gender aspect, victim-oriented approach and considering the best interests of the child.	Permanently	MoW	MoI, Office of the Ombudsman, NGOs, local governments, MoFA	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
15. To evaluate the Cabinet Regulation No. 889 of 31 October 2006 in force, Regulations Regarding the Procedures, by Which Victims of the Traffic in Human Beings Receive Social Rehabilitation Services, and the Criteria for the Recognition of a Person as a Victim of the Traffic in Human Beings, and in case of necessity to draft amendments, supplementing criteria for recognising a persona s a victim of trafficking in human beings.	2nd half of 2015	MoW	MoI, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
16. To develop the co-operation between social service offices of local governments and social service providers for victims of trafficking in human beings, ensuring successful re-integration of the victim of trafficking in human beings after receipt of social services.	Year 2017 of 2015	MoW	Local governments, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
17. To evaluate	1st half	MoW	Local governments,	Within the

improvement of medium-term and long-term support programmes for support to children who have suffered from trafficking in human beings, also accommodation, the programmes being adjusted to the needs of children.	of 2014		NGOs	scope of the financial resources provided for in the Law On the State Budget for the current year.
18. To draw up and introduce guidelines for reintegration of victims of trafficking in human beings.	Year 2017 of 2014	MoW	NGOs, MoI	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
19. To evaluate the institutional framework and operational mechanism for identification, repatriation and return of victims of trafficking in human beings, for provision of support, conforming to the rights safety and honour of the victim of trafficking in human beings.	1st half of 2015	Office of the Ombudsman		Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
20. To draw up methodological materials for sectoral specialists (social workers, labour inspectors) regarding identification of cases and victims of trafficking in human beings and action in such cases.	Year 2017 of 2014	MoW	MoI, MoJ, local governments, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
21. To draw up methodological materials for sectoral specialists (medical personnel) regarding identification of cases and victims of trafficking in human beings and action in such cases.	Year 2017 of 2014	MoH	MoI, MoJ, local governments, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
22. To survey risks which affect health of the persons involved in prostitution, and to develop	1st half of 2014	MoH	MoI, NGOs, MoJ, local governments	Within the scope of the financial resources

measures for reducing such risks				provided for in the Law On the State Budget for the current year.
23. To evaluate the necessity of amendments to regulation of the Criminal Law in relation to punishing persons purchasing sexual services.	2014 of 2015	MoJ	MoI, Office of the Prosecutor General, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
Policy objectives defined in the Guidelines: **To achieve that the latency of trafficking in human beings is decreased and the capacity of law enforcement authorities and competent partners for combating cases of trafficking in human beings is developed**				
II Action direction: *Combating of Trafficking in Human Beings*				
Tasks and main measures for achieving the objective brought forward	**Term for execution**	**Responsible institution**	**Involved institutions**	**Necessary financing and sources thereof**
24. To improve the methodological materials for officers of the State Police: "Guidance Document for Identification of Persons Related to Prostitution, Living on the Avails of Prostitution, Trafficking in Persons" and "Guidance Recommendations for Police Employees for the Investigation of Cases of Trafficking in Persons/Living on the Avails of Prostitution".	As necessary	MoI	State Police, SPC	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
25. To improve the teaching aids for employees of the State Police "Methodology for Investigating Crimes of Trafficking in Human Beings".	As necessary	MoI	State Police, SPC	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
26. To ensure publishing of adjudications adopted by a court on the Internet in anonymous form.	Permanently	MoJ	CA	Within the scope of the financial resources provided for in

				the Law On the State Budget for the current year.
27. To form State law enforcement units for better investigation of cases of trafficking in human beings and criminal prosecution.	Permanently	MoI	State Police, Office of the Prosecutor General	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
28. To conduct training of judges, public prosecutors and lawyers regarding trafficking in human beings, rights of victims of trafficking in human beings, applicable legal acts, customary law, conformity with an approach oriented towards human rights.	Permanently	State Police	MoI, JTC, CA, CSA, Office of the Prosecutor General, MoJ	State Police in 2015 and henceforth EUR 820 – State budget financing (grant)
29. To improve the National Referral Mechanism in order to better identify victims of trafficking in human beings, to consult them and to provide protection and aid to them.	1st half of 2015	MoI	MoJ, MoW, MoFA, MoH, MoES, Office of the Prosecutor General, NGOs, local governments	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
Policy objectives defined in the guidelines: **1. To promote awareness and understanding of the society regarding trafficking in human beings and to ensure care for victims of trafficking in human beings.** **2. To achieve that the latency of trafficking in human beings is decreased and the capacity of law enforcement authorities and competent partners for combating cases of trafficking in human beings is developed**				
III Action direction: ***Co-ordination of co-operation and collection of information***				
Tasks and main measures for achieving the objective brought forward	**Term for execution**	**Responsible institution**	**Involved institutions**	**Necessary financing and sources thereof**
30. To improve the national co-ordination mechanism of expert level of implementation of the policy for the prevention of trafficking in human beings (inter-institutional working group) and its operation.	1st half of 2014	MoI	MoJ, MoW, MoFA, MoH, MoES, Office of the Prosecutor General, NGOs, local governments	Within the scope of the financial resources provided for in the Law On the State Budget for the current

				year.
31. To ensure the operation of the informal working group for prevention of exploitation of the labour force.	Permanently	MoI	MoJ, MoW, MoFA, Office of the Prosecutor General, NGOs, local governments	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
32. To ensure the creation of regional informal co-operation networks for the prevention of trafficking in human beings and its efficient operation.	Year 2017 of 2014	Institutions, NGOs, local governments	MoI	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
33. To ensure conducting of a study on the understanding of the society on trafficking in human beings, its risks, threats and consequences, including also the theme on the impact of the social environment on risk of trafficking of children.	2nd half of 2015 2nd half of 2015	MoW		MoW in 2015 EUR 25 612 and in 2019 EUR 7 114 – State budget financing (grant)
34. To conduct a repeat study on trends and risks of trafficking in human beings and recruiting mechanisms.	2nd half of 2015	MoI		MoI in 2019 EUR 25 612 – State budget financing (grant) or project or programme co-financed by EU policy instruments (grant)
35. To expand the range of international partners, with which international agreements on co-operation in provision of legal aid and combating of organised crime are entered into.	Permanently	MoJ, MoI		Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
36. To ensure	Permanently	MoI		According to

representation of Latvia in CBSS TF-THB.				Cabinet Order No. 657 of 15 December 2011, On Participation of Latvia in the Working Group of the Council of the Baltic Sea States
37. To ensure presidency of Latvia in the CBSS TF-THB: - meeting of the CBSS TF-THB in autumn 2018; - meeting of the CBSS TF-THB and joint meeting of the CBSS TF-THB Observer States and the CBSS TF-THB in spring 2019; - meeting of the CBSS TF-THB and joint meeting of the CBSS TF-THB Observer States and the CBSS TF-THB in spring 2019.	1 July 2018 – 30 June 2019	MoI		MoI in 2018 EUR 854 and in 2019 EUR 1 281 – State budget financing (grant)
38. To ensure co-operation with GRETA (group of experts for action against trafficking in human beings) in evaluation of the second round of the Council of Europe Convention on Action against Trafficking in Human Beings.	2016-2017	MoI	MoW, MoJ, MoC, MoES, MoFA, MoD, MoE, Office of the Prosecutor General, RCC, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.
39. To draw up guidelines for collection, collection and analysis of data on trafficking in human beings.	Year 2017 of 2014	MoI	MoW, MoFA, MoJ, NGOs	Within the scope of the financial resources provided for in the Law On the State Budget for the current year.

IV. ASSESSMENT OF IMPACT ON THE STATE BUDGET AND LOCAL GOVERNMENT BUDGETS

The financial resources planned for implementation of the Guidelines is the State and local government budget, international financing, as well as private capital to be attracted by successfully developing public-private partnership.

The largest part of implementation of the measures provided for in the Guidelines will be ensured within the scope of the resources from the State budget assigned to the institutions referred to in the Guidelines. In turn, the issue of assigning additional resources from the State budget to the institutions referred to in the Guidelines shall be examined during the process of preparing a draft Cabinet law on the medium-term budget framework and draft law on the State budget for the following economic years together with request other new policy initiatives of all ministries and other central State institutions according to the State budget possibilities.

	Three subsequent years (thous. euros)		
	2014	2015	2016
Total changes in budget revenue, including:			
Changes in the State budget revenue			
Changes in local government budget revenue			
Total changes in budget expenses, including:	0	44.8	13.5
Changes in the State budget expenses	0	44.8	13.5
Changes in local government budget expenses			
Total financial impact:	0	-44.8	-13.5
Financial impact on the State budget	0	-44.8	-13.5
Financial impact on local government budget	0		
Detailed calculation of revenue and expenses: see next table.			

Additional expenses for the **Ministry of the Interior – EUR 109 476**
(in total from 2014 to 2020)

No. of the task or main measure	Task and main measure/Expenses	Budget programme 97.00.00 "Sectoral Management and Policy Planning" of the Ministry of the Interior
	In total additionally necessary expenses for the **Ministry of Interior (central institutions)** (in total from 2014 to 2020)	**EUR 36 284**
9.	To organise a conference for heads of State and local government institutions, high-level officials of law enforcement authorities, senior officials of the CA in order to shape and strengthen understanding regarding trafficking in human beings.	**EUR 4 269**
	In 2015 – EUR 4 260. Payment for the service (IKK 2232). Necessary expenses for organising a one-day conference – EUR 4 269, therefrom: 1. Representation expenses and hand-outs – EUR	

No. of the task or main measure	Task and main measure/Expenses	Budget programme 97.00.00 "Sectoral Management and Policy Planning" of the Ministry of the Interior
	2 134; 2. Catering of participants (170 participants) – EUR 2 134. 2 coffee breaks (170 participants x EUR 3.56 x 2 coffee breaks = EUR 1 209); lunch (170 participants x EUR 5.44 = EUR 925),	
12.	To draw up and distribute clear and easy to use information regarding the rights of victims of trafficking in human beings in the field of employment and social field, the status of victims and rights of immigrants.	**EUR 4 269**
	In 2015 – EUR 4 260. in 2016 – EUR 1 423. Payment for the service (IKK 2232).	
34.	To conduct a repeat study on trends and risks of trafficking in human beings and recruiting mechanisms.	**EUR 25 612**
	In 2019 – EUR 25 612. Payment for the service (IKK 2232).	
37.	To ensure presidency of Latvia in the CBSS TF-THB.	**EUR 2 134**
	in 2018 – EUR 854; In 2019 – EUR 1280. Payment for the service (IKK 2232). Estimate: in 2018 – EUR 854; One meeting (CBSS TF-THB – 17 participants): Catering expenses: 2 coffee breaks (2 coffee breaks x 17 participants x EUR 2.85 = EUR 96.76), lunch (17 participants x EUR 4.98 = EUR 84.66), dinner (17 participants x EUR 14.23 = EUR 241.89), In total: **EUR 424** Representation expenses: **EUR 430** In 2019 – EUR 1281. One meeting (one day CBSS TF-THB meeting (17 participants) and one day joint meeting with CBSS Observer States (27 participants): Catering expenses: – 2 coffee breaks (2 coffee breaks x 17 participants x EUR 2.85 = EUR 96.76), lunch (17 participants x EUR 4.98 = EUR 84.66), dinner (17 participants x EUR 14.23 = EUR 241.89), In total: **EUR 424** – coffee break (27 participants x EUR 2.85 = EUR 76.84),	

No. of the task or main measure	Task and main measure/Expenses	Budget programme 97.00.00 "Sectoral Management and Policy Planning" of the Ministry of the Interior
	lunch (27 participants x EUR 4.98 = EUR 134.46), In total: **EUR 213** One meeting (one day CBSS TF-THB meeting (17 participants) and one day joint meeting with CBSS Expert Group on Children at Risk (in total 28 participants)): Catering expenses: – 2 coffee breaks (2 coffee breaks x 17 participants x EUR 2.85 = EUR 96.76), lunch (17 participants x EUR 4.98 = EUR 84.66), dinner (17 participants x EUR 14.23 = EUR 241.89), In total: **EUR 424** – coffee break (28 participants x EUR 2.85 = EUR 79.68), lunch (28 participants x EUR 4.98 = EUR 139.44), In total: **EUR 219**	
	In total additionally necessary expenses for the **State Police** (in total from 2014 to 2020)	**EUR 72,192**
1.	To organise informative campaigns and activities regarding trafficking in human beings for the purpose of sexual abuse, exploitation of the labour force, entering into fictitious marriages and organ harvesting, in order to promote the public awareness and reduce the offer.	**EUR 42,684**
	in 2015 – EUR 7,114; in 2016 – EUR 7,114; in 2017 – EUR 7,114; in 2018 – EUR 7,114; In 2019 – EUR 7,114. In 2020 – EUR 7,114. Payment for the service (IKK 2231). Costs of organising one informative campaign EUR 7 114 – printed materials (booklets, brochures, flyers), creation of banners on the Internet, etc.	
4.	To conduct training of officers of the State Police and local government police, border guards, public prosecutors, social workers, consular officials, labour inspectors, employees of Orphan's courts, SIPCR and OCMA, persons involved in the tourism sector regarding trafficking in human beings and issues related to the protection of the rights of children.	**EUR 24,588**
	in 2015 – EUR 4,098; in 2016 – EUR 4 098; in 2017 – EUR 4 098; in 2018 – EUR 4 098;	

No. of the task or main measure	Task and main measure/Expenses	Budget programme 97.00.00 "Sectoral Management and Policy Planning" of the Ministry of the Interior
	in 2019 – EUR 4 098; in 2020 – EUR 4 098; Payment for the service (IKK 2231). It is intended to train 150 people a year (in 5 two-day training groups per 30 participants). Necessary expenses for organising one training measure – EUR 820, therefrom: 1. Catering of participants (2 dinners, 4 coffee breaks, costs per participant EUR 3.56 dinner, EUR 2.21 coffee break) – EUR 478; 2. Payment for lecturers (EUR 28.46 including VAT per lecture, in total 12 lectures) – EUR 342. Necessary expenses per year: EUR 820 x 5 = EUR 4 098.	
28.	To conduct training of judges, public prosecutors and lawyers regarding trafficking in human beings, rights of victims of trafficking in human beings, applicable legal acts, customary law, conformity with an approach oriented towards human rights. in 2015 – EUR 820; in 2016 – EUR 820; in 2017 – EUR 820; in 2018 – EUR 820; In 2019 – EUR 820. In 2020 – EUR 820. Payment for the service (IKK 2231). Necessary expenses for organising one training measure – EUR 820, therefrom: 1. Catering of participants (2 dinners, 4 coffee breaks, costs per participant EUR 3.56 dinner, EUR 2.21 coffee break) – EUR 478; 2. Payment for lecturers (EUR 28.46 including VAT per lecture, in total 12 lectures) – EUR 342.	**EUR 4,920**

Additional expenses for the **Ministry of Welfare**: **EUR 51,224**
(in total from 2014 to 2020)

No. of the task or main measure	Task and main measure/Expenses	Sub-programme 05.01.00 "Social Rehabilitation State Programme" of the budget of the Ministry of Welfare
	In total additionally necessary expenses for the Ministry of Welfare (in total from 2014 to 2020)	**EUR 51,224**
33.	To ensure conducting of a study on the understanding of the society on trafficking in human beings, its risks, threats and consequences, including also the theme on the impact of the social environment on risk of trafficking of children. In 2015 – EUR 25 612; In 2015 – EUR 25 612; Payment for the service (IKK 2232).	**EUR 51,224**

Other information	The Cabinet shall decide on assigning additional funds from the State budget during preparation of the State budget for 2015 and subsequent years.						
	Changes in budget expenses from 2014 to 2020, euro						
Task No.	2014	2015	2016	2017	2018	2019	2020
Ministry of the Interior – in total	**0**	**EUR 19,147**	**EUR 13,455**	**EUR 12,032**	**EUR 12,886**	**EUR 38,924**	**EUR 12,032**
Ministry of the Interior (central institutions) – in total	**0**	**EUR 7,115**	**EUR 1,423**	**0**	**EUR 854**	**EUR 26,892**	**0**
Task No. 9	0	**EUR 4,269**	0	0	0	0	0
Task No. 12	0	**EUR 2,846**	**EUR 1,423**	0	0	0	0
Task No. 34	0	0	0	0	0	**EUR 25,612**	0
Task No. 37	0	0	0	0	**EUR 854**	**EUR 1,280**	0
State Police – in total	**0**	**EUR 12,032**	**EUR 12,032**	**EUR 12,032**	**EUR 12,032**	**EUR 12 032**	**EUR 12,032**
Task No. 1	0	**EUR 7,114**	**EUR 7,114**	**EUR 7,114**	**EUR 7,114**	**EUR 7,114**	**EUR 7,114**
Task No. 4	0	**EUR 4,098**	**EUR 4,098**	**EUR 4,098**	**EUR 4,098**	**EUR 4,098**	**EUR 4,098**
Task No. 28	0	**EUR 820**	**EUR 820**	**EUR 820**	**EUR 820**	**EUR 820**	**EUR 820**
Ministry of Welfare – in total	**0**	**EUR 25,612**	**0**	**0**	**0**	**EUR 25,612**	**0**
Task No. 33	0	**EUR 25,612**	0	0	0	**EUR 25,612**	0
IN TOTAL	**0**	**EUR 44,759**	**EUR 13,455**	**EUR 12,032**	**EUR 12,886**	**EUR 64,536**	**EUR 12,032**

V. PROCEDURES FOR THE PROVISION AND EVALUATION OF REPORTS

No.	Description of the action	Term for execution	Responsible institution
1.	Submission of the interim informative report on implementation of the Guidelines to the SC	30 June 2017	MoI
2.	Submission of the final informative report on implementation of the Guidelines to the SC	30 June 2021	MoI
3.	Guidelines for Prevention of Trafficking in Human Beings 2021-2026 to SC for approval	30 June 2020	MoI

Minister for the Interior Rihards Kozlovskis

(Cabinet
Order No. 29 of
21 January 2014)

Guidelines for Prevention of Trafficking in Human Beings 2014-2020 (summary)

The Guidelines for Prevention of Trafficking in Human Beings 2014-2020 (hereinafter – the Guidelines) are a medium-term policy planning document for subsequent seven years. It lays down the objective of the trafficking in human beings prevention policy – to prevent and combat trafficking in human beings, to protect and help victims of trafficking in human beings, completely conforming to their human rights, and to promote inter-sectoral co-operation in order to achieve the objective.

The Guidelines have been drawn up according to the Government Action Plan for implementation of the Declaration of the Cabinet led by Valdis Dombrovskis Regarding Intended Activities (approved by Cabinet Order No. 84 of 16 February 2012), implementing Measure 125.2 – to draw up guidelines for prevention of trafficking in human beings – of Task No. 125 given in the Declaration – to implement a single crime prevention programme in the State.

The measures included in the Guidelines have been co-ordinated with the EU Strategy Towards the Eradication of Trafficking in Human Beings 2012-2016, the Council of Europe Convention on Action Against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children supplementing the UN Convention Against Transnational Organised Crime.

Three action directions and measures subordinate thereto have been brought forward in the Guidelines for implementation of the trafficking in human beings prevention policy in medium-term:
1) prophylaxis of trafficking in human beings;
2) action against trafficking in human beings;
3) co-ordination of co-operation and collection of information.

The working group established by Order No. 85 of the Prime Minister of 8 March 2013, On the Working Group for the Programme for the Prevention of Trafficking in Human Beings 2009-2013 participated in drawing up of the Guidelines, to which representatives from the Ministry of the Interior, the Minister of Welfare, the Ministry of Foreign Affairs, the Ministry of Education and Science, the Ministry of Economics, the Ministry of Justice, the Ministry of Health, the State Police, the State Border Guard, the Office of Citizenship and Migration Affairs, the Information Centre of the Ministry of the Interior, the Office of the Prosecutor General, the Prosecutor's Office of Liepāja, the Office of the Ombudsman, the National Library of Latvia, the Welfare Department of Riga City Council, Riga local government policy, association "Shelter "Safe House"", association "Resource centre for women "Marta"" and Riga office of the International Organisation for Migration were appointed.

The largest part of the measures provided for in the Guidelines will be ensured within the scope of the funds from the State budget assigned to the respective institutions. The institutions involved in implementation of the Guidelines have identified the necessity for additional budget funds in the following amount:
1) in 2015 – EUR 44 759;
2) in 2016 – EUR 13,455;
3) in 2017 – EUR 12 032;
4) in 2018 – EUR 12 886;
5) in 2019 – EUR 64 536;
6) in 2020 – EUR 12,032;

The issue on the additional financing necessary to the Ministry of the Interior and the Ministry of Welfare from 2015 in order to implement the tasks and measures included in the Guidelines shall be examined at the Cabinet during the process of preparing draft law on medium-term budget framework and draft law on the State budget for the subsequent economic years together with proposals of all ministries and other central State institutions for new policy initiatives and requests for additional financing according to the possibilities of the State budget.

The Ministry of the Interior will prepare and submit to the Cabinet an interim informative report (until 30 June 2017) and final informative report (until 30 June 2021) on carrying out of the Guidelines.

Minister for the Interior Rihards Kozlovskis

Lukáš Stary

CV - Lukáš Starý

Mr Lukáš Starý, a citizen of the Czech Republic, is a public prosecutor, who started his career at the District Public Prosecutor's Office in Karvina where he worked from 2003-2008, and again from 2009 until his appointment at Eurojust in 2011. From October 2008 to June 2009, he worked at the International Department of the Supreme Public Prosecutor's Office of the Czech Republic.

Mr Lukáš Starý was appointed National Member for the Czech Republic on 1 February 2011. Shortly after he joined Eurojust he has become a member of the Eurojust´s team specialized besides other things in THB called Trafficking and Related Crimes Team (TRCT). Since May 2012 he is also a vice chair of the TRCT and a Eurojust´s contact point for THB.

THE ROLE AND POSSIBILITIES OF EUROJUST IN COUNTERING THB THROUGH ENHANCED JUDICIAL COOPERATION

ERA seminar on Countering THB
Riga, 10-11 September 2015

Outline

- Eurojust
- Casework on THB
- A case example
- Strategic Project on THB
- Strategic meeting on THB
- Next steps

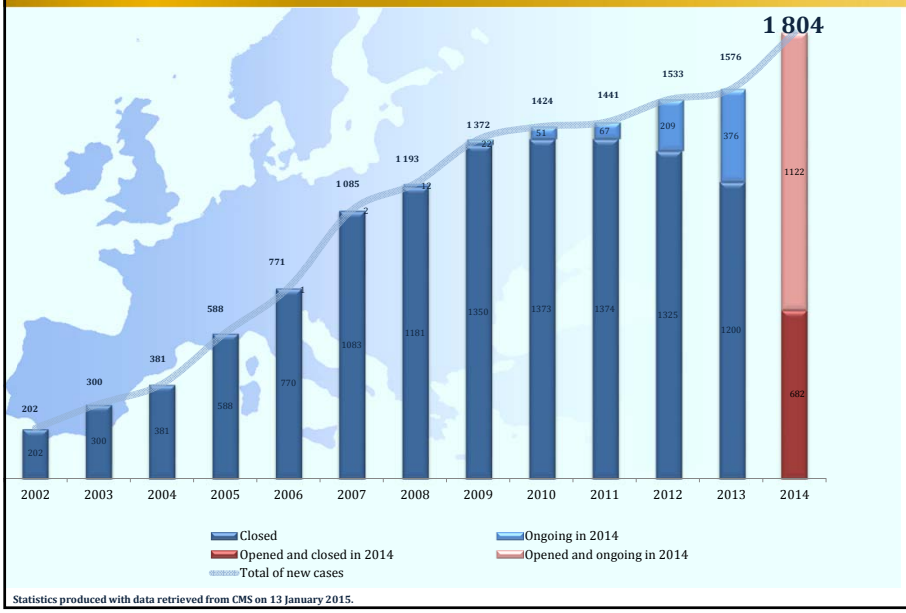
Eurojust

- Bringing together judicial & law enforcement authorities
- Resolving legal & practical challenges of 30 legal systems
- Direct exchange of information in ongoing investigations
- 197 coordination meetings in 2014
- 10 coordination centres
- 122 supported JITs

- MLA, seizures, searches
- Admissibility of evidence
- Execution of EAWs
- Conflict of jurisdictions
- Settle where to prosecute
- JIT agreements

3

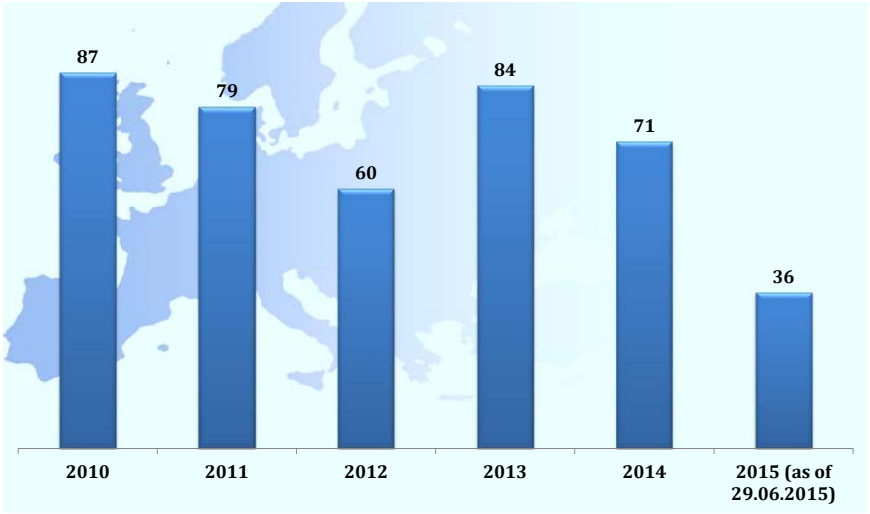
Casework 2002 – 2014 increase



Statistics produced with data retrieved from CMS on 13 January 2015.

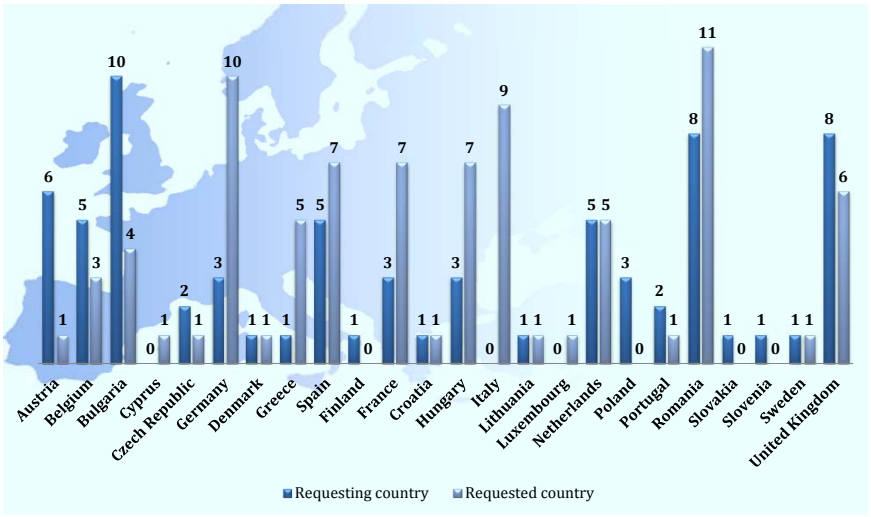
EUROJUST CASEWORK
ON
TRAFFICKING IN HUMAN BEINGS

Total number of THB cases



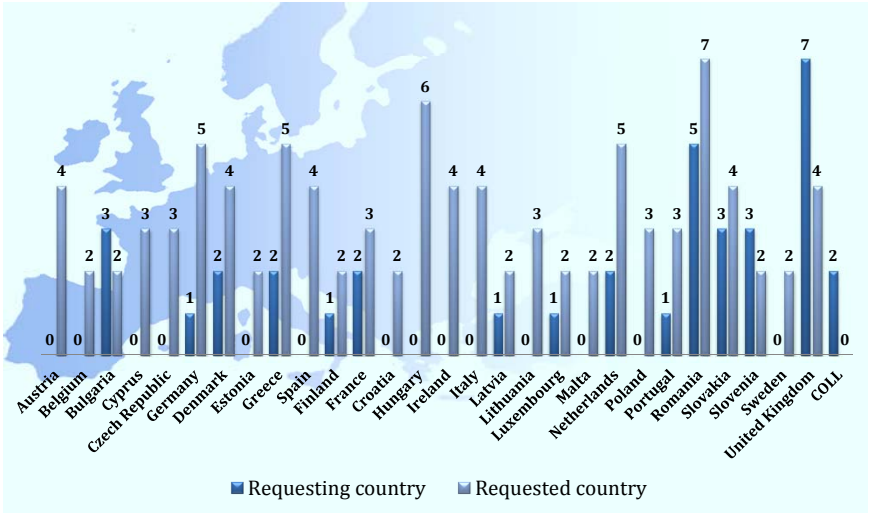
Case Analysis Unit

THB - Requesting / Requested countries in 2014



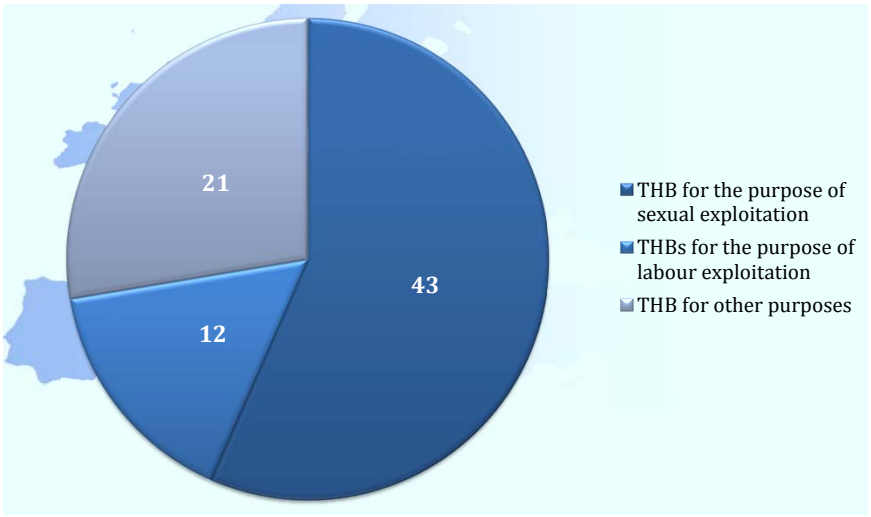
Case Analysis Unit

THB - Requesting / Requested countries in 2015 (as of 30.06.2015)



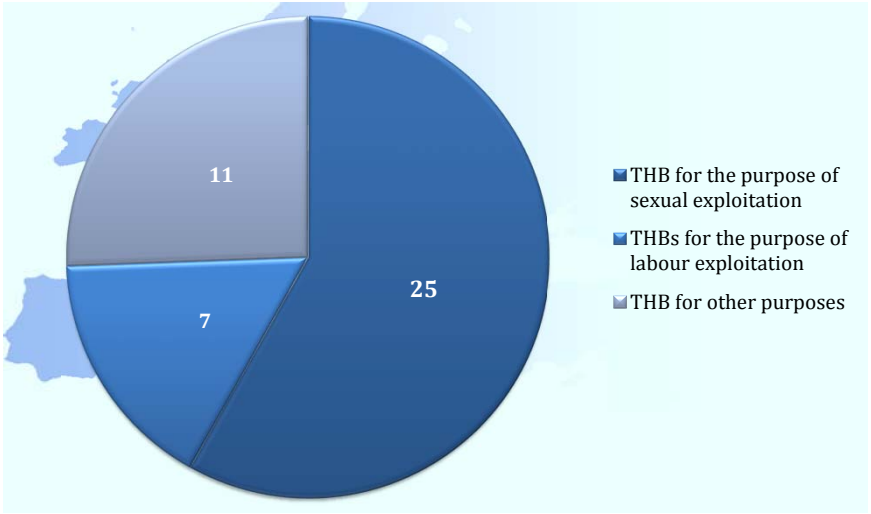
Case Analysis Unit

Purpose of exploitation (registered THB cases 2014)



Case Analysis Unit

Purpose of exploitation (registered THB cases as of 30.06.2015)



Case Analysis Unit

CASE EXAMPLES

CASE „A“ THB FOR LABOUR EXPLOITATION
CASE „B“ THB FOR SEXUAL EXPLOITATION

The facts (case A)

- **OCG** (THB) active in two Member States (A and B)
- **Victims** from “A” trafficked to “B” for work exploitation
- **Parallel investigations** “A” (recruitment, transport) and “B”(exploitation)
- **Suspects** - Russian, Moldavian and “A” and “B” nationals
- Jobs offered **online** in “A” - promise of a monthly salary of EUR 800
- Vulnerable victims **forced to work illegally**
- **No minimum conditions** for labour protection, salaries and accommodation

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Eurojust's assistance

Need to clarify the criminal activities and to gather evidence

Eurojust asked to facilitate judicial cooperation:

- Coordination meetings
- Exchange real time information
- Coordinate the investigative and judicial actions in the two MSs:
  - Wiretaps, surveillance of individuals and places, freezing of assets, photo recognitions, victims' statements
- Assistance in setting up a JIT between the two MSs
- Assumed extensive and long term cooperation
- Avoid delays caused by repeated MLA requests
- Ensure better coordination between the two investigations

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The Joint Investigation Team

In December 2013 – for one year

To clarify the criminal activities and to gather evidence

Extended until December 2015

Financing by Eurojust – several grants

App. EUR 15.000: travel, accommodation, interpretation and translation

Participation of Eurojust and Europol

EJ support in drafting JIT agreement, clarifying legal requirements

- - Coordination of MLA requests to a State not member of JIT
- - Evidence gathered in both investigations can be used by both Parties
- - Operational Action Plan of the JIT

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The facts (case B)

OCG (THB) active in two Member States (CZ and UK)

Victims (more than 40 girls 19-35) from "CZ" trafficked to "UK" for sexual exploitation/sham marriages

Suspects – mostly Czech nationals of Roma ethnicity

Europol/Eurojust involvement

Parallel investigations (CZ July 2010, UK January 2011)

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Eurojust´s assistance/JIT

Differences in legal systems (hearing of witnesses, wire tapping, financial support, dislosure procedure)

Co-ordination at Eurojust 30 March 2011: Signing of the JIT agreement. Operational Action Plan

Crimes to investigate: **CZ** THB, **UK** THB, rape, controlling for prostitution and immigration offences relating to sham marriages and other offences committed by OCG for purpose of sexual or other exploitation breach of immigration laws and rape.

Agreement on the prosecution

Extremely swift progress; Coordinated action (Action Day) 13 July 2011, arrests of 3 suspects in UK (London, Gloucester), arrests of 3 suspects in CZ (Liberec, Mimoň, Jablonné v Podještědí), house searches

11 October 2011: the 3 suspects from CZ were surrendered to the UK

Conviction of 7 traffickers – 6 Czech and 1 UK nationals; Conspiracy to traffic into/within UK for controlled prostitution, Conspiracy to control prostitution, Conspiracy to assist unlawful immigration, Doing acts tending and intended to pervert the course of public justice, Punishments from 3,5 – 11 years of imprisonment

Eurojust assistance – coordination, legal advice, JIT funding

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EUROJUST
STRATEGIC PROJECT ON THB

The project aims and findings

- Improved judicial cooperation
- Increased prosecutions THB
- Enhance Eurojust's involvement
- Analysis of Eurojust casework
- THB Questionnaire
- 2012 THB strategic meeting

Evidentiary difficulties

Identification of cases and victims

Multilateral dimension of THB

Lack of **knowledge** and **experience**

Asset recovery is problematic

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Main tools to address the problems

Eurojust:
- Improves judicial cooperation
- Coordination meetings
- Coordination centers
- Role in conflicts of jurisdiction
- Cooperation with third States

Europol:
- Exchange of information
- Operational support
- Strategic analytical support
- Emerging trends in THB
- Better understand and investigate THB

JITs:
- Suitable and useful tools for effective investigations and prosecutions;
- Offer solutions for addressing the lack of financial resources needed to proceed with the investigations

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Eurojust Action Plan against THB 2012-2016

1. Exchange of information
2. Increase number of detections and joint investigations and prosecutions
3. Training and expertise in THB
4. Cooperation with third states
5. Alternative approaches (multidisciplinary)
6. Financial investigations (asset recovery)

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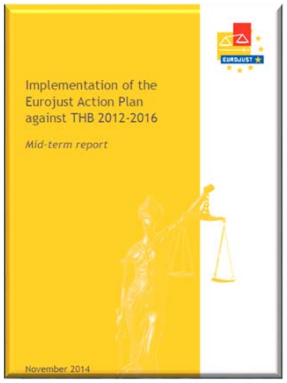
Mid-term Evaluation, 2014

Exchange of information

- Small number of Art 13 notifications
- High number of CC small number THB cases
- 68 % of CMs attended by EP

Investigation, prosecution and judicial cooperation

- Often links to illegal immigration,
- No increase in multilateral cases
- THB section on EJ website
- Best practices and obstacles in judicial cooperation
- JITs (continuing increase), JIT funding
- Feedback on EJ intervention



Conclusions and Recommendations

1. *The number of THB cases registered at Eurojust in 2013 increased by 40% over 2012*
2. *Eurojust CMs continue to be a powerful tool; their number per case ratio increased*
3. *Evidence-related problems continue to remain the main obstacles in prosecuting THB cases*
4. *The total number of Article 13 notifications in THB cases remains very low*
5. *Europol's participation in CMs was significantly higher in 2013 than 2012*
6. *The percentage of JITs set up in THB cases has increased from 13% in 2012 to 24% in 2013*
7. *Eurojust has participated in several training sessions on THB*
8. *The number of Eurojust cases with the involvement of third States is relatively small*
9. *Financial investigations and asset recovery in THB cases - used to a large extent*

EUROJUST

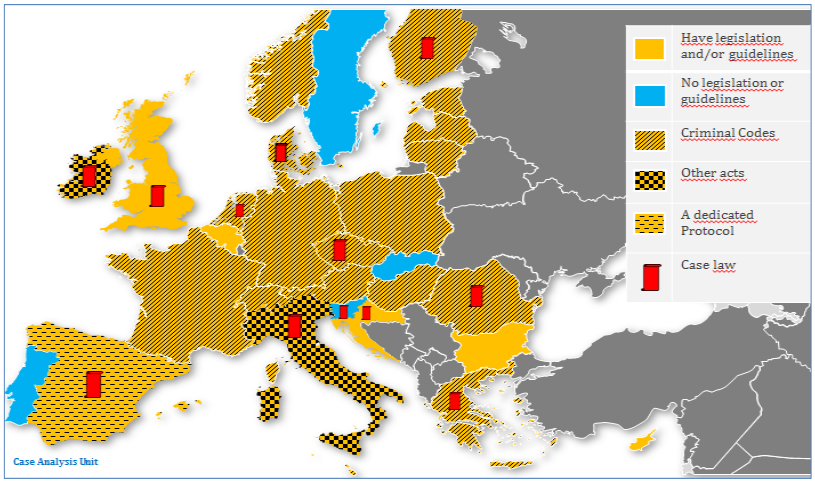
STRATEGIC MEETING ON THB

APRIL 2015

Aims and sources

- Issues to explore: hearing and protection of victims
  labor exploitation
  challenges in judicial cooperation
- Analysis of cases (Eurojust´s case work)
- Two questionnaires (external and internal)
  - THB for the purpose of labour exploitation, indicators and lessons learned
  - The hearing and protection of THB victims/witnesses
  - Financial investigations in THB cases
  - Internet and THB
  - Suggestions to improve the fight against THB

Questionnaire – indicators THB labour



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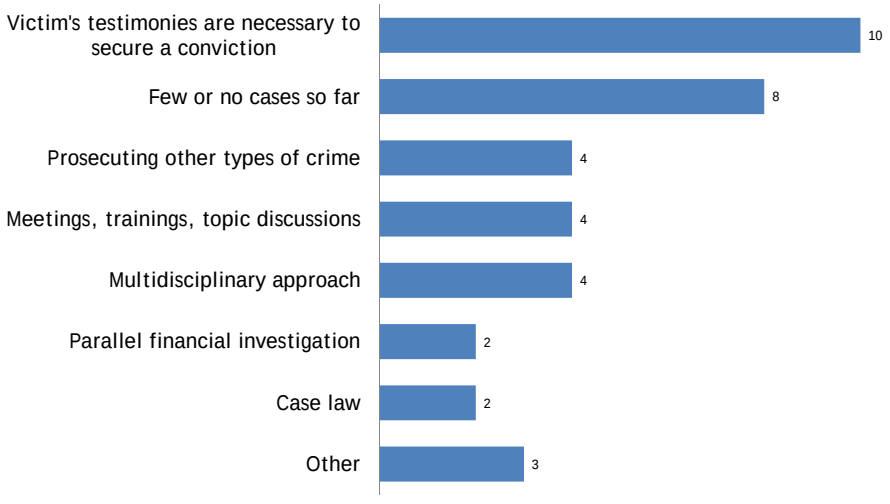
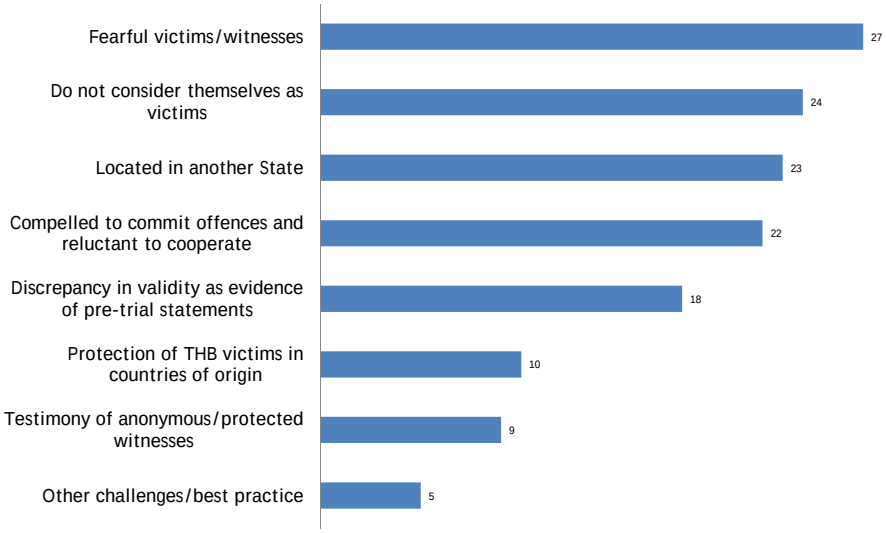
Questionnaire – THB for labour cases



Questionnaire – hearing of victims



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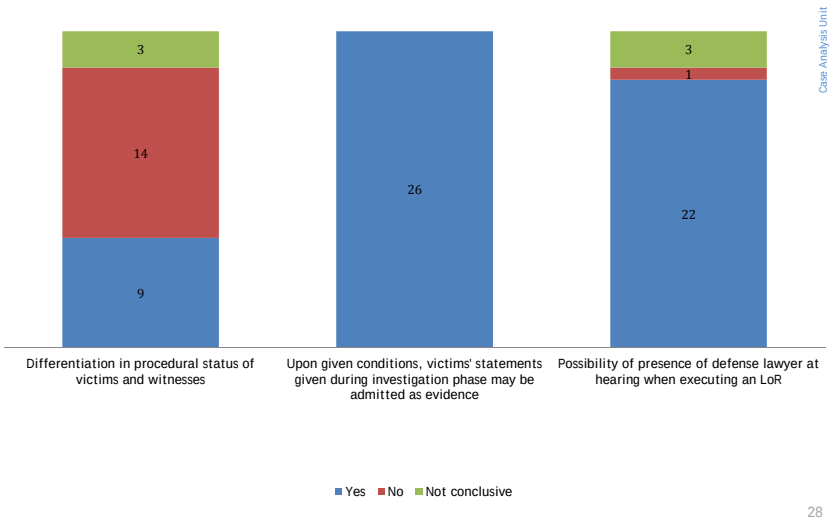
Questionnaire – legal standards hearing



Case Analysis Unit

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The plenary and workshops

- Difficulties in **proving the labour exploitation purpose**
- **Protective measures** for the hearing of victims
- The right to **refuse to testify** against a relative remains a major challenge
- Victim statements may be **inconsistent**, but not necessarily unreliable
- Investigations should **not focus only on victim statements**
- Parallel **financial investigations** are instrumental
- Challenges in monitoring **social media**
- Reports on **working conditions** in the countries of origin of victims
- Think outside the box' and consider **other disruptive measures**
- Victims are **forced to commit offences** as a result of trafficking

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Main recommendations

- Clearer definitions, legislation and guidelines, awareness and training
- The use of pre-trial statements of victims as evidence in court
- Clear communication about specific MLA requirements
- Avoid relying only on victim statements for securing convictions
- Investigate and prosecute other offences in parallel with the THB
- Sanctions for those who profit from the use of cheap labour
- Financial investigations
- Administrative measures for violating health and safety regulations, etc
- Encourage multidisciplinary approaches
- Non – prosecution of victims
- Request assistance from Eurojust

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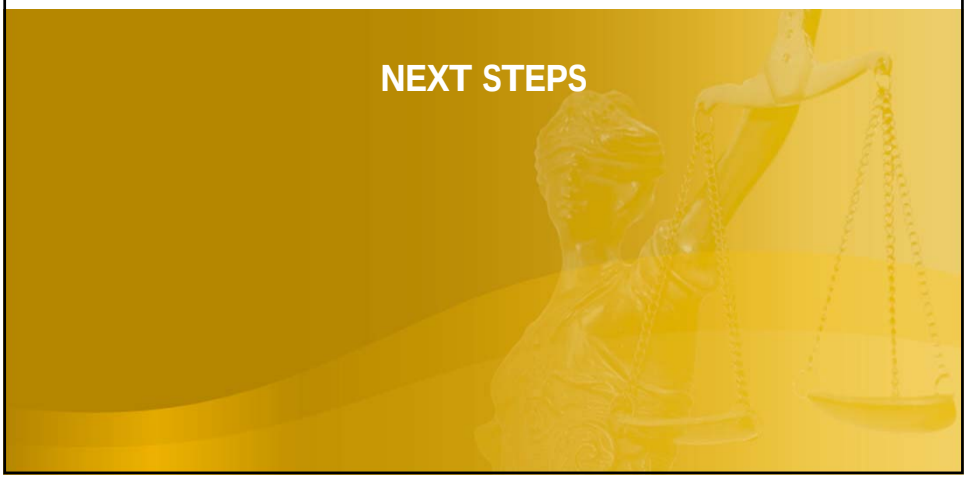
NEXT STEPS



2015-2016

In-depth analysis of questionnaire responses

Analysis of Eurojust casework on THB

Final report on the implementation of the Action Plan

Q & A

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Contact information

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CASE SCENARIO FOR WORKSHOPS

Czech authorities have initiated a criminal investigation into a group of suspects composed of Moldavian, Romanian and Czech nationals allegedly involved in the **trafficking of human beings (THB) for the purpose of labour exploitation**. The suspects recruited Romanian and Moldovan nationals using an **online advertisement** for employment abroad and transported them by bus to the Czech Republic. A promise of employment with a monthly salary of EUR 800 and free accommodation was made, upon payment of an 'agency fee'.

Upon arrival, the Moldovan and Romanian nationals were handed over to foreign work agents and put in a **position of dependence**, as the employers benefited from their unfamiliarity with the situation in the Czech Republic. They were forced to work illegally, mainly in the building industry, and were **paid considerably less** than the salaries commonly paid for similar work.

During the Czech investigation, it became apparent that the Romanian authorities were conducting **parallel investigations** targeting the same Romanian suspects. The Czech investigation also revealed links with a UK investigation regarding Romanian and Moldovan nationals being **transported** to the UK through France, where they were **forced to commit unlawful activities** (e.g. pickpocketing) in the UK to repay their debts to the suspects.

The Czech authorities requested **Eurojust**'s assistance in facilitating the **coordination** of the national investigations and possibly in setting up a **joint investigation team (JIT)** among the Czech Republic, Romania, the UK and Moldova**.**

Eurojust organised a **coordination meeting** with judicial authorities from the Czech Republic, Romania, the UK and Moldova to discuss an investigation and prosecution strategy, including the establishment of a JIT with the purpose of identifying, investigating, prosecuting and disrupting the organised crime group operating in these four countries and protecting the victims. To meet these objectives, several **measures** were foreseen, including obtaining testimonies, intercepting telecommunications, monitoring Facebook accounts, electronic interceptions, monitoring financial transactions, identifying and freezing criminal assets, employing protective measures in relation to the victims and their families etc..

***

The countries in the case scenario are mentioned only for illustrative purposes and the circumstances referred to in the discussion points are hypothetical.

***

1. *Have you ever encountered in your case work similar situation (not exclusively cases of labour exploitation)? If so,*
   a) Have you asked for support from Eurojust and/or Europol or any other international institution?
   b) Do you have practical experience with Joint investigation teams?
   c) What is your experience with cooperation with states outside the EU?

2. *Imagine that your country is one of the states involved in the case scenario and participates in the coordination meeting at Eurojust to discuss, among other things, the possibility of setting up a JIT.*
   As parallel investigations are being conducted in the Czech Republic, UK and Romania, but not in Moldova, which matters would you take into consideration to ensure the prosecution of the entire trafficking chain operating in the four countries? For instance:
   a) The investigation of the recruitment of victims from Moldova and Moldovan members of the criminal group,
   b) Aspects to be taken into account in the decision on where to prosecute,
   c) The ability and willingness of the countries to enter into a JIT - including with Moldova - and the stage of proceedings for doing so,
   d) The added value of involving Eurojust in addressing the points above and the financing of a JIT.
   e) Financial investigation, seizures of the assets abroad.

Sandra Zalcmane

System of identification of victims of trafficking in human beings in Latvia

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NGO Shelter «Safe house»

- Founded in 2007
- Since 2007 until now supports people who are victims of human trafficking.
- In 2008 began to provide support to asylum seekers, refugees and persons with other statuses.

Patvērums DROŠĀ MĀJA

Assistance stages for the victim

- **Identification**
- **Rehabilitation**
- **Reintegration**

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The aim of identification

- To support people recognized as victims of human trafficking
- Possibility to obtain social rehabilitation within the framework of the governmental programme

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Organisations involved in the procedure of identification

- Latvian and international police
- Consular Department of the Ministry for Foreign Affairs and the Latvian Embassies
- International Organisation for Migration
- Latvian and international NGOs
- Telephone help lines and telephone consultations
- Various experts

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Who is able to identify?

- **Law-enforcement authorities of Latvia** may decide that a person is a victim of a criminal scheme involving human trafficking.
- **International law-enforcement authorities** issue a certificate that a person is recognized as a victim of human trafficking in this country.
- **Representatives of social services** call for a commission including a social worker, a psychologist, a lawyer, a doctor, a representative of the State police as well as other experts if necessary.

Patvērums DROŠĀ MĀJA

Criteria for the Recognition of a Person as a Victim of the Traffic in Human Beings

- **Person's Assessment Report – 47 criteria**
- **Evaluation in the following areas:**
  - Migration
  - Employment
  - Safety
  - Social ties
  - Objective characteristics
  - Person's self appraisal

Patvērums DROŠĀ MĀJA

Areas of evaluation

- **Migration – 14 criteria**, main THB aspects – whether the person was recruited, transported, conveyed or received, kidnapped or sold
- **Employment – 10 criteria** – work relations
- **Safety – 8 criteria** – whether the person was intimidated or threatened, suffered from violence, denied the satisfaction of the basic needs

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Areas of evaluation

- **Social ties – 7 criteria –** whether the person was held imprisoned, constantly controlled, could freely communicate with his or her relatives
- **Objective characteristics – 3 criteria** – what we know and what we find out
- **Person's self appraisal – 4 criteria** – how does the person evaluates the current situation

Patvērums DROŠĀ MĀJA

Ethical principles of interviewing

Do no evil, do not harm the client!!!

- **Ensure support, safety**
- **Ensure inviolability of private life**
- **Comply with confidentiality**
- **Provide information on the issues the client is interested in**
- **Receive client's consent for disclosure of information to a third party**

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Ethical principles of interviewing

Do no evil, do not harm the client!!!

- Form and ask questions tactically
- Regularly develop your listening skills
- Ensure that the client has necessary moments of rest during the conversation
- Identify your stereotypes and work with them
- Believe and do not judge

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Ethical principles of interviewing

Do no evil, do not harm the client!!!

- Maintain professionalism, be polite and compassionate
- Ensure that the victim controls his body himself and is able to influence communication with other people
- Inform the victim about his/her right to medical expert examination and conclusion, to victim compensation
- Provide translation if required

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Rehabilitation

Aim:

- Reducing or preventing negative consequences of participating in a process about human trafficking and to reintegrate the victim into society
- Efficiency of the rehabilitation depending on provision of necessary services

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Rehabilitation resources

- State-funded rehabilitation services (strictly regulated conditions, rehabilitation lasts for up to 180 days)
- NGO support within the framework of different projects (the term depends on the duration of the project, the needs of a particular victim are taken into account)
- Local government resources, based on social legislation (free services are available, if a person has been granted the status of a low-income or poor person)

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Why the victim refuses help?

- There is a good family support
- Wishes to forget what happened (long court proceedings)
- Does not consider himself/herself as a victim of THB
- The conditions of the first contact were chaotic (police raid)
- Depends on who provided help in the beginning (police, social service, a person who was passing by, etc.) – there is a fear that the client will be rolled back into exploitation
- There is a physical, emotional or psychological trauma, which doesn't allow to adequately understand and accept assistance

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Why the victim refuses help?

- Help is imposed
- Person was exploited for a very long period of time
- It is not possible to participate in a rehabilitation program at once (a queue)
- Fear of victimization
- Need to go home and help the family
- Criticism from the family
- Fear of public reaction and opinion

Patvērums DROŠĀ MĀJA

Human trafficking prevention activities in Latvia

- 24/7 Anonymous Trust-line for Cases of Trafficking in Human Beings + **371 28612120**
- Help Group to Victims of THB
- Different Campaigns
- The anti-trafficking info trailer
- Seminars, trainings (pupils, social workers, police officers and police cadets, academic and school staff, librarians, active youth, etc.)

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Thanks for your attention!

Background Documentation

REGULATION (EU) No 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 12 June 2013

on mutual recognition of protection measures in civil matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a), (e) and (f) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions [1],

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured and access to justice is facilitated, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(2) Article 81(1) of the Treaty on the Functioning of the European Union (TFEU) provides that judicial cooperation in civil matters having cross-border implications is to be based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases.

(3) In a common area of justice without internal borders, provisions to ensure rapid and simple recognition and, where applicable, enforcement in another Member State of protection measures ordered in a Member State are essential to ensure that the protection afforded to a natural person in one Member State is maintained and continued in any other Member State to which that person travels or moves. It is necessary to ensure that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union (TEU) and Article 21 TFEU, does not result in a loss of that protection.

(4) Mutual trust in the administration of justice in the Union and the aim of ensuring quicker and less costly circulation of protection measures within the Union justify the principle according to which protection measures ordered in one Member State are recognised in all other Member States without any special procedure being required. As a result, a protection measure ordered in one Member State ('Member State of origin') should be treated as if it had been ordered in the Member State where its recognition is sought ('Member State addressed').

(5) In order to attain the objective of free movement of protection measures, it is necessary and appropriate that the rules governing the recognition and, where applicable, enforcement of protection measures be governed by a legal instrument of the Union which is binding and directly applicable.

(6) This Regulation should apply to protection measures ordered with a view to protecting a person where there exist serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk, for example so as to prevent any form of gender-based violence or violence in close relationships such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion. It is important to underline that this Regulation applies to all victims, regardless of whether they are victims of gender-based violence.

(7) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime [3] ensures that victims of crime receive appropriate information and support.

[1] OJ C 113, 18.4.2012, p. 56.
[2] Position of the European Parliament of 22 May 2013 (not yet published in the Official Journal) and decision of the Council of 6 June 2013.
[3] OJ L 315, 14.11.2012, p. 57.

(8) This Regulation complements Directive 2012/29/EU. The fact that a person is the object of a protection measure ordered in civil matters does not necessarily preclude that person from being defined as a 'victim' under that Directive.

(9) The scope of this Regulation is within the field of judicial cooperation in civil matters within the meaning of Article 81 TFEU. This Regulation applies only to protection measures ordered in civil matters. Protection measures adopted in criminal matters are covered by Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order [1].

(10) The notion of civil matters should be interpreted autonomously, in accordance with the principles of Union law. The civil, administrative or criminal nature of the authority ordering a protection measure should not be determinative for the purpose of assessing the civil character of a protection measure.

(11) This Regulation should not interfere with the functioning of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility [2] ('Brussels IIa Regulation'). Decisions taken under the Brussels IIa Regulation should continue to be recognised and enforced under that Regulation.

(12) This Regulation takes account of the different legal traditions of the Member States and does not interfere with the national systems for ordering protection measures. This Regulation does not oblige the Member States to modify their national systems so as to enable protection measures to be ordered in civil matters, or to introduce protection measures in civil matters for the application of this Regulation.

(13) In order to take account of the various types of authorities which order protection measures in civil matters in the Member States, and unlike in other areas of judicial cooperation, this Regulation should apply to decisions of both judicial authorities and administrative authorities provided that the latter offer guarantees with regard, in particular, to their impartiality and to the right of the parties to judicial review. In no event should police authorities be considered as issuing authorities within the meaning of this Regulation.

(14) Based on the principle of mutual recognition, protection measures ordered in civil matters in the Member State of origin should be recognised in the Member State addressed as protection measures in civil matters in accordance with this Regulation.

(15) According to the principle of mutual recognition, the recognition corresponds to the duration of the protection measure. However, taking into account the diversity of protection measures under the laws of the Member States, in particular in terms of their duration, and the fact that this Regulation will typically apply in urgent situations, the effects of recognition under this Regulation should, by way of exception, be limited to a period of 12 months from the issuing of the certificate provided for by this Regulation, irrespective of whether the protection measure itself (be it provisional, time-limited or indefinite in nature) has a longer duration.

(16) In cases where the duration of a protection measure is greater than 12 months, the limitation of the effects of recognition under this Regulation should be without prejudice to the right of the protected person to invoke that protection measure under any other available legal act of the Union providing for recognition or to apply for a national protection measure in the Member State addressed.

(17) The limitation of the effects of recognition is exceptional due to the special nature of the subject matter of this Regulation and should not serve as a precedent for other instruments in civil and commercial matters.

(18) This Regulation should deal only with the recognition of the obligation imposed by the protection measure. It should not regulate the procedures for implementation or enforcement of the protection measure, nor should it cover any potential sanctions that might be imposed if the obligation ordered by the protection measure is infringed in the Member State addressed. Those matters are left to the law of that Member State. However, in accordance with the general principles of Union law and particularly the principle of mutual recognition, Member States are to ensure that protection measures recognised under this Regulation can take effect in the Member State addressed.

[1] OJ L 338, 21.12.2011, p. 2.
[2] OJ L 338, 23.12.2003, p. 1.

(19) Protection measures covered by this Regulation should afford protection to the protected person at his or her place of residence or place of work, or at another place which that person visits on a regular basis, such as the residence of close relatives or the school or educational establishment attended by his or her child. Irrespective of whether the place in question or the extent of the area covered by the protection measure is described in the protection measure by one or more specific addresses or by reference to a circumscribed area which the person causing the risk may not approach or enter, respectively (or a combination of the two), the recognition of the obligation imposed by the protection measure relates to the purpose which the place serves for the protected person rather than to the specific address.

(20) In the light of the foregoing and provided that the nature and the essential elements of the protection measure are maintained, the competent authority of the Member State addressed should be allowed to adjust the factual elements of the protection measure where such adjustment is necessary in order for the recognition of the protection measure to be effective in practical terms in the Member State addressed. Factual elements include the address, the general location or the minimum distance the person causing the risk must keep from the protected person, the address or the general location. However, the type and the civil nature of the protection measure may not be affected by such adjustment.

(21) In order to facilitate any adjustment of a protection measure, the certificate should indicate whether the address specified in the protection measure constitutes the place of residence, the place of work or a place that the protected person visits on a regular basis. Furthermore, if relevant, the circumscribed area (approximate radius from the specific address) to which the obligation imposed by the protection measure on the person causing the risk applies should also be indicated in the certificate.

(22) In order to facilitate the free movement of protection measures within the Union, this Regulation should introduce a uniform model of certificate and provide for the establishment of a multilingual standard form for that purpose. The issuing authority should issue the certificate upon request by the protected person.

(23) Free text fields in the multilingual standard form for the certificate should be as limited as possible, so that translation or transliteration may be provided in most cases without imposing any costs on the protected person by making use of the standard form in the relevant language. Any costs for necessary translation that goes beyond the text of the multilingual standard form are to be allocated as provided under the law of the Member State of origin.

(24) Where a certificate contains free text, the competent authority of the Member State addressed should determine whether any translation or transliteration is required. This should not preclude the protected person or the issuing authority of the Member State of origin from providing a translation or transliteration on their own initiative.

(25) To ensure respect for the rights of defence of the person causing the risk, where the protection measure was ordered in default of appearance or under a procedure that does not provide for prior notice to that person ('*ex-parte* proceeding'), the issue of the certificate should only be possible if that person has had the opportunity to arrange for his or her defence against the protection measure. However, with a view to avoiding circumvention and taking into account the typical urgency of cases necessitating protection measures, it should not be required that the period for raising such defence has expired before a certificate may be issued. The certificate should be issued as soon as the protection measure is enforceable in the Member State of origin.

(26) Having regard to the objectives of simplicity and speed, this Regulation provides for simple and quick methods to be used for bringing procedural steps to the notice of the person causing the risk. Those specific methods of notification should apply only for the purposes of this Regulation due to the special nature of its subject matter, should not serve as a precedent for other instruments in civil and commercial matters and should not affect any obligations of a Member State concerning the service abroad of judicial and extrajudicial documents in civil matters arising from a bilateral or multilateral convention concluded between that Member State and a third country.

(27) When the certificate is brought to the notice of the person causing the risk and also when any adjustment is made to any factual elements of a protection measure in the Member State addressed, due regard should be paid to the interest of the protected person in not having his or her whereabouts or other contact details disclosed. Such details should not be disclosed to the person causing the risk unless such disclosure is necessary for compliance with, or the enforcement of, the protection measure.

(28) The issuing of the certificate should not be subject to appeal.

(29) The certificate should be rectified where, due to an obvious error or inaccuracy, such as a typing error or an error of transcription or copying, the certificate does not correctly reflect the protection measure, or should be withdrawn if it was clearly wrongly granted, for example where it was used for a measure that falls outside the scope of this Regulation or where it was issued in breach of the requirements for its issuing.

(30) The issuing authority of the Member State of origin should, upon request, assist the protected person in obtaining information on the authorities of the Member State addressed before which the protection measure is to be invoked or enforcement is to be sought.

(31) The harmonious functioning of justice requires that irreconcilable decisions should not be delivered in two Member States. To that end, this Regulation should provide for a ground for refusal of recognition or enforcement of the protection measure in cases of irreconcilability with a judgment given or recognised in the Member State addressed.

(32) Public interest considerations may, in exceptional circumstances, justify a refusal by the court of the Member State addressed to recognise or enforce a protection measure where its application would be manifestly incompatible with the public policy of that Member State. However, the court should not be able to apply the public-policy exception in order to refuse recognition or enforcement of a protection measure when to do so would be contrary to the rights set out in the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof.

(33) In the event of suspension or withdrawal of the protection measure or withdrawal of the certificate in the Member State of origin, the competent authority of the Member State addressed should, upon submission of the relevant certificate, suspend or withdraw the effects of recognition and, where applicable, the enforcement of the protection measure.

(34) A protected person should have effective access to justice in other Member States. To ensure such effective access in procedures covered by this Regulation, legal aid is to be provided in accordance with Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes [1].

(35) In order to facilitate the application of this Regulation, Member States should be required to provide certain information regarding their national rules and procedures concerning protection measures in civil matters within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC [2]. Access to the information provided by the Member States should be made available through the European e-Justice Portal.

(36) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the forms provided for in this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [3].

(37) The examination procedure should be used for the adoption of implementing acts establishing and subsequently amending the forms provided for in this Regulation.

(38) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure the rights of the defence and fair trial, as established in Articles 47 and 48 thereof. This Regulation should be applied according to those rights and principles.

(39) Since the objective of this Regulation, namely to establish rules for a simple and rapid mechanism for the recognition of protection measures ordered in a Member State in civil matters, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(40) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Regulation.

[1] OJ L 26, 31.1.2003, p. 41.

[2] OJ L 174, 27.6.2001, p. 25.

[3] OJ L 55, 28.2.2011, p. 13.

(41) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(42) The European Data Protection Supervisor delivered an opinion on 17 October 2011 [1], based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2],

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes rules for a simple and rapid mechanism for the recognition of protection measures ordered in a Member State in civil matters.

Article 2

Scope

1. This Regulation shall apply to protection measures in civil matters ordered by an issuing authority within the meaning of point (4) of Article 3.

2. This Regulation shall apply to cross-border cases. For the purposes of this Regulation, a case shall be deemed to be a cross-border case where the recognition of a protection measure ordered in one Member State is sought in another Member State.

3. This Regulation shall not apply to protection measures falling within the scope of Regulation (EC) No 2201/2003.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

(1) 'protection measure' means any decision, whatever it may be called, ordered by the issuing authority of the Member State of origin in accordance with its national law and imposing one or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person's physical or psychological integrity may be at risk:

(a) a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays;

(b) a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means;

(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance;

(2) 'protected person' means a natural person who is the object of the protection afforded by a protection measure;

(3) 'person causing the risk' means a natural person on whom one or more of the obligations referred to in point (1) have been imposed;

(4) 'issuing authority' means any judicial authority, or any other authority designated by a Member State as having competence in the matters falling within the scope of this Regulation, provided that such other authority offers guarantees to the parties with regard to impartiality, and that its decisions in relation to the protection measure may, under the law of the Member State in which it operates, be made subject to review by a judicial authority and have similar force and effects to those of a decision of a judicial authority on the same matter;

(5) 'Member State of origin' means the Member State in which the protection measure is ordered;

(6) 'Member State addressed' means the Member State in which the recognition and, where applicable, the enforcement of the protection measure is sought.

CHAPTER II

RECOGNITION AND ENFORCEMENT OF PROTECTION MEASURES

Article 4

Recognition and enforcement

1. A protection measure ordered in a Member State shall be recognised in the other Member States without any special procedure being required and shall be enforceable without a declaration of enforceability being required.

[1] OJ C 35, 9.2.2012, p. 10.
[2] OJ L 8, 12.1.2001, p. 1.

2. A protected person who wishes to invoke in the Member State addressed a protection measure ordered in the Member State of origin shall provide the competent authority of the Member State addressed with:

(a) a copy of the protection measure which satisfies the conditions necessary to establish its authenticity;

(b) the certificate issued in the Member State of origin pursuant to Article 5; and

(c) where necessary, a transliteration and/or a translation of the certificate in accordance with Article 16.

3. The certificate shall take effect only within the limits of the enforceability of the protection measure.

4. Irrespective of whether the protection measure has a longer duration, the effects of recognition pursuant to paragraph 1 shall be limited to a period of 12 months, starting from the date of the issuing of the certificate.

5. The procedure for the enforcement of protection measures shall be governed by the law of the Member State addressed.

Article 5

Certificate

1. The issuing authority of the Member State of origin shall, upon request by the protected person, issue the certificate using the multilingual standard form established in accordance with Article 19 and containing the information provided for in Article 7.

2. No appeal shall lie against the issuing of the certificate.

3. Upon request by the protected person, the issuing authority of the Member State of origin shall provide the protected person with a transliteration and/or a translation of the certificate by making use of the multilingual standard form established in accordance with Article 19.

Article 6

Requirements for the issuing of the certificate

1. The certificate may only be issued if the protection measure has been brought to the notice of the person causing the risk in accordance with the law of the Member State of origin.

2. Where the protection measure was ordered in default of appearance, the certificate may only be issued if the person causing the risk had been served with the document which instituted the proceeding or an equivalent document or, where relevant, had been otherwise informed of the initiation of the proceeding in accordance with the law of the Member State of origin in sufficient time and in such a way as to enable that person to arrange for his or her defence.

3. Where the protection measure was ordered under a procedure that does not provide for prior notice to be given to the person causing the risk ('*ex-parte* proceeding'), the certificate may only be issued if that person had the right to challenge the protection measure under the law of the Member State of origin.

Article 7

Contents of the certificate

The certificate shall contain the following information:

(a) the name and address/contact details of the issuing authority;

(b) the reference number of the file;

(c) the date of issue of the certificate;

(d) details concerning the protected person: name, date and place of birth, where available, and an address to be used for notification purposes, preceded by a conspicuous warning that that address may be disclosed to the person causing the risk;

(e) details concerning the person causing the risk: name, date and place of birth, where available, and address to be used for notification purposes;

(f) all information necessary for enforcement of the protection measure, including, where applicable, the type of the measure and the obligation imposed by it on the person causing the risk and specifying the function of the place and/or the circumscribed area which that person is prohibited from approaching or entering, respectively;

(g) the duration of the protection measure;

(h) the duration of the effects of recognition pursuant to Article 4(4);

(i) a declaration that the requirements laid down in Article 6 have been met;

(j) information on the rights granted under Articles 9 and 13;

(k) for ease of reference, the full title of this Regulation.

Article 8

Notification of the certificate to the person causing the risk

1. The issuing authority of the Member State of origin shall bring to the notice of the person causing the risk the certificate and the fact that the issuing of the certificate results in the recognition and, where applicable, in the enforceability of the protection measure in all Member States pursuant to Article 4.

2. Where the person causing the risk resides in the Member State of origin, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State of origin or in a third country, the notification shall be effected by registered letter with acknowledgment of receipt or equivalent.

Situations in which the address of the person causing the risk is not known or in which that person refuses to accept receipt of the notification shall be governed by the law of the Member State of origin.

3. The whereabouts or other contact details of the protected person shall not be disclosed to the person causing the risk unless their disclosure is necessary for compliance with, or the enforcement of, the protection measure.

Article 9

Rectification or withdrawal of the certificate

1. Without prejudice to Article 5(2) and upon request by the protected person or the person causing the risk to the issuing authority of the Member State of origin or on that authority's own initiative, the certificate shall be:

(a) rectified where, due to a clerical error, there is a discrepancy between the protection measure and the certificate; or

(b) withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in Article 6 and the scope of this Regulation.

2. The procedure, including any appeal, with regard to the rectification or withdrawal of the certificate shall be governed by the law of the Member State of origin.

Article 10

Assistance to the protected person

Upon request by the protected person, the issuing authority of the Member State of origin shall assist that person in obtaining information, as made available in accordance with Articles 17 and 18, concerning the authorities of the Member State addressed before which the protection measure is to be invoked or enforcement is to be sought.

Article 11

Adjustment of the protection measure

1. The competent authority of the Member State addressed shall, where and to the extent necessary, adjust the factual elements of the protection measure in order to give effect to the protection measure in that Member State.

2. The procedure for the adjustment of the protection measure shall be governed by the law of the Member State addressed.

3. The adjustment of the protection measure shall be brought to the notice of the person causing the risk.

4. Where the person causing the risk resides in the Member State addressed, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State addressed or in a third country, the notification shall be effected by registered letter with acknowledgment of receipt or equivalent.

Situations in which the address of the person causing the risk is not known or in which that person refuses to accept receipt of the notification shall be governed by the law of the Member State addressed.

5. An appeal against the adjustment of the protection measure may be lodged by the protected person or the person causing the risk. The appeal procedure shall be governed by the law of the Member State addressed. However, the lodging of an appeal shall not have suspensive effect.

Article 12

No review as to substance

Under no circumstances may a protection measure ordered in the Member State of origin be reviewed as to its substance in the Member State addressed.

Article 13

Refusal of recognition or enforcement

1. The recognition and, where applicable, the enforcement of the protection measure shall be refused, upon application by the person causing the risk, to the extent such recognition is:

(a) manifestly contrary to public policy in the Member State addressed; or

(b) irreconcilable with a judgment given or recognised in the Member State addressed.

2. The application for refusal of recognition or enforcement shall be submitted to the court of the Member State addressed as communicated by that Member State to the Commission in accordance with point (a)(iv) of Article 18(1).

3. The recognition of the protection measure may not be refused on the ground that the law of the Member State addressed does not allow for such a measure based on the same facts.

Article 14

Suspension or withdrawal of recognition or enforcement

1. In the event of suspension or withdrawal of the protection measure in the Member State of origin, suspension or limitation of its enforceability, or withdrawal of the certificate in accordance with point (b) of Article 9(1), the issuing authority of the Member State of origin shall, upon request by the protected person or the person causing the risk, issue a certificate indicating that suspension, limitation or withdrawal using the multilingual standard form established in accordance with Article 19.

2. Upon submission by the protected person or the person causing the risk of the certificate issued in accordance with paragraph 1, the competent authority of the Member State addressed shall suspend or withdraw the effects of the recognition and, where applicable, the enforcement of the protection measure.

CHAPTER III

GENERAL AND FINAL PROVISIONS

Article 15

Legalisation and other similar formalities

No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.

Article 16

Transliteration or translation

1. Any transliteration or translation required under this Regulation shall be into the official language or one of the official languages of the Member State addressed or into any other official language of the institutions of the Union which that Member State has indicated it can accept.

2. Subject to Article 5(3), any translation under this Regulation shall be done by a person qualified to do translations in one of the Member States.

Article 17

Information made available to the public

The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC and with a view to making the information available to the public, a description of the national rules and procedures concerning protection measures in civil matters, including information on the type of authorities which are competent in the matters falling within the scope of this Regulation.

The Member States shall keep that information updated.

Article 18

Communication of information by the Member States

1. By 11 July 2014, Member States shall communicate to the Commission the following information:

(a) the type of authorities which are competent in the matters falling within the scope of this Regulation, specifying, where applicable:

(i) the authorities which are competent to order protection measures and issue certificates in accordance with Article 5;

(ii) the authorities before which a protection measure ordered in another Member State is to be invoked and/or which are competent to enforce such a measure;

(iii) the authorities which are competent to effect the adjustment of protection measures in accordance with Article 11(1);

(iv) the courts to which the application for refusal of recognition and, where applicable, enforcement is to be submitted in accordance with Article 13;

(b) the language or languages accepted for translations as referred to in Article 16(1).

2. The Commission shall make the information referred to in paragraph 1 available to the public through any appropriate means, in particular through the website of the European Judicial Network in civil and commercial matters.

Article 19

Establishment and subsequent amendment of the forms

The Commission shall adopt implementing acts establishing and subsequently amending the forms referred to in Articles 5 and 14. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20.

Article 20

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 21

Review

By 11 January 2020, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals for amendments.

Article 22

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 11 January 2015.

This Regulation shall apply to protection measures ordered on or after 11 January 2015, irrespective of when proceedings have been instituted.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 12 June 2013.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	L. CREIGHTON

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2012

establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the ordinary legislative procedure [3],

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.

(2) The Union is committed to the protection of, and to the establishment of minimum standards in regard to, victims of crime and the Council has adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings [4]. Under the Stockholm Programme – An open and secure Europe serving and protecting citizens [5], adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States were asked to examine how to improve legislation and practical support measures for the protection of victims, with particular attention paid to, support for and recognition of, all victims, including for victims of terrorism, as a priority.

(3) Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular with regard to the rights of victims of crime.

(4) In its resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings [6] ('the Budapest roadmap'), the Council stated that action should be taken at Union level in order to strengthen the rights of, support for, and protection of victims of crime. To that end and in accordance with that resolution, this Directive aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings.

(5) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women [7] called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.

(6) In its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women [8] the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union action plan. International regulation within this area includes the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979, the CEDAW Committee's recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.

[1] OJ C 43, 15.2.2012, p. 39.
[2] OJ C 113, 18.4.2012, p. 56.
[3] Position of the European Parliament of 12 September 2012 (not yet published in the Official Journal) and decision of the Council of 4 October 2012.
[4] OJ L 82, 22.3.2001, p. 1.
[5] OJ C 115, 4.5.2010, p. 1.
[6] OJ C 187, 28.6.2011, p. 1.
[7] OJ C 285 E, 21.10.2010, p. 53.
[8] OJ C 296 E, 2.10.2012, p. 26.

(7) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order [1] establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims [2] and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography [3] address, inter alia, the specific needs of the particular categories of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.

(8) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism [4] recognises that terrorism constitutes one of the most serious violations of the principles on which the Union is based, including the principle of democracy, and confirms that it constitutes, inter alia, a threat to the free exercise of human rights.

(9) Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

(10) This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.

(11) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.

(12) The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.

(13) This Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.

(14) In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.

(15) In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information.

(16) Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security.

[1] OJ L 338, 21.12.2011, p. 2.
[2] OJ L 101, 15.4.2011, p. 1.
[3] OJ L 335, 17.12.2011, p. 1.
[4] OJ L 164, 22.6.2002, p. 3.

(17) Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.

(18) Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence.

(19) A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive. In the case of a child, the child or, unless this is not in the best interests of the child, the holder of parental responsibilty on behalf of the child, should be entitled to exercise the rights set out in this Directive. This Directive is without prejudice to any national administrative procedures required to establish that a person is a victim.

(20) The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria: whether the national system provides for a legal status as a party to criminal proceedings; whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness; and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings. Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.

(21) Information and advice provided by competent authorities, victim support services and restorative justice services should, as far as possible, be given by means of a range of media and in a manner which can be understood by the victim. Such information and advice should be provided in simple and accessible language. It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, age, maturity, intellectual and emotional capacity, literacy and any mental or physical impairment should be taken into account. Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.

(22) The moment when a complaint is made should, for the purposes of this Directive, be considered as falling within the context of the criminal proceedings. This should also include situations where authorities initiate criminal proceedings *ex officio* as a result of a criminal offence suffered by a victim.

(23) Information about reimbursement of expenses should be provided, from the time of the first contact with a competent authority, for example in a leaflet stating the basic conditions for such reimbursement of expenses. Member States should not be required, at this early stage of the criminal proceedings, to decide on whether the victim concerned fulfils the conditions for reimbursement of expenses.

(24) When reporting a crime, victims should receive a written acknowledgement of their complaint from the police, stating the basic elements of the crime, such as the type of crime, the time and place, and any damage or harm caused by the crime. This acknowledgement should include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported, for example in relation to insurance claims.

(25) Without prejudice to rules relating to limitation periods, the delayed reporting of a criminal offence due to fear of retaliation, humiliation or stigmatisation should not result in refusing acknowledgement of the victim's complaint.

(26) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings. In this respect, information allowing the victim to know about the current status of any proceedings is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute. Unless otherwise required, it should be possible to provide the information communicated to the victim orally or in writing, including through electronic means.

(27) Information to a victim should be provided to the last known correspondence address or electronic contact details given to the competent authority by the victim. In exceptional cases, for example due to the high number of victims involved in a case, it should be possible to provide information through the press, through an official website of the competent authority or through a similar communication channel.

(28) Member States should not be obliged to provide information where disclosure of that information could affect the proper handling of a case or harm a given case or person, or if they consider it contrary to the essential interests of their security.

(29) Competent authorities should ensure that victims receive updated contact details for communication about their case unless the victim has expressed a wish not to receive such information.

(30) A reference to a 'decision' in the context of the right to information, interpretation and translation, should be understood only as a reference to the finding of guilt or otherwise ending criminal proceedings. The reasons for that decision should be provided to the victim through a copy of the document which contains that decision or through a brief summary of them.

(31) The right to information about the time and place of a trial resulting from the complaint with regard to a criminal offence suffered by the victim should also apply to information about the time and place of a hearing related to an appeal of a judgment in the case.

(32) Specific information about the release or the escape of the offender should be given to victims, upon request, at least in cases where there might be a danger or an identified risk of harm to the victims, unless there is an identified risk of harm to the offender which would result from the notification. Where there is an identified risk of harm to the offender which would result from the notification, the competent authority should take into account all other risks when determining an appropriate action. The reference to 'identified risk of harm to the victims' should cover such factors as the nature and severity of the crime and the risk of retaliation. Therefore, it should not be applied to those situations where minor offences were committed and thus where there is only a slight risk of harm to the victim.

(33) Victims should receive information about any right to appeal of a decision to release the offender, if such a right exists in national law.

(34) Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system. For other aspects of criminal proceedings, the need for interpretation and translation can vary depending on specific issues, the role of the victim in the relevant criminal justice system and his or her involvement in proceedings and any specific rights they have. As such, interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.

(35) The victim should have the right to challenge a decision finding that there is no need for interpretation or translation, in accordance with procedures in national law. That right does not entail the obligation for Member States to provide for a separate mechanism or complaint procedure in which such decision may be challenged and should not unreasonably prolong the criminal proceedings. An internal review of the decision in accordance with existing national procedures would suffice.

(36) The fact that a victim speaks a language which is not widely spoken should not, in itself, be grounds to decide that interpretation or translation would unreasonably prolong the criminal proceedings.

(37) Support should be available from the moment the competent authorities are aware of the victim and throughout criminal proceedings and for an appropriate time after such proceedings in accordance with the needs of the victim and the rights set out in this Directive. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution across the Member State to allow all victims the opportunity to access such services. Victims who have suffered considerable harm due to the severity of the crime could require specialist support services.

(38) Persons who are particularly vulnerable or who find themselves in situations that expose them to a particularly high risk of harm, such as persons subjected to repeat violence in close relationships, victims of gender-based violence, or persons who fall victim to other types of crime in a Member State of which they are not nationals or residents, should be provided with specialist support and legal protection. Specialist support services should be based on an integrated and targeted approach which should, in particular, take into account the specific needs of victims, the severity of the harm suffered as a result of a criminal offence, as well as the relationship between victims, offenders, children and their wider social environment. A main task of these services and their staff, which play an important role in supporting the victim to recover from and overcome potential harm or trauma as a result of a criminal offence, should be to inform victims about the rights set out in this Directive so that they can take decisions in a supportive environment that treats them with dignity, respect and sensitivity. The types of support that such specialist support services should offer could include providing shelter and safe accommodation, immediate medical support, referral to medical and forensic examination for evidence in cases of rape or sexual assault, short and long-term psychological counselling, trauma care, legal advice, advocacy and specific services for children as direct or indirect victims.

(39) Victim support services are not required to provide extensive specialist and professional expertise themselves. If necessary, victim support services should assist victims in calling on existing professional support, such as psychologists.

(40) Although the provision of support should not be dependent on victims making a complaint with regard to a criminal offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be and are adhered to. Repeat referrals should be avoided.

(41) The right of victims to be heard should be considered to have been fulfilled where victims are permitted to make statements or explanations in writing.

(42) The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of that victim's age.

(43) The right to a review of a decision not to prosecute should be understood as referring to decisions taken by prosecutors and investigative judges or law enforcement authorities such as police officers, but not to the decisions taken by courts. Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision, unless the initial decision not to prosecute was taken by the highest prosecuting authority, against whose decision no review can be made, in which case the review may be carried out by that same authority. The right to a review of a decision not to prosecute does not concern special procedures, such as proceedings against members of parliament or government, in relation to the exercise of their official position.

(44) A decision ending criminal proceedings should include situations where a prosecutor decides to withdraw charges or discontinue proceedings.

(45) A decision of the prosecutor resulting in an out-of-court settlement and thus ending criminal proceedings, excludes victims from the right to a review of a decision of the prosecutor not to prosecute, only if the settlement imposes a warning or an obligation.

(46) Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim's physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to the restorative justice services and in conducting a restorative justice process. Restorative justice processes should, in principle, be confidential, unless agreed otherwise by the parties, or as required by national law due to an overriding public interest. Factors such as threats made or any forms of violence committed during the process may be considered as requiring disclosure in the public interest.

(47) Victims should not be expected to incur expenses in relation to their participation in criminal proceedings. Member States should be required to reimburse only necessary expenses of victims in relation to their participation in criminal proceedings and should not be required to reimburse victims' legal fees. Member States should be able to impose conditions in regard to the reimbursement of expenses in national law, such as time limits for claiming reimbursement, standard rates for subsistence and travel costs and maximum daily amounts for loss of earnings. The right to reimbursement of expenses in criminal proceedings should not arise in a situation where a victim makes a statement on a criminal offence. Expenses should only be covered to the extent that the victim is obliged or requested by the competent authorities to be present and actively participate in the criminal proceedings.

(48) Recoverable property which is seized in criminal proceedings should be returned as soon as possible to the victim of the crime, subject to exceptional circumstances, such as in a dispute concerning the ownership or where the possession of the property or the property itself is illegal. The right to have property returned should be without prejudice to its legitimate retention for the purposes of other legal proceedings.

(49) The right to a decision on compensation from the offender and the relevant applicable procedure should also apply to victims resident in a Member State other than the Member State where the criminal offence was committed.

(50) The obligation set out in this Directive to transmit complaints should not affect Member States' competence to institute proceedings and is without prejudice to the rules of conflict relating to the exercise of jurisdiction, as laid down in Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings [1].

(51) If the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.

(52) Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.

[1] OJ L 328, 15.12.2009, p. 42.

(53) The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.

(54) Protecting the privacy of the victim can be an important means of preventing secondary and repeat victimisation, intimidation and retaliation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, and includes non-disclosure of the name of the child. However, there might be cases where, exceptionally, the child can benefit from the disclosure or even widespread publication of information, for example where a child has been abducted. Measures to protect the privacy and images of victims and of their family members should always be consistent with the right to a fair trial and freedom of expression, as recognised in Articles 6 and 10, respectively, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(55) Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.

(56) Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.

(57) Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.

(58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.

(59) Immediate operational needs and constraints may make it impossible to ensure, for example, that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due, for example, to renovation. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis.

(60) Where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority.

(61) Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.

(62) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels — at Union level, and at national, regional and local level. Victims should be assisted in finding and addressing the competent authorities in order to avoid repeat referrals. Member States should consider developing 'sole points of access' or 'one-stop shops', that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.

(63) In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints.

(64) Systematic and adequate statistical data collection is recognised as an essential component of effective policy-making in the field of rights set out in this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims. Relevant statistical data can include data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organisations working with victims of crime. Judicial data can include information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.

(65) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, that Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.

(66) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.

(67) Since the objective of this Directive, namely to establish minimum standards on the rights, support and protection of victims of crime, cannot be sufficiently achieved by the Member States, and can therefore, by reason of its scale and potential effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(68) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [1] and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.

(69) This Directive does not affect more far reaching provisions contained in other Union acts which address the specific needs of particular categories of victims, such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, in a more targeted manner.

(70) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Directive.

(71) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

[1] OJ L 350, 30.12.2008, p. 60.

(72) The European Data Protection Supervisor delivered an opinion on 17 October 2011 [2] based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [3],

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objectives

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) 'victim' means:

(i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;

(ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;

[2] OJ C 35, 9.2.2012, p. 10.
[3] OJ L 8, 12.1.2001, p. 1.

(b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;

(c) 'child' means any person below 18 years of age;

(d) 'restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

2. Member States may establish procedures:

(a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and

(b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

CHAPTER 2

PROVISION OF INFORMATION AND SUPPORT

Article 3

Right to understand and to be understood

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

Article 4

Right to receive information from the first contact with a competent authority

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;

(c) how and under what conditions they can obtain protection, including protection measures;

(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions they can access compensation;

(f) how and under what conditions they are entitled to interpretation and translation;

(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about their case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

Article 5

Right of victims when making a complaint

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.

2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

Article 6

Right to receive information about their case

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:

(a) any decision not to proceed with or to end an investigation or not to prosecute the offender;

(b) the time and place of the trial, and the nature of the charges against the offender.

2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:

(a) any final judgment in a trial;

(b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

Article 7

Right to interpretation and translation

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.

5. Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.

8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

Article 8

Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Article 9

Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

(b) information about or direct referral to any relevant specialist support services in place;

(c) emotional and, where available, psychological support;

(d) advice relating to financial and practical issues arising from the crime;

(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:

(a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;

(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

CHAPTER 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 10

Right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

Article 11

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.

5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

Article 12

Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;

(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

(c) the offender has acknowledged the basic facts of the case;

(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;

(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

Article 13

Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

Article 14

Right to reimbursement of expenses

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.

Article 15

Right to the return of property

Member States shall ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.

Article 16

Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

Article 17

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:

(a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;

(b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ([1]) for the purpose of hearing victims who are resident abroad.

([1]) OJ C 197, 12.7.2000, p. 3.

2. Member States shall ensure that victims of a criminal offence committed in Member States other than that where they reside may make a complaint to the competent authorities of the Member State of residence, if they are unable to do so in the Member State where the criminal offence was committed or, in the event of a serious offence, as determined by national law of that Member State, if they do not wish to do so.

3. Member States shall ensure that the competent authority to which the victim makes a complaint transmits it without delay to the competent authority of the Member State in which the criminal offence was committed, if the competence to institute the proceedings has not been exercised by the Member State in which the complaint was made.

CHAPTER 4

PROTECTION OF VICTIMS AND RECOGNITION OF VICTIMS WITH SPECIFIC PROTECTION NEEDS

Article 18

Right to protection

Without prejudice to the rights of the defence, Member States shall ensure that measures are available to protect victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, including against the risk of emotional or psychological harm, and to protect the dignity of victims during questioning and when testifying. When necessary, such measures shall also include procedures established under national law for the physical protection of victims and their family members.

Article 19

Right to avoid contact between victim and offender

1. Member States shall establish the necessary conditions to enable avoidance of contact between victims and their family members, where necessary, and the offender within premises where criminal proceedings are conducted, unless the criminal proceedings require such contact.

2. Member States shall ensure that new court premises have separate waiting areas for victims.

Article 20

Right to protection of victims during criminal investigations

Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that during criminal investigations:

(a) interviews of victims are conducted without unjustified delay after the complaint with regard to a criminal offence has been made to the competent authority;

(b) the number of interviews of victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of the criminal investigation;

(c) victims may be accompanied by their legal representative and a person of their choice, unless a reasoned decision has been made to the contrary;

(d) medical examinations are kept to a minimum and are carried out only where strictly necessary for the purposes of the criminal proceedings.

Article 21

Right to protection of privacy

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

2. In order to protect the privacy, personal integrity and personal data of victims, Member States shall, with respect for freedom of expression and information and freedom and pluralism of the media, encourage the media to take self-regulatory measures.

Article 22

Individual assessment of victims to identify specific protection needs

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:

(a) the personal characteristics of the victim;

(b) the type or nature of the crime; and

(c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

Article 23

Right to protection of victims with specific protection needs during criminal proceedings

1. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, Member States shall ensure that victims with specific protection needs who benefit from special measures identified as a result of an individual assessment provided for in Article 22(1), may benefit from the measures provided for in paragraphs 2 and 3 of this Article. A special measure envisaged following the individual assessment shall not be made available if operational or practical constraints make this impossible, or where there is a an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

2. The following measures shall be available during criminal investigations to victims with specific protection needs identified in accordance with Article 22(1):

(a) interviews with the victim being carried out in premises designed or adapted for that purpose;

(b) interviews with the victim being carried out by or through professionals trained for that purpose;

(c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

(d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted by a person of the same sex as the victim, if the victim so wishes, provided that the course of the criminal proceedings will not be prejudiced.

3. The following measures shall be available for victims with specific protection needs identified in accordance with Article 22(1) during court proceedings:

(a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;

(b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;

(c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and

(d) measures allowing a hearing to take place without the presence of the public.

Article 24

Right to protection of child victims during criminal proceedings

1. In addition to the measures provided for in Article 23, Member States shall ensure that where the victim is a child:

(a) in criminal investigations, all interviews with the child victim may be audiovisually recorded and such recorded interviews may be used as evidence in criminal proceedings;

(b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint a special representative for child victims where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;

(c) where the child victim has the right to a lawyer, he or she has the right to legal advice and representation, in his or her own name, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The procedural rules for the audiovisual recordings referred to in point (a) of the first subparagraph and the use thereof shall be determined by national law.

2. Where the age of a victim is uncertain and there are reasons to believe that the victim is a child, the victim shall, for the purposes of this Directive, be presumed to be a child.

CHAPTER 5

OTHER PROVISIONS

Article 25

Training of practitioners

1. Member States shall ensure that officials likely to come into contact with victims, such as police officers and court staff, receive both general and specialist training to a level appropriate to their contact with victims to increase their awareness of the needs of victims and to enable them to deal with victims in an impartial, respectful and professional manner.

2. Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall request that those responsible for the training of judges and prosecutors involved in criminal proceedings make available both general and specialist training to increase the awareness of judges and prosecutors of the needs of victims.

3. With due respect for the independence of the legal profession, Member States shall recommend that those responsible for the training of lawyers make available both general and specialist training to increase the awareness of lawyers of the needs of victims.

4. Through their public services or by funding victim support organisations, Member States shall encourage initiatives enabling those providing victim support and restorative justice services to receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

5. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall aim to enable the practitioner to recognise victims and to treat them in a respectful, professional and non-discriminatory manner.

Article 26

Cooperation and coordination of services

1. Member States shall take appropriate action to facilitate cooperation between Member States to improve the access of victims to the rights set out in this Directive and under national law. Such cooperation shall be aimed at least at:

(a) the exchange of best practices;

(b) consultation in individual cases; and

(c) assistance to European networks working on matters directly relevant to victims' rights.

2. Member States shall take appropriate action, including through the internet, aimed at raising awareness of the rights set out in this Directive, reducing the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships. Such action may include information and awareness raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.

CHAPTER 6

FINAL PROVISIONS

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 16 November 2015.

2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 28

Provision of data and statistics

Member States shall, by 16 November 2017 and every three years thereafter, communicate to the Commission available data showing how victims have accessed the rights set out in this Directive.

Article 29

Report

The Commission shall, by 16 November 2017, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Articles 8, 9 and 23, accompanied, if necessary, by legislative proposals.

Article 30

Replacement of Framework Decision 2001/220/JHA

Framework Decision 2001/220/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to that Framework Decision shall be construed as references to this Directive.

Article 31

Entry into force

This Directive shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Article 32

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 25 October 2012.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A. D. MAVROYIANNIS

DIRECTIVES

DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on the European protection order

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(a) and (d) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure [1],

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.

(2) Article 82(1) of the Treaty on the Functioning of the European Union (TFEU) provides that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions.

(3) According to the Stockholm Programme — An open and secure Europe serving and protecting citizens [2], mutual recognition should extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative. It also calls on the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims. The programme also points out that victims of crime can be offered special protection measures which should be effective within the Union. This Directive forms part of a coherent and comprehensive set of measures on victims' rights.

(4) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women calls on Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures and calls on the Union to guarantee the right to assistance and support for all victims of violence. The resolution of the European Parliament of 10 February 2010 on equality between women and men in the European Union 2009 endorses the proposal to introduce the European protection order for victims.

(5) In its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, the Council stated that action should be taken at the level of the Union in order to strengthen the rights and protection of victims of crime and called on the Commission to present appropriate proposals to that end. In this framework, a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims of crime. According to that Resolution, this Directive, which concerns the mutual recognition of protection measures taken in criminal matters, should be complemented by an appropriate mechanism concerning measures taken in civil matters.

(6) In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a natural person in one Member State is maintained and continued in any other Member State to which the person moves or has moved. It should also be ensured that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union (TEU) and Article 21 TFEU, does not result in a loss of their protection.

(7) In order to attain these objectives, this Directive should set out rules whereby the protection stemming from certain protection measures adopted according to the law of one Member State ('the issuing State') can be extended to another Member State in which the protected person decides to reside or stay ('the executing State').

(8) This Directive takes account of the different legal traditions of the Member States as well as the fact that effective protection can be provided by means of protection orders issued by an authority other than a criminal court. This Directive does not create obligations to modify national systems for adopting protection measures nor does it create obligations to introduce or amend a criminal law system for executing a European protection order.

(9) This Directive applies to protection measures which aim specifically to protect a person against a criminal act of another person which may, in any way, endanger that person's life or physical, psychological and sexual integrity, for example by preventing any form of harassment, as well as that person's dignity or personal liberty, for example by preventing abductions, stalking and other forms of indirect coercion, and which aim to prevent new criminal acts or to reduce the consequences of previous criminal acts. These personal rights of the protected person correspond to fundamental values recognised and upheld in all Member States. However, a Member State is not obliged to issue a European protection order on the basis of a criminal measure which does not serve specifically to protect a person, but primarily serves other aims, for example the social rehabilitation of the offender. It is important to underline that this Directive applies to protection measures which aim to protect all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned.

(10) This Directive applies to protection measures adopted in criminal matters, and does not therefore cover protection measures adopted in civil matters. For a protection measure to be executable in accordance with this Directive, it is not necessary for a criminal offence to have been established by a final decision. Nor is the criminal, administrative or civil nature of the authority adopting a protection measure relevant. This Directive does not oblige Member States to amend their national law to enable them to adopt protection measures in the context of criminal proceedings.

(11) This Directive is intended to apply to protection measures adopted in favour of victims, or possible victims, of crimes. This Directive should not therefore apply to measures adopted with a view to witness protection.

(12) If a protection measure, as defined in this Directive, is adopted for the protection of a relative of the main protected person, a European protection order may also be requested by and issued in respect of that relative, subject to the conditions laid down in this Directive.

(13) Any request for the issuing of a European protection order should be treated with appropriate speed, taking into account the specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.

(14) Where information is to be provided under this Directive to the protected person or to the person causing danger, this information should also, where relevant, be provided to the guardian or the representative of the person concerned. Due attention should also be paid to the need for the protected person, the person causing danger or the guardian or representative in the proceedings, to receive the information provided for by this Directive, in a language that that person understands.

(15) In the procedures for the issuing and recognition of a European protection order, competent authorities should give appropriate consideration to the needs of victims, including particularly vulnerable persons, such as minors or persons with disabilities.

(16) For the application of this Directive, a protection measure may have been imposed following a judgment within the meaning of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions [1], or following a decision on supervision measures within the meaning of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the

[1] Position of the European Parliament of 14 December 2010 (not yet published in the Official Journal) and position of the Council at first reading of 24 November 2011 (not yet published in the Official Journal). Position of the European Parliament of 13 December 2011 (not yet published in the Official Journal).

[2] OJ C 115, 4.5.2010, p. 1.

[1] OJ L 337, 16.12.2008, p. 102.

principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention [1]. If a decision was adopted in the issuing State on the basis of one of those Framework Decisions, the recognition procedure should be followed accordingly in the executing State. This, however, should not exclude the possibility to transfer a European protection order to a Member State other than the State executing decisions based on those Framework Decisions.

(17) In accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, the person causing danger should be provided, either during the procedure leading to the adoption of a protection measure or before issuing a European protection order, with the possibility of being heard and challenging the protection measure.

(18) In order to prevent a crime being committed against the victim in the executing State, that State should have the legal means for recognising the decision previously adopted in the issuing State in favour of the victim, while also avoiding the need for the victim to start new proceedings or to produce evidence in the executing State again, as if the issuing State had not adopted the decision. The recognition of the European protection order by the executing State implies, inter alia, that the competent authority of that State, subject to the limitations set out in this Directive, accepts the existence and validity of the protection measure adopted in the issuing State, acknowledges the factual situation described in the European protection order, and agrees that protection should be provided and should continue to be provided in accordance with its national law.

(19) This Directive contains an exhaustive list of prohibitions and restrictions which, when imposed in the issuing State and included in the European protection order, should be recognised and enforced in the executing State, subject to the limitations set out in this Directive. Other types of protection measures may exist at national level, such as, if provided by national law, the obligation on the person causing danger to remain in a specified place. Such measures may be imposed in the issuing State in the framework of the procedure leading to the adoption of one of the protection measures which, according to this Directive, may be the basis for a European protection order.

(20) Since, in the Member States, different kinds of authorities (civil, criminal or administrative) are competent to adopt and enforce protection measures, it is appropriate to provide a high degree of flexibility in the cooperation mechanism between the Member States under this Directive. Therefore, the competent authority in the executing State is not required in all cases to take the same protection measure as those which were adopted in the issuing State, and has a degree of discretion to adopt any measure which it deems adequate and appropriate under its national law in a similar case in order to provide continued protection to the protected person in the light of the protection measure adopted in the issuing State as described in the European protection order.

(21) The prohibitions or restrictions to which this Directive applies include, among others, measures aimed at limiting personal or remote contacts between the protected person and the person causing danger, for example by imposing certain conditions on such contacts or imposing restrictions on the contents of communications.

(22) The competent authority of the executing State should inform the person causing danger, the competent authority of the issuing State and the protected person of any measure adopted on the basis of the European protection order. In the notification to the person causing danger, due regard should be taken of the interest of the protected person in not having that person's address or other contact details disclosed. Such details should be excluded from the notification, provided that the address or other contact details are not included in the prohibition or restriction imposed as an enforcement measure on the person causing danger.

(23) When the competent authority in the issuing State withdraws the European protection order, the competent authority in the executing State should discontinue the measures which it has adopted in order to enforce the European protection order, it being understood that the competent authority in the executing State may — autonomously, and in accordance with its national law — adopt any protection measure under its national law in order to protect the person concerned.

(24) Given that this Directive deals with situations in which the protected person moves to another Member State, issuing or executing a European protection order should not imply any transfer to the executing State of powers relating to principal, suspended, alternative, conditional or secondary penalties, or relating to security measures imposed on the person causing danger, if the latter continues to reside in the State that adopted the protection measure.

(25) Where appropriate, it should be possible to use electronic means with a view to putting into practice the measures adopted in application of this Directive, in accordance with national laws and procedures.

[1] OJ L 294, 11.11.2009, p. 20.

(26) In the context of cooperation among the authorities involved in ensuring the protection of the protected person, the competent authority of the executing State should communicate to the competent authority of the issuing State any breach of the measures adopted in the executing State with a view to executing the European protection order. This communication should enable the competent authority of the issuing State to promptly decide on any appropriate response with respect to the protection measure imposed in its State on the person causing danger. Such a response may comprise, where appropriate, the imposition of a custodial measure in substitution of the non-custodial measure that was originally adopted, for example, as an alternative to preventive detention or as a consequence of the conditional suspension of a penalty. It is understood that such a decision, since it does not impose *ex novo* a penalty in relation to a new criminal offence, does not interfere with the possibility that the executing State may, where applicable, impose penalties in the event of a breach of the measures adopted in order to execute the European protection order.

(27) In view of the different legal traditions of the Member States, where no protection measure would be available in the executing State in a case similar to the factual situation described in the European protection order, the competent authority of the executing State should report any breach of the protection measure described in the European protection order of which it is aware to the competent authority of the issuing State.

(28) In order to ensure the smooth application of this Directive in each particular case, the competent authorities of the issuing and the executing States should exercise their competencies in accordance with the provisions of this Directive, taking into account the principle of *ne bis in idem*.

(29) The protected person should not be required to sustain costs related to the recognition of the European protection order which are disproportionate to a similar national case. When implementing this Directive, Member States should ensure that, after recognition of the European protection order, the protected person is not required to initiate further national proceedings to obtain from the competent authority of the executing State, as a direct consequence of the recognition of the European protection order, a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person.

(30) Bearing in mind the principle of mutual recognition upon which this Directive is based, Member States should promote, to the widest extent possible, direct contact between the competent authorities when they apply this Directive.

(31) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States should consider requesting those responsible for the training of judges, prosecutors, police and judicial staff involved in the procedures aimed at issuing or recognising a European protection order to provide appropriate training with respect to the objectives of this Directive.

(32) In order to facilitate the evaluation of the application of this Directive, Member States should communicate to the Commission relevant data related to the application of national procedures on the European protection order, at least with regard to the number of European protection orders requested, issued and/or recognised. In this respect, other types of data, such as, for example, the types of crimes concerned, would also be useful.

(33) This Directive should contribute to the protection of persons who are in danger, thereby complementing, but not affecting, the instruments already in place in this field, such as Framework Decision 2008/947/JHA and Framework Decision 2009/829/JHA.

(34) When a decision relating to a protection measure falls within the scope of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [1], Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility [2], or the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children [3], the recognition and enforcement of that decision should be carried out in accordance with the provisions of the relevant legal instrument.

(35) Member States and the Commission should include information about the European protection order, where it is appropriate, in existing education and awareness-raising campaigns on the protection of victims of crime.

(36) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [4] and with the principles laid down in the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

[1] OJ L 12, 16.1.2001, p. 1.
[2] OJ L 338, 23.12.2003, p. 1.
[3] OJ L 48, 21.2.2003, p. 3.
[4] OJ L 350, 30.12.2008, p. 60.

(37) This Directive should respect the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in accordance with Article 6 TEU.

(38) When implementing this Directive, Member States are encouraged to take into account the rights and principles enshrined in the 1979 United Nations Convention on the elimination of all forms of discrimination against women.

(39) Since the objective of this Directive, namely to protect persons who are in danger, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(40) In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Directive.

(41) In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(42) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective

This Directive sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has been adopted with a view to protecting a person against a criminal act by another person which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in accordance with the national law of the issuing State.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

(1) 'European protection order' means a decision, taken by a judicial or equivalent authority of a Member State in relation to a protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any appropriate measure or measures under its own national law with a view to continuing the protection of the protected person;

(2) 'protection measure' means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions referred to in Article 5 are imposed on a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity;

(3) 'protected person' means a natural person who is the object of the protection resulting from a protection measure adopted by the issuing State;

(4) 'person causing danger' means the natural person on whom one or more of the prohibitions or restrictions referred to in Article 5 have been imposed;

(5) 'issuing State' means the Member State in which a protection measure has been adopted that constitutes the basis for issuing a European protection order;

(6) 'executing State' means the Member State to which a European protection order has been forwarded with a view to its recognition;

(7) 'State of supervision' means the Member State to which a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has been transferred.

Article 3

Designation of competent authorities

1. Each Member State shall inform the Commission which judicial or equivalent authority or authorities are competent under its national law to issue a European protection order and to recognise such an order, in accordance with this Directive, when that Member State is the issuing State or the executing State.

2. The Commission shall make the information received available to all Member States. Member States shall inform the Commission of any change to the information referred to in paragraph 1.

Article 4

Recourse to a central authority

1. Each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist its competent authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority or authorities responsible for the administrative transmission and reception of any European protection order, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the designated central authority or authorities of the Member State concerned.

3. Member States wishing to make use of the possibilities referred to in this Article shall communicate to the Commission information relating to the designated central authority or authorities. These indications shall be binding upon all the authorities of the issuing State.

Article 5

Need for an existing protection measure under national law

A European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:

(a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

(b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or

(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Article 6

Issuing of a European protection order

1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

2. A judicial or equivalent authority of the issuing State may issue a European protection order only at the request of the protected person and after verifying that the protection measure meets the requirements set out in Article 5.

3. The protected person may submit a request for the issuing of a European protection order either to the competent authority of the issuing State or to the competent authority of the executing State. If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing State.

4. Before issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.

5. When a competent authority adopts a protection measure containing one or more of the prohibitions or restrictions referred to in Article 5, it shall inform the protected person in an appropriate way, in accordance with the procedures under its national law, about the possibility of requesting a European protection order in the case that that person decides to leave for another Member State, as well as of the basic conditions for such a request. The authority shall advise the protected person to submit an application before leaving the territory of the issuing State.

6. If the protected person has a guardian or representative, that guardian or representative may introduce the request referred to in paragraphs 2 and 3, on behalf of the protected person.

7. If the request to issue a European protection order is rejected, the competent authority of the issuing State shall inform the protected person of any applicable legal remedies that are available, under its national law, against such a decision.

Article 7

Form and content of the European protection order

The European protection order shall be issued in accordance with the form set out in Annex I to this Directive. It shall, in particular, contain the following information:

(a) the identity and nationality of the protected person, as well as the identity and nationality of the guardian or representative if the protected person is a minor or is legally incapacitated;

(b) the date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known;

(c) the name, address, telephone and fax numbers and e-mail address of the competent authority of the issuing State;

(d) identification (for example, through a number and date) of the legal act containing the protection measure on the basis of which the European protection order is issued;

(e) a summary of the facts and circumstances which have led to the adoption of the protection measure in the issuing State;

(f) the prohibitions or restrictions imposed, in the protection measure underlying the European protection order, on the person causing danger, their duration and the indication of the penalty, if any, in the event of the breach of any of the prohibitions or restrictions;

(g) the use of a technical device, if any, that has been provided to the protected person or to the person causing danger as a means of enforcing the protection measure;

(h) the identity and nationality of the person causing danger, as well as that person's contact details;

(i) where such information is known by the competent authority of the issuing State without requiring further inquiry, whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State;

(j) a description, where appropriate, of other circumstances that could have an influence on the assessment of the danger that confronts the protected person;

(k) an express indication, where applicable, that a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred to the State of supervision, when this is different from the State of execution of the European protection order, and the identification of the competent authority of that State for the enforcement of such a judgment or decision.

Article 8

Transmission procedure

1. Where the competent authority of the issuing State transmits the European protection order to the competent authority of the executing State, it shall do so by any means which leaves a written record so as to allow the competent authority of the executing State to establish its authenticity. All official communication shall also be made directly between those competent authorities.

2. If the competent authority of either the executing State or the issuing State is not known to the competent authority of the other State, the latter authority shall make all the relevant enquiries, including via the contact points of the European Judicial Network referred to in Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network [1], the National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the necessary information.

3. When an authority of the executing State which receives a European protection order has no competence to recognise it, that authority shall, *ex officio*, forward the European protection order to the competent authority and shall, without delay, inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 9

Measures in the executing State

1. Upon receipt of a European protection order transmitted in accordance with Article 8, the competent authority of the executing State shall, without undue delay, recognise that order and take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person, unless it decides to invoke one of the grounds for non-recognition referred to in Article 10. The executing State may apply, in accordance with its national law, criminal, administrative or civil measures.

[1] OJ L 348, 24.12.2008, p. 130.

2. The measure adopted by the competent authority of the executing State in accordance with paragraph 1, as well as any other measure taken on the basis of a subsequent decision as referred to in Article 11, shall, to the highest degree possible, correspond to the protection measure adopted in the issuing State.

3. The competent authority of the executing State shall inform the person causing danger, the competent authority of the issuing State and the protected person of any measures adopted in accordance with paragraph 1, as well as of the possible legal consequence of a breach of such measure provided for under national law and in accordance with Article 11(2). The address or other contact details of the protected person shall not be disclosed to the person causing danger unless such details are necessary in view of the enforcement of the measure adopted in accordance with paragraph 1.

4. If the competent authority in the executing State considers that the information transmitted with the European protection order in accordance with Article 7 is incomplete, it shall without delay inform the competent authority of the issuing State by any means which leaves a written record, assigning a reasonable period for it to provide the missing information.

Article 10

Grounds for non-recognition of a European protection order

1. The competent authority of the executing State may refuse to recognise a European protection order in the following circumstances:

(a) the European protection order is not complete or has not been completed within the time limit set by the competent authority of the executing State;

(b) the requirements set out in Article 5 have not been met;

(c) the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State;

(d) the protection derives from the execution of a penalty or measure that, according to the law of the executing State, is covered by an amnesty and relates to an act or conduct which falls within its competence according to that law;

(e) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order;

(f) criminal prosecution, against the person causing danger, for the act or the conduct in relation to which the protection measure has been adopted is statute-barred under the law of the executing State, when the act or the conduct falls within its competence under its national law;

(g) recognition of the European protection order would contravene the *ne bis in idem* principle;

(h) under the law of the executing State, the person causing danger cannot, because of that person's age, be held criminally responsible for the act or the conduct in relation to which the protection measure has been adopted;

(i) the protection measure relates to a criminal offence which, under the law of the executing State, is regarded as having been committed, wholly or for a major or essential part, within its territory.

2. Where the competent authority of the executing State refuses to recognise a European protection order in application of one of the grounds referred to in paragraph 1, it shall:

(a) without undue delay, inform the issuing State and the protected person of this refusal and of the grounds relating thereto;

(b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure in accordance with its national law;

(c) inform the protected person of any applicable legal remedies that are available under its national law against such a decision.

Article 11

Governing law and competence in the executing State

1. The executing State shall be competent to adopt and to enforce measures in that State following the recognition of a European protection order. The law of the executing State shall apply to the adoption and enforcement of the decision provided for in Article 9(1), including rules on legal remedies against decisions adopted in the executing State relating to the European protection order.

2. In the event of a breach of one or more of the measures taken by the executing State following the recognition of a European protection order, the competent authority of the executing State shall, in accordance with paragraph 1, be competent to:

(a) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the law of the executing State;

(b) take any non-criminal decisions related to the breach;

(c) take any urgent and provisional measure in order to put an end to the breach, pending, where appropriate, a subsequent decision by the issuing State.

3. If there is no available measure at national level in a similar case that could be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.

Article 12

Notification in the event of breach

The competent authority of the executing State shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. Notice shall be given using the standard form set out in Annex II.

Article 13

Competence in the issuing State

1. The competent authority of the issuing State shall have exclusive competence to take decisions relating to:

(a) the renewal, review, modification, revocation and withdrawal of the protection measure and, consequently, of the European protection order;

(b) the imposition of a custodial measure as a consequence of revocation of the protection measure, provided that the protection measure has been applied on the basis of a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA;

2. The law of the issuing State shall apply to decisions adopted in accordance with paragraph 1.

3. Where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred, or is transferred after the issuing of the European protection order, to another Member State, subsequent decisions, as provided for by those Framework Decisions, shall be taken in accordance with the relevant provisions of those Framework Decisions.

4. When the protection measure is contained in a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA which has been transferred or is transferred after the issuing of the European protection order to another Member State, and the competent authority of the State of supervision has made subsequent decisions affecting the obligations or instructions contained in the protection measure in accordance with Article 14 of that Framework Decision, the competent authority of the issuing State shall renew, review, modify, revoke or withdraw without delay the European protection order accordingly.

5. The competent authority of the issuing State shall inform the competent authority of the executing State without delay of any decision taken in accordance with paragraph 1 or 4.

6. If the competent authority in the issuing State has revoked or withdrawn the European protection order in accordance with point (a) of paragraph 1 or with paragraph 4, the competent authority in the executing State shall discontinue the measures adopted in accordance with Article 9(1) as soon as it has been duly notified by the competent authority of the issuing State.

7. If the competent authority in the issuing State has modified the European protection order in accordance with point (a) of paragraph 1 or with paragraph 4, the competent authority in the executing State shall, as appropriate:

(a) modify the measures adopted on the basis of the European protection order, acting in accordance with Article 9; or

(b) refuse to enforce the modified prohibition or restriction when it does not fall within the types of prohibitions or restrictions referred to in Article 5, or if the information transmitted with the European protection order in accordance with Article 7 is incomplete or has not been completed within the time limit set by the competent authority of the executing State in accordance with Article 9(4).

Article 14

Grounds for discontinuation of measures taken on the basis of a European protection order

1. The competent authority of the executing State may discontinue the measures taken in execution of a European protection order:

(a) where there is clear indication that the protected person does not reside or stay in the territory of the executing State, or has definitively left that territory;

(b) where, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired;

(c) in the case referred to in Article 13(7)(b); or

(d) where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, is transferred to the executing State after the recognition of the European protection order.

2. The competent authority of the executing State shall immediately inform the competent authority of the issuing State and, where possible, the protected person of such decision.

3. Before discontinuing measures in accordance with point (b) of paragraph 1 the competent authority of the executing State may invite the competent authority of the issuing State to provide information as to whether the protection provided for by the European protection order is still needed in the circumstances of the case in question. The competent authority of the issuing State shall, without delay, reply to such an invitation.

Article 15

Priority in recognition of a European protection order

A European protection order shall be recognised with the same priority which would be applicable in a similar national case, taking into consideration any specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.

Article 16

Consultations between competent authorities

Where appropriate, the competent authorities of the issuing State and of the executing State may consult each other in order to facilitate the smooth and efficient application of this Directive.

Article 17

Languages

1. A European protection order shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State.

2. The form referred to in Article 12 shall be translated by the competent authority of the executing State into the official language or one of the official languages of the issuing State.

3. Any Member State may, either when this Directive is adopted or at a later date, state in a declaration that it shall deposit with the Commission that it will accept a translation in one or more other official languages of the Union.

Article 18

Costs

Costs resulting from the application of this Directive shall be borne by the executing State, in accordance with its national law, except for costs arising exclusively within the territory of the issuing State.

Article 19

Relationship with other agreements and arrangements

1. Member States may continue to apply bilateral or multilateral agreements or arrangements which are in force upon the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate further the procedures for taking protection measures.

2. Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures.

3. By 11 April 2012, Member States shall notify the Commission of the existing agreements and arrangements referred to in paragraph 1 which they wish to continue applying. Member States shall also notify the Commission of any new agreements or arrangements referred to in paragraph 2 within three months of the signing thereof.

Article 20

Relationship with other instruments

1. This Directive shall not affect the application of Regulation (EC) No 44/2001, Regulation (EC) No 2201/2003, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, or the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

2. This Directive shall not affect the application of Framework Decision 2008/947/JHA or Framework Decision 2009/829/JHA.

Article 21

Implementation

1. Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive by 11 January 2015. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 22

Data collection

Member States shall, in order to facilitate the evaluation of the application of this Directive, communicate to the Commission relevant data related to the application of national procedures on the European protection order, at least on the number of European protection orders requested, issued and/or recognised.

Article 23

Review

By 11 January 2016, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive. That report shall be accompanied, if necessary, by legislative proposals.

Article 24

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 25

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 13 December 2011.

For the European Parliament	*For the Council*
The President	*The President*
J. BUZEK	M. SZPUNAR

ANNEX I

EUROPEAN PROTECTION ORDER

referred to in Article 7 of

DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 DECEMBER 2011 ON THE EUROPEAN PROTECTION ORDER

The information contained in this form is to be treated with appropriate confidentiality

Issuing State:

Executing State:

(a) Information regarding the protected person:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

Has the protected person been granted free legal aid in the issuing State (if information is available without further enquiry)?

☐ Yes.

☐ No.

☐ Unknown.

Where the protected person is a minor or is legally incapacitated, information regarding the person's guardian or representative:

Surname:

Forename(s):

Maiden name or previous name, where applicable:

Sex:

Nationality:

Office/Address:

(b) The protected person has decided to reside or already resides in the executing State, or has decided to stay or already stays in the executing State.

Date from which the protected person intends to reside or stay in the executing State (if known):

Period(s) of stay (if known):

(c) Have any technical devices been provided to the protected person or to the person causing danger to enforce the protection measure:

☐ Yes; please give a short summary of the devices used:

☐ No.

(d) Competent authority which issued the European protection order:

Official name:

Full address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail (if any):

Languages that may be used for communication:

(e) Identification of the protection measure on the basis of which the European protection order has been issued:

The protection measure was adopted on (date: DD-MM-YYYY):

The protection measure became enforceable on (date: DD-MM-YYYY):

File reference of the protection measure (if available):

Authority that adopted the protection measure:

(f) Summary of the facts and description of the circumstances — including, where applicable, the classification of the offence — which have led to the imposition of the protection measure mentioned under (e) above:

(g) Indications regarding the prohibition(s) or restriction(s) that have been imposed by the protection measure on the person causing danger:

— Nature of the prohibition(s) or restriction(s): (more than one box may be ticked):

☐ a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

— if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:

☐ a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;

— if you ticked this box, please provide any relevant details:

☐ a prohibition or regulation on approaching the protected person closer than a prescribed distance;

— if you ticked this box, please indicate precisely the distance which the person causing danger has to observe in respect of the protected person:

— Please indicate the length of time during which the abovementioned prohibition(s) or restriction(s) are imposed on the person causing danger:

— Indication of the penalty (if any) in the event of the breach of the prohibition or restriction:

(h) Information regarding the person causing danger on whom the prohibition(s) or restriction(s) mentioned under (g) have been imposed:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

Has the person causing danger been granted free legal aid in the issuing State (if information is available without further enquiry)?

☐ Yes.

☐ No.

☐ Unknown.

(i) Other circumstances that could have an influence on the assessment of the danger that could affect the protected person (optional information):

(j) Other useful information (such as, where available and necessary, information on other States where protection measures have been previously adopted with respect to the same protected person):

(k) Please complete:

☐ a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, has already been transmitted to another Member State

— If you ticked this box, please provide the contact details of the competent authority to whom the judgment has been forwarded:

☐ a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA has already been transmitted to another Member State

— If you ticked this box, please provide the contact details of the competent authority to whom the decision on supervision measures has been forwarded:

Signature of the authority issuing the European protection order and/or of its representative to confirm the accuracy of the content of the order:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

ANNEX II

FORM

referred to in Article 12 of

DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 DECEMBER 2011 ON THE EUROPEAN PROTECTION ORDER

NOTIFICATION OF A BREACH OF THE MEASURE TAKEN ON THE BASIS OF THE EUROPEAN PROTECTION ORDER

The information contained in this form is to be treated with appropriate confidentiality

(a) Details of the identity of the person causing danger:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the identity of the protected person:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(c) Details of the European protection order:

Order issued on:

File reference (if any):

Authority which issued the order:

Official name:

Address:

(d) Details of the authority responsible for the execution of the protection measure, if any, which was taken in the executing State in line with the European protection order:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. No (country code) (area code) (number):

Fax No (country code) (area code) (number):

E-mail:

Languages that may be used for communication:

(e) Breach of the prohibition(s) or restriction(s) imposed by the competent authorities of the executing State following recognition of the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following prohibition(s) or restriction(s) (more than one box may be ticked):

☐ a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

☐ a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;

☐ a prohibition or regulation on approaching the protected person closer than a prescribed distance;

☐ any other measure, corresponding to the protection measure at the basis of the European protection order, taken by the competent authorities of the executing State following recognition of the European protection order

Description of the breach(es) (place, date and specific circumstances):

In accordance with Article 11(2):

— measures taken in the executing State as a consequence of the breach:

— possible legal consequence of the breach in the executing State:

Other findings which could result in taking any subsequent decision

Description of the findings:

(f) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

EUROPEAN COMMISSION

Brussels, 18.5.2011
COM(2011) 275 final

2011/0129 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing minimum standards on the rights, support and protection of victims of crime

{COM(2011) 274}
{COM(2011) 276}
{SEC(2011) 580}
{SEC(2011) 581}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

This proposal is part of a legislative package which aims at strengthening the rights of victims in the EU and which also includes the following two other elements: a communication on strengthening victims' rights in the EU and a proposal for a Regulation on mutual recognition of protection measures in civil matters.

The European Commission has identified as a strategic priority[1] the protection of victims of crimes and the establishment of minimum standards, based on the Stockholm Programme and its Action Plan[2]. These documents place victims high on the EU agenda and firmly establish the need and intention to create an integrated and co-ordinated approach to victims, in line with the October 2009 JHA Council Conclusions[3].

The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the principle of mutual recognition of judgments and other decisions of judicial authorities taken in civil and criminal matters within the Union. The Commission's "Citizenship Report" of 27 October 2010[4] seeks to dismantle the obstacles to citizens' rights by adding substance to individual rights granted at EU level. Strengthening victims' rights, together with the strengthening of procedural rights of suspects or accused persons in criminal proceedings reflects this approach.

The European Union has already acted on the rights of victims in criminal proceedings through Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. Whilst improvements have been achieved in this area, the objectives of the Council Framework Decision have not been fully realised.

The European Parliament has also called upon the Council to adopt a comprehensive legal framework offering victims of crime the widest protection[5]. In its resolution of 26 November 2009[6] on the elimination of violence against women, the Parliament called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures and called on the Union to guarantee the right to assistance, protection and support for all victims of violence. Declaration 19 of the protocols to the Treaty on the Functioning of the European Union also calls on Member States to take all necessary measures to prevent and punish acts of domestic violence and to support and protect the victims of such violence.

Judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions. Mutual recognition can only operate effectively in a spirit of confidence, whereby not only judicial authorities but all those involved in the criminal justice process and others who have a legitimate interest in it can trust in the adequacy of the rules of each Member State and trust that those rules are correctly applied. Where victims of crime are not subject to the same minimum standards throughout the EU, such trust can be reduced due to concerns over the treatment of victims or due to differences in procedural rules.

Common minimum rules should thus lead to increased confidence in the criminal justice systems of all Member States, which in turn should lead to more efficient judicial cooperation in a climate of mutual trust as well as to the promotion of a fundamental rights culture in the European Union. They should also contribute to reducing obstacles to free movement of citizens since such common minimum rules should apply to all victims of crime.

Consistency with other policies and objectives of the Union

This proposal aims to ensure that the wide ranging needs of victims of crime, which cut across a number of other EU policies, are respected and met. In particular, the protection of victims' rights is an essential part of a range of EU policies and/or instruments relating to human trafficking, sexual abuse and sexual exploitation of children, violence against women, terrorism, organised crime, and enforcement of road traffic offences.

The proposal will build on and complement existing instruments, in particular Council Directive 2011/36/EU on preventing and combating trafficking in human beings, and protecting victims[7], in Council Directive on combating the sexual abuse, sexual exploitation of children and child pornography[8] presently under negotiation or in Council Framework Decision of 2002/475/JHA on combating terrorism[9] as modified by Council Framework Decision 2008/919/JHA of 28 November 2008[10]. It will establish minimum standards on victims' rights which will improve the general environment for protecting victims in EU law and policy. While the specific instruments on, for example, acts of terrorism, trafficking and sexual abuse and sexual exploitation of children and child pornography address the particular needs of certain groups of victims of identified types of crimes, this proposal will set out the horizontal framework for addressing the needs of all victims of crime, irrespective of the type of crime or the circumstances or place in which it was committed. The provisions of this proposal are consistent with the approach taken in the above policy areas.

This Directive will not affect provisions contained in other EU acts which address the specific needs of particularly vulnerable victims in a more targeted manner. In particular, adult victims of trafficking in human beings shall benefit from the measures established in Council Directive 2011/36/EU which correspond to the measures established in Articles 12, 20(b), 21(3)(a, c, d) of this Directive; child victims of trafficking in human beings shall benefit from the measures established in Council Directive 2011/36/EU which correspond to the measures established in Articles 12, 20, 21(2)(a, b, c), 21(3) and 22 of this Directive; child victims of sexual abuse, sexual exploitation and child pornography shall benefit from the measures established in Council Directive [….]/[..]/EU [*on combating the sexual abuse, sexual exploitation of children and child pornography]* which correspond to the measures established in Articles 12, 20, 21(2)(a, b, c), 21(3) and 22 of this Directive.

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1 COM(2010) 623.
2 OJ C 115, 4.5.2010, p. 1; COM(2010) 171.
3 2969th JAI Council meeting, 23/10/2009, 14936/09 (Presse 306).
4 EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights - COM(2010) 603.
5 Resolution of 7 May 2009 of the European Parliament on the development of a European Union criminal justice area (INI/2009/2012).
6 P_TA(2009)0098.
7 OJ L 101/1 .
8 OJ L […].
9 OJ L164, 22.6.2002, p. 3.
10 OJ L 330, 9.12.2008, p. 21-23.

Victims of terrorism will benefit from improved mechanisms for identifying their needs, keeping them informed of proceedings and providing adequate protection during proceedings. Likewise, for road traffic victims, though this action does not specifically cater for all the detailed needs of such victims, greater awareness and improved cultural attitudes of legal practitioners combined with appropriate assessments will help ensure their needs are met, in particular their treatment before a specific crime has been identified.

Moreover, in line with the approach taken for victims of human trafficking and sexual abuse and sexual exploitation of children and child pornography, the proposal will be consistent in addressing the particular needs of vulnerable victims.

Looking to the future, action in relation to specific categories of victims such as victims of terrorism and organised crime is also envisaged. In particular analysis of the existing gaps in the protection of victims of terrorism is due to take place with a view to improving the situation of victims of terrorism in Europe.

Existing provisions in the area of the proposal

– Trafficking in human beings, where protection of victims' rights has been introduced in Council Directive 2011/36/EU, including specific focus on children who are particularly vulnerable to trafficking[11];

– Sexual abuse, sexual exploitation of children and child pornography, where a proposed new directive addresses the specific needs of child victims of those crimes[12];

– An EU Agenda for the Rights of the Child, which sets a key objective of making the justice systems more child-friendly. Negative experiences of child victims who are involved in criminal proceedings should be reduced and child victims should be given the opportunity to play an active part in criminal proceedings[13];

– Council Directive 2004/80/EC relating to compensation for crime victims which aims at facilitating access to compensation in cross-border situations[14];

– Combating violence against women, being a strategic priority in the 2010-2015 Strategy on Gender Equality, and the focus of the Daphne III Programme[15];

– Protection of the rights of terrorist victims[16].

2. RESULTS OF CONSULTATIONS WITH INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Commission's standards on consultations were followed. Experts from different backgrounds including governments, law enforcement agencies, NGOs, international organisations and universities took part in detailed discussions on the legislative plans as part of the preparation of the impact assessment accompanying this proposal.

The Commission contracted an external study to support the preparation of the impact assessment and a further study was contracted to examine options in relation to the specific objective of ensuring that the protection gained through a protection order is not lost when a protected person travels or moves to another Member State[17]. Results from two surveys have

11 Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

12 Proposal for a directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing FD 2004/68/JHA.

13 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, An EU Agenda for the Rights of the Child - COM(2011) 60, 15.2.2011.

14 Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261, 6.8.2004, p. 15).

15 Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Strategy for equality between women and men (2010-2015) - COM(2010) 491.

16 Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism as modified by modified by Council Framework Decision 2008/919/IIIA of 28 November 2008 (OJ L 330, 9.12.2008, p. 21-23).

17 Hess Burkhard, "Feasibility Study: The European Protection Order and the European Law of Civil Procedure", soon available at: http://ec.europa.eu/justice/index_en.htm.

also been used: the external study consulted 384 representatives from government and non-government sectors, receiving 119 replies, and the Victims in Europe Project[18] received 97 replies to its legal implementation questionnaire and 218 to its organisational questionnaire.

During the preparation of the Impact Assessment, the Commission held a public consultation, open to all members of the public, as well as to non-governmental and governmental organisations, seeking their views on what action the EU should take to improve the situation of victims of crime. The Commission received 77 replies by the deadline for responses.

A meeting of academic experts, NGOs and Member States was held on 18-19 February 2010 and was followed by a further Justice Forum on 14 April 2010.

In addition to direct consultation, the Commission has drawn on a number of studies and publications[19].

The impact assessment concluded that it was necessary to replace the 2001 Framework Decision with a new Directive containing concrete obligations on the rights of victims. Legislation should be followed with practical measures to facilitate implementation. It would also be a first step in this field with further studies and action envisaged, in particular in relation to compensation of victims and legal aid for victims.

3. LEGAL ELEMENTS OF THE PROPOSAL

A number of provisions of Council Framework Decision 2001/220/JHA on the standing of victims in criminal proceedings have been maintained in their original form or have been amended only to the extent necessary for clarity of drafting. For instance, Articles 9, 12, 14, 15, 16 and 25 of the proposed Directive correspond to Articles 3, 6, 9, 11 and 12 of the Framework Decision. The following comments concentrate on those articles which introduce substantive changes to the Framework Decision.

Article 2 - Definitions

The purpose of this Directive is to ensure that all victims of crime benefit from minimum standards throughout the EU. In particular, this Directive makes provision for support and protection to be given to family members of victims since such persons are often also harmed by the crime and may themselves be at risk of secondary victimisation as well as victimisation or intimidation by the offender or his associates. All provisions in this Directive are also applicable to family members of a victim whose death has been caused by a criminal offence since such persons have specific and legitimate interests in the proceedings beyond those of family members of surviving victims and are often recognised as representatives of the victim.

[18] APAV/Victim Support Europe, the Project "Victims in Europe", 2009 (hereinafter referred to as the "APAV Report".

[19] See e.g. APAV Report, The Implementation of the EU Framework Decision on the standing of victims in the criminal proceedings in the Member States of the European Union, Lisbon 2009; Bulgarian Centre for the Study of Democracy, Project ONE: Member States' legislation, national policies, practices and approaches concerning the victims of crime, Sofia 2009.

Articles 3, 4, 5 and 6 – Information rights and right to understand and to be understood

The purpose of these Articles is to ensure that victims receive sufficient information in a form they can understand to enable them to fully access their rights and to ensure they feel treated in a respectful manner. Such information should be available from the moment a victim makes a complaint of a criminal offence as well as on a regular basis throughout criminal proceedings and in relation to the progress of the case. Sufficient detail should be provided to enable victims to make informed decisions about their participation in proceedings and how to access their rights, in particular when deciding whether to request a review of the decision not to prosecute.

For a number of reasons victims may have difficulties in understanding information provided in a standard, written form. In particular, the victim may not understand the language of the information or there may be other factors such as the victim's age, maturity, intellectual and emotional capacities, literacy levels and any disabilities for instance related to sight or hearing which may hinder or completely prevent a victim from understanding the information. Information should therefore and as much as possible be provided in a variety of formats to take account of these factors.

Article 7 – Right to access victim support services

The purpose of this Article is to ensure that victims have access to support services which provide information and advice, emotional and psychological support and practical assistance which are often crucial to the recovery of victims and help them cope with the aftermath of the crime and with the strain of any criminal proceedings.

Support should be available from the earliest possible moment after the commission of a crime irrespective of whether it has been reported. Such services can prove particularly important in regard to a victim's decision to ultimately report a crime. Equally, victims may require support both during the period of any proceedings and in the long term. Support services may be provided by governmental or non-governmental organisations and should not involve excessive procedures and formalities which might reduce effective access to such services. Support may be provided in a variety of ways such as face-to-face meetings, by telephone or other remote means in order to maximise the geographical distribution and availability of services. Certain groups of victims including victims of sexual violence, bias crime such as gender based violence and race hate crime, and victims of terrorism often require specialist support services due to the particular characteristics of the crime they have fallen victim to. As far as possible, such services should be made available.

Although the provision of support should not be dependent on a victim making a complaint of an offence to the police or other competent authorities, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be adhered to.

Article 8 – Right of victims to have their complaint acknowledged

The purpose of this Article is to ensure that when a person makes a complaint of a crime, the victim is provided with an official acknowledgment which they can refer back to in any future communications.

Article 9 – Right to be heard

The purpose of this Article is to ensure that the victim has an opportunity to provide initial and further information, views or evidence during criminal proceedings. The exact extent of this right is left to national law and may range from basic rights to communicate with and supply evidence to a competent authority through to more extensive rights such as a right to have evidence taken into account, the right to ensure that certain evidence is taken or the right to make interventions during the trial.

Article 10 – Rights in the event of a decision not to prosecute

The purpose of this Article is to enable the victim to verify that established procedures and rules have been complied with and that a correct decision has been made to end a prosecution in relation to a specific person. Precise mechanisms for a review are left to national law. However, such a review should as a minimum be carried out by a person or authority different to the one that took the original decision not to prosecute.

Article 11 – Right to safeguards in the context of mediation and other restorative justice services

Restorative justice services encompass a range of services whether attached to, running prior to, in parallel with or after criminal proceedings. They may be available in relation to certain types of crime or only in relation to adult or child offenders and include for example victim-offender mediation, family group conferencing and sentencing circles.

The purpose of this Article is to ensure that where such services are provided, safeguards are in place to ensure the victim is not further victimised as a result of the process. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm to the victim and avoiding further harm. Participation of the victim should be voluntary which also implies that the victim has sufficient knowledge of the risks and benefits to make an informed choice. It also means that factors such as power imbalances, and the age, maturity or intellectual capacity of the victim which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim should be taken into consideration in referring a case to and in conducting a restorative process. Whilst private proceedings should in general be confidential, unless agreed otherwise by the parties, factors such as threats made during the process may be considered as requiring disclosure in the public interest. Ultimately any agreement between the parties should be reached voluntarily.

Article 13 – Right to reimbursement of expenses

This provision is consistent with the 2001 Framework Decision in providing to victims who participate in criminal proceedings the right to reimbursement of expenses. It also provides for reimbursement where the victim attends the trial without participating in the proceedings as such. The purpose is to ensure that victims are not prevented from attending the trial and seeing justice done, due to their own financial limitations.

Article 18 – Identification of vulnerable victims

The purpose of this Article is to ensure that victims are treated in an individual manner and that a consistent mechanism is established to identify vulnerable victims who may require special measures during criminal proceedings.

All victims of crime are per se vulnerable and accordingly require sensitive and careful treatment. However, some victims are particularly vulnerable to further victimisation or intimidation by the accused or suspected person or his associates. In addition, some victims are particularly at risk of being further distressed or harmed by their involvement in criminal proceedings whether through the giving of evidence or through other forms of participation. Such victims require special measures in order to minimise the likelihood of further harm occurring.

This Article provides that the vulnerability of victims to such harm be determined by the personal characteristics of the victim and by the nature or type of crime a victim has suffered. The majority of children and persons with disabilities are at particular risk of harm due to their personal characteristics. As a group they can immediately be identified as vulnerable and in the majority of cases in need of special measures. Victims within other categories based on the nature or type of crime, such as victims of sexual violence, including exploitation, and victims of human trafficking are also in most cases vulnerable to further victimisation during proceedings.

At the same time, this article recognises that victims are individuals who react in different ways to a crime and have different needs and vulnerabilities. Thus a victim may be vulnerable despite not falling into a specific vulnerable victim category. An individual assessment mechanism is therefore to be established to ensure that all vulnerable victims are identified and properly protected. Such an approach can be crucial in facilitating a victim's recovery and ensuring they are provided with the right assistance and protection during proceedings and afterwards. It maximises the ability to prevent secondary and repeat victimisation and intimidation and to enable the victim to effectively access justice. Nevertheless, such an approach must be carried out to an extent proportionate to the likelihood that criminal proceedings will be instituted and that specific measures will be required by the victim. In particular the severity of the crime and the degree of apparent harm suffered by the victim provides a useful indication of the extent of any particular individual assessment.

The individual assessment should determine a victim's needs during proceedings and any requirements for referral to victim support services. Those public officials who first come into contact with a victim when a crime is reported should be trained and should have access to appropriate guidance, tools or protocols to enable them to carry out assessments of the needs of victims in a consistent manner.

Individual assessments should consider any factors which may increase the likelihood of a victim suffering further victimisation or intimidation during proceedings. In particular, the following factors should be taken into account: age, gender and gender identity, ethnicity, race, religion, sexual orientation, state of health, disability, communication difficulties, relationship to or dependence on the suspected or accused person, previous experience of crime and the type or nature of the crime such as bias crime, organised crime or terrorism. Victims of terrorism require particular attention in any assessment given the varying nature of such acts ranging from acts of mass terrorism to targetted terrorism against individuals.

Article 19 – Right to avoidance of contact between victim and offender

This Article mirrors the approach taken in Article 8 of the 2001 Framework Decision with a view to ensuring that where a victim must attend a venue as a result of their participation in criminal proceedings, appropriate steps should be taken to ensure the victim does not have to come into contact with accused or suspected persons. This could be achieved by various

means such as establishing separate waiting areas, and controlling the arrival of victims and the accused. Best practice and guidance offered to public officials can also act as an important source of information on how to assist in avoiding contact.

Article 20 – Right to protection of victims during questioning in criminal investigations

The purpose of this Article is to prevent secondary victimisation by ensuring that the victim is interviewed as early as possible and that interaction with authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them. Decisions on when to carry out any interviews should as far as possible take account of the victim's needs as well as any urgency in relation to the gathering of evidence. Victims may be accompanied by a trusted person of their choice. Only in exceptional circumstances should this possibility be limited and then only in relation to a specific person. The victim should then be permitted to be accompanied by another person of their choice.

Articles 21 and 22 – Right of protection of vulnerable victims including children during criminal proceedings

The purpose of this Article is to ensure that when victims have been identified as being vulnerable to further victimisation or intimidation, appropriate measures are taken to help prevent such harm. Such measures should be available throughout criminal proceedings whether during the initial investigative or prosecutorial phase or during the trial itself. The measures necessary will vary according to the stage of proceedings.

During criminal investigation, minimum levels of protection are required in relation to any interviews with the victim. These should be carried out in a sensitive manner and officials should have received appropriate training to this end. Such training should ensure that officials know appropriate methods of interviewing which will take account of a victim's particular situation, minimise distress and maximise the collection of high-quality evidence. To this end, it may be necessary, according to the vulnerability of the victim, that interviews are only carried out in appropriate premises. This may mean premises which allow for video interviews or simply where furniture for example is adapted for children or persons with disabilities.

Vulnerable victims can find the interview process highly distressing, particularly where the crime is of a very personal nature. Establishing trust with the interviewer can be important and may only happen over a period of time. For this reason, this article requires that in most cases a vulnerable victim is to be interviewed by the same person. Exceptions are permitted for reasons of good administration, such as an urgent need to interview someone else or the unavailability of the usual interviewer. For similar reasons, in cases of sexual violence, victims should have the right to be interviewed by a person of the same gender.

During the trial itself, protection from intimidation, whether intentional or not, is also a relevant factor when determining appropriate protection measures. This article establishes minimum measures for this purpose as well as to minimise the distress of, in particular, testifying. Measures to enable the victim to avoid visual contact with the defendant are established as well as measures to exclude members of the public and press. In particular, in order to ensure that the fundamental rights of an accused or suspected person are respected, the decision on whether such measures are to be taken is left to judicial discretion. However, the fact that a victim is a child, a person with a disability, a victim of sexual violence or of

human trafficking combined with the individual assessment should provide a strong indication of the need for a protection measure.

Given the particular vulnerabilities of children, additional measures should also be made available and utilised in normal circumstances. Article 22 provides that interviews may be videotaped and used as evidence in court and that in appropriate cases, where a child does not have a representative, the judicial authority should appoint one.

Article 24 – Training of practitioners

The purpose of this Article is to establish training requirements for public officials who come into contact with victims. The level, type and frequency of training including any specialist training should be determined in accordance with the extent and nature of the officals' contact with victims as well as, in particular, whether they are in contact with specific groups of victims.

Training should cover issues which will assist officials to treat victims in a respectful manner, to identify protection needs and to provide them with appropriate information to help them cope with proceedings and access their rights. Such training should cover issues such as awareness of the negative effects of crime on victims and the risk of causing secondary victimisation, skills and knowledge, including special measures and techniques, required to assist victims and minimise any trauma to the victim in particular from secondary victimisation, recognising and preventing intimidation, threats and harm to victims, the availability of services providing information and support specific to the needs of victims and the means of accessing these services.

Additionally, this article ensures that those providing victim support or restorative justice services should also be trained to an appropriate level such that they treat victims in a respectful and impartial manner and provide their services to professional standards.

4. SUBSIDIARITY PRINCIPLE

The objective of the proposal cannot be sufficiently achieved by Member States alone, since the aim of the proposal is to promote trust between them and it is therefore important to agree on common minimum standards that apply throughout the whole of the European Union. The proposal will approximate Member States' substantive rules on rights, support and protection of victims of crime in order to build mutual trust.

In addition, there is a large cross-border element of victimisation with significant numbers of EU citizens living, working and travelling around the EU and falling victim to crime whilst abroad. Persons in such situations can find accessing their rights particularly difficult and criminal proceedings can impose an additional burden on them. Citizens should be able to rely on having access to a minimum level of rights across the EU.

The proposal therefore complies with the subsidiarity principle.

5. PROPORTIONALITY PRINCIPLE

The proposal complies with the proportionality principle in that it does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing minimum standards on the rights, support and protection of victims of crime

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular

Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[20],

Having regard to the opinion of the Committee of the Regions[21],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.

(2) The Union is committed to the protection of victims of crimes and to the establishment of minimum standards and has adopted Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings. Under the Stockholm programme, adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States have been asked to examine how to improve legislation and practical support measures for the protection of victims.

(3) The Resolution of the European Parliament of 26 November 2009 on the elimination of violence against women called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.

[20] OJ C […], […], p. […].
[21] OJ C […], […], p. […].

(4) Article 82(2) of the Treaty provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension. Point (c) of Article 82(2) refers to 'the rights of victims of crime' as one of the areas where minimum rules may be established.

(5) Crime is as an offence against society as well as a violation of the individual rights of victims. As such, victims should be recognised and treated in a respectful, sensitive and professional manner in all contacts with any public authority, victim support service or restorative justice service taking into account their personal situation and immediate needs, age, gender, disability and level of maturity and fully respecting their physical, mental and moral integrity. They should be protected from secondary and repeat victimisation and intimidation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.

(6) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, the Framework Decision should in the interests of clarity be replaced in its entirety.

(7) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular it seeks to promote the right to dignity, life, physical and mental integrity, private and family life, right to property, and the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.

(8) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.

(9) A person should be considered a victim regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. Family members of victims are also harmed as a result of the crime, in particular the family of a deceased victim, who have a legitimate interest in criminal proceedings. Such indirect victims should therefore also benefit from protection under this Directive. Victims need appropriate support and assistance even before reporting a crime. Such support can be crucial both for the recovery of the victim and in any decision to ultimately report the crime.

(10) When providing information, sufficient detail should be given to ensure that victims are treated in a respectful manner and to enable them to make informed decisions about their participation in proceedings and how to access their rights. In this respect, information allowing the victim to know about the current status of any proceedings and their progress is particularly important. This is equally relevant for information to enable a victim to decide whether to request a review of a decision not to prosecute.

(11) Information and advice provided by public authorities, victim support services and restorative justice services should as far as possible be given through a range of media in a manner which can be understood by the victim. It should also be ensured that the victim can be understood during proceedings. In this respect, the victim's knowledge of the language used to provide information, their age, maturity, intellectual and emotional capacities, literacy levels and any mental or physical impairment such as

those related to sight or hearing, should be taken into account. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings.

(12) Justice cannot be effectively achieved unless the victim can properly explain the circumstances of the crime they have suffered and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure the respectful treatment of the victim and to ensure they are able to access their rights. Free of charge interpretation should therefore always be available during questioning of the victim and for their participation in court hearings. For other aspects of criminal proceedings, the need of interpretation and translation can vary depending on specific issues, the status of the victim and their involvement in proceedings and any specific rights they have. As such interpretation and translation for these other cases need only be provided to the extent necessary for victims to exercise their rights.

(13) Support, whether provided by governmental or non-governmental organisations, should be made available from the moment a crime takes place as well as throughout criminal proceedings and after such proceedings in accordance with the needs of the victim. Support should be provided through a variety of means, without excessive formalities and through a sufficient geographical distribution to allow all victims the opportunity to access such services. Certain groups of victims such as victims of sexual violence, gender, race hate or other bias crimes or victims of terrorism may require specialist support services due to the particular characteristics of the crime they have fallen victim to.

(14) Although the provision of support should not be dependent on a victim making a complaint of an offence to a competent authority such as the police, such authorities are often best placed to inform victims of the possibility of support. Member States are therefore encouraged to establish appropriate conditions to enable the referral of victims to victim support services, including by ensuring that data protection requirements can be adhered to.

(15) Any review of a decision not to prosecute should be carried out by a different person or authority to that which made the original decision. The mechanisms or procedures for such a review should be applied in accordance with national law.

(16) Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit to the victim, but require safeguards to prevent any further victimisation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. Factors such as power imbalances, and the age, maturity or intellectual capacity of the victim, which could limit or reduce the victim's ability to make an informed choice or could prejudice a positive outcome for the victim, should be taken into consideration in referring a case to and in conducting a restorative process. Whilst private proceedings should in general be confidential, unless agreed otherwise by the parties, factors such as threats made during the process may be considered as requiring disclosure in the public interest.

(17) Some victims are particularly vulnerable during criminal proceedings to secondary and repeat victimisation and to intimidation by the offender or his associates. Such vulnerability can broadly be identified from the personal characteristics of the victim

and the type or nature of the crime. On this basis some victims such as children, persons with disabilities, victims of sexual violence and victims of human trafficking are in most cases vulnerable to further victimisation and in need of special protection measures. Only in exceptional circumstances, such as balancing the fundamental rights of the accused or suspected person, or where the victim so wishes, should access to such protection measures be limited. In the case of victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, where specific and more detailed provisions are already included in separate instruments adopted or in course of negotiation this Directive does not deal with those same matters.

(18) Beyond these categories, but again based on personal characteristics and the crime, any person could be vulnerable. Only through individual assessments, carried out at the earliest opportunity by those in a position to make recommendations on protection measures, can such vulnerabilities be effectively identified. The assessment should in particular take into account age, gender and gender identity, ethnicity, race, religion, sexual orientation, state of health, disability, communication difficulties, relationship to or dependence on the suspected or accused person, previous experience of crime, the type or nature of the crime such as organised crime, terrorism, or bias crimes and whether the victim is a foreign victim. Victims of terrorism require particular attention in any assessment given the varying nature of such acts ranging from mass acts of terrorism to targetted terrorism against individuals.

(19) Victims who have been identified as vulnerable should be offered appropriate measures to protect them during criminal proceedings. The exact nature and extent of any such measures should be determined through the individual assessment, in discussions with the victim and in accordance with rules of judicial discretion. The victim's concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.

(20) In applying the provisions of this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.

(21) In applying the provisions of this Directive, Member States should ensure that persons with disabilities fully enjoy the rights under the Directive on an equal basis with others, in accordance with the UN Convention on the Rights of Persons with Disabilities, particularly the Convention's provisions on the right to equal recognition before the law, equal access to justice, the right to have access to information and accessibility to premises as well as the freedom from inhuman or degrading treatment and freedom from violence and abuse.

(22) The risk of further victimisation either by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a co-ordinated manner which treats victims with respect and enables them to establish trust in authorities. Interaction with authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through for example video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his family, associates or members of the public. To that end,

Member States are encouraged to introduce, where appropriate, feasible and practical measures enabling court facilities to include separate waiting areas for victims. Protecting the privacy of the victim can be an important means of preventing further victimisation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, including non-disclosure of the name of the child.

(23) When, in accordance with this Directive, a guardian and/or a representative is to be appointed for a child, those roles may be performed by the same person or by a legal person, an institution or an authority.

(24) Any officials in criminal proceedings likely to come into contact with victims should be trained to identify and meet the needs of victims both through initial and ongoing training and to a level appropriate to their contact with victims. This should include specialist training as appropriate.

(25) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policy-making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime.

(26) Since the aim of establishing common minimum standards cannot be sufficiently achieved by Member States acting unilaterally, either at national, regional or local level, and could instead, due to the scale and potential effects be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as referred to in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(27) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters[22] and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.

(28) This Directive shall not affect more far reaching provisions contained in other EU acts which address the specific needs of particularly vulnerable victims in a more targeted manner.

(29) [In accordance with Articles 1, 2, 3 and 4 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland have notified their wish to participate in the

[22] OJ L 350, 30.12.2008, p. 60.

adoption and application of this Directive] OR [Without prejudice to Article 4 of the Protocol on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom and Ireland will not participate in the adoption of this Directive and will not be bound by or be subject to its application][23].

(30) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive, and is therefore not bound by it or subject to its application.

HAVE ADOPTED THIS DIRECTIVE:

Chapter 1

INTRODUCTORY PROVISIONS

Article 1
Objectives

The purpose of this Directive is to ensure that all victims of crime receive appropriate protection and support and are able to participate in criminal proceedings and are recognised and treated in a respectful, sensitive and professional manner, without discrimination of any kind, in all contacts with any public authority, victim support or restorative justice service.

Article 2
Definitions

For the purposes of this Directive:

(a) 'victim' means

(i) a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss directly caused by a criminal offence;

(ii) the family members of a person whose death has been caused by a criminal offence;

(b) 'family members' means the spouse, non-marital cohabitee, registered partner, the relatives in direct line, the brothers and sisters, and the dependants of the victim;

(c) 'non-marital cohabitee' means a person who is living with the victim on a stable and continuous basis without that relationship being registered with an authority;

[23] The final wording of this recital in the Directive will depend on the actual position of the United Kingdom and Ireland taken in accordance with the provisions of protocol (No 21).

(d) 'registered partner' means the partner with whom the victim has entered into a registered partnership, on the basis of the legislation of a Member State;

(e) 'restorative justice services' means services which have as their objective to bring together the victim and the accused with a view to reaching a voluntary agreement between them on how the harm arising from the offence can be addressed;

(f) 'child' means any person below 18 years of age;

(g) 'a person with disability' means a person who has a physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder the full and effective participation in society on an equal basis with others.

Chapter 2

PROVISION OF INFORMATION AND SUPPORT

Article 3
Right to receive information from first contact with a competent authority

Member States shall ensure that victims are provided with the following information, without unnecessary delay, from their first contact with the authority competent to receive a complaint concerning a criminal offence:

(a) where and how they can make a complaint of a criminal offence;

(b) details of the services or organisations to which they can turn for support;

(c) the type of support they can obtain;

(d) procedures following the making of a complaint of an offence and their role in connection with such procedures;

(e) how and under what conditions they can obtain protection;

(f) to what extent and on what terms they are entitled to receive legal advice, legal aid or any other sort of advice;

(g) to what extent and on what terms they are entitled to compensation, including time limits for making any application;

(h) if they are resident in another Member State, any special arrangements available to them in order to protect their interests;

(i) any procedures for making complaints where their rights are not respected;

(j) contact details for communications about their case.

Article 4

Right to receive information about their case

1. Member States shall ensure that victims are notified of their right to receive the following information on their case and that they receive this information where they have expressed such a wish:

   (a) any decision, including reasons for that decision, ending the criminal proceedings instituted as a result of the complaint of a criminal offence made by the victim, such as a decision not to proceed with or to end an investigation or prosecution, or a final judgment in a trial, including any sentence;

   (b) information enabling the victim to know about the state of affairs of the criminal proceedings instituted as a result of the complaint of a criminal offence made by the victim, unless in exceptional cases the proper handling of the case may be adversely affected;

   (c) the time and place of the trial.

2. Member States shall ensure that victims are offered the opportunity to be notified when the person prosecuted or sentenced for offences concerning them is released from detention. Victims shall receive this information where they have expressed such a wish.

3. Member States shall ensure that victims who state that they do not wish to receive the information referred to in paragraphs 1 and 2 do not receive that information.

Article 5

Right to understand and to be understood

Member States shall take measures to ensure that victims understand and can be understood during any interaction they have with public authorities in criminal proceedings, including where information is provided by such authorities.

Article 6

Right to interpretation and translation

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided if they so wish with interpretation, free of charge, during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their participation in court hearings and any necessary interim hearings.

2. In order to ensure that victims can exercise their rights in criminal proceedings, Member States shall ensure that in all other cases and at the request of the victim, interpretation is available, free of charge, in accordance with the victims' needs and their role in those proceedings.

3. Where appropriate, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victim to properly exercise their rights or understand the proceedings.

4. Member States shall ensure that a victim who does not understand or speak the language of the criminal proceedings concerned shall receive translations if they so wish, free of charge, of the following information, to the extent that such information is made available to the victim:

   (a) the complaint of the criminal offence to the competent authority;

   (b) any decision ending the criminal proceedings related to the criminal offence reported by the victim including at least a summary of the reasons for such a decision;

   (c) information essential to the victim's exercise of their rights in criminal proceedings in accordance with their needs and their role in those proceedings.

5. Member States shall ensure that a procedure or mechanism is in place to ascertain whether the victim understands and speaks the language of the criminal proceedings and whether they need translation and the assistance of an interpreter.

6. Member States shall ensure that, in accordance with procedures in national law, victims have the right to challenge a decision finding that there is no need for interpretation or translation, and when they have been provided, the possibility to complain that the quality of the interpretation is not sufficient to exercise their rights or understand proceedings.

Article 7

Right to access victim support services

1. Member States shall ensure that victims and their family members, in accordance with their needs, have access to free of charge, confidential victim support services.

2. As a minimum, such services shall provide:

   (a) information, advice and support relevant to the rights of victims including on accessing state compensation schemes for criminal injuries, and their role in criminal proceedings including preparation for attendance at the trial;

   (b) information on or referral to, as appropriate, specialist services;

   (c) emotional and psychological support;

   (d) advice relating to financial and practical issues following the crime.

3. Member States shall facilitate the referral of victims, by the authority that received the complaint and other relevant agencies, to victim support services.

4. Member States shall promote the setting up or development of specialist support services, in addition to general victim support services.

Chapter 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 8
Right of victims to have their complaint acknowledged

Member States shall ensure that victims receive written acknowledgement of any complaint made by them to an appropriate authority of the Member State.

Article 9
Right to be heard

Member States shall ensure that victims may be heard during criminal proceedings and may supply evidence.

Article 10
Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims have the right to have any decision not to prosecute reviewed.

2. Member States shall ensure that victims are provided with sufficient information to decide whether to request a review of any decision not to prosecute.

Article 11
Right to safeguards in the context of mediation and other restorative justice services

1. Member States shall establish standards to safeguard the victim from intimidation or further victimisation, to be applied when providing mediation or other restorative justice services. Such standards should as a minimum include the following:

   (a) mediation or restorative justice services are used only if they are in the interest of the victim, and based on free and informed consent; this consent may be withdrawn at any time;

   (b) before agreeing to participate in the process, the victim is provided with full and unbiased information about the process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

   (c) the suspected or accused person or offender must have accepted responsibility for their act;

   (d) any agreement should be arrived at voluntarily and should be taken into account in any further criminal proceedings;

   (e) discussions in mediation or other restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases to mediation or other restorative justice services, including through the establishment of protocols on the conditions for referral.

Article 12
Right to legal aid

Member States shall ensure that victims have access, in accordance with procedures in national law, to legal aid, where they have the status of parties to criminal proceedings.

Article 13
Right to reimbursement of expenses

Member States shall, in accordance with procedures in national law, afford victims who participate in criminal proceedings the possibility of reimbursement of expenses incurred as a result of their participation in criminal proceedings, including as a result of their attendance at the trial.

Article 14
Right to the return of property

Member States shall ensure that recoverable property belonging to victims which is seized in the course of criminal proceedings is returned to them without delay, unless required for the purpose of criminal proceedings.

Article 15
Right to decision on compensation from the offender in the course of criminal proceedings

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time.

   The first subparagraph shall not apply where national law provides for restitution or compensation to be awarded in another manner.

2. Member States shall take measures to encourage offenders to provide adequate compensation to victims.

Article 16

Rights of victims resident in another Member State

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the offence occurs, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the crime took place shall, in particular, be in a position:

   – to take a statement from the victim immediately after the complaint of the criminal offence is made to the appropriate authority;

   – to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 for the purpose of hearing victims resident abroad.

2. Member States shall ensure that victims of criminal offences in Member States other than the one where they reside may make a complaint to the competent authorities of the Member State of residence if they are unable to do so in the Member State where the offence is committed or, in the event of a serious offence determined by national law, if they do not wish to do so.

3. Without prejudice to the jurisdiction of the Member State receiving the complaint, the competent authority to which the complaint is made shall transmit it without delay to the competent authority in the territory in which the criminal offence was committed.

Chapter 4

RECOGNITION OF VULNERABILITY AND PROTECTION OF VICTIMS

Article 17

Right to protection

1. Member States shall ensure that measures are available to protect the safety of victims and their family members from retaliation, intimidation, repeat or further victimisation.

2. The measures referred to in paragraph 1, shall in particular include procedures for the physical protection of victims and their family members, measures to ensure that contact between offenders and victims may be avoided within premises where criminal proceedings are conducted, and measures to ensure that the risk of psychological or emotional harm to victims during questioning or when testifying is minimised and their safety and dignity are secured.

Article 18

Identification of vulnerable victims

1. For the purposes of this Directive, the following categories of victims are considered to be vulnerable due to their personal characteristics:

   (a) Children;

   (b) Persons with disabilities.

2. For the purposes of this Directive, the following categories of victims are considered to be vulnerable due to the nature or type of crime to which they have fallen victim:

   (a) Victims of sexual violence;

   (b) Victims of human trafficking.

3. Member States shall ensure that all other victims receive a timely and individual assessment, in accordance with national procedures, to determine whether they are vulnerable, due to their personal characteristics or the circumstances or the type or nature of the crime, to secondary and repeat victimisation or intimidation.

4. Member States shall ensure that all vulnerable victims as identified in paragraphs 1, 2 and 3, receive a timely and individual assessment, in accordance with national procedures, to determine which special measures as provided in Articles 21 and 22 they should benefit from. Such an assessment shall take into account the wishes of the vulnerable victim including where they do not wish to benefit from special measures.

5. The extent of the assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

Article 19

Right to avoidance of contact between victim and offender

Member States shall progressively establish the necessary conditions to enable avoidance of contact between victims and accused or suspected persons in any venue where victims may have personal contact with public authorities due to their being a victim and in particular venues where criminal proceedings are conducted.

Article 20

Right to protection of victims during questioning in criminal investigations

Member States shall ensure that:

(a) victims are interviewed without unjustified delay after the complaint of a criminal offence has been made to the competent authorities;

(b) the number of interviews with victims is kept to a minimum and interviews are carried out only where strictly necessary for the purposes of criminal proceedings;

(c) victims may be accompanied, where appropriate by their legal representative, or a person of their choice, unless a reasoned decision has been made to the contrary in respect of that person.

Article 21

Right to protection of vulnerable victims during criminal proceedings

1. Member States shall ensure that vulnerable victims referred to in Article 18 benefit from the measures provided for in paragraphs 2 and 3 in accordance with an individual assessment as provided for in Article 18(4) and with rules of judicial discretion.

2. Vulnerable victims shall be offered the following measures during criminal investigations:

   (a) interviews with the victim carried out in premises designed or adapted for that purpose;

   (b) interviews with the victim carried out by or through professionals trained for that purpose;

   (c) all interviews with the victim are conducted by the same persons unless this is contrary to the good administration of justice;

   (d) all interviews with victims of sexual violence are conducted by a person of the same sex.

3. Vulnerable victims shall be offered the following measures during court proceedings:

   (a) measures to avoid visual contact between victims and defendants including during the giving of evidence, by appropriate means including the use of communication technologies;

   (b) measures to ensure that the victim may be heard in the courtroom without being present, notably through the use of appropriate communication technologies;

   (c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and

   (d) measures allowing a hearing to take place without the presence of the public.

Article 22

Right to protection of child victims during criminal proceedings

In addition to the measures provded for in Article 21, Member States shall ensure that where the victim is a child:

(a) in criminal investigations, all interviews with the victim may be video recorded and such video recorded interviews may be used, in accordance with national law, as evidence in criminal court proceedings;

(b) in criminal investigations and court proceedings, judicial authorities appoint a special representative for the victim where, according to national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the victim, or where the child is unaccompanied or separated from the family.

Article 23

Right to protection of privacy

1. Member States shall ensure that judicial authorities may adopt during the court proceedings, appropriate measures to protect the privacy and photographic images of victims and their family members.

2. Member States shall encourage the media to pursue self-regulatory measures in order to protect victims' privacy, personal integrity and personal data.

Chapter 6

GENERAL PROVISIONS

Article 24

Training of practitioners

1. Member States shall ensure that police, prosecutors and court staff receive both general and specialist training to a level appropriate to their contact with victims to sensitise them to the needs of victims and to deal with them in an impartial, respectful and professional manner.

2. Member States shall ensure that members of the judiciary have access to both general and specialist training to sensitise them to the needs of victims and to deal with them in an impartial, respectful and professional manner.

3. Member States shall take measures to ensure that those providing victim support and restorative justice services receive adequate training to a level appropriate to their contact with victims and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.

4. In accordance with the duties involved, and the nature and level of contact the practitioner has with victims, training shall as a minimum include matters relating to the impact that crime has on victims, the risks of intimidation, repeat and secondary victimisation and how these can be avoided and the availability and relevance of support to victims.

Article 25

Co-operation and co-ordination of services

1. Member States shall co-operate to facilitate more effective protection of victims' rights and interests in criminal proceedings, whether in the form of networks, directly linked to the judicial system or by means of links between organisations which provide support to victims, including through the support of European networks dealing with victims' matters.

2. Member States shall ensure that those authorities working with or providing support to victims work together to ensure a co-ordinated response to victims and to minimise the negative impact of the crime, the risks of secondary and repeat victimisation and the burden on the victim due to interactions between the victim and criminal justice agencies.

Chapter 7

FINAL PROVISIONS

Article 26

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [two years after the date of adoption] at the latest.

2. Member States shall forthwith communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive, accompanied by a correlation table between those provisions and this Directive.

3. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

Article 27

Provision of data and statistics

Member States shall communicate to the European Commission data related to the application of national procedures on victims of crime by [two years after the date of adoption] at the latest.

Article 28

Replacement

Framework Decision 2001/220/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law.

In relation to Member States participating in the adoption of this Directive, references to the Framework Decision shall be construed as references to this Directive.

Article 29

Entry into force

This Directive shall enter into force on the twentieth day following its publication in the *Official Journal of the European Union*.

Article 30

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 5 April 2011

on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) Trafficking in human beings is a serious crime, often committed within the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating trafficking in human beings is a priority for the Union and the Member States.

(2) This Directive is part of global action against trafficking in human beings, which includes action involving third countries as stated in the 'Action-oriented Paper on strengthening the Union external dimension on action against trafficking in human beings; Towards global EU action against trafficking in human beings' approved by the Council on 30 November 2009. In this context, action should be pursued in third countries of origin and transfer of victims, with a view to raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting those third countries in developing appropriate anti-trafficking legislation.

(3) This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate. The 'push' and 'pull' factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.

(4) The Union is committed to the prevention of and fight against trafficking in human beings, and to the protection of the rights of trafficked persons. For this purpose, Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings [3], and an EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings [4] were adopted. Moreover, the Stockholm Programme — An open and secure Europe serving and protecting citizens [5], adopted by the European Council, gives a clear priority to the fight against trafficking in human beings. Other measures should be envisaged, such as support for the development of general common indicators of the Union for the identification of victims of trafficking, through the exchange of best practices between all the relevant actors, particularly public and private social services.

[1] Opinion of 21 October 2010 (not yet published in the Official Journal).
[2] Position of the European Parliament of 14 December 2010 (not yet published in the Official Journal) and decision of the Council of 21 March 2011.
[3] OJ L 203, 1.8.2002, p. 1.
[4] OJ C 311, 9.12.2005, p. 1.
[5] OJ C 115, 4.5.2010, p. 1.

(5) The law enforcement authorities of the Member States should continue to cooperate in order to strengthen the fight against trafficking in human beings. In this regard, close cross-border cooperation, including the sharing of information and the sharing of best practices, as well as a continued open dialogue between the police, judicial and financial authorities of the Member States, is essential. The coordination of investigations and prosecutions of cases of trafficking in human beings should be facilitated by enhanced cooperation with Europol and Eurojust, the setting-up of joint investigation teams, as well as by the implementation of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflict of jurisdiction in criminal proceedings [1].

(6) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations in this field working with trafficked persons, in particular in policy-making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of anti-trafficking measures.

(7) This Directive adopts an integrated, holistic, and human rights approach to the fight against trafficking in human beings and when implementing it, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities [2] and Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals [3] should be taken into consideration. More rigorous prevention, prosecution and protection of victims' rights, are major objectives of this Directive. This Directive also adopts contextual understandings of the different forms of trafficking and aims at ensuring that each form is tackled by means of the most efficient measures.

(8) Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.

(9) The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings are crucial steps in the process of enhancing international cooperation against trafficking in human beings. It should be noted that the Council of Europe Convention contains an evaluation mechanism, composed of the Group of experts on action against trafficking in human beings (GRETA) and the Committee of the Parties. Coordination between international organisations with competence with regard to action against trafficking in human beings should be supported in order to avoid duplication of effort.

(10) This Directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees (Geneva Convention), and is in accordance with Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union.

(11) In order to tackle recent developments in the phenomenon of trafficking in human beings, this Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation. Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No 29 concerning Forced or Compulsory Labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur. In the light of the relevant case-law, the validity of any possible consent to perform such labour or services should be evaluated on a case-by-case basis. However, when a child is concerned, no possible consent should ever be considered valid. The expression 'exploitation of criminal activities' should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.

(12) The levels of penalties in this Directive reflect the growing concern among Member States regarding the development of the phenomenon of trafficking in human beings. For this reason this Directive uses as a basis levels 3 and 4 of the Council conclusions of 24-25 April 2002 on the approach to apply regarding

[1] OJ L 328, 15.12.2009, p. 42.
[2] OJ L 261, 6.8.2004, p. 19.
[3] OJ L 168, 30.6.2009, p. 24.

approximation of penalties. When the offence is committed in certain circumstances, for example against a particularly vulnerable victim, the penalty should be more severe. In the context of this Directive, particularly vulnerable persons should include at least all children. Other factors that could be taken into account when assessing the vulnerability of a victim include, for example, gender, pregnancy, state of health and disability. When the offence is particularly grave, for example when the life of the victim has been endangered or the offence has involved serious violence such as torture, forced drug/medication usage, rape or other serious forms of psychological, physical or sexual violence, or has otherwise caused particularly serious harm to the victim, this should also be reflected in a more severe penalty. When, under this Directive, a reference is made to surrender, such reference should be interpreted in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States [1]. The gravity of the offence committed could be taken into account within the framework of the execution of the sentence.

(13) In combating trafficking in human beings, full use should be made of existing instruments on the seizure and confiscation of the proceeds of crime, such as the United Nations Convention against Transnational Organised Crime and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime [2], and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property [3]. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities, should be encouraged.

(14) Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.

(15) To ensure the success of investigations and prosecutions of human trafficking offences, their initiation should not depend, in principle, on reporting or accusation by the victim. Where the nature of the act calls for it, prosecution should be allowed for a sufficient period of time after the victim has reached the age of majority. The length of the sufficient period of time for prosecution should be determined in accordance with respective national law. Law enforcement officials and prosecutors should be adequately trained, in particular with a view to enhancing international law enforcement and judicial cooperation. Those responsible for investigating and prosecuting such offences should also have access to the investigative tools used in organised crime or other serious crime cases. Such tools could include the interception of communications, covert surveillance including electronic surveillance, the monitoring of bank accounts and other financial investigations.

(16) In order to ensure effective prosecution of international criminal groups whose centre of activity is in a Member State and which carry out trafficking in human beings in third countries, jurisdiction should be established over the offence of trafficking in human beings where the offender is a national of that Member State, and the offence is committed outside the territory of that Member State. Similarly, jurisdiction could also be established where the offender is an habitual resident of a Member State, the victim is a national or an habitual resident of a Member State, or the offence is committed for the benefit of a legal person established in the territory of a Member State, and the offence is committed outside the territory of that Member State.

(17) While Directive 2004/81/EC provides for the issue of a residence permit to victims of trafficking in human beings who are third-country nationals, and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States [4] regulates the exercise of the right to move and reside freely in the territory of the Member States by citizens of the Union and their families, including protection from expulsion, this Directive establishes specific protective measures for any victim of trafficking in human beings. Consequently, this Directive does not deal with the conditions of the residence of the victims of trafficking in human beings in the territory of the Member States.

(18) It is necessary for victims of trafficking in human beings to be able to exercise their rights effectively. Therefore assistance and support should be available to them before, during and for an appropriate time after criminal proceedings. Member States should provide for resources to support victim assistance, support and protection. The assistance and support provided should

[1] OJ L 190, 18.7.2002, p. 1.
[2] OJ L 182, 5.7.2001, p. 1.
[3] OJ L 68, 15.3.2005, p. 49.
[4] OJ L 158, 30.4.2004, p. 77.

include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers. The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the circumstances, cultural context and needs of the person concerned. A person should be provided with assistance and support as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness. In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings have ended, for example if medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to the victim' s statements in those criminal proceedings.

(19) Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings [1] establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition, victims of trafficking in human beings should be given access without delay to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation. Such legal counselling and representation could also be provided by the competent authorities for the purpose of claiming compensation from the State. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling should be provided by a person having received appropriate legal training without necessarily being a lawyer. Legal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge, at least when the victim does not have sufficient financial resources, in a manner consistent with the internal procedures of Member States. As child victims in particular are unlikely to have such resources, legal counselling and legal representation would in practice be free of charge for them. Furthermore, on the basis of an individual risk assessment carried out in accordance with national procedures, victims should be protected from retaliation, from intimidation, and from the risk of being re-trafficked.

(20) Victims of trafficking who have already suffered the abuse and degrading treatment which trafficking commonly entails, such as sexual exploitation, sexual abuse, rape, slavery-like practices or the removal of organs, should be protected from secondary victimisation and further trauma during the criminal proceedings. Unnecessary repetition of interviews during investigation, prosecution and trial should be avoided, for instance, where appropriate, through the production, as soon as possible in the proceedings, of video recordings of those interviews. To this end victims of trafficking should during criminal investigations and proceedings receive treatment that is appropriate to their individual needs. The assessment of their individual needs should take into consideration circumstances such as their age, whether they are pregnant, their health, a disability they may have and other personal circumstances, as well as the physical and psychological consequences of the criminal activity to which the victim was subjected. Whether and how the treatment is applied is to be decided in accordance with grounds defined by national law, rules of judicial discretion, practice and guidance, on a case-by-case basis.

(21) Assistance and support measures should be provided to victims on a consensual and informed basis. Victims should therefore be informed of the important aspects of those measures and they should not be imposed on the victims. A victim's refusal of assistance or support measures should not entail obligations for the competent authorities of the Member State concerned to provide the victim with alternative measures.

(22) In addition to measures available to all victims of trafficking in human beings, Member States should ensure that specific assistance, support and protective measures are available to child victims. Those measures should be provided in the best interests of the child and in accordance with the 1989 United Nations Convention on the Rights of the Child. Where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Assistance and support measures for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question. Access to education would help children to be reintegrated into society. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.

(23) Particular attention should be paid to unaccompanied child victims of trafficking in human beings, as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed

[1] OJ L 82, 22.3.2001, p. 1.

in order to safeguard the minor's best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States.

(24) When, in accordance with this Directive, a guardian and/or a representative are to be appointed for a child, those roles may be performed by the same person or by a legal person, an institution or an authority.

(25) Member States should establish and/or strengthen policies to prevent trafficking in human beings, including measures to discourage and reduce the demand that fosters all forms of exploitation, and measures to reduce the risk of people becoming victims of trafficking in human beings, by means of research, including research into new forms of trafficking in human beings, information, awareness-raising, and education. In such initiatives, Member States should adopt a gender perspective and a child-rights approach. Officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims. That training obligation should be promoted for members of the following categories when they are likely to come into contact with victims: police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, social, child and health care personnel and consular staff, but could, depending on local circumstances, also involve other groups of public officials who are likely to encounter trafficking victims in their work.

(26) Directive 2009/52/EC provides for sanctions for employers of illegally staying third-country nationals who, while not having been charged with or convicted of trafficking in human beings, use work or services exacted from a person with the knowledge that that person is a victim of such trafficking. In addition, Member States should take into consideration the possibility of imposing sanctions on the users of any service exacted from a victim, with the knowledge that the person has been trafficked. Such further criminalisation could cover the behaviour of employers of legally staying third-country nationals and Union citizens, as well as buyers of sexual services from any trafficked person, irrespective of their nationality.

(27) National monitoring systems such as national rapporteurs or equivalent mechanisms should be established by Member States, in the way in which they consider appropriate according to their internal organisation, and taking into account the need for a minimum structure with identified tasks, in order to carry out assessments of trends in trafficking in human beings, gather statistics, measure the results of anti-trafficking actions, and regularly report. Such national rapporteurs or equivalent mechanisms are already constituted in an informal Union Network established by the Council Conclusions on establishing an informal EU Network of National Rapporteurs or Equivalent Mechanisms on Trafficking in Human Beings of 4 June 2009. An anti-trafficking coordinator would take part in the work of that Network, which provides the Union and the Member States with objective, reliable, comparable and up-to-date strategic information in the field of trafficking in human beings and exchanges experience and best practices in the field of preventing and combating trafficking in human beings at Union level. The European Parliament should be entitled to participate in the joint activities of the national rapporteurs or equivalent mechanisms.

(28) In order to evaluate the results of anti-trafficking action, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.

(29) In the light of the Stockholm Programme and with a view to developing a consolidated Union strategy against trafficking in human beings aimed at further strengthening the commitment of, and efforts made, by the Union and the Member States to prevent and combat such trafficking, Member States should facilitate the tasks of an anti-trafficking coordinator, which may include for example improving coordination and coherence, avoiding duplication of effort, between Union institutions and agencies as well as between Member States and international actors, contributing to the development of existing or new Union policies and strategies relevant to the fight against trafficking in human beings or reporting to the Union institutions.

(30) This Directive aims to amend and expand the provisions of Framework Decision 2002/629/JHA. Since the amendments to be made are of substantial number and nature, the Framework Decision should in the interests of clarity be replaced in its entirety in relation to Member States participating in the adoption of this Directive.

(31) In accordance with point 34 of the Interinstitutional Agreement on better law-making [1], Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.

[1] OJ C 321, 31.12.2003, p. 1.

(32) Since the objective of this Directive, namely to fight against trafficking in human beings, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

(33) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of slavery, forced labour and trafficking in human beings, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, the protection of personal data, the right to an effective remedy and to a fair trial and the principles of the legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

(34) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Directive.

(35) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

(36) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

Article 2

Offences concerning trafficking in human beings

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

Article 3

Incitement, aiding and abetting, and attempt

Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

Article 4

Penalties

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.

2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

(a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;

(b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime [1];

(c) deliberately or by gross negligence endangered the life of the victim; or

(d) was committed by use of serious violence or has caused particularly serious harm to the victim.

3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

Article 5

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

(a) a power of representation of the legal person;

(b) an authority to take decisions on behalf of the legal person; or

(c) an authority to exercise control within the legal person.

2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.

4. For the purpose of this Directive, 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 6

Sanctions on legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions, which shall include criminal or non-criminal fines and may include other sanctions, such as:

(a) exclusion from entitlement to public benefits or aid;

(b) temporary or permanent disqualification from the practice of commercial activities;

(c) placing under judicial supervision;

(d) judicial winding-up;

(e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 7

Seizure and confiscation

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.

Article 8

Non-prosecution or non-application of penalties to the victim

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Article 9

Investigation and prosecution

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.

2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.

3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.

4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

[1] OJ L 300, 11.11.2008, p. 42.

Article 10

Jurisdiction

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:

(a) the offence is committed in whole or in part within their territory; or

(b) the offender is one of their nationals.

2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, inter alia, where:

(a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;

(b) the offence is committed for the benefit of a legal person established in its territory; or

(c) the offender is an habitual resident in its territory.

3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:

(a) the acts are a criminal offence at the place where they were performed; or

(b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

Article 11

Assistance and support for victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted [1] and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2] or pursuant to other international instruments or other similar national rules.

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

Article 12

Protection of victims of trafficking in human beings in criminal investigation and proceedings

1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.

2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

[1] OJ L 304, 30.9.2004, p. 12.
[2] OJ L 326, 13.12.2005, p. 13.

3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

(a) unnecessary repetition of interviews during investigation, prosecution or trial;

(b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;

(c) the giving of evidence in open court; and

(d) unnecessary questioning concerning the victim's private life.

Article 13

General provisions on assistance, support and protection measures for child victims of trafficking in human beings

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.

2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

Article 14

Assistance and support to child victims

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

2. Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

3. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of a child victim of trafficking in human beings when the family is in the territory of the Member States. In particular, Member States shall, where appropriate and possible, apply Article 4 of Framework Decision 2001/220/JHA to the family.

4. This Article shall apply without prejudice to Article 11.

Article 15

Protection of child victims of trafficking in human beings in criminal investigations and proceedings

1. Member States shall take the necessary measures to ensure that in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative for a child victim of trafficking in human beings where, by national law, the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest between them and the child victim.

2. Member States shall, in accordance with the role of victims in the relevant justice system, ensure that child victims have access without delay to free legal counselling and to free legal representation, including for the purpose of claiming compensation, unless they have sufficient financial resources.

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose;

(c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;

(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;

(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;

(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

(a) the hearing take place without the presence of the public; and

(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

6. This Article shall apply without prejudice to Article 12.

Article 16

Assistance, support and protection for unaccompanied child victims of trafficking in human beings

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.

2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

3. Member States shall take the necessary measures to ensure that, where appropriate, a guardian is appointed to unaccompanied child victims of trafficking in human beings.

4. Member States shall take the necessary measures to ensure that, in criminal investigations and proceedings, in accordance with the role of victims in the relevant justice system, competent authorities appoint a representative where the child is unaccompanied or separated from its family.

5. This Article shall apply without prejudice to Articles 14 and 15.

Article 17

Compensation to victims

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

Article 18

Prevention

1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.

2. Member States shall take appropriate action, including through the Internet, such as information and awareness-raising campaigns, research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders, aimed at raising awareness and reducing the risk of people, especially children, becoming victims of trafficking in human beings.

3. Member States shall promote regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings, including front-line police officers, aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

4. In order to make the preventing and combating of trafficking in human beings more effective by discouraging demand, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation as referred to in Article 2, with the knowledge that the person is a victim of an offence referred to in Article 2.

Article 19

National rapporteurs or equivalent mechanisms

Member States shall take the necessary measures to establish national rapporteurs or equivalent mechanisms. The tasks of such mechanisms shall include the carrying out of assessments of trends in trafficking in human beings, the measuring of results of anti-trafficking actions, including the gathering of statistics in close cooperation with relevant civil society organisations active in this field, and reporting.

Article 20

Coordination of the Union strategy against trafficking in human beings

In order to contribute to a coordinated and consolidated Union strategy against trafficking in human beings, Member States shall facilitate the tasks of an anti-trafficking coordinator (ATC). In particular, Member States shall transmit to the ATC the information referred to in Article 19, on the basis of which the ATC shall contribute to reporting carried out by the Commission every two years on the progress made in the fight against trafficking in human beings.

Article 21

Replacement of Framework Decision 2002/629/JHA

Framework Decision 2002/629/JHA on combating trafficking in human beings is hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limit for transposition of the Framework Decision into national law.

In relation to Member States participating in the adoption of this Directive, references to the Framework Decision 2002/629/JHA shall be construed as references to this Directive.

Article 22

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 April 2013.

2. Member States shall transmit to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Directive.

3. When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

Article 23

Reporting

1. The Commission shall, by 6 April 2015, submit a report to the European Parliament and the Council, assessing the extent to which the Member States have taken the necessary measures in order to comply with this Directive, including a description of action taken under Article 18(4), accompanied, if necessary, by legislative proposals.

2. The Commission shall, by 6 April 2016, submit a report to the European Parliament and the Council, assessing the impact of existing national law, establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, on the prevention of trafficking in human beings, accompanied, if necessary, by adequate proposals.

Article 24

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 25

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 5 April 2011.

For the European Parliament	*For the Council*
The President	*The President*
J. BUZEK	GYŐRI E.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

EUROPEAN COUNCIL

THE STOCKHOLM PROGRAMME — AN OPEN AND SECURE EUROPE SERVING AND PROTECTING CITIZENS

(2010/C 115/01)

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1. TOWARDS A CITIZENS' EUROPE IN THE AREA OF FREEDOM, SECURITY AND JUSTICE

The European Council reaffirms the priority it attaches to the development of an area of freedom, security and justice, responding to a central concern of the peoples of the States brought together in the Union.

Building on the achievements of the Tampere and Hague Programmes, significant progress has been achieved to date in this field. Internal border controls have been removed in the Schengen area and the external borders of the Union are now managed in a more coherent manner. Through the development of the Global Approach to Migration, the external dimension of the Union's migration policy focuses on dialogue and partnerships with third countries, based on mutual interests. Significant steps have been taken towards the creation of a European Asylum System. European agencies such as Europol, Eurojust, the European Union Agency for Fundamental Rights and Frontex have reached operational maturity in their respective fields of activity. Cooperation in civil matters is facilitating the everyday life of citizens and cooperation in law enforcement provides enhanced security.

In spite of these and other important achievements in the area of freedom, security and justice Europe still faces challenges. These challenges must be addressed in a comprehensive manner. Further efforts are thus needed in order to improve coherence between policy areas. In addition, cooperation with partner countries should be intensified.

It is therefore time for a new agenda to enable the Union and its Member-States to build on these achievements and to meet future challenges. To this end the European Council has adopted this new multiannual programme to be known as the Stockholm Programme, for the period 2010-2014.

The European Council welcomes the increased role that the European Parliament and National Parliaments will play following the entry into force of the Lisbon Treaty [1]. Citizens and representative associations will have greater opportunity to make known and publicly exchange their views in all areas of Union action in accordance with Article 11 TEU. This will reinforce the open and democratic character of the Union for the benefit of its people.

The Treaty facilitates the process of reaching the goals outlined in this programme, both for the Union institutions and for the Member States. The role of the Commission in preparing initiatives is confirmed, as is the right for a group of at least seven Member States to submit legislative proposals. The legislative process is improved by the use, in most sectors, of the codecision procedure, thereby granting full involvement of the European Parliament. National Parliaments will play an increasing role in the legislative process. By enhancing also the role of the Court of Justice, the Treaty will improve Europe's ability to fully implement policy in this area and ensure the consistency of interpretation.

All opportunities offered by the Lisbon Treaty to strengthen the European area of freedom, security and justice for the benefit of the citizens of the Union should be used by the Union institutions.

This programme defines strategic guidelines for legislative and operational planning within the area of freedom, security and justice in accordance with Article 68 TFEU.

1.1. Political priorities

The European Council considers that the priority for the coming years will be to focus on the interests and needs of citizens. The challenge will be to ensure respect for fundamental rights and freedoms and integrity of the person while guaranteeing security in Europe. It is of paramount importance that law enforcement measures, on the one hand, and measures to safeguard individual rights, the rule of law and international protection rules, on the other, go hand in hand in the same direction and are mutually reinforced.

All actions taken in the future should be centred on the citizen of the Union and other persons for whom the Union has a responsibility. The Union should, in the years to come, work on the following main priorities:

Promoting citizenship and fundamental rights: European citizenship must become a tangible reality. The area of freedom, security and justice must, above all, be a single area in which fundamental rights and freedoms are protected. The enlargement of the Schengen area must continue. Respect for the human person and human dignity and for the other rights set out in the Charter of Fundamental Rights of the European Union and the European Convention for the protection of Human Rights and fundamental freedoms are core values. For example, the exercise of these rights and freedoms, in particular citizens' privacy, must be preserved beyond national borders, especially by protecting personal data. Allowance must be made for the special needs of vulnerable people. Citizens of the Union and other persons must be able to exercise their specific rights to the fullest extent within, and even, where relevant, outside the Union.

A Europe of law and justice: The achievement of a European area of justice must be consolidated so as to move beyond the current fragmentation. Priority should be given to mechanisms that facilitate access to justice, so that people can enforce their rights throughout the Union. Training of and cooperation between public professionals should also be improved, and resources should be mobilised to eliminate barriers to the recognition of legal decisions in other Member States.

[1] As it is commonly known. The Union is actually founded on two Treaties: the Treaty on European Union (TEU) and the Treaty of the Functioning of the European Union (TFEU). For ease of reading, the 'Lisbon Treaty' or 'the Treaty' will sometimes be used in the Programme.

A Europe that protects: An internal security strategy should be developed in order to further improve security in the Union and thus protect the lives and safety of citizens of the Union and to tackle organised crime, terrorism and other threats. The strategy should be aimed at strengthening cooperation in law enforcement, border management, civil protection, disaster management as well as judicial cooperation in criminal matters in order to make Europe more secure. Moreover, the Union needs to base its work on solidarity between Member States and make full use of Article 222 TFEU.

Access to Europe in a globalised world: Access to Europe for businessmen, tourists, students, scientists, workers, persons in need of international protection and others having a legitimate interest to access the Union's territory has to be made more effective and efficient. At the same time, the Union and its Member States have to guarantee security for their citizens. Integrated border management and visa policies should be construed to serve these goals.

A Europe of responsibility, solidarity and partnership in migration and asylum matters: The development of a forward-looking and comprehensive Union migration policy, based on solidarity and responsibility, remains a key policy objective for the Union. Effective implementation of all relevant legal instruments needs to be undertaken and full use should be made of relevant Agencies and Offices operating in this field. Well-managed migration can be beneficial to all stakeholders. The European Pact on Immigration and Asylum provides a clear basis for further development in this field. Europe will need a flexible policy which is responsive to the priorities and needs of Member States and enables migrants to take full advantage of their potential. The objective of establishing a common asylum system in 2012 remains and people in need of international protection must be ensured access to legally safe and efficient asylum procedures. Moreover, in order to maintain credible and sustainable immigration and asylum systems in the Union, it is necessary to prevent, control and combat illegal immigration as the Union faces increasing pressure from illegal migration flows, and particularly the Member States at its external borders, including at its Southern borders in line with the conclusions of the European Council of October 2009.

The role of Europe in a globalised world — the external dimension: The importance of the external dimension of the Union's policy in the area of freedom, security and justice underlines the need for increased integration of these policies into the general policies of the Union. This external dimension is essential to address the key challenges we face and to provide greater opportunities for citizens of the Union to work and do business with countries across the world. This external dimension is crucial to the successful implementation of the objectives of this programme and should in particular be taken into account in, and be fully coherent with all other aspects of the Union's foreign policy.

1.2. The tools

If the next multiannual programme is to be implemented successfully, the following tools are important.

1.2.1. *Mutual trust*

Mutual trust between authorities and services in the different Member States and decision-makers is the basis for efficient cooperation in this area. Ensuring trust and finding new ways to increase reliance on, and mutual understanding between, the different legal systems in the Member States will thus be one of the main challenges for the future.

1.2.2. *Implementation*

Increased attention needs to be paid in the coming years to the full and effective implementation, enforcement and evaluation of existing instruments. Legal transposition should be ensured using, to their fullest extent, wherever necessary, existing institutional tools.

The time taken to respond to the needs of citizens and businesses must also be shorter in the future. The Union should focus on identifying the needs of citizens and practitioners and the appropriate responses. The development of action at Union level should involve Member States' expertise and consider a range of measures, including non-legislative solutions such as agreed handbooks, sharing of best practice (*inter alia*, making best use of the European Judicial Networks) and regional projects that address those needs, in particular where they can produce a fast response.

1.2.3. *Legislation*

In general, new legislative initiatives, by the Commission or by Member States where the Treaty so provides [1], should be tabled only after verification of the respect for the principles of proportionality and subsidiarity, a thorough preparation, including prior impact assessments, also involving identifying needs and financial consequences and using Member States' expertise. It is crucial to evaluate the implications of new legislative initiatives on the four freedoms under the Treaty and to ensure that such initiatives are fully compatible with internal market principles.

The European Council considers that the development of legislation in the area of freedom, security and justice is impressive, but it has shortcomings in terms of overlapping and a certain lack of coherence. At the same time, the quality of legislation including the language used in some of the legal acts could be improved.

[1] For ease of reading, the Programme only attributes the Commission the right of initiative. This is without prejudice to the possibility that Member States take initiatives in accordance with Article 76 TFEU.

A horizontal review of the adopted instruments should be considered, where appropriate, in order to improve consistency and consolidation of legislation. Legal coherence and ease of accessibility is particularly important. Better regulation and better law-making principles should be strengthened throughout the decision-making procedure. The interinstitutional agreement on better law-making between the European Parliament, the Council and the Commission [1] should be fully applied. All Union institutions at all stages of the interinstitutional procedure should make an effort to draft Union legislation in clear and comprehensible language.

1.2.4. *Increased coherence*

The European Council invites the Council and the Commission to enhance the internal coordination in order to achieve greater coherence between external and internal elements of the work in the area of freedom, security and justice. The same need for coherence and improved coordination applies to the Union agencies (Europol, Eurojust, Frontex, European Police College (CEPOL), the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), the future European Asylum Support Office (EASO) and the European Union Agency for Fundamental Rights). The Council should exercise more political oversight over the agencies, for example, by drawing conclusions on annual reports. Special rules in relation to some agencies apply as regards oversight by the European Parliament.

1.2.5. *Evaluation*

The Lisbon Treaty provides that measures may be taken so that the Member States, in cooperation with the Commission, shall undertake an objective and impartial evaluation of the implementation of the policies in the area of freedom, security and justice, in particular to promote the full application of the principle of mutual recognition. The European Parliament and the national parliaments are to be informed of the content and results of the evaluations. The European Council considers that such evaluation mechanisms should avoid duplication and, in the long term, encompass all policies in that area. There should also be an efficient system of follow-up to such evaluations.

There has to be an evaluation of the effectiveness of the legal instruments adopted at Union level. Evaluation is also necessary to determine any obstacles to the proper functioning of the European judicial area. It should focus on specific problems and therefore facilitate full application of the mutual recognition principle. Judicial cooperation in criminal matters should be pursued as the first policy for evaluation. However other policies will have to follow such as respect for asylum procedures in relevant legislation. Evaluation procedures should be adapted to the policy in question where necessary.

The European Council invites the Commission to:

— submit one or several proposals under Article 70 TFEU concerning the evaluation of the Union policies referred to in Title V of TFEU. That proposal (or proposals) should, where appropriate, include an evaluation mechanism based on the well-established system of peer-evaluation. Evaluation should be carried out periodically, should include an efficient follow-up system, and should facilitate better understanding of national systems in order to identify best practice and obstacles to cooperation. Professionals should be able to contribute to the evaluations. The Council should, in principle, have a leading role in the evaluation process, and in particular in its follow-up.

Duplication with other evaluation mechanisms should be avoided, but synergies and cooperation should be sought, in particular with the work of the Council of Europe. The Union should take an active part in and should contribute to the work of the monitoring bodies of the Council of Europe.

1.2.6. *Training*

In order to foster a genuine European judicial and law enforcement culture, it is essential to step up training on Union-related issues and make it systematically accessible for all professions involved in the implementation of the area of freedom, security and justice. This will include judges, prosecutors, judicial staff, police and customs officers and border guards.

The objective of systematic European Training Schemes offered to all persons involved should be pursued. The ambition for the Union and its Member States should be that a substantive number of professionals by 2015 will have participated in a European Training Scheme or in an exchange programme with another Member State, which might be part of training schemes that are already in place. For this purpose existing training institutions should in particular be used.

Member States have the primary responsibility in this respect, but the Union must give their efforts support and financial backing and also be able to have its own mechanisms to supplement national efforts. The European Council considers that EU and international cooperation aspects should be part of national curricula. For training of judges, prosecutors and judicial staff it is important to safeguard judicial independence while at the same time the emphasis should be placed on the European dimension for professionals that use European instruments frequently. CEPOL and Frontex should play a key role in training of law enforcement personnel and border guards with a view to ensuring a European dimension in training. Training of border guards and customs officers is of special importance with a view to fostering a common approach to an integrated border management. Solutions at European level could be sought, with a view to strengthening European Training Schemes. E-learning programmes and common training materials must also be developed to train professionals in the European mechanisms.

The European Council invites the Commission to:

— propose an Action Plan for raising substantially the level of European training schemes and exchange programmes systematically in the Union. The Plan should propose how to ensure that one third of all police involved in European police cooperation and half of the judges, prosecutors and judicial staff involved in European judicial cooperation as well as half of other professionals involved in European cooperation could be offered European Training Schemes,

— examine what could be defined as a European Training Scheme, and to suggest in the Action Plan how to develop this idea with a view to giving it a European dimension,

— set up specific 'Erasmus'-style exchange programmes, which could involve non-Member States and in particular candidate countries and countries with which the Union has concluded Partnership and Cooperation Agreements,

— ensure that participation in joint courses, exercises and exchange programmes is decided on the basis of tasks and is not dependent on sector-specific criteria.

1.2.7. *Communication*

The achievements in the area of freedom, security and justice are generally of great importance to citizens, businesses and professionals. The European Council therefore calls on all Union institutions, in particular the Commission as well as on the Member States, to consider ways to better communicate to citizens and practitioners the concrete results of the policy in the area of freedom, security and justice. It asks the Commission to devise a strategy on how best to explain to citizens how they can benefit from the new tools and legal frameworks, for instance through the use of e-Justice and the e-Justice Portal.

1.2.8. *Dialogue with civil society*

The European Council encourages the Union institutions, within the framework of their competences, to hold an open, transparent and regular dialogue with representative associations and civil society. The Commission should put in place specific mechanisms, such as the European Justice Forum, to step up dialogue in areas where such mechanisms are appropriate.

1.2.9. *Financing*

The European Council emphasises that the Stockholm Programme should be financed within the headings and ceilings of the current financial framework. Many of the measures and actions in this programme can be implemented through a more effective use of existing instruments and funds.

The European Council notes that the current financial perspectives expire at the end of 2013. It underlines its intention to reflect the goals of the Stockholm Programme. This programme does not however prejudge the negotiations on the next financial perspective.

The European Council also considers that procedures for application to the financing programmes should, while taking account of the experience of Member States, be transparent, flexible, coherent and streamlined and made more easily accessible to administrations, established partners and practitioners through the active dissemination of clear guidelines, a mechanism for identifying partners and accurate programming. The European Council requests the Commission to examine appropriate means of achieving that goal.

Within the next financial perspectives, it should be examined how best to design the financial instruments in order to ensure a suitable support for operational projects developed outside the Union which enhance the Union's security, in particular in the field of fighting against organised crime and terrorism. Careful consideration should be given to ways and means to speed up the Union's reaction to urgent events in this area in terms of financial assistance and how to provide technical assistance for the global implementation of international conventions, such as those relating to terrorism.

1.2.10. *Action Plan*

In light of the Stockholm Programme, the European Council invites the Commission to present promptly an Action Plan in the first 6 months of 2010 to be adopted by the Council. This Action Plan will translate the aims and priorities of the Stockholm Programme into concrete actions with a clear timetable for adoption and implementation. It should include a proposal for a timetable for the transformation of instruments with a new legal basis.

1.2.11. *Review of the Stockholm Programme*

The European Council invites the Commission to submit a mid-term review before June 2012 of the implementation of the Stockholm Programme. Trio Presidency programmes and Commission legislative programmes should be published as soon as possible so as to enable national parliaments to have early sight of proposals.

[1] OJ C 321, 31.12.2003, p. 1.

2. PROMOTING CITIZENS' RIGHTS: A EUROPE OF RIGHTS

2.1. A Europe built on fundamental rights

The Union is based on common values and respect for fundamental rights. After the entry into force of the Lisbon Treaty, the rapid accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms is of key importance. This will reinforce the obligation of the Union, including its institutions, to ensure that in all its areas of activity, fundamental rights and freedoms, are actively promoted. The case-law of the Court of Justice of the European Union and the European Court of Human Rights will be able to continue to develop in step, reinforcing the creation of a uniform European fundamental and human rights system based on the European Convention and those set out in the Charter of Fundamental Rights of the European Union.

The European Council invites:

— the Commission to submit a proposal on the accession of the Union to the European Convention for Protection of Human Rights and Fundamental Freedoms as a matter of urgency,

— the Union institutions and the Member States to ensure that legal initiatives are and remain consistent with fundamental rights and freedoms throughout the legislative process by way of strengthening the application of the methodology for a systematic and rigorous monitoring of compliance with the European Convention and the rights and freedoms set out in the Charter of Fundamental Rights.

The European Council invites the Union institutions to:

— make full use of the expertise of the European Union Agency for Fundamental Rights and to consult, where appropriate, with the Agency, in line with its mandate, on the development of policies and legislation with implications for fundamental rights, and to use it for the communication to citizens of human rights issues affecting them in their everyday life,

— pursue the Union's efforts to bring about the abolition of the death penalty, torture and other inhuman and degrading treatment,

— continue to support and promote Union and Member States' activity against impunity and fight against crimes of genocide, crimes against humanity and war crimes; in that context, promote cooperation between the Member States, third countries and the international tribunals in this field, and in particular the International Criminal Court (ICC), and develop exchange of judicial information and best practices in relation to the prosecution of such crimes through the European Network of Contact Points in respect of persons responsible for crimes of genocide, crimes against humanity and war crimes.

The Union is an area of shared values, values which are incompatible with crimes of genocide, crimes against humanity and war crimes, including crimes committed by totalitarian regimes. Each Member State has its own approach to this issue but, in the interests of reconciliation, the memory of those crimes must be a collective memory, shared and promoted, where possible, by us all. The Union must play the role of facilitator.

The European Council invites the Commission:

— to examine and to report to the Council in 2010 whether there is a need for additional proposals covering publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions.

2.2. Full exercise of the right to free movement

The right to free movement of citizens and their family members within the Union is one of the fundamental principles on which the Union is based and of European citizenship. Citizens of the Union have the right to move and reside freely within the territory of the Member States, the right to vote and stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, protection of diplomatic and consular authorities of other Member States etc. When exercising their rights, citizens are ensured equal treatment to nationals under the conditions set by Union law. The effective implementation of relevant Union legislation is therefore a priority.

As noted by the European Parliament, Schengen cooperation, which has removed internal border controls within much of the Union, is a major achievement in the area of freedom, security and justice. The European Council recalls its attachment to the further enlargement of the Schengen area. Provided that all requirements to apply the Schengen *acquis* have been fulfilled, the European Council calls on the Council, the European Parliament and the Commission to take all necessary measures to allow for the abolition of controls at internal borders with the remaining Member States that have declared their readiness to join the Schengen area without delay.

Citizens of the Union must be assisted in administrative and legal procedures they are faced with when exercising the right to free movement. Within the framework of the Treaty, obstacles restricting that right in everyday life should be removed.

The European Council invites the Commission to:

— monitor the implementation and application of these rules in order to guarantee the right to free movement.

Obtaining a right of residence under Union law for the citizens of the Union and their family members is an advantage inherent in the exercise of the right to free movement. The purpose of that right is however not to circumvent immigration rules. Freedom of movement not only entails rights but also imposes obligations on those that benefit from it; abuses and fraud should be avoided. Member States should further safeguard and protect the right to free movement by working together, and with the Commission, to combat actions of a criminal nature with forceful and proportionate measures, with due regard to the applicable law.

The European Council therefore further invites the Commission to:

— monitor the implementation and application of these rules to avoid abuse and fraud,

— examine how best to exchange information, *inter alia*, on residence permits and documentation and how to assist Member States' authorities to tackle abuse of this fundamental right effectively.

With this aim in mind, Member States should also closely monitor the full and correct implementation of the existing *acquis* and tackle possible abuse and fraud of the right to free movement of persons and exchange information and statistics on such abuse and fraud. If systematic trends in abuse and fraud of the right to free movement are identified, Member States should report such trends to the Commission, which will suggest to the Council how these trends might be addressed through the most appropriate means.

2.3. Living together in an area that respects diversity and protects the most vulnerable

Since diversity enriches the Union, the Union and its Member States must provide a safe environment where differences are respected and the most vulnerable protected. Measures to tackle discrimination, racism, anti-semitism, xenophobia and homophobia must be vigorously pursued.

2.3.1. *Racism and xenophobia*

The European Council invites the Commission to:

— report during the period of the Stockholm Programme on the transposition of Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law by 28 November 2013, and, if appropriate, to make proposals for amending it,

— make full use of the existing instruments, in particular the financing programmes to combat racism and xenophobia.

The Member States should implement that Framework Decision as soon as possible and at the latest by 28 November 2010.

2.3.2. *Rights of the child*

The rights of the child, namely the principle of the best interest of the child being the child's right to life, survival and development, non-discrimination and respect for the children's right to express their opinion and be genuinely heard in all matters concerning them according to their age and level of development as proclaimed in the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child, concern all Union policies. They must be systematically and strategically taken into account with a view to ensuring an integrated approach. The Commission Communication of 2006 entitled 'Towards an EU Strategy on the rights of the child' reflect important considerations in this regard. An ambitious Union strategy on the rights of the child should be developed.

The European Council calls upon the Commission to:

— identify measures, to which the Union can bring added value, in order to protect and promote the rights of the child. Children in particularly vulnerable situations should receive special attention, notably children that are victims of sexual exploitation and abuse as well as children that are victims of trafficking and unaccompanied minors in the context of Union migration policy.

As regards parental child abduction, apart from effectively implementing existing legal instruments in this area, the possibility to use family mediation at international level should be explored, while taking account of good practices in the Member States. The Union should continue to develop criminal child abduction alert mechanisms, by promoting cooperation between national authorities and interoperability of systems.

2.3.3. *Vulnerable groups*

All forms of discrimination remain unacceptable. The Union and the Member States must make a concerted effort to fully integrate vulnerable groups, in particular the Roma community, into society by promoting their inclusion in the education system and labour market and by taking action to prevent violence against them. For this purpose, Member States should ensure that the existing legislation is properly applied to tackle potential discrimination. The Union will offer practical support and promote best practice to help Member States achieve this. Civil society will have a special role to play.

Vulnerable groups in particularly exposed situations, such as women who are the victims of violence or of genital mutilation or persons who are harmed in a Member State of which they are not nationals or residents, are in need of greater protection, including legal protection. Appropriate financial support will be provided, through the available financing programmes.

The need for additional proposals as regards vulnerable adults should be assessed in the light of the experience acquired from the application of the 2000 Hague Convention on the International Protection of Adults by the Member States which are parties or which will become parties in the future. The Member States are encouraged to join the Convention as soon as possible.

2.3.4. *Victims of crime, including terrorism*

Those who are most vulnerable or who find themselves in particularly exposed situations, such as persons subjected to repeated violence in close relationships, victims of gender based violence, or persons who fall victim to other types of crimes in a Member State of which they are not nationals or residents, are in need of special support and legal protection. Victims of terrorism also need special attention, support and social recognition. An integrated and coordinated approach to victims is needed, in line with the Council conclusions on a strategy to ensure fulfilment of the rights of, and improve support for, persons who fall victims of crime.

The European Council calls on the Commission and the Member States to:

— examine how to improve legislation and practical support measures for the protection of victims and to improve the implementation of existing instruments,

— offer better support to victims in other ways, possibly through existing European networks that provide practical help, and put forward proposals to that end,

— examine the opportunity of making one comprehensive legal instrument on the protection of victims, by joining together Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims and Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings, on the basis of an evaluation of these two instruments.

Increased use of the financing programmes should be made in accordance with their respective legal frameworks.

2.4. **Rights of the individual in criminal proceedings**

The protection of the rights of suspected and accused persons in criminal proceedings is a fundamental value of the Union, which is essential in order to maintain mutual trust between the Member States and public confidence in the Union. The European Council therefore welcomes the adoption by the Council of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, which will strengthen the rights of the individual in criminal proceedings when fully implemented. That Roadmap will henceforth form part of the Stockholm Programme.

The European Council invites the Commission to:

— put forward the foreseen proposals in the Roadmap for its swift implementation, on the conditions laid down therein,

— examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, needs to be addressed, to promote better cooperation in this area.

2.5. **Protecting citizen's rights in the information society**

When it comes to assessing the individual's privacy in the area of freedom, security and justice, the right to freedom is overarching. The right to privacy and the right to the protection of personal data are set out in the Charter of Fundamental Rights. The Union must therefore respond to the challenge posed by the increasing exchange of personal data and the need to ensure the protection of privacy. The Union must secure a comprehensive strategy to protect data within the Union and in its relations with other countries. In that context, it should promote the application of the principles set out in relevant Union instruments on data protection and the 1981 Council of Europe Convention for the Protection of Individuals with regards to Automatic Processing of Personal Data as well as promoting accession to that Convention. It must also foresee and regulate the circumstances in which interference by public authorities with the exercise of these rights is justified and also apply data protection principles in the private sphere.

The Union must address the necessity for increased exchange of personal data whilst ensuring the utmost respect for the protection of privacy. The European Council is convinced that the technological developments not only present new challenges to the protection of personal data, but also offer new possibilities to better protect personal data.

Basic principles such as purpose limitation, proportionality, legitimacy of processing, limits on storage time, security and confidentiality as well as respect for the rights of the individual, control by national independent supervisory authorities, and access to effective judicial redress need to be ensured and a comprehensive protection scheme must be established. These issues are also dealt with in the context of the Information Management Strategy for EU internal security referred to in Chapter 4.

The European Council invites the Commission to:

— evaluate the functioning of the various instruments on data protection and present, where necessary, further legislative and non-legislative initiatives to maintain the effective application of the above principles,

— propose a Recommendation for the negotiation of a data protection and, where necessary, data sharing agreements for law enforcement purposes with the United States of America, building on the work carried out by the EU-US High Level Contact Group on Information Sharing and Privacy and Personal Data Protection,

— consider core elements for data protection agreements with third countries for law enforcement purposes, which may include, where necessary, privately held data, based on a high level of data protection,

— improve compliance with the principles of data protection through the development of appropriate new technologies, improving cooperation between the public and private sectors, particularly in the field of research,

— examine the introduction of a European certification scheme for 'privacy-aware' technologies, products and services,

— conduct information campaigns, in particular to raise awareness among the public.

On a broader front, the Union must be a driving force behind the development and promotion of international standards for personal data protection, based on relevant Union instruments on data protection and the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, and in the conclusion of appropriate bilateral or multilateral instruments.

2.6. **Participation in the democratic life of the Union**

The European Council recalls that transparency of decision-making, access to documents and good administration contribute to citizens' participation in the democratic life of the Union. Furthermore, the Union citizens' initiative introduced by Article 11 TEU will create a new mechanism for civic participation. That mechanism should be realised rapidly.

The European Council invites the Commission to:

— examine how best to ensure transparency of decision-making, access to documents and good administration of justice in the light of the new opportunities provided by the Lisbon Treaty and to make appropriate proposals to that end.

With a view to the European elections in 2014, careful consideration should be given to how to encourage citizens to vote. Voter turnout has diminished by 20 % since 1979 while at the same time the powers of the European Parliament as co-legislator have increased considerably. Measures such as making it easier to register on the electoral roll should be explored.

In addition, the European Council invites the Commission, before December 2012, to:

— report to the European Council on national practices and traditions on elections to the European Parliament, and propose, on the basis of the report, how to achieve a common election day for elections to the European Parliament. In the light of that report, the European Council will consider how to take this issue forward.

2.7. **Entitlement to protection in non-Member States**

A citizen of the Union travelling to or living in a third country where his or her Member State is not represented is entitled to protection by the diplomatic and consular authorities of any Member State under the same conditions as the nationals of that Member State. This right, enshrined in the Treaties, is not well publicised, and more effort is needed to ensure its full application. Targeted communication campaigns could be conducted in connection with this right.

The European Council invites the Commission to:

— consider appropriate measures establishing coordination and cooperation necessary to facilitate consular protection in accordance with Article 23 TFEU.

3. **MAKING PEOPLE'S LIVES EASIER: A EUROPE OF LAW AND JUSTICE**

The European Council declared at its meeting in Tampere in 1999 that enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights and that the principle of mutual recognition should be the cornerstone of judicial cooperation in both civil and criminal matters. This principle is now expressed in the Treaty.

In the Hague Programme, adopted in 2004, the European Council noted that in order for the principle of mutual recognition to become effective, mutual trust needed to be strengthened by progressively developing a European judicial culture based on the diversity of legal systems and unity through European law. The judicial systems of the Member States should be able to work together coherently and effectively in accordance with their national legal traditions.

The Union should continue to enhance mutual trust in the legal systems of the Member States by establishing minimum rights as necessary for the development of the principle of mutual recognition and by establishing minimum rules concerning the definition of criminal offences and sanctions as defined by the Treaty. The European judicial area must also allow citizens to assert their rights anywhere in the Union by significantly raising overall awareness of rights and by facilitating their access to justice.

In this respect, the European Council emphasises the horizontal importance of e-Justice, which is not confined to specific areas of law. It should be integrated into all areas of civil, criminal and administrative law in order to ensure better access to justice and strengthened cooperation between administrative and judicial authorities.

3.1. **Furthering the implementation of mutual recognition**

The European Council notes with satisfaction that considerable progress has been achieved in implementing the two programmes on mutual recognition adopted by the Council in 2000 and emphasises that the Member States should take all necessary measures to transpose at national level the rules agreed at European level. In this context the European Council emphasises the need to evaluate the implementation of these measures and to continue the work on mutual recognition.

3.1.1. *Criminal law*

In the face of cross-border crime, more efforts should be made to make judicial cooperation more efficient. The instruments adopted need to be more 'user-friendly' and focus on problems that are constantly occurring in cross-border cooperation, such as issues regarding time limits and language conditions or the principle of proportionality. In order to improve cooperation based on mutual recognition, some matters of principle should also be resolved. For example, there may be a need for a horizontal approach regarding certain recurring problems during negotiations on instruments. The approximation, where necessary, of substantive and procedural law should facilitate mutual recognition.

Mutual recognition could extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative.

Victims of crime or witnesses who are at risk can be offered special protection measures which should be effective within the Union.

The European Council considers that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The existing instruments in this area constitute a fragmentary regime. A new approach is needed, based on the principle of mutual recognition but also taking into account the flexibility of the traditional system of mutual legal assistance. This new model could have a broader scope and should cover as many types of evidence as possible, taking account of the measures concerned.

The European Council invites the Commission to:

— propose a comprehensive system, after an impact assessment, to replace all the existing instruments in this area, including Council Framework Decision 2008/978/JHA of 18 December 2008 on the European Evidence Warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, covering as far as possible all types of evidence and containing deadlines for enforcement and limiting as far as possible the grounds for refusal,

— explore whether there are other means to facilitate admissibility of evidence in this area,

— explore whether certain investigative measures could be executed by law enforcement or judicial authorities of the requesting/issuing Member State in liaison and in agreement with the authorities of the executing state in accordance with Article 89 TFEU, and, where appropriate, make necessary proposals,

— explore if and how authorities of one Member State could obtain information rapidly from private or public entities of another Member State without use of coercive measures or by using judicial authorities of the other Member State,

— explore the results of the evaluation of the European Arrest Warrant, and, where appropriate, make proposals to increase efficiency and legal protection for individuals in the process of surrender, by adopting a step-by-step approach to other instruments on mutual recognition,

— prepare a comprehensive study on existing legal and administrative obstacles to cross-border enforcement of penalties and administrative decisions for road traffic offences, and to present, where necessary, further legislative and non-legislative initiatives to improve road safety in the Union.

The Union should aim for the systematic exchange of information and, as a long term goal, mutual recognition of judgments imposing certain types of disqualification.

The European Council invites the Commission to:

— study the use of disqualification in the Member States and propose to the Council a programme of measures, including exchange of information on certain types of disqualifications and, by adopting a long term step-by-step approach, which accords priority to cases where disqualification is most likely to affect personal safety or business life.

In the field of judicial cooperation, the European Council emphasises the need for Member States and Eurojust to implement thoroughly Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust, which, together with the Lisbon Treaty, offers an opportunity for the further development of Eurojust in the coming years, including in relation to initiation of investigations and resolving conflicts of competence. On the basis of an assessment of the implementation of this instrument, new possibilities could be considered in accordance with the relevant provisions of the Treaty, including giving further powers to the Eurojust national members, reinforcement of the powers of the College of Eurojust or the setting-up of a European Public Prosecutor.

3.1.2. *Civil law*

As regards civil matters, the European Council considers that the process of abolishing all intermediate measures (the exequatur), should be continued during the period covered by the Stockholm Programme. At the same time the abolition of the exequatur will also be accompanied by a series of safeguards, which may be measures in respect of procedural law as well as of conflict-of-law rules.

Mutual recognition should, moreover, be extended to fields that are not yet covered but are essential to everyday life, for example succession and wills, matrimonial property rights and the property consequences of the separation of couples, while taking into consideration Member States' legal systems, including public policy, and national traditions in this area.

The European Council considers that the process of harmonising conflict-of-law rules at Union level should also continue in areas where it is necessary, like separation and divorces. It could also include the area of company law, insurance contracts and security interests.

The European Council also highlights the importance of starting work on consolidation of the instruments adopted so far in the area of judicial cooperation in civil matters. First and foremost the consistency of Union legislation should be enhanced by streamlining the existing instruments. The aim should be to ensure the coherence and user-friendliness of the instruments, thus ensuring a more efficient and uniform application thereof.

The European Council invites the Commission to:

— assess which safeguards are needed to accompany the abolition of exequatur and how these could be streamlined,

— assess whether there are grounds for consolidation and simplification in order to improve the consistency of existing Union legislation,

— follow up on the recent study on the possible problems encountered with regard to civil status documents and access to registers of such documents.

In light of the findings, the Commission could submit appropriate proposals taking into account the different legal systems and legal traditions in the Member States. In the short term a system allowing citizens to obtain their own civil status documents easily could be envisaged. In the long term, it might be considered whether mutual recognition of the effects of civil status documents could be appropriate, at least in certain areas. Work developed by the International Commission on Civil Status should be taken into account in this particular field.

3.2. **Strengthening mutual trust**

One of the consequences of mutual recognition is that rulings made at national level have an impact in other Member States, in particular in their judicial systems. Measures aimed at strengthening mutual trust are therefore necessary in order to take full advantage of these developments.

The Union should support Member States' efforts to improve the efficiency of their judicial systems by encouraging exchanges of best practice and the development of innovative projects relating to the modernisation of justice.

3.2.1. *Training*

Training of judges (including administrative courts), prosecutors and other judicial staff is essential to strengthen mutual trust (see also Chapter 1.2.6). The Union should continue to support and strengthen measures to increase training in line with Articles 81 and 82 TFEU.

3.2.2. *Developing networks*

The European Council considers that contacts between senior officials of the Member States in areas covered by Justice and Home Affairs are valuable and should be promoted by the Union in so far as possible. Such areas could be, depending on national structures, senior police chiefs or prosecutors, heads of training institutes, heads of prison administrations, general directors of customs administration. Where appropriate, these networks should also be informed of the work of the Standing Committee on Internal Security (COSI), or be able to take part in the development of the Organised Crime Threat Assessment and other strategic tools of the Union. Such networks should primarily meet using existing structures such as Europol, Eurojust and Frontex or at the invitation of the Presidency as host country. Other Networks of professionals existing in this area should also continue to receive Union support. Among those are the European Network of Councils for the Judiciary and the Network of the Presidents of the Supreme Judicial Courts of the European Union.

3.2.3. *Evaluation*

As in other areas, the development of mutual recognition in the judicial sphere must go hand in hand with improvements in evaluation, both ex-ante and ex-post (See also Chapter 1.2.5).

3.2.4. *Improving the tools*

The European Council calls for the enhancement of the operational capabilities of and tools for judges, prosecutors and all other actors involved in the field of justice. To that end, the European Council calls for the more active involvement of Eurojust and the European Judicial Networks in civil and criminal law to participate in improving cooperation and the effective application of Union law by all practitioners. Work should continue on improving the electronic tools that have so far been developed and the necessary resources should be provided for pursuing this work.

3.2.5. *Implementation*

A priority of the Union should be the implementation of decisions which have already been taken. This should be done in several ways: by accompanying the implementation of Union legislation more closely, through the better use of the financing instruments, by increasing the training of judges and other professionals and by enhancing evaluation mechanisms and practical measures.

Without prejudice to the role of the Commission and the Court of Justice of the European Union, implementation is primarily a matter for the Member States, but as mutual recognition instruments are common tools, the Union should better accompany implementation of them by enabling the sharing of experiences and best practices.

The European Council invites the Commission to:

— ensure the sharing of information by way of developing handbooks or national facts sheets together with experts in civil and criminal law and Member States, on the use of mutual recognition instruments, in the same manner as what has been done for the European Arrest Warrant. The aim should be to have a handbook or national fact sheet for each of the instruments that have been adopted so far at the end of the 5-year period.

The European Council also considers that all modern means of electronic communication should be used to the fullest extent, and that the judicial authorities as soon as possible should be given means for secure electronic communications to enable safe correspondence. The Union should also put an emphasis on videoconferencing and on assisting the development of translation tools in order to make them as accurate as possible. These developments should be accompanied by and form part of the implementation of the e-Justice action plan. In addition, measures should be taken to enhance cooperation, while taking full account of data protection rules, between competent authorities so as to detect addresses where persons live as their habitual residence, in connection with service of documents.

3.2.6. *Detention*

The European Council considers that efforts should be undertaken to strengthen mutual trust and render more efficient the principle of mutual recognition in the area of detention. Efforts to promote the exchange of best practices should be pursued and implementation of the European Prison Rules, approved by the Council of Europe, should be supported. Issues such as alternatives to imprisonment, pilot projects on detention and best practices in prison management could also be addressed. The Commission is invited to reflect on this issue further within the possibilities offered by the Lisbon Treaty.

3.3. **Developing a core of common minimum rules**

To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters, the Union may adopt common minimum rules. The European Council considers that a certain level of approximation of laws is necessary to foster a common understanding of issues among judges and prosecutors, and hence to enable the principle of mutual recognition to be applied properly, taking into account the differences between legal systems and legal traditions of Member States.

3.3.1. *Criminal law*

Criminal behaviour in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis should become the object of common definitions of criminal offences and common minimum levels of maximum sanctions. These are the serious criminal offences referred to in Article 83(1) TFEU. Priority should be given to terrorism, trafficking in human beings, illicit drug trafficking, sexual exploitation of women and children and child pornography and computer crime.

The European Council invites the Commission to:

— examine whether the level of approximation is sufficient in relation to the adopted framework decisions and report on the need to establish common definitions and sanctions and to consider submitting new legislative proposals where further approximation is needed.

The relationship between approximation of criminal offences or their definition and the double criminality rule in the framework of mutual recognition should be further explored. The Commission is invited to make a report to the Council on this issue. One of the issues may be the necessity and feasibility of approximation or definition of criminal offence for which double criminality does not apply.

Criminal law provisions should be introduced when they are considered essential in order for the interests to be protected and, as a rule, be used only as a last resort.

Minimum rules with regard to the definition of criminal offences and sanctions may also be established when the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy which has been subject to harmonisation measures.

The European Council stresses the importance of the coherence of criminal law provisions in the various Union instruments and invites the Council to:

— implement the work on model standard provisions in criminal law and the Council and the Commission to continue to reflect, together with the European Parliament, on how to improve the coherence of criminal law provisions in various Union instruments,

and the Commission to:

— examine the possibilities of using the existing programmes to finance pilot schemes in the Member States testing alternatives to imprisonment.

3.3.2. *Civil law*

The abolition of exequatur will be accompanied by a series of safeguards, especially regarding judgments taken by default, which may be measures in respect of procedural law as well as of conflict-of-law rules (for example the right to be heard, the servicing of documents, time required for providing opinions, etc). The main policy objective in the area of civil procedural law is that borders between Member States should not constitute an obstacle either to the settlement of civil matters or to initiating court proceedings, or to the enforcement of decisions in civil matters. With the Conclusions of the Tampere European Council and the Hague programme: strengthening freedom, security and justice in the European Union, major steps have been taken to reach this goal. However, the European Council notes that the effectiveness of Union instruments in this field still needs to be improved.

The European Council invites the Commission:

— as a first step, to submit a report on the functioning of the present Union regime on civil procedural law across borders, and on the basis of that report put forward a proposal aimed at improving the consistency of existing Union legislation,

— to assess, also in the course of upcoming reviews of existing regulations, the need to establish common minimum standards or standard rules of civil procedure for the cross-border execution of judgments and decisions on matters such as the serving of documents, the taking of evidence, review procedures and enforcement, the establishment of minimum standards in relation to the recognition of decisions on parental responsibility and, where appropriate, to submit proposals on these issues,

— to continue the work on common conflict-of-law rules, where necessary.

3.4. **The benefits for citizens of a European judicial area**

3.4.1. *Providing easier access to justice*

Access to justice in the European judicial area must be made easier, particularly in cross-border proceedings. At the same time, efforts must continue to improve alternative methods of settling disputes, particularly in consumer law. Action is needed to help people overcome the language barriers that obstruct their access to justice.

The European Council considers that e-Justice presents an excellent opportunity to provide easier access to justice. The multiannual European e-Justice action plan, adopted at the end of November 2008 by the Council, sets the framework for developing European e-Justice activities until the end of 2013. The European e-Justice portal will be a way of keeping people better informed of their rights and giving them access to a range of information and services on the various judicial systems. Better use should be made of videoconferencing, for example to spare victims the effort of needless travel and the stress of participating in court proceedings. In accordance with data protection rules, some national registers will be gradually interconnected (for example registers on insolvency, interpreters, translators and wills). Some existing databases may also be partially integrated into the portal (for example the European Business Register and the European Land Information Service). In the medium term, some European and national cross-border procedures could be dealt with on-line (for example the European order for payment, the European small claims procedure and mediation). Furthermore, the use of electronic signatures should be promoted within the framework of the e-Justice project.

The European Council invites the Council, the Commission and the Member States to:

— create effective conditions to enable the parties to communicate with courts by electronic means in the context of legal proceedings. For that purpose, dynamic forms should be made available through the e-Justice portal as regards certain European procedures, such as the European order for payment procedure and the European small claims procedure. During this phase, electronic communication between judicial authorities should be improved decisively in the area of the application of e-Justice.

The European Council further encourages the Union institutions and the Member States to:

— devote efforts to the full implementation of the e-Justice action plan. In that context, the Commission is invited to put forward proposals within the framework of the financial perspectives for an adequate funding of e-Justice projects and in particular horizontal large-scale IT projects.

Certain formalities for the legalisation of documents also represent an obstacle or an excessive burden. Given the possibilities offered by the use of new technologies, including digital signatures, the Union should consider abolishing all formalities for the legalisation of documents between Member States. Where appropriate, thought should be given to the possibility of creating, in the long term, authentic European documents.

The European Council invites the Commission to:

— examine the possibility of dispensing with the formalities for the legalisation of documents between Member States, and submit a proposal to that effect.

3.4.2. *Supporting economic activity*

The European judicial area should serve to support economic activity in the single market.

The European Council invites the Commission to:

— assess the need for, and the feasibility of, providing for certain provisional, including protective, measures at Union level, to prevent for example the disappearance of assets before the enforcement of a claim,

— put forward appropriate proposals for improving the efficiency of enforcement of judgments in the Union regarding bank accounts and debtors' assets, based on the 2006 and 2008 Green Papers.

When devising measures of this kind, account should be taken on the impact they will have on the right to privacy and the right to the protection of citizens' personal data.

The European Council reaffirms that the common frame of reference for European contract law should be a non-binding set of fundamental principles, definitions and model rules to be used by the law-makers at Union level to ensure greater coherence and quality in the law-making process. The Commission is invited to submit a proposal on a common frame of reference.

The current financial crisis has emphasised the need to regulate financial markets and to prevent abuse. There is also a need to study further measures regarding business law, and to create a clear regulatory environment allowing small and medium enterprises in particular to take full advantage of the internal market so that they can grow and operate across borders as they do in their domestic market. There is a need to explore whether common rules determining the law applicable to matters of company law, rules on insolvency for banks and transfer of claims could be devised. The issue of contractual law also needs to be examined further.

The European Council invites the Commission to:

— consider whether there is a need to take measures in these areas, and, where appropriate, to put forward proposals in this respect.

3.5. **Increasing the Union's international presence in the legal field**

3.5.1. *Civil law*

The European Council considers that clearly defining Union external interests and priorities in the area of judicial cooperation in civil matters is very important with a view to interacting with third countries in a secure legal environment.

The 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters is open to the accession by other States and the Union should assess, in cooperation with the other Contracting Parties, which third countries could be encouraged to accede to it.

The Union should use its membership of The Hague Conference on Private International Law to actively promote the widest possible accession to the most relevant Conventions and to offer as much assistance as possible to other States with a view to the proper implementation of these instruments. The European Council invites the Council, the Commission and the Member States to encourage all partner countries to accede to those Conventions which are of particular interest to the Union.

In cases where no legal framework is in place for relations between the Union and partner countries, and where the development of new multilateral cooperation is not possible from the Union's standpoint, the option of bilateral agreements should be explored, on a case-by-case basis.

The European Council invites the Council and the Commission to:

— define a strategy in the area of civil matters for the coming years which is coherent with overall Union external action.

3.5.2. *Criminal law*

As regards the criminal law field, it will be necessary to identify priorities for the negotiations of mutual assistance and extradition agreements. The Union should actively promote the widest possible accession of the partner countries to the most relevant and functioning Conventions and to offer as much assistance as possible to other States with a view to the proper implementation of the instruments. The Union institutions should ensure, to the furthest extent possible, coherence between the Union and the international legal order. Where possible, synergy with the Council of Europe work should be considered.

The European Council calls upon the Commission, the Council and the European Parliament where appropriate to:

— develop a policy aimed at the establishment of agreements on international judicial cooperation with third countries of interest or within international organisations. In particular, the following criteria should be taken into account when deciding on the priority countries: strategic relationship, whether bilateral agreements already exist, whether the country in question adheres to Human Rights' principles, whether it cooperates with the Union in general and its Member States, and priorities of law enforcement and judicial cooperation,

— sponsor exchanges of best practice and the pooling of experience with non-Member States and, in particular with regard to enlargement countries, make full use of the instruments the Union has at its disposal to promote judicial reform and strengthen the rule of law, such as twinning schemes and peer reviews, also in cooperation with the Council of Europe,

— offer steady support to the justice systems in partner countries in order to promote the rule of law throughout the world,

— continue to promote the Rome Statute of the ICC principle of complementarity and compliance with Rome Statute obligations.

The European Council further invites the Commission to:

— submit to the Council in 2010 a list of countries that have requested to conclude agreements on mutual legal assistance and extradition with the Union as well as an assessment, based on the above mentioned principles of the appropriateness and urgency of concluding such agreements with these or other countries.

4. **A EUROPE THAT PROTECTS**

4.1. **Internal Security Strategy**

The European Council is convinced that the enhancement of actions at European level, combined with better coordination with actions at regional and national level, are essential to protection from trans-national threats. Terrorism and organised crime, drug trafficking, corruption, trafficking in human beings, smuggling of persons and trafficking in arms, inter alia, continue to challenge the internal security of the Union. Cross-border wide-spread crime has become an urgent challenge which requires a clear and comprehensive response. Action of the Union will enhance the work carried out by Member States' competent authorities and will improve the outcome of their work.

The European Council calls upon the Council and the Commission to:

— define a comprehensive Union internal security strategy based, in particular, on the following principles:

  — clarity on the division of tasks between the Union and the Member States, reflecting a shared vision of today's challenges,

  — respect for fundamental rights, international protection and the rule of law,

— solidarity between Member States,

— reflection of a proactive and intelligence-led approach,

— the need for a horizontal and cross-cutting approach in order to be able to deal with complex crises or natural or man-made disasters,

— stringent cooperation between the Union agencies, including further improving their information exchange,

— a focus on implementation and streamlining as well as on improvement of preventive action,

— the use of regional initiatives and regional cooperation,

— the aim of making citizens aware of the importance of the Union's work to protect them.

Developing, monitoring and implementing the internal security strategy should become one of the priority tasks of COSI set up under Article 71 TFEU. In order to ensure the effective enforcement of the internal security strategy, it shall also cover security aspects of an integrated border management and, where appropriate, judicial cooperation in criminal matters relevant to operational cooperation in the field of internal security.

The internal security strategy should also take into account the external security strategy developed by the Union as well as by other Union policies, in particular those concerning the internal market. Account should also be taken of the impact it may have on relations with the Union's neighbourhood and particularly with the candidate and potential candidate countries, since internal security is interlinked with the external dimension of the threats. In a global world, crime knows no borders. As the policies followed in the area of freedom, security and justice gradually reach maturity, they should support each other and grow in consistency. In the years to come they should fit smoothly together with the other policies of the Union.

The European Council asks the Commission:

— to consider the feasibility of setting up of an Internal Security Fund to promote the implementation of the Internal Security Strategy so that it becomes an operational reality.

4.2. **Upgrading the tools for the job**

Security in the Union requires an integrated approach where security professionals share a common culture, pool information as effectively as possible and have the right technological infrastructure to support them.

4.2.1. *Forging a common culture*

The European Council stresses the need to enhance mutual trust between all the professionals concerned at national and Union level. A genuine European law enforcement culture should be developed through exchange of experiences and good practice as well as the organisation of joint training courses and exercises in line with Chapter 1.2.6.

The European Council encourages Member States to devise mechanisms that gives incentives to professionals for taking up duties related to cross-border cooperation and thereby favour the creation of a Union-wide response at all levels.

4.2.2. *Managing the flow of information*

The European Council notes with satisfaction that developments over the past years in the Union have led to a wide choice and created an extensive toolbox for collecting, processing and sharing information between national authorities and other European players in the area of freedom, security and justice. The principle of availability will continue to give important impetus to this work.

The European Council acknowledges the need for coherence and consolidation in developing information management and exchange and invites the Council and the Commission to:

— implement the Information Management Strategy for EU internal security [1], which includes a strong data protection regime. Development must be coherent with the priorities set for the area of freedom, security and justice and the internal security strategy, supporting the business vision for law enforcement, judicial cooperation, border management and public protection.

In this context, the European Council invites the Commission to:

— assess the need for developing a European Information Exchange Model based on the evaluation of the current instruments, including Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA (Prüm framework) and Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union (the so-called 'Swedish Framework Decision'). These assessments will determine whether these instruments function as originally intended and meet the goals of the Information Management Strategy.

[1] See Council document 16637/09 JAI 873.

The Information Management Strategy for EU internal security is based on:

— business-driven development (a development of information exchange and its tools that is driven by law enforcement needs,

— a strong data protection regime consistent with the strategy for protection of personal data referred to in Chapter 2,

— a well targeted data collection, both to protect fundamental rights of citizens and to avoid an information overflow for the competent authorities,

— guiding principles for a policy on the exchange of information with third countries for law enforcement purposes,

— interoperability of IT systems ensuring full conformity with data protection and data security principles when developing such systems,

— a rationalisation of the different tools, including the adoption of a business plan for large IT systems,

— overall coordination, convergence and coherence.

The necessary Union and national structures need to be in place to ensure the implementation and management of the different information management tools. The European Council also calls for the establishment of an administration, as proposed by the Commission, having the competence and capacity to develop technically and manage large-scale IT systems in the area of freedom, security and justice, as referred to in the joint statements of the European Parliament, the Council and the Commission in December 2006 and October 2007. Possible additional tasks should be considered by the Council in the light of the Information Management Strategy.

Reflecting the discussions in the Council and the European Parliament, with a view to setting up an Union Passenger Names Record (PNR) system, the European Council calls upon the Commission:

— to propose an Union measure, that ensures a high level of data protection, on PNR for the purpose of preventing, detecting, investigating and prosecuting terrorist offences and serious crime, based on an impact assessment.

4.2.3. *Mobilising the necessary technological tools*

The European Council, while ensuring consistency with the strategy for protection of personal data referred to in Chapter 2, stresses the need for new technologies to keep pace with and promote the current trends towards mobility, while ensuring that people are safe, secure and free.

The European Council invites the Council, the Commission, the European Parliament, where appropriate, and the Member States to:

— draw up and implement policies to ensure a high level of network and information security throughout the Union and improve measures aimed at protection, security preparedness and resilience of critical infrastructure, including Information and Communication Technology (ICT) and services infrastructure,

— promote legislation that ensures a very high level of network security and allows faster reactions in the event of cyber attacks.

The European Council also invites the Council and the Commission to:

— ensure that the priorities of the internal security strategy are tailored to the real needs of users and focus on improving interoperability. Research and development in the field of security should be supported by public-private partnerships.

The European Council invites:

— the Member States to implement the European Criminal Records Information System (ECRIS) as soon as possible,

— the Commission to assess whether the networking of criminal records makes it possible to prevent criminal offences from being committed (for example through checks on access to certain jobs, particularly those relating to children), and whether it is possible to extend the exchange of information on supervision measures,

— the Commission to propose, in addition to ECRIS, a register of third-country nationals who have been convicted by the courts of the Member States.

The European Council recalls the need for ensuring consistency with the strategy for the protection of personal data and the business plan for setting up large scale IT systems as referred to in Chapter 2, and calls on the Commission to:

— make a feasibility study on the need for, and the added value of, setting up a European Police Records Index system (EPRIS) and to make a report to the Council in the course of 2012 on the issue,

— to reflect on how to further develop the use of existing databases for law enforcement purposes, while fully respecting data protection rules, so as to make full use of new technologies with a view to protecting the citizens,

— examine how best to promote that Member States' competent authorities can exchange information on travelling violent offenders including those attending sporting events or large public gatherings.

4.3. **Effective policies**

4.3.1. *More effective European law enforcement cooperation*

The prime objective of Union law enforcement cooperation is to combat forms of crime that have typically a cross-border dimension. Focus should not only be placed on combating terrorism and organised crime but also cross-border widespread crime that have a significant impact on the daily life of the citizens of the Union. Europol should become a hub for information exchange between the law enforcement authorities of the Member States, a service provider and a platform for law enforcement services.

The European Council encourages Member States' competent authorities to use the investigative tool of Joint Investigative Teams (JITs) as much as possible in appropriate cases. Europol and Eurojust should be systematically involved in major cross-border operations and informed when JITs are set up. The model agreement for setting up JITs should be updated. Europol and Eurojust should step up their cooperation further. Eurojust should ensure that its work is followed up at judicial level. Europol and Eurojust should expand their work with third countries especially by forging closer links with the regions and countries neighbouring the Union. Europol should work more closely with Common Security and Defence Policy (CSDP) police missions and help promote standards and good practice for European law enforcement cooperation in countries outside the Union. Cooperation with Interpol should be stepped up with a view to creating synergies and avoiding duplication.

The European Council invites the Commission, and, where appropriate, the Council and the High Representative of the Union for foreign affairs and security policy, to:

— examine how it could be ensured that Europol receives information from Member States law enforcement authorities so that the Member States can make full use of Europol capacities,

— examine how operational police cooperation could be stepped up, for example as regards incompatibility of communication systems and other equipment, use of undercover agents, and, where necessary, draw operational conclusions to that end,

— issue as soon as possible a reflection document on how best to ensure that the activities of Europol may be scrutinised and evaluated by the European Parliament, together with national parliaments in line with Articles 85 and 88 TFEU,

— consider developing a Police Cooperation Code which would consolidate existing instruments and, where necessary, amend and simplify them,

— make a proposal to the Council and the European Parliament to adopt a decision on the modalities of cooperation, including on exchange of information between Union agencies, in particular Europol, Eurojust and Frontex, which ensures data protection and security,

— propose measures on how the Union agencies in this area could conclude operational arrangements between themselves and how they should develop their participation in regional initiatives conducted by Member States and in regional bodies that further law enforcement cooperation,

— agree on common quality standards within the forensic field, *inter alia*, to develop best practice for crime scene investigations,

— examine whether there are obstacles to cooperation between CSDP police missions and Europol and make appropriate proposals to eliminate such obstacles.

Pilot projects in cross-border regional cooperation dealing with joint operational activities and/or cross-border risk assessments, such as Joint Police and Customs Centres, should be promoted by the Union, *inter alia*, through financing programmes.

The development of ad hoc law enforcement cooperation at sporting events or large public gatherings (for example. the 2012 Olympic Games, Euro 2012) should be implemented.

4.3.2. *More effective crime prevention*

The best way to reduce the level of crime is to take effective measures to prevent them from ever occurring, including promoting social inclusion, by using a multidisciplinary approach which also includes taking administrative measures and promoting cooperation between administrative authorities, citizens of the Union that have similar experiences and are affected in similar ways by crime and related insecurity in their everyday lives.

The awareness of the links between local crime and organised crime and its complex cross-border dimensions is increasing. Member States have developed different methods to prevent crime and should be encouraged to share experiences and best practice and, in doing so, to add to the general knowledge and its respective effectiveness and efficiency, thereby avoiding the duplication of work.

In addition, the cross-border dimension underlines the importance of enhancing and developing knowledge at European level on how crime and criminality in the Member States is interconnected, to support Member States when taking individual or joint action, and to call for action by Union institutions when deemed necessary. With the Lisbon Treaty, cooperation within the area of crime prevention will be further recognised with a new legal basis.

The European Council invites Member States and the Commission to actively promote and support crime prevention measures focusing on prevention of mass criminality and cross-border crime affecting the daily life of our citizens in accordance with Article 84 TFEU.

The European Council invites the Commission to submit a proposal building on the evaluation of the work carried out within the European Crime Prevention Network (EUCPN) with a view to setting up an Observatory for the Prevention of Crime (OPC), the tasks of which will be to collect, analyse and disseminate knowledge on crime, including organised crime (including statistics) and crime prevention, to support and promote Member States and Union institutions when they take preventive measures and to exchange best practice. The OPC should build on the work carried out within the framework of the EUCPN and the evaluation of it. It should include or replace the EUCPN, with a secretariat located within an existing Union agency and functioning as a separate unit. The European Council invites the Commission to:

— submit a proposal on setting up the OPC by 2013 at the latest.

4.3.3. *Statistics*

Adequate, reliable and comparable statistics (both over time and between Member States and regions) are a necessary prerequisite, *inter alia*, for evidence-based decisions on the need for action, on the implementation of decisions and on the effectiveness of action.

The European Council invites the Commission to:

— continue developing statistical tools to measure crime and criminal activities and reflect on how to further develop, after 2010, the actions outlined and partly implemented in the Union Action plan for 2006-2010 on developing a comprehensive and coherent Union strategy to measure crime and criminal justice, in view of the increased need for such statistics in a number of areas within the area of freedom, security and justice.

4.4. **Protection against serious and organised crime**

4.4.1. *Combating serious and organised crime*

As organised crime continues to become more globalised, it is increasingly important that law enforcement has the ability to work effectively across borders and jurisdictions. The Union can bring real added value to the fight against certain types of threat that require a high level of coordinated action. The fight against these criminal phenomena will involve systematic exchange of information, widespread use of the Union agencies and investigative tools and, where necessary, the development of common investigative and prevention techniques and increased cooperation with third countries.

The European Council therefore calls upon the Council and the Commission:

— to adopt an organised crime strategy, within the framework of the Internal Security Strategy,

— set its priorities in crime policy by identifying the types of crime against which it will deploy the tools it has developed, while continuing to use the Organised Crime Threat Assessment Report (OCTA) and its regional versions.

Criminal phenomena to be tackled as a priority at European level should be selected. The European Council considers that the following types of crime deserve special priority in the years to come.

4.4.2. *Trafficking in human beings*

Trafficking in human beings and smuggling of persons are very serious crimes involving violations of human rights and human dignity that the Union cannot condone. The European Council finds it necessary to strengthen and enhance the prevention and combating of trafficking and smuggling. This calls for a coordinated and coherent policy response which goes beyond the area of freedom, security and justice and, while taking account of new forms of exploitation, includes external relations, development cooperation, social affairs and employment, education and health, gender equality and non-discrimination. It should also benefit from a broad dialogue between all stakeholders, including civil society, and be guided by an improved understanding and research of trafficking in human beings and smuggling of persons at Union and at international level.

In this context, cooperation and coordination with third countries is of crucial importance. The Action-Oriented Paper on the fight against trafficking in human beings, adopted by the Council on 30 November 2009 should be used to its fullest extent.

It is necessary that the Union develops a consolidated Union policy against trafficking in human beings aiming at further strengthening the commitment of, and efforts made, by the Union and the Member States to prevent and combat such trafficking. This includes building up and strengthening partnerships with third countries, improving coordination and cooperation within the Union and with the mechanisms of the Union external dimension as an integral part of such a policy. Progress should also be monitored and COSI regularly informed of coordination and cooperation against trafficking. The fight against human trafficking must mobilise all means of action, bringing together prevention, law enforcement, and victim protection, and be tailored to combating trafficking into, within and out of the Union.

The European Council therefore invites the Council to consider establishing an EU Anti-Trafficking Coordinator (EU ATC) and, if it decides so, to determine the modalities therefore in such a way that all competences of the Union can be used in the most optimal way in order to reach a well coordinated and consolidated Union policy against trafficking in human beings.

The European Council calls for:

— the adoption of new legislation on combating trafficking and protecting victims,

— the Commission to examine whether ad hoc cooperation agreements with specific third countries to be identified by the Council could be a way to enhance fight against trafficking and to make proposals to that end. In particular, such agreements could involve full use of all leverage available to the Union, including use of financing programmes, cooperation for the exchange of information, judicial cooperation and migration tools,

— Europol, with the support of the Member States, to step up support for information gathering and strategic analysis, to be carried out in cooperation with the countries of origin and of transit,

— Eurojust to step up its efforts to coordinate investigations conducted by Member States' authorities into trafficking in human beings,

— the Commission:

  — to propose further measures to protect and assist victims through an array of measures including the development of compensation schemes, safe return and assistance with reintegration into society in their country of origin if they return voluntarily and those relating to their stay; the Union should establish partnerships with the main countries of origin,

  — to propose cooperative measures to mobilise consular services in the countries of origin with a view to preventing the fraudulent issuing of visas. Information campaigns aimed at potential victims, especially women and children, could be conducted in the countries of origin in cooperation with the authorities there,

  — to propose measures to make border checks more efficient in order to prevent human trafficking, in particular the trafficking of children.

4.4.3. *Sexual exploitation of children and child pornography*

Protecting children against the danger of sexual abuse is an important element in the strategy of children's rights.

The European Council invites:

— the Council and the European Parliament to adopt new legislation on combating sexual abuse, sexual exploitation of children and child pornography,

— the Commission to accompany this legislation, once adopted, by measures supported under the Safer Internet Programme 2009-2013,

— The Commission to examine how Member States' competent authorities could exchange information on best practices,

— the Commission to explore how the Union could promote partnerships with the private sector on this subject and expand such public-private partnerships to the financial sector in order to disrupt the money transfers related to websites with child abuse content,

— the Commission to build on the child alert mechanism and explore the creation of an Union-wide child abduction Network in order to promote cooperation between the competent authorities of the Member States, with a view to ensuring interoperability,

— the Commission, in order to prevent child abuse, to explore ways to enhance cooperation between Member States' competent authorities in response to the movement of child sex offenders known to be an ongoing threat.

4.4.4. *Cyber crime*

The Internet has considerably facilitated communication and promoted global development and interaction. At the same time, new, modern challenges have emerged in the form of cyber crime as criminal groups have taken effectively advantage of technologies. This in turn makes investigations more complicated for law enforcement authorities. The Union should therefore promote policies and legislation that ensure a very high level of network security and allow faster reactions in the event of cyber disruptions or cyber attacks.

As soon as possible, Member States should ratify the 2001 Council of Europe Convention on Cybercrime. This Convention should become the legal framework of reference for fighting cyber crime at global level. Europol could play a role as a European resource centre by creating a European platform for identifying offences which should also assist Member States national alert platforms to exchange best practices.

The European Council also calls upon the Member States to:

— give their full support to the national alert platforms in charge of the fight against cyber crime and emphasises the need for cooperation with countries outside the Union.

The European Council invites:

— the Commission to take measures for enhancing/improving public-private partnerships,

— Europol to step up strategic analysis on cyber crime.

The Union should also clarify the rules on jurisdiction and the legal framework applicable to cyberspace within the Union, including how to obtain evidence in order to promote cross-border investigations.

The European Council:

— calls upon the Member States to improve judicial cooperation in cyber crime cases,

— requests the Commission to make proposals for clarifying, where needed, the legal framework on investigations in the cyber space within the Union.

Cooperation should also become more efficient in relation to the sale of fake pharmaceuticals on the Internet.

4.4.5. *Economic crime and corruption*

The Union must reduce the number of opportunities available to organised crime as a result of a globalised economy, in particular during a crisis that is exacerbating the vulnerability of the financial system, and allocate appropriate resources to meet these challenges effectively.

The European Council calls upon the Member States and, where appropriate, the Commission to:

— enhance the capacity for financial investigations and combine all available instruments in fiscal, civil and criminal law. Forensic financial analysis must be developed by pooling resources, in particular for training. The confiscation of assets of criminals should be made more efficient and cooperation between Asset Recovery Offices made stronger,

— to identify assets of criminals more effectively and seize them and, whenever possible, consider re-using them wherever they are found in the Union,

— further develop information exchange between the Financial Intelligence Units (FIUs), in the fight against money laundering. Within the framework of the European Information Management System, their analyses could feed a database on suspicious transactions, for example, within Europol,

— mobilise and coordinate sources of information to identify suspicious cash transactions and to confiscate the proceeds from crime in line with the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, for instance through legislation determining whether proceeds are legitimate or not,

— improve the prosecution of tax evasion and corruption in the private sector and the early detection of fraudulent market abuse (such as insider dealing and market manipulation), as well as the misappropriation of funds,

— facilitate the exchange of best practice in prevention and law enforcement, in particular within the framework of the Asset Recovery Office Network and the Anti-Corruption Network.

The European Council invites the Commission to:

— develop indicators, on the basis of existing systems and common criteria, to measure efforts in the fight against corruption, in particular in the areas of the *acquis* (public procurement, financial control, etc) and to develop a comprehensive anti-corruption policy, in close cooperation with the Council of Europe Group of States against Corruption (GRECO). The Commission should submit a report in 2010 to the Council on the modalities for the Union to accede to GRECO,

— with a view to preventing financial crime, consider measures to facilitate identification of beneficial owners behind assets and increase transparency of legal persons and legal arrangements,

— increase coordination between Member States in the framework of the United Nations Convention against Corruption (UNCAC), GRECO and the Organisation for Economic Cooperation and Development (OECD) work in the field of combating corruption,

— to reflect on how to improve prevention of financial crime.

Counterfeiting poses a serious danger for consumers and economies. The Union must make further studies of this phenomenon and ensure that greater account is taken of law enforcement aspects in the work of the future European Observatory on Counterfeiting and Piracy. The European Council calls upon the Council and the European Parliament to consider as soon as possible legislation on criminal measures aimed at ensuring the enforcement of intellectual property rights.

4.4.6. *Drugs*

The Union Drugs Strategy (2005-2012) advocates for a global, balanced approach, based on the simultaneous reduction of supply and demand. This strategy will expire during the Stockholm Programme. It must be renewed on the basis of a detailed evaluation of the EU Drugs Action Plan for 2009-2012, carried out by the Commission with the support of the European Monitoring Centre for Drugs and Drug Addiction and Europol.

This renewed Strategy should be founded on three principles:

— improving coordination and cooperation by using all available means under the Lisbon Treaty, and in particular in the Western Balkans, Latin America, Eastern Partnership countries, West Africa, Russia, Central Asia including Afghanistan and the United States,

— the mobilisation of civil society, in particular, by reinforcing initiatives such as the European Action on Drugs,

— contributing to research and comparability of information in order to obtain access to reliable data.

The European Council invites the Council and the Commission to ensure that the new Drugs Strategy supports the Union's Internal Security Strategy and dovetails with other related policy tools such as OCTA, the future Organised Crime Strategy and the Council conclusions on the fight against serious and organised crime.

4.5. **Terrorism**

The European Council considers that the threat from terrorists remains significant and is constantly evolving in response to both the international community's attempts at combating it and new opportunities that present themselves. We must not lower our guard against these heinous criminals.

Respect for the Rule of Law, fundamental rights and freedoms is one of the bases for the Union's overall counter-terrorism work. Measures in the fight against terrorism must be undertaken within the framework of full respect for fundamental rights and freedoms so that they do not give rise to challenge. Moreover, all the parties concerned should avoid stigmatising any particular group of people, and should develop intercultural dialogue in order to promote mutual awareness and understanding.

The Union must ensure that all tools are deployed in the fight against terrorism while fully respecting fundamental rights and freedoms. The European Council reaffirms its counter-terrorism strategy consisting of four strands of work — prevent, pursue, protect and respond — and calls for a reinforcement of the prevention strand.

The European Council reaffirms the importance of the role of the EU Counter Terrorism Coordinator in ensuring implementation and evaluation of the Counter Terrorist strategy, coordinating Counter Terrorist work within the Union, and fostering better communication between the Union and third countries.

The European Council calls upon:

— Member States to develop prevention mechanisms, in particular to allow the early detection of signs of radicalisation or threats, including threats from violent, militant extremism,

— the Commission, the Council and Member States to improve initiatives to counter radicalisation in all vulnerable populations on the basis of an evaluation of the effectiveness of national policies. Member States should identify best practices and specific operational tools to be shared with other Member States. New areas of work could include integration and the fight against discrimination,

— Member States, government institutions and the Commission, together with the civil society, to enhance their efforts and cooperate even more closely, especially at local level, in order to understand all the factors underlying the phenomenon and to promote strategies that encourage people to give up terrorism. To that end, a network of local professionals should be set up and networks for exchanging practices on prevention should be developed.

The European Council stresses the importance of better understanding the methods used for dissemination of terrorist propaganda, including on Internet. This will require better technical resources and know-how. Work on aviation and maritime security need to be developed, along with threat analysis, in close cooperation with transport operators in order to mitigate the impact on the travelling public. Greater attention should be paid to potential targets such as urban mass transit and high speed rail networks, as well as energy and water infrastructures.

The European Council considers that the instruments for combating the financing of terrorism must be adapted to the new potential vulnerabilities of the financial system, as well as cash smuggling and abuse of money services, and to new payment methods used by terrorists.

The European Council calls upon the Commission to:

— promote increased transparency and responsibility for charitable organisations with a view to ensuring compatibility with Special Recommendation (SR) VIII of the Financial Action Task Force (FATF),

— take into account new payment methods in the elaboration/update of Counter Terrorist Financing measures,

— examine the possibilities to track terrorist financing within the Union,

— present measures to improve feedback to financial institutions regarding the outcome of their cooperation in the fight against financing of terrorism.

The Union must ensure that its policies are in full compliance with international law, in particular, human rights law. It will play an active role in the fight against terrorism in different multilateral forums, and in particular in the United Nations (UN), where it will continue to work with partners towards a Comprehensive Convention on International Terrorism and towards enhancing the design, implementation and effectiveness of sanctions by the UN Security Council with a view to safeguarding fundamental rights and freedoms and ensuring fair and clear procedures. Cooperation with third countries in general and within international organisations need to be strengthened.

In order to be able to analyse the threats at European level, a methodology based on common parameters should be established. Full use should be made of Europol, SitCen and Eurojust in the fight against terrorism.

The EU Action Plan on Enhancing the security of Explosives should be implemented and better information on the safety of explosives provided. A legislative framework to address the dangers associated with precursors should be developed.

4.6. **Comprehensive and effective Union Disaster Management: reinforcing the Union's capacities to prevent, prepare for and respond to all kinds of disasters**

Natural and man-made disasters such as forest fires, earthquakes, floods and storms, as well as terrorist attacks, increasingly affect the safety and security of citizens and call for the further development of Union action in disaster management.

Union disaster management should be based on an integrated approach, covering the whole disaster cycle encompassing prevention, preparedness, response and recovery for actions both inside and outside the Union.

Union disaster management is built on two main principles: the responsibility of Member States for providing their citizens with the necessary protection in view of the existing risks and threats, and solidarity amongst the Member States to assist each other both before, during and after disasters, if catastrophes overwhelm national capacities or affect more than one Member State. The European Council considers that future Union action should be guided by the objectives of reducing vulnerability to disasters by developing a strategic approach to disaster prevention and by further improving preparedness and response while recognising national responsibility. Guidelines for hazard and risk-mapping methods, assessments and analyses should be developed as well as an overview of the natural and man-made risks that the Union may face in the future. Continued efforts are necessary to strengthen the Union Civil Protection Mechanism and to improve the civil protection instruments, including the availability, interoperability and use of and support for the coordination of assistance also outside the Union's territory on occasions of serious emergencies involving citizens of the Union abroad. The Monitoring and Information Centre (MIC) should be reinforced in order to improve the coordination of Member States' assistance, provide mapping and analytical support to the Member States for the further identification and registration of national and multinational civil protection modules and develop training and exercises in order to contribute to an efficient Union disaster response.

Reducing vulnerability to attacks is one of the major objectives pursued with the Union action concerning the protection of Union Critical Infrastructure. Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European Critical Infrastructures and the assessment of the need to improve their protection, when implemented, should be analysed and reviewed in due course in order to consider the possible inclusion of additional policy sectors.

The chemical, biological, radiological and nuclear (CBRN) risk, and in particular the threat of terrorist groups using CBRN materials, has led to action at national and Union level. The overall goal of the policy on CBRN security is to present a prioritised, relevant and effective European strategy to enhance the protection of citizens of the Union from incidents involving CBRN materials. In order to achieve this goal, the implementation of the EU CBRN Action Plan based on an all-hazards approach, including actions to prevent, detect, prepare and respond to larger incidents with high risk CBRN materials, is vital.

Increasingly research will be of importance to support all areas of disaster management. Possibilities for research within the Seventh Framework Programme for research and technological development for the period 2007 to 2013 and within the following framework programmes need to be analysed and appropriate proposals should be made to support that goal.

Close cooperation with international organisations, in particular UN, which has an overall coordinating role in international humanitarian response should continue to be a priority for interventions in third countries, both on the ground and in terms of preparedness (training, joint exercises). In accordance with the 2007 European Consensus on Humanitarian Aid a strong Union coordination and role will enhance the overall international humanitarian response, including concerted efforts to improve the humanitarian system, and would also reinforce the Union ambition of working closely with other humanitarian actors. The safety and security of the Union requires continuous dialogue and cooperation with third countries, and in particular neighbouring countries and countries with a Member State perspective. The Union's increasing initiatives for strengthening regional cooperation, for example for the Mediterranean, the Baltic Sea area and the Black Sea Region, as well as the Eastern partnership, are designed to contribute to this.

5. ACCESS TO EUROPE IN A GLOBALISED WORLD

5.1. Integrated management of the external borders

The Union must continue to facilitate legal access to the territory of its Member States while in parallel taking measures to counteract illegal immigration and cross-border crime and maintaining a high level of security. The strengthening of border controls should not prevent access to protection systems by those persons entitled to benefit from them, and especially people and groups that are in vulnerable situations. In this regard, priority will be given to those in need of international protection and to the reception of unaccompanied minors. It is essential that the activities of Frontex and of the EASO are coordinated when it comes to the reception of migrants at the Union's external borders. The European Council calls for the further development of integrated border management, including the reinforcement of the role of Frontex in order to increase its capacity to respond more effectively to changing migration flows.

The European Council therefore:

— requests the Commission to put forward proposals no later than early 2010 to clarify the mandate and enhance the role of Frontex, taking account of the results of the evaluation of the Agency and the role and responsibilities of the Member States in the area of border control. Elements of these proposals could contain preparation of clear common operational procedures containing clear rules of engagement for joint operations at sea, with due regard to ensuring protection for those in need who travel in mixed flows, in accordance with international law as well as increased operational cooperation between Frontex and countries of origin and of transit and examination of the possibility of regular chartering financed by Frontex. In order to promote the proper enforcement of the applicable statutory framework for Frontex operations, the Commission should consider including a mechanism for reporting and recording incidents that can be satisfactorily followed up by the relevant authorities,

— invites Frontex itself to consider, within its mandate, establishing regional and/or specialised offices to take account of the diversity of situations, particularly the land border to the East and the sea border to the South. Creating such offices should in no account undermine the unity of the Frontex agency. Before creating such offices, Frontex should report to the Council on its intentions,

— invites the Commission to initiate a debate on the long-term development of Frontex. This debate should include, as was envisaged in the Hague programme, the feasibility of the creation of a European system of border guards,

— invites the EASO to develop methods to better identify those in need of international protection in mixed flows, and to cooperate with Frontex wherever possible,

— considers that the evaluation of the Schengen area will continue to be of key importance and that it therefore should be improved by strengthening the role of Frontex in this field,

— invites the Council and the Commission to support enhanced capacity building in third countries so that they can control efficiently their external borders.

The European Council looks forward to the continued phased development of the European Border Surveillance System (Eurosur) in the Southern and Eastern borders, with a view to putting in place a system using modern technologies and supporting Member States, promoting interoperability and uniform border surveillance standards and to ensuring that the necessary cooperation is established between the Member States and with Frontex to share necessary surveillance data without delay. This development should take into account the work in other relevant areas of the Integrated Maritime Policy for the European Union as well as being able in the medium term to allow for cooperation with third countries. The European Council invites the Commission to make the necessary proposals to achieve these objectives.

The European Council takes note of the ongoing studies of Member States and Frontex in the field of automated border control and encourages them to continue their work in order to establish best practice with a view to improving border controls at the external borders.

The European Council also invites Member States and the Commission to explore how the different types of checks carried out at the external border can be better coordinated, integrated and rationalised with a view to the twin objective of facilitating access and improving security. Moreover, the potential of enhanced information exchange and closer cooperation between border guard authorities and other law enforcement authorities working inside the territory should be explored, in order to increase efficiency for all the parties involved and fight cross-border crime more effectively.

The European Council considers that technology can play a key role in improving and reinforcing the system of external border controls. The entry into operation of the Second generation Schengen Information System II (SIS II) and the roll-out of the Visa Information system (VIS) therefore remains a key objective and the European Council calls on the Commission and Member States to ensure that they now become fully operational in keeping with the timetables to be established for that purpose. Before creating new systems, an evaluation of these and other existing systems should be made and the difficulties encountered when they were set up should be taken into account. The setting up of an administration for large-scale IT systems could play a central role in the possible development of IT systems in the future.

The European Council is of the opinion that an electronic system for recording entry to and exit from Member States could complement the existing systems, in order to allow Member States to share data effectively while guaranteeing data protection rules. The introduction of the system at land borders deserves special attention and the implications to infrastructure and border lines should be analysed before implementation.

The possibilities of new and interoperable technologies hold great potential for rendering border management more efficient as well as more secure but should not lead to discrimination or unequal treatment of passengers. This includes, *inter alia*, the use of gates for automated border control.

The European Council invites the Commission to:

— present proposals for an entry/exit system alongside a fast track registered traveller programme with a view to such a system becoming operational as soon as possible,

— to prepare a study on the possibility and usefulness of developing a European system of travel authorisation and, where appropriate, to make the necessary proposals,

— to continue to examine the issue of automated border controls and other issues connected to rendering border management more efficient.

5.2. Visa policy

The European Council believes that the entry into force of the Visa Code and the gradual roll-out of the VIS will create important new opportunities for further developing the common visa policy. That policy must also be part of a broader vision that takes account of relevant internal and external policy concerns. The European Council therefore encourages the Commission and Member States to take advantage of these developments in order to intensify regional consular cooperation by means of regional consular cooperation programmes which could include, in particular, the establishment of common visa application centres, where necessary, on a voluntary basis.

The European Council also invites:

— the Commission and Council to continue to explore the possibilities created by the conclusion of visa facilitation agreements with third countries in appropriate cases,

— the Commission to keep the list of third countries whose nationals are or are not subject to a visa requirement under regular review in accordance with appropriate criteria relating for example to illegal immigration, public policy and security, which take account of the Union's internal and foreign policy objectives,

— the Commission to strengthen its efforts to ensure the principle of visa reciprocity and prevent the (re)introduction of visa requirements by third countries towards any Member State and to identify measures which could be used prior to imposing the visa reciprocity mechanism towards those third countries.

The European Council, with a view to creating the possibility of moving to a new stage in the development of the common visa policy, while taking account of Member States competences in this area, invites the Commission to present a study on the possibility of establishing a common European issuing mechanism for short term visas. The study could also examine to what degree an assessment of individual risk could supplement the presumption of risk associated with the applicant's nationality.

6. A EUROPE OF RESPONSIBILITY, SOLIDARITY AND PARTNERSHIP IN MIGRATION AND ASYLUM MATTERS

The European Council recognises both the opportunities and challenges posed by increased mobility of persons, and underlines that well-managed migration can be beneficial to all stakeholders. The European Council equally recognises that, in the context of the important demographic challenges that will face the Union in the future with an increased demand for labour, flexible migration policies will make an important contribution to the Union's economic development and performance in the longer term. The European Council is of the opinion that the long-term consequences of migration, for example on the labour markets and the social situation of migrants, have to be taken into account and that the interconnection between migration and integration remains crucial, inter alia, with regard to the fundamental values of the Union. Furthermore, the European Council recalls that the establishment of a Common European Asylum System (CEAS) by 2012 remains a key policy objective for the Union.

The European Council calls for the development of a comprehensive and sustainable Union migration and asylum policy framework, which in a spirit of solidarity can adequately and proactively manage fluctuations in migration flows and address situations such as the present one at the Southern external borders. Serious efforts are needed to build and strengthen dialogue and partnership between the Union and third countries, regions and organisations in order to achieve an enhanced and evidence-based response to these situations, taking into account that illegal immigrants enter the Union also via other borders or through misuse of visa. An important objective is to avoid the recurrence of tragedies at sea. When tragic situations unfortunately happen, ways should be explored to better record and, where possible, identify migrants trying to reach the Union.

The European Council recognises the need to find practical solutions which increase coherence between migration policies and other policy areas such as foreign and development policy and trade, employment, health and education policy at the European level. In particular, the European Council invites the Commission to explore procedures that to a greater extent link the development of migration policy to the development of the post-Lisbon Strategy. The European Council recognises the need to make financial resources within the Union increasingly flexible and coherent, both in terms of scope and of applicability, to support policy development in the field of asylum and migration.

The European Council reaffirms the principles set out in the Global Approach to Migration as well as the European Pact on Immigration and Asylum. The European Council also recalls its conclusions of the June and October 2009 on this subject. It underlines the need to implement all measures in a comprehensive manner and evaluate them as decided. It recalls the five basic commitments set out in the Pact:

— to organise legal migration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage integration,

— to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit,

— to make border controls more effective,

— to construct a Europe of asylum,

— to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development.

6.1. **A dynamic and comprehensive migration policy**

6.1.1. *Consolidating, developing and implementing the Global Approach to Migration*

The European Council has consistently underlined the need for Union migration policy to be an integral part of Union foreign policy and recognises that the Global Approach to Migration has proven its relevance as the strategic framework for this purpose. Based on the original principles of solidarity, balance and true partnership with countries of origin and of transit outside the Union and in line with what already has been accomplished, the European Council calls for the further development and consolidation of this integrated approach. The implementation of the Global Approach to Migration needs to be accelerated by the strategic use of all its existing instruments and improved by increased coordination. A balance between the three areas (promoting mobility and legal migration, optimising the link between migration and development, and preventing and combating illegal immigration) should be maintained. The principal focus should remain on cooperation with the most relevant countries in Africa and Eastern and South-Eastern Europe. Dialogue and cooperation should be further developed also with other countries and regions such as those in Asia and Latin America on the basis of the identification of common interests and challenges.

To this end, the European Council emphasises the following priorities:

— strategic, evidence-based and systematic use of all available instruments of the Global Approach to Migration — migration profiles, migration missions, cooperation platforms on migration and development and Mobility partnerships — for long-term cooperation on all dimensions of this policy in close partnership with selected third countries along priority migratory routes,

— continued and expanded use of the Mobility partnership instrument as the main strategic, comprehensive and long-term cooperation framework for migration management with third countries, adding value to existing bilateral frameworks. Success in implementing these partnerships requires improved coordination and substantial capacity-building efforts in countries of origin, of transit and of destination. The European Council calls for further development of the Mobility partnership instrument, while respecting their voluntary nature. Partnerships should be flexible and responsive to the needs of both the Union and the partner countries, and should include cooperation on all areas of the Global Approach to Migration,

— more efficient use of the Union's existing cooperation instruments to increase the capacity of partner countries, with a view to ensuring well-functioning infrastructures and sufficient administrative capacity to handle all aspects of migration, including improving their capacity to offer adequate protection and increasing the benefits and opportunities created by mobility.

The successful implementation of the Global Approach to Migration should be underpinned by regular evaluations, increased commitment and capacity as well as improved flexibility of the financial instruments of both the Union and the Member States available in this field.

6.1.2. *Migration and development*

The European Council underlines the need to take further steps to maximise the positive and minimise the negative effects of migration on development in line with the Global Approach on Migration. Effective policies can provide the framework needed to enable countries of destination and of origin and migrants themselves to work in partnership to enhance the effects of international migration on development.

Efforts to promote concerted mobility and migration with countries of origin should be closely linked with efforts to promote the development of opportunities for decent and productive work and improved livelihood options in third countries in order to minimise the brain drain.

To that end, the European Council invites the Commission to submit proposals before 2012 on:

— how to further ensure efficient, secure and low-cost remittance transfers, and enhance the development impact of remittance transfers, as well as to evaluate the feasibility of creating a common Union portal on remittances to inform migrants about transfer costs and encourage competition among remittance service providers,

— how diaspora groups may be further involved in the Union development initiatives, and how Member States may support diaspora groups in their efforts to enhance development in their countries of origin,

— ways to further explore the concept of circular migration and study ways to facilitate orderly circulation of migrants, either taking place within, or outside, the framework of specific projects or programmes including a wide-ranging study on how relevant policy areas may contribute to and affect the preconditions for increased temporary and circular mobility.

The European Council recognises the need for increased policy coherence at European level in order to promote the positive development effects of migration within the scope of the Union's activities in the external dimension and to align international migration more closely to the achievement of the Millennium Development Goals. The European Council calls on the Council to ensure that it acts in a coordinated and coherent manner in this field.

The connection between climate change, migration and development needs to be further explored, and the European Council therefore invites the Commission to present an analysis of the effects of climate change on international migration, including its potential effects on immigration to the Union.

6.1.3. *A concerted policy in keeping with national labour-market requirements*

The European Council recognises that labour immigration can contribute to increased competitiveness and economic vitality. In this sense, the European Council is of the opinion that the Union should encourage the creation of flexible admission systems that are responsive to the priorities, needs, numbers and volumes determined by each Member State and enable migrants to take full advantage of their skills and competence. In order to facilitate better labour matching, coherent immigration policies as well as better integration assessments of the skills in demand on the European labour markets are carried out. These systems must have due regard for Member States' competences, especially for managing their labour markets, and the principle of Union preference.

The European Council invites:

— the Commission and Council to continue to implement the Policy Plan on Legal Migration,

— the Commission to consider how existing information sources and networks can be used more effectively to ensure the availability of the comparable data on migration issues with a view to better informing policy choices, which also takes account of recent developments,

— the Commission and the Council to evaluate existing policies that should, *inter alia*, improve skills recognition and labour matching between the Union and third countries and the capacity to analyze labour market needs, the transparency of European on-line employment and recruitment information, training, information dissemination, and skills matching in the country of origin,

— the Commission to assess the impact and effectiveness of measures adopted in this area with a view to determining whether there is a need for consolidating existing legislation, including regarding categories of workers currently not covered by Union legislation.

6.1.4. *Proactive policies for migrants and their rights*

The Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of citizens of the Union. This should remain an objective of a common immigration policy and should be implemented as soon as possible, and no later than 2014.

The European Council therefore invites the Commission to submit proposals for:

— consolidation of all legislation in the area of immigration, starting with legal migration, which would be based on an evaluation of the existing *acquis* and include amendments needed to simplify and/or, where necessary, extend the existing provisions and improve their implementation and coherence,

— evaluation and, where necessary, review of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, taking into account the importance of integration measures.

6.1.5. *Integration*

The successful integration of legally residing third-country nationals remains the key to maximising the benefits of immigration. European cooperation can contribute to more effective integration policies in the Member States by providing incentives and support for the action of Member States. The objective of granting comparable rights, responsibilities, and opportunities for all is at the core of European cooperation in integration, taking into account the necessity of balancing migrants' rights and duties.

Integration is a dynamic, two-way process of mutual interaction, requiring not only efforts by national, regional and local authorities but also a greater commitment by the host community and immigrants.

Member States' integration policies should be supported through the further development of structures and tools for knowledge exchange and coordination with other relevant policy areas, such as employment, education and social inclusion. Access to employment is central to successful integration.

The European Council also invites the Commission to support Member States' efforts:

— through the development of a coordination mechanism involving the Commission and the Member States using a common reference framework, which should improve structures and tools for European knowledge exchange,

— to incorporate integration issues in a comprehensive way in all relevant policy areas,

— towards the identification of joint practices and European modules to support the integration process, including essential elements such as introductory courses and language classes, a strong commitment by the host community and the active participation of immigrants in all aspects of collective life,

— towards the development of core indicators in a limited number of relevant policy areas (for example employment, education and social inclusion) for monitoring the results of integration policies, in order to increase the comparability of national experiences and reinforce the European learning process,

— for improved consultation with and involvement of civil society, taking into account integration needs in various policy areas and making use of the European Integration Forum and the European website on Integration,

— to enhance democratic values and social cohesion in relation to immigration and integration of immigrants and to promote intercultural dialogue and contacts at all levels.

6.1.6. *Effective policies to combat illegal immigration*

The European Council is convinced that effective action against illegal immigration remains essential when developing a common immigration policy. The fight against trafficking in human beings and smuggling of persons, integrated border management and cooperation with countries of origin and of transit, supported by police and judicial cooperation, in particular, must remain a key priority for this purpose. Our aim must be to prevent the human tragedies which result from the activities of traffickers.

An effective and sustainable return policy is an essential element of a well-managed migration system within the Union. The Union and the Member States should intensify the efforts to return illegally residing third-country nationals. Necessary financial means should be allocated for this purpose. Such a policy must be implemented with full respect for the principle of '*non-refoulement*' and for the fundamental rights and freedoms and the dignity of the individual returnees. Voluntary return should be preferred, while acknowledging the inevitable need for efficient means to enforce returns where necessary.

In order to create a comprehensive approach on return and readmission, it is necessary to step up cooperation with countries of origin and of transit within the framework of the Global Approach to Migration and in line with the European Pact on Immigration and Asylum, while recognising that all States are required to readmit their own nationals who are illegally staying on the territory of another State.

It is important to ensure that the implementation of the newly adopted instruments in the area of return and sanctions against employers, as well as the readmission agreements in force, is closely monitored in order to ensure their effective application.

The European Council believes that the focus should be placed on:

— encouraging of voluntary return, including through the development of incentive systems, training, reintegration and subsidies, and by using the possibilities offered by existing financial instruments,

— Member States:

  — to put into full effect the Union provisions pursuant to which a return decision issued by one Member State is applicable throughout the Union and the effective application of the principle of mutual recognition of return decisions by recording entry bans in SIS and facilitating exchange of information,

  — to improve the exchange of information on developments at national level in the area of regularisation, with a view to ensuring consistency with the principles of the European Pact on Immigration and Asylum,

— assistance by the Commission, Frontex and Member States on a voluntary basis, to Member States which face specific and disproportionate pressures, in order to ensure the effectiveness of their return policies towards certain third countries,

— more effective action against illegal immigration and trafficking in human beings and smuggling of persons by developing information on migration routes as well as aggregate and comprehensive information which improves our understanding of and response to migratory flows, promoting cooperation on surveillance and border controls, facilitating readmission by promoting support measures for return and reintegration, capacity building in third countries,

— the conclusion of effective and operational readmission agreements, on a case-by-case basis at Union or bilateral level,

— ensuring that the objective of the Union's efforts on readmission should add value and increase the efficiency of return policies, including existing bilateral agreements and practices,

— the presentation by the Commission of an evaluation, also of ongoing negotiations, during 2010 of the EC/EU readmission agreements and propose a mechanism to monitor their implementation. The Council should define a renewed, coherent strategy on readmission on that basis, taking into account the overall relations with the country concerned, including a common approach towards third countries that do not cooperate in readmitting their own nationals,

— increased practical cooperation between Member States, for instance by regular chartering of joint return flights, financed by Frontex and the verification of the nationality of third-country nationals eligible for return, and the procurement from third countries of travel documents,

— increased targeted training and equipment support,

— a coordinated approach by Member States by developing the network of liaison officers in countries of origin and of transit.

6.1.7. *Unaccompanied minors*

Unaccompanied minors arriving in the Member States from third countries represent a particularly vulnerable group which requires special attention and dedicated responses, especially in the case of minors at risk. This is a challenge for Member States and raises issues of common concern. Areas identified as requiring particular attention are the exchange of information and best practice, minor's smuggling, cooperation with countries of origin, the question of age assessment, identification and family tracing, and the need to pay particular attention to unaccompanied minors in the context of the fight against trafficking in human beings. A comprehensive response at Union level should combine prevention, protection and assisted return measures while taking into account the best interests of the child.

The European Council therefore welcomes the Commission's initiative to:

— develop an action plan, to be adopted by the Council, on unaccompanied minors which underpins and supplements the relevant legislative and financial instruments and combines measures directed at prevention, protection and assisted return. The action plan should underline the need for cooperation with countries of origin, including cooperation to facilitate the return of minors, as well as to prevent further departures. The action plan should also examine practical measures to facilitate the return of the high number of unaccompanied minors that do not require international protection, while recognising that the

best interests for many may be the reunion with their families and development in their own social and cultural environment.

6.2. **Asylum: a common area of protection and solidarity**

The European Council remains committed to the objective of establishing a common area of protection and solidarity based on a common asylum procedure and a uniform status for those granted international protection. While CEAS should be based on high protection standards, due regard should also be given to fair and effective procedures capable of preventing abuse. It is crucial that individuals, regardless of the Member State in which their application for asylum is lodged, are offered an equivalent level of treatment as regards reception conditions, and the same level as regards procedural arrangements and status determination. The objective should be that similar cases should be treated alike and result in the same outcome.

6.2.1. *A common area of protection*

There are still significant differences between national provisions and their application. In order to achieve a higher degree of harmonisation, the establishment of CEAS, should remain a key policy objective for the Union. Common rules, as well as a better and more coherent application of them, should prevent or reduce secondary movements within the Union, and increase mutual trust between Member States.

The development of a Common Policy on Asylum should be based on a full and inclusive application of the 1951 Geneva Convention relating to the Status of Refugees and other relevant international treaties. Such a policy is necessary in order to maintain the long-term sustainability of the asylum system and to promote solidarity within the Union. Subject to a report from the Commission on the legal and practical consequences, the Union should seek accession to the Geneva Convention and its 1967 Protocol.

The EASO will be an important tool in the development and implementation of the CEAS and should contribute to strengthening all forms of practical cooperation between the Member States. Therefore the Member States should play an active role in the work of the EASO. It should further develop a common educational platform for national asylum officials, building in particular on the European Asylum Curriculum (EAC). Enhancing the convergence and ongoing quality with a view to reducing disparities of asylum decisions will be another important task.

The Dublin System remains a cornerstone in building the CEAS, as it clearly allocates responsibility for the examination of asylum application.

The European Council accordingly invites:

— the Council and the European Parliament to intensify the efforts to establish a common asylum procedure and a uniform status in accordance with Article 78 TFEU for those who are granted asylum or subsidiary protection by 2012 at the latest,

— the Commission to consider, once the second phase of the CEAS has been fully implemented and on the basis of an evaluation of the effect of that legislation and of the EASO, the possibilities for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquired residence rights under Union law,

— the Commission to undertake a feasibility study on the Eurodac system as a supporting tool for the entire CEAS, while fully respecting data protection rules,

— the Commission to consider, if necessary, in order to achieve the CEAS, proposing new legislative instruments on the basis of an evaluation,

— invites the Commission to finalise its study on the feasibility and legal and practical implications to establish joint processing of asylum applications.

6.2.2. *Sharing of responsibilities and solidarity between the Member States*

Effective solidarity with the Member States facing particular pressures should be promoted.

This should be achieved through a broad and balanced approach. Mechanisms for the voluntary and coordinated sharing of responsibility between the Member States should therefore be further analyzed and developed. In particular as one of the keys to a credible and sustainable CEAS is for Member States to build sufficient capacity in the national asylum systems, the European Council urges the Member States to support each other in building sufficient capacity in their national asylum systems. The EASO should have a central role in coordinating these capacity-building measures.

The European Council therefore invites the Commission to examine the possibilities for:

— developing the above mentioned mechanism for sharing responsibility between the Member States while assuring that asylum systems are not abused, and the principles of the CEAS are not undermined,

— creating instruments and coordinating mechanisms which will enable Member States to support each other in building capacity, building on Member States own efforts to increase their capacity with regard to their national asylum systems,

— using, in a more effective way, existing Union financial systems aiming at reinforcing internal solidarity,

— the EASO to evaluate and develop procedures that will facilitate the secondment of officials in order to help those Member States facing particular pressures of asylum seekers.

6.2.3. *The external dimension of asylum*

The Union should act in partnership and cooperate with third countries hosting large refugee populations. A common Union approach can be more strategic and thereby contribute more efficiently to solving protracted refugee situations. Any development in this area needs to be pursued in close cooperation with the United Nations High Commissioner for Refugees (UNHCR) and, if appropriate, other relevant actors. The EASO should be fully involved in the external dimension of the CEAS. In its dealings with third countries, the Union has the responsibility to actively convey the importance of acceding to, and implementing of, the 1951 Geneva Convention and its Protocol.

Promoting solidarity within the Union is crucial but not sufficient to achieve a credible and sustainable common policy on asylum. It is therefore important to further develop instruments to express solidarity with third countries in order to promote and help building capacity to handle migratory flows and protracted refugee situations in these countries.

The European Council invites:

— the Council and the Commission to enhance capacity building in third countries, in particular, their capacity to provide effective protection, and to further develop and expand the idea of Regional Protection Programmes, on the basis of the forthcoming evaluations. Such efforts should be incorporated into the Global Approach to Migration, and should be reflected in national poverty reduction strategies and not only be targeting refugees and internally displaced persons but also local populations,

— the Council, the European Parliament and the Commission to encourage the voluntary participation of Member States in the joint Union resettlement scheme and increase the total number of resettled refugees, taking into consideration the specific situation in each Member State,

— the Commission to report annually to the Council and the European Parliament on the resettlement efforts made within the Union, to carry out a mid-term evaluation during 2012 of the progress made, and to evaluate the joint Union resettlement programme in 2014 with a view to identifying necessary improvements,

— the Council and the Commission to find ways to strengthen Union support for the UNHCR,

— the Commission to explore, in that context and where appropriate, new approaches concerning access to asylum procedures targeting main countries of transit, such as protection programmes for particular groups or certain procedures for examination of applications for asylum, in which Member States could participate on a voluntary basis.

7. **EUROPE IN A GLOBALISED WORLD — THE EXTERNAL DIMENSION OF FREEDOM, SECURITY AND JUSTICE**

The European Council emphasises the importance of the external dimension of the Union's policy in the area of freedom, security and justice and underlines the need for the increased integration of these policies into the general policies of the Union. The external dimension is crucial to the successful implementation of the objectives of this programme and should in particular be fully coherent with all other aspects of Union foreign policy.

The Union must continue to ensure effective implementation, and to conduct evaluations also in this area. All action should be based on transparency and accountability, in particular, with regard to the financial instruments.

As reiterated by the 2008 European Security Strategy report, internal and external security are inseparable. Addressing threats, even far away from our continent, is essential to protecting Europe and its citizens.

The European Council invites the Council and the Commission to ensure that coherence and complementary are guaranteed between the political and the operational level of activities in the area of freedom, security and justice. Priorities in external relations should inform and guide the prioritisation of the work of relevant Union agencies (Europol, Eurojust, Frontex, CEPOL, EMCDDA and EASO).

Member States' Liaison officers should be encouraged to further strengthen their cooperation, sharing of information and best practices.

The European Council underscores the need for complementarity between the Union and Member States' action. To that end, increased commitment from the Union and the Member States is required.

7.1. **A reinforced external dimension**

The European Council has decided that the following principles will continue to guide the Union action in the external dimension of the area of freedom, security and justice in the future:

— the Union has a single external relations policy,

— the Union and the Member States must work in partnership with third countries,

— the Union and the Member States will actively develop and promote European and international standards,

— the Union and the Member States will cooperate closely with their neighbours,

— the Member States will increase further the exchange of information between themselves and within the Union on multilateral and bilateral activities,

— the Union and the Member States must act with solidarity, coherence and complementarity,

— the Union will make full use of all ranges of instruments available to it,

— the Member States should coordinate with the Union so as to optimise the effective use of resources,

— the Union will engage in information, monitoring and evaluation, inter alia, with the involvement of the European Parliament,

— the Union will work with a proactive approach in its external relations.

The European Council considers that the policies in the area of freedom, security and justice should be well integrated into the general policies of the Union. The adoption of the Lisbon Treaty offers new possibilities for the Union to act more efficiently in the external relations. The High Representative of the Union for foreign affairs and security policy, who is also a Vice President of the Commission, the European External Action Service and the Commission will ensure better coherence between traditional external policy instruments and internal policy instruments with significant external dimensions, such as freedom, security and justice. Consideration should be given to the added value that could be achieved by including specific competence in the area of freedom, security and justice in Union delegations in strategic partner countries. Furthermore, the legal personality of the Union should enable the Union to act with increased strength in international organisations.

The Council recognises that CSDP and many external actions in the area of freedom, security and justice have shared or complementary objectives. CSDP missions also make an important contribution to the Union's internal security in their efforts to support the fight against serious transnational crime in their host countries and to build respect for the rule of law. The European Council encourages greater cooperation and coherence between the policies in the area of freedom, security and justice and CSDP to further these shared objectives.

The new basis under the Treaty for concluding international agreements will ensure that the Union can negotiate more effectively with key partners. The European Council intends to capitalise on all these new instruments to the fullest extent.

The European Council underscores the need for complementary between the Union and Member States' action. This will require a further commitment from the Union and the Member States. The European Council therefore asks the Commission to report on ways to ensure complementary by December 2011 at the latest.

7.2. **Human rights**

The Lisbon Treaty offers the Union new instruments as regards the protection of fundamental rights and freedoms both internally and externally. The values of the Union should be promoted and strict compliance with and development of international law should be respected. The European Council calls for the establishment of a Human Rights Action Plan to promote its values in the external dimension of the policies in the area of freedom, security and justice. This Plan should be examined by the European Council and should take into account that internal and external aspects of Human Rights are interlinked, for instance as regards the principle of *non-refoulement* or the use of death penalty by partners that the Union cooperates with. The Plan should contain specific measures in the short, medium and long term, and designate who is responsible for carrying out the actions.

7.3. **Continued thematic priorities with new tools**

The European Council considers that the key thematic priorities identified in the previous strategy remain valid, i.e. the fight against terrorism, organised crime, corruption, drugs, the exchange of personal data in a secure environment and managing migration flows. The fight against trafficking in human beings and smuggling of persons needs to be stepped up.

Building on the Strategy for the external dimension of JHA: Global freedom, security and justice adopted in 2005 and other relevant *acquis* in this field, such as the Global Approach to Migration, Union external cooperation should focus on areas where Union activity provides added value, in particular:

— ***Migration and asylum***, with a view to increasing Union dialogue and cooperation with countries of origin and of transit in order to improve their capacity to carry out border control, to fight against illegal immigration, to better manage migration flows and to ensure protection as well as to benefit from the positive effects of migration on development; return and readmission is a priority in the Union's external relations,

— ***Security***, by engaging with third countries to combat serious and organised crime, terrorism, drugs, trafficking in human beings and smuggling of persons, inter alia, by focusing the Union's counter-terrorism activities primarily on prevention and by protecting critical infrastructures, internal and external security are inseparable. Addressing threats, even far away from our continent, is essential to protecting Europe and its citizens,

— ***Information exchange*** that flows securely, efficiently and with adequate data protection standards between the Union and third countries,

— ***Justice***, to promote the rule of law and human rights, good governance, fight against corruption, the civil law dimension, promote security and stability and create a safe and solid environment for business, trade and investment,

— ***Civil protection and disaster management***, in particular to develop capacities of prevention and answers to major technological and natural catastrophes as well as to meet threats from terrorists.

The European Council invites the Commission to:

— examine whether ad hoc cooperation agreements with specific third countries to be identified by the Council could be a way of enhancing the fight against trafficking in human beings and smuggling of persons and making proposals to that end. In particular, such agreements could involve full use of all leverage available to the Union, including the use of existing financing programmes, cooperation in the exchange of information, judicial cooperation and migration tools.

The threat of terrorism and organised crime remains high. It is therefore necessary to work with key strategic partners to exchange information while continuing to work on longer-term objectives such as measures to prevent radicalisation and recruitment, as well as the protection of critical infrastructures. Operational agreements by Eurojust, Europol, as well as working arrangements with Frontex, should be strengthened.

7.4. **Agreements with third countries**

The Lisbon Treaty provides for new and more efficient procedures for the conclusion of agreements with third countries. The European Council recommends that such agreements, in particular, as regards judicial cooperation as well as in the field of civil law, should be considered to be used more frequently, while taking account of multilateral mechanisms. It notes however that Member States will maintain the option of entering into bilateral agreements which comply with Union law, and that a legal framework has been created for certain bilateral agreements in civil law as well.

Protection of personal data is a core activity of the Union. There is a need for a coherent legislative framework for the Union for personal data transfers to third countries for law enforcement. A framework model agreement consisting of commonly applicable core elements of data protection could be created.

7.5. **Geographical priorities and international organisations**

Union action in external relations should focus on key partners, in particular:

— Candidate countries and countries with a European Union membership perspective for which the main objective would be to assist them in transposing the acquis,

— European neighbourhood countries, and other key partners with whom the Union should cooperate on all issues in the area of freedom, security and justice,

— EEA/Schengen states have a close relationship with the Union. This motivates closer cooperation, based on mutual trust and solidarity to enhance the positive effects of the internal market as well as to promote Union internal security,

— the United States of America, the Russian Federation and other strategic partners with which the Union should cooperate on all issues in the area of freedom, security and justice,

— Other countries or regions of priority, in terms of their contribution to EU strategic or geographical priorities,

— International organisations such as the UN and the Council of Europe with whom the Union needs to continue to work and within which the Union should coordinate its position.

In the ***Western Balkans***, Stabilisation and Association Agreements are progressively entering into force and notable progress has been made in the area of visa policy, with visa facilitation and readmission agreements in place and a comprehensive visa liberalisation dialogue already achieved for some countries and still under way for others. Further efforts, including use of financial instruments, are needed to combat organised crime and corruption, to guarantee fundamental rights and freedoms and to build administrative capacities in border management, law enforcement and the judiciary in order to make the European perspective a reality.

The Union and ***Turkey*** have agreed to intensify their cooperation to meet the common challenge of managing migration flows and to tackle illegal immigration in particular. This cooperation should focus on joint responsibility, solidarity, cooperation with all Member States and common understanding, taking into account that Turkey neighbours the Union's external borders, its negotiation process and the Union's existing financial assistance in relevant areas, including border control. Concluding the negotiations on the readmission agreement with Turkey is a priority. Until then, already existing bilateral agreements should be adequately implemented.

The European Council emphasises that the ***European Neighbourhood Policy*** (ENP) offers future opportunities for the Union to act in a coordinated and efficient manner and contribute to strengthen capacity and institution-building for an independent and impartial judiciary, law enforcement authorities and anti-corruption efforts, as well as increasing and facilitating the mobility of citizens of the partner countries. As regards the Eastern Partnership countries, the Union is holding out the prospect of concluding Association Agreements (with substantial parts concerning the area of freedom, security and justice) with those countries and supporting, the mobility of citizens and, as a long-term perspective, visa liberalisation in a secure environment.

The European Council calls for the development before the end of 2010 of a plan on how to take cooperation with the Eastern Partnership countries forward, comprising freedom, security and justice aspects of the Eastern Partnership as well as chapters on freedom, security and justice of the ENP Action Plans (or their successor documents) of the countries concerned. This plan should also list the gradual steps towards full visa liberalisation as a long-term goal for individual partner countries on a case-by-case basis, as well as describe the conditions for well-managed and secure mobility, mentioned in the Joint Declaration of the Prague Eastern Partnership Summit. The European Council will review the plan by the end of 2012, and in particular to assess its impact on the ground.

The Union should increase its efforts to support stability and security of ***the Black Sea Region*** as a whole and enhance further ***the Black Sea Synergy*** regional cooperation initiative. Activities should in particular focus on border management, migration management, customs cooperation and the rule of law as well as fight against cross-border crime.

As regards the ***Union for the Mediterranean***, it will be necessary to enhance the work started in the context of the Barcelona process and the Euro-Mediterranean Partnership, in particular regarding migration (maritime), border surveillance, preventing and fighting drug trafficking, civil protection, law enforcement and judicial cooperation. The European Council invites the Commission in cooperation with the High Representative of the Union for foreign affairs and security policy to submit such a plan in 2010 and asks Coreper to prepare as soon as possible the decisions to be taken by the Council. The European Council will review the Plan by the end of 2012, and in particular to assess its impact on the ground.

As regards the situation in the Mediterranean area, the European Council considers that a stronger partnership with third countries of transit and of origin is necessary, based on reciprocal requirements and operational support, including border control, fight against organised crime, return and readmission. Rapid action to face the challenges in this region is a priority.

Cooperation has been intensified with the ***USA*** in the past 10 years including on all matters relating to the area of freedom, security and justice. Regular Ministerial Troika and Senior officials' meetings are held under each Presidency. In line with what has been laid down in the 'Washington Statement' adopted at the Ministerial Troika meeting in October 2009, the dialogue should continue and be deepened.

Ongoing cooperation in the fight against terrorism and transnational crime, border security, visa policy, migration and judicial cooperation should be pursued. An agreement on the protection of personal data exchanged for law enforcement purposes needs to be negotiated and concluded rapidly. The Union and the USA will work together to complete visa-free travel between the USA and the Union as soon as possible and increase security for travellers. Joint procedures should be set up for the implementation of the agreements on judicial cooperation, and regular consultations need to take place.

The Common Space for an area of freedom, security and justice and the new agreement currently under negotiation will provide the framework for intense and improved future cooperation with the ***Russian Federation***. Building also on the outcomes of the bi-annual Permanent Partnership Councils on freedom, security and justice, the Union and Russia should continue to cooperate within the framework of the visa dialogue and on legal migration, while tackling illegal immigration, enhance common fight against organised crime and particularly operational cooperation, and improve and intensify judicial cooperation. An agreement, which should satisfy high standards of data protection, should be made with Eurojust as soon as possible. A framework agreement on information exchange should be concluded in that context. The visa dialogue must continue. The visa facilitation and readmission agreement should be implemented fully.

The European Council notes that the 2007 ***EU-Africa*** Joint Strategy and Action Plan define the scope of cooperation in the areas of counter-terrorism, transnational crime and drug trafficking. Both within the EU-Africa Partnership on Mobility, Migration and Employment (MME) and the Global Approach to Migration, and the follow up process of the Rabat, Paris and Tripoli conferences, the dialogue on migration should be deepened and intensified with African Partners, focussing on countries along the irregular migration routes to Europe with a view to assisting those countries in their efforts to draw up migration policies and responding to illegal immigration at sea and on the borders. Efforts should be made to enhance cooperation, including the swift conclusion of readmission agreements, with Algeria, Morocco and Egypt, and, in line with the European Council conclusions of October 2009, with Libya.

West Africa has recently developed into a major hub for drug trafficking from South America to Europe and will require enhanced attention and assistance to stem drug trafficking as well as other transnational crime and terrorism (within the Sahel).

The dialogues with ***China*** and ***India*** on counter-terrorism aspects should be broadened and cover other priority areas such as intellectual property rights, migration, including fight against illegal immigration and judicial cooperation. When agreements on judicial cooperation are entered into, the Union will continue to require that the death penalty is an issue where no compromises can be made. The dialogue with India on migration should be intensified and cover all migration-related aspects. With regard to China, the dialogue on Human Rights must be continued. The dialogue with ***Brazil*** will have to become deeper and wider in the years to come. The Strategic Partnership and the Joint Action Plan should be implemented more efficiently and more specific measures should be considered.

With other countries and regions the Union will cooperate regionally or bilaterally as appropriate. The dialogue with Latin-American and Caribbean countries, on migration, drugs trafficking, money laundering and other fields of mutual interest should be pursued within the regional framework ***(EU-LAC)*** and within the framework of the FATF. Work will have to continue with the ***Central Asian countries*** along the trafficking routes to Europe.

Efforts should also be made to enhance cooperation with ***Afghanistan*** on drugs, including the implementation of the Action Oriented Paper on drug trafficking, and with Afghanistan and ***Pakistan*** on terrorism and migration issues.

As regards ***Afghanistan and Iraq***, focus should be kept on effectively addressing the refugee situation through a comprehensive approach. Efforts should be made to address illegal immigration flows and to conclude readmission agreements with them as well as with ***Bangladesh***.

7.6. International organisations and promotion of European and international standards

The European Council reiterates its commitment to effective multilateralism that supplements the bilateral and regional partnership with third countries and regions.

The UN remains the most important international organisation for the Union. The Lisbon Treaty creates the basis for more coherent and efficient Union participation in the work of the UN and other international organisations.

The Union should continue to promote European and international standards and the ratification of international conventions, in particular those developed under the auspices of the UN and the Council of Europe.

The work of the Council of Europe is of particular importance. It is the hub of the European values of democracy, human rights and the rule of law. The Union must continue to work together with the Council of Europe based on the Memorandum of Understanding between the Council of Europe and the European Union signed in 2007 and support its important conventions such as the Convention on Action against Trafficking in Human Beings and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

For law enforcement cooperation, Interpol is an important partner for the Union. Civil law cooperation is in particular made in the framework of the Hague Conference on Private International Law. The Union should continue to support the Conference and encourage its partners to ratify the conventions where the Union is or will become a Party or where all Member States are Parties.

LIST OF ABBREVIATIONS

CBRN	Chemical, Biological, Radiological and Nuclear
CEAS	Common European Asylum System
CEPOL	European Police College
COSI	Standing Committee on Internal Security
CSDP	Common Security and Defence Policy
EAC	European Asylum Curriculum
EASO	European Asylum Support Office
ECRIS	European Criminal Records Information System
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ENP	European Neighbourhood Policy
EPRIS	European Police Records Index System
EU	European Union
EU ATC	EU Anti-Trafficking Coordinator
EUCPN	European Crime Prevention Network
Eurosur	European Border Surveillance System
FATF	Financial Action Task Force
FIUs	Financial Intelligence Units
GRECO	Council of Europe Group of States against Corruption
ICC	International Criminal Court
ICT	Information and Communication Technology
JITs	Joint Investigative Teams
MIC	Monitoring and Information Centre
OCTA	Organised Crime Threat Assessment
OECD	Organisation for Economic Cooperation and Development
OPC	Observatory for the Prevention of Crime
PNR	Passenger Name Record
SIS II	Second generation Schengen Information System
TEU	Treaty on the European Union
TFEU	Treaty on the Functioning of the European Union
UNCAC	United Nations Convention against Corruption
UNHCR	United Nations High Commissioner for Refugees
VIS	Visa Information System

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COMMISSION STAFF WORKING DOCUMENT

Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings

{COM(2014) 635 final}

1. INTRODUCTION

Trafficking in human beings (THB) is a severe violation of fundamental rights, explicitly prohibited by Article 5 of the European Union's Charter of Fundamental Rights. It is also a serious form of organised crime, driven by very high profits and high demand for the services of its victims. It affects women and men, girls and boys, from within the EU and from non-EU countries, causing profound and often life-long harm.

To address this phenomenon, the European Commission adopted the **EU Strategy towards the eradication of trafficking in human beings 2012-16**.[2] This **mid-term report** takes stock of how the EU Strategy has been implemented, from early 2012 to the third quarter of 2014. The report includes work carried out through cooperation between EU institutions, agencies and bodies, Member States,[3] civil society organisations and the private sector. It covers action taken within the EU and in cooperation with non-EU countries of origin, transit and destination.

The report starts by briefly presenting the legal and policy context in which the EU Strategy is being implemented. It then sets out the progress made on the Strategy's four key priorities:

A. Identifying, protecting and assisting victim of trafficking;

B. Stepping up the prevention of trafficking in human beings;

C. Increased prosecution of traffickers; and

D. Enhanced coordination, cooperation and policy coherence.

Progress made in relation to the fifth priority (*Increased knowledge of and effective response to emerging concerns relating to all forms of THB*) is covered under each of the key priorities. The report ends by pointing to next steps, in line with the Strategy.

The report emphasises the Commission's efforts to implement the EU policy framework on THB in a coordinated manner across all relevant policy fields and actors. It thus includes a section on the steps taken since 2012 under the **2009 action-oriented paper (AOP)** on strengthening the EU external dimension on action against THB. The report also includes an annex on the important work of seven **EU justice and home affairs agencies** to address THB, on the basis of the joint statement signed by the heads of the agencies on the occasion of the EU Anti-Trafficking Day on 18 October 2011.

2. THE SCALE OF THE PHENOMENON – DATA COLLECTION

For the first time at EU level, the Commission collected statistical data on THB. In line with the EU Strategy, a Eurostat working paper on THB was published in April 2013, which includes data for 2008-10 on the total number of victims disaggregated by gender, age, form of exploitation, citizenship, and type of assistance and protection received. This is a working paper looking at statistical data as gathered and submitted by national authorities. In this respect, it is a unique undertaking in this field at EU level. The paper also includes statistics

[2] Communication on *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016* (COM(2012) 286 final).

[3] The Member States were consulted via Council Working Group GENVAL on the basis of an informal questionnaire prepared by the Commission.

on suspected, prosecuted and convicted traffickers disaggregated by gender, citizenship and form of exploitation.

According to the working paper, 23 632 identified or presumed victims are reported in the Member States. Women and girls remain by far the largest group over the three reference years (2008-10), representing 80 % of the total. Most of the registered victims (around 62 %) are trafficked for the purpose of sexual exploitation. Labour exploitation (including forced labour and services, and domestic servitude) accounts for around 25 % and the category 'other' (this includes exploitation for the purpose of forced begging, criminal activities, removal of organs, forced marriages and the selling of children) around 14 %. More specifically, victims of sexual exploitation are overwhelmingly female (96 % in 2010), whereas a majority of victims of labour exploitation are male (77 % in 2010). The majority of identified and presumed victims (61 %) have EU, in particular Bulgarian or Romanian, citizenship.

While trafficking within the EU (internal trafficking) dominates the statistics, victims also come from non-EU countries. Nigeria and China are the main non-EU countries of origin and Brazil, Russia and Algeria also feature in all three years.

Applying lessons learnt from the first data collection exercise, Eurostat has compiled data for 2010-12 and its second THB working paper is being published alongside this report. The paper is based on the questionnaire asking Member States for more specific information, including breakdowns of victims' and traffickers' ages, different sectors in which THB takes place, etc.

Over the three years 2010 – 2012, 30 146 victims were registered in the 28 Member States. According to data disaggregated by gender during the reference period 80% of registered victims were female. Looking at the data from Member States who provided a breakdown by gender and age (adults/minors), women account for 67 %, men for 17 %, girls for 13 % and boys for 3 % of the total number of registered victims of trafficking in human beings. Based on data from Member States who were able to provide a more detailed breakdown by age, 45% of registered victims were aged 25 or older. 36% were registered as aged 18-24, 17% were registered aged 12-17, and 2% were aged 0-11.Data on registered victims disaggregated by different forms of exploitation for all three reference years showed that the majority (69%) of victims registered were trafficked for the purpose of sexual exploitation, 19 % for labour exploitation and 12% for other forms of exploitation such as the removal of organs, criminal activities, or selling of children Of all the female victims registered, the overwhelming majority were trafficked for the purpose of sexual exploitation (85%). Among registered male victims, 64% were trafficked for labour exploitation.

Encouraging progress has been achieved in terms of availability of data. The second working paper reaffirms the need for further improvement, as more comprehensive and comparable data will allow for a more accurate assessment of the nature of the problem, as well as more accurate conclusions at EU level.

3. THE EU LEGAL AND POLICY FRAMEWORK ON THB

THB is a complex transnational phenomenon and can be addressed effectively only if Member States work together in a coordinated way. The European Union has demonstrated strong legal and political commitment to addressing THB and has developed a comprehensive legal and policy framework.

This framework is victim-centred and anchored in fundamental rights. It takes a gender-specific and child-sensitive approach and aims for coherence across all relevant policy fields. It seeks prevention, the prosecution of criminals and the protection of victims. Partnerships with stakeholders and greater knowledge of emerging THB-related concerns are of the utmost importance.

3.1. EU law on THB

The milestone **Directive 2011/36/EU[4] on preventing and combating THB and protecting its victims** is the first act at EU level to address THB in a comprehensive and integrated way, focusing equally on the protection of victims, the prosecution of traffickers and the prevention of the phenomenon in the first place.

The Directive was to be transposed into national law by 6 April 2013[5] and the Commission has been closely monitoring progress in the Member States, proactively supporting the relevant national procedures. Several infringement cases were launched in 2013 against Member States that had failed to notify the Commission of any transposing legislation. To date, 25 Member States have indicated that they have transposed the Directive in full. The Commission is currently analysing the information received and will report in 2015, in accordance with Article 23 of the Directive, on the state of transposition across all Member States.

The EU legal framework also includes **Directive 2004/81/EC regulating the grant of a temporary residence permit to third-country national victims of THB cooperating with the authorities for the investigation and prosecution of the alleged traffickers**.[6] This lays down specific rules on residence permits and the treatment of third-country nationals cooperating with the authorities, while Directive 2011/36/EU applies horizontally to EU and non-EU citizens and strengthens some of the provisions of Directive 2004/81/EC, including as regards protection for children. The second report on the implementation of Directive 2004/81/EC is published on the same day as this mid-term report.

Furthermore, **Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime**[7] applies to the victims of trafficking in human beings and ensures that these victims benefit from a range of rights which are not specified in Directive 2011/36/EU. The legal framework is also complemented by **Directive 2004/80/EC relating to compensation to crime victims**[8].

3.2. EU policy on THB

[4] OJ L 101, 15.4.2011, p. 1.

[5] All Member States except Denmark participate in the implementation of the Directive.

[6] Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (OJ L 261, 6.8.2004, p. 19).

[7] L 315/57,14.11.2012

[8] L 261/15, 6.8.2004

The EU Strategy sets out the EU's overall approach to addressing THB. It recognises that the main responsibility lies with the Member States and provides a framework to complement their efforts and help them implement Directive 2011/36/EU ('the Directive'), focusing on priority areas and concrete action in partnership with EU institutions and the justice and home affairs agencies, and in cooperation with a wide variety of stakeholders. The EU Strategy confirms that eradicating THB is a priority for the EU's external migration policy, the Global Approach to Migration and Mobility,[9] and THB is systematically addressed in agreements and partnerships with third countries and in bilateral and regional dialogues on migration and mobility. This is in line with the 2009 action-oriented paper on strengthening the EU external dimension against THB.

3.3. The EU anti-trafficking coordinator

Within this legal and policy framework, in March 2011 the Commission appointed an EU anti-trafficking coordinator (EU ATC) to provide **strategic policy orientation, ensure consistent and coordinated planning**, coherently address THB within the EU and in relation to non-EU countries, and monitor the implementation of the EU Strategy.[10] The EU ATC ensures policy coherence and cooperation among diverse actors and this mandate should be extended.[11]

3.4. Enabling action through funding

To implement this comprehensive legal and policy framework, **the EU provides extensive funding under a number of thematic and geographical instruments**. The Commission has developed an **anti-trafficking website**[12] containing a **database of EU-funded projects on THB in the EU and elsewhere**, and updated information on, *inter alia*, EU legal and policy instruments, anti-trafficking measures in the Member States, funding opportunities and EU initiatives.

In line with the fifth priority of the EU Strategy on increased knowledge and effective response to emerging concerns relating to all forms of THB, the Commission funds specific quantitative and qualitative research (see below). This may provide valuable knowledge to ensure accessibility, upholding of the rights enshrined in the Directive and other relevant EU instruments, and the effectiveness of prevention measures, appropriately reducing risk and demand. The Commission also funds projects to improve the quality of data collection.

4. VICTIM IDENTIFICATION, PROTECTION AND ASSISTANCE

Early identification of victims is still an important challenge in our joint efforts to address THB and a key priority in the EU legal and policy framework. Victims cannot be effectively assisted and protected if they are not properly identified.

[9] Communication on *The Global Approach to Migration and Mobility* (COM(2011) 743 final).

[10] Member States are to facilitate the EU ATC's tasks, transmitting the reports prepared by the NREMs under Article 19 of the Directive on the basis of which the EU ATC is to contribute to the Commission's two-yearly progress reports.

[11] Communication on *An open and secure Europe: making it happen* (COM(2014) 154 final).

[12] http://ec.europa.eu/anti-trafficking/.

4.1. National referral mechanisms

The Directive calls on Member States to set up appropriate mechanisms to ensure early identification, protection and assistance, including legal assistance in criminal proceedings, and a child-sensitive approach, with specific measures for child victims of trafficking. The Strategy specifies that Member States **should maintain formal, functional national referral mechanisms** (NRMs), describing procedures and criteria to better identify, refer, protect and assist victims. Such mechanisms should involve the widest possible range of actors, including all relevant public authorities and civil society organisations.

The Commission has provided funding under a number of instruments for projects addressing these issues, details of which can be found on the EU's anti-trafficking website. According to the information available to the Commission, over half the Member States have formalised NRMs to coordinate the actors involved in identification, assistance, protection and reintegration. Member States report broad participation in these systems, including by national ministries (health, justice, social affairs, employment, etc.), law enforcement authorities, border guards and consular services, civil society organisations, service providers and labour inspectorates.

4.2. Guidelines for border guards and consular services on identifying THB victims

As envisaged in the EU Strategy, in order to improve coordination and coherence in the area of victim identification, and to facilitate the work of front-line officials, the Commission has published **Guidelines for the identification of victims of THB**, addressed in particular to border guards and consular services.[13]

The guidelines are based on existing handbooks and manuals, and provide information on EU-funded projects on the identification of victims to ensure that there is no duplication in this area. They have been presented and disseminated on a number of occasions, e.g. at the Council Consular Affairs Working Group (COCON) meeting of 18 October 2013 in Vilnius, and in the framework of the European Multidisciplinary Platform against Criminal Threats (EMPACT) Group on THB, under the EU Policy Cycle on Serious and Organised Crime.

4.3. EU rights of trafficking victims

The Directive grants a series of important rights to trafficking victims. **The Strategy accordingly stresses the importance of clear and consistent information for victims and front-line officials likely to come into contact with them.** This includes information on rights relating to assistance and healthcare, residence permits, labour rights, access to justice and to a lawyer, and the possibilities of claiming compensation.

In 2013, as envisaged in the Strategy, the Commission published a **document on the EU rights of trafficking victims**,[14] available on the EU anti-trafficking website in all official EU languages. It provides a practical overview of victims' rights, ranging from (emergency) assistance and healthcare to labour rights, access to justice and to a lawyer, and access to compensation, based on the EU Charter of Fundamental Rights, EU directives (such as in particular Directive 2011/36/EU and Directive 2012/29/EU), relevant framework decisions and the jurisprudence of the European Court of Justice and the European Court of Human Rights. Additional references to the rights of the child have been included at the end of each chapter. The overview contributes to the upholding of victims' rights by helping Member State authorities deliver the information, assistance and protection that they need and deserve. It is addressed to victims and practitioners, and to Member States so that they can develop similar approaches to THB victims' rights at national level.

[13] http://ec.europa.eu/anti-trafficking/EU+Policy/Guidelines_identification_victims.

[14] http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb_victims_rights/thb_victims_rights_en.pdf.

4.4. Labour market intermediaries

As mentioned in the EU Strategy, where implemented correctly, labour (-market) legislation and laws regulating migrants working in the EU will also help to prevent the various forms of human trafficking. Greater attention should be paid to those involved in THB, e.g. contractors, subcontractors and job recruitment agencies, in particular in high-risk sectors.

To this end, the European Foundation for the Improvement of Living and Working Conditions (Eurofound), in consultation with the Commission, is undertaking a comparative analytical study on the regulation of labour market intermediaries and the role of the social partners in preventing THB for the purpose of labour exploitation.[15] The study will map the situation in the Member States as regards the regulation of temporary work agencies and intermediaries, including their activities in placing workers from inside and outside the EU, and identify relevant social-partner initiatives to prevent THB. It will provide input for a best practice guide for public authorities on the monitoring of THB via temporary job agencies and intermediaries such as recruitment agencies. Publication is expected in 2015.

Focus on children

4.5. Child-sensitive protection systems

Children are particularly vulnerable to victimisation and re-trafficking into the EU, within the EU and within individual Member States. The Directive sets out a number of provisions based on the principle of the 'best interests of the child', which require that Member States take into account the specific needs of child victims of trafficking.

The EU Strategy recognises that comprehensive child-sensitive protection systems, ensuring interagency and multidisciplinary coordination, are crucial in catering to the needs of child victims of THB. **The Commission has started work on a Communication providing guidance on integrated child protection systems**, which is expected to be adopted early in 2015. In 2012 and 2013, the European Forum on the Rights of the Child[16] focused on this issue, seeking to contribute to the development of EU guidance to support Member States in fulfilling their child protection responsibilities. A public consultation was held between April and July 2014 to allow a wide a range of stakeholders and organisations to contribute to the process and close to 300 contributions were received. The Communication will aim to provide information on EU legislation and policies relevant to integrated child protection systems, clarifying where the EU can support national child protection systems. It will also illustrate good practice on integrated child protection systems and promote to foster mutual learning in cross-border and national contexts.

[15] http://www.eurofound.europa.eu/research/projects.htm.

[16] The European Forum on the Rights of the Child was launched following the 2006 Commission Communication *Towards an EU strategy on the Rights of the Child* (COM(2006) 367 — not published in the Official Journal). The Forum is chaired by the Commission and meets annually as a permanent group to promote children's rights in the EU's internal and external action. Its role is to advise and assist the Commission and other European institutions, in particular as regards the mainstreaming of children's rights across all EU policies, and to exchange information and good practices.

The Commission will also take account of a mapping of national child protection systems currently being carried out by the EU Agency for Fundamental Rights (FRA) in cooperation with the European Commission.

4.6. Increasing knowledge on children vulnerability to THB

Another current study seeks to develop knowledge and increase understanding of this vulnerable group, in line with the EU Strategy. The results, expected by the first half of 2015, should contribute to evidence-based policy development by the Commission, inform policy implementation and evaluation, and enhance coherence and impact.

4.7. Guardianship for children deprived of parental care

The EU Strategy stressed that effective guardianship systems are instrumental in preventing abuse, neglect and exploitation. However, guardians' roles, qualifications and competences vary from one Member State to another. In line with the EU Strategy, in June 2014 FRA and DG HOME published ***Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking.***[17] This is designed to help standardise guardianship practice, ensuring also that it is better equipped to deal with the specific needs of child victims of trafficking. It provides Member States with guidance and recommendations on strengthening their guardianship systems, setting out the core principles, fundamental design and management of such systems. The handbook will be translated into all official EU languages. In parallel, FRA will publish a map of national guardianship systems, based on research carried out in 2013.

Over the reference period, the Commission continued to provide funding for projects targeting child victims of trafficking under several programmes, e.g. ISEC and DAPHNE.[18]

Lastly, the Commission has cooperated with non-governmental and international children's organisations.

5. PREVENTION AND DEMAND REDUCTION

A human rights-based approach focusing on victims must address prevention appropriately and effectively, and discourage the demand that fosters all forms of THB. Vulnerability puts people at greater risk of becoming victims of THB, but does not *per se* cause THB. THB takes place because there is a demand for services and goods provided through exploitation and because it is a highly profitable form of organised crime.

5.1. Demand reduction

The Directive requires the Member States to take appropriate measures to discourage and reduce the demand that fosters all forms of exploitation relating to THB. More specifically, it provides that 'Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation, with the knowledge that the person is a victim'. The Commission is to submit a report to the European Parliament and the Council

[17] http://ec.europa.eu/anti-trafficking/EU+Policy/Guardianship_for_children_deprived_of_parental_care.

[18] Details of all funded projects are available on the EU anti-trafficking website: http://ec.europa.eu/anti-trafficking/EU+Projects/;jsessionid=GQDmT0TWJhd5nvK7VnlqkCC8vLPf8wlwngBJx8QVyRlygfykGlvN!-684101059.

by 2016, assessing the impact of national laws criminalising the use of services provided by victims of trafficking, accompanied, if necessary, by adequate proposals.

The THB Directive refers to the Employers' Sanctions Directive,[19] which already provides for criminal sanctions for employers who use the work or services of illegally staying third-country nationals in the knowledge that they are victims of trafficking. The first report on implementation of that Directive was published in May 2014.

The EU Strategy reflects the focus on prevention and demand reduction, recognising that increasing knowledge and the exchange of best practices are crucial to reducing demand for all forms of trafficking, including sexual exploitation. Addressing demand must include partnerships and cooperation with the private sector. In this framework, the THB Directive sets out several provisions to ensure that legal persons can be held liable for THB offences and the Commission has used various instruments to fund several projects focusing on demand.

5.2. Assessing prevention work

The Commission's funding supports a wide range of projects on prevention, including awareness-raising programmes, risk-reduction projects targeting vulnerable groups, e.g. campaigns targeting people looking for jobs abroad in high-risk sectors, and projects focused on reducing demand, e.g. campaigns targeting potential users of sexual services provided by THB victims.

In line with the EU Strategy, a current study will systematically evaluate the impact of THB prevention initiatives. The outcome, expected in the first half of 2015, should provide information that will help to enhance the effectiveness and impact of prevention measures and policies, and to ensure that EU funding is allocated in line with the Commission's priorities as set out in the EU Strategy. Prevention projects are thus being reviewed in terms of impact and results, to improve effectiveness, coherence and coordination, ensuring that fund allocation reflects the priorities for addressing THB as set out in the Strategy.

5.3. The gender dimension of THB

The EU legal and policy framework recognises that trafficking is a gender-specific phenomenon and requires Member States to take gender-specific action. For the first time, the Directive adopts a gender-specific approach to THB, recognising that women and men, girls and boys, are trafficked in different circumstances and require gender-specific assistance and support. Also, the EU Strategy identifies violence against women and gender inequalities as a root cause of trafficking and sets out a series of measures to address the gender dimension of THB, as vulnerability to trafficking for different forms of exploitation is shaped by gender.

The EU Strategy calls on the Commission to develop knowledge on the gender dimension of human trafficking. The Commission has launched a study to that effect and funded projects under various instruments; the results are expected in the second half of 2015.

Lastly, over the reference period the Commission worked with international organisations and non-governmental organisations on the gender dimension of THB.

[19] Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals (OJ L 168, 30.6.2009, p. 24).

6. INVESTIGATION AND PROSECUTION OF OFFENDERS

The Strategy sets out specific measures to assist Member States in conducting effective prosecutions of traffickers and the Commission is funding several projects focused on training law enforcement authorities, prosecutors, the police and social services.

6.1. Targeted and regular training

Cooperation and partnerships at all levels are crucial to ensuring effective prosecutions and investigations. The EU legal and policy framework stresses the importance of appropriate and regular training for those responsible for investigating or prosecuting THB offences, and for the judiciary. According to information available to the Commission, Member States provide training for judiciary and law enforcement officials, including those deployed in cross-border contexts. Such courses are often delivered under EU-funded projects and many have been included in the curricula of relevant schools and academies. Training on specific dimensions of THB is generally organised in close cooperation with civil society organisations and/or European and international institutions and agencies (e.g. the European Police College – CEPOL).

6.2. 'Follow the money' – financial investigations

As stressed above, **THB is a highly profitable form of organised crime.** The EU Strategy therefore focuses on enhancing Member States' cooperation with EU JHA agencies and bodies such as Europol, Eurojust and CEPOL to **encourage financial investigations of trafficking cases**. According to the information available to the Commission, financial (including asset-tracing) investigations are conducted in several Member States on a case-by-case basis when a case of THB is encountered, but not systematically across all Member States. The reasons for this vary between Member States and are often linked to a lack of best practices and experience at national level, or to legal obstacles. The Commission encourages Member States to use financial (including asset-tracing) investigations more proactively and systematically. Against this background and as required by the EU Strategy, **Europol is currently working on an analysis of financial investigations in THB cases in the EMPACT framework** on the basis of information from Member States.

The ability of MS authorities to freeze and confiscate the proceeds of THB will be considerably enhanced by the implementation, by end 2016, of the new Directive on confiscation[20]. This Directive foresees far-reaching legal measures (for example allowing the freezing and confiscation of property transferred to, or acquired by, third parties) which will apply to the proceeds of the most serious forms of organised crime, including THB.

At the same time, the improved cooperation between the Asset Recovery Offices in the Member States[21] will enhance the possibilities to identify and trace the proceeds of THB across the Union.

The EU Strategy also provides for the involvement of seven JHA agencies[22] and Eurofound. Details of all joint activities and a list of specific THB-related measures, broken down by agency and based on the joint statement, can be found in the Annex.

[20] Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127/39).

[21] The asset tracing requests exchanged between Asset Recovery Offices in the Europol SIENA system have increased from 471 in 2012 to 2251 in 2013. The quality of the information provided has also improved.

6.3. EU policy cycle and THB

In June 2013, the **Council adopted conclusions[23] identifying the nine priority areas of the EU Serious and Organised Crime Policy Cycle starting in 2014, which include THB**. The Standing Committee on Operational Cooperation on Internal Security (COSI) has a mandate to facilitate, promote and strengthen the coordination of Member States' operations in the field of internal security, with support from Europol, and to adopt annual operational action plans (OAPs) on each priority area identified by the Council. The OAP for 2014 focuses on issues such as intelligence gathering, the use of financial investigations, the use of the internet and new technologies, child trafficking, joint investigation teams and cooperation with EU agencies and bodies and other stakeholders.

The OAP on THB is implemented by the EMPACT Group, which meets regularly on Europol's premises. The Commission participates in the meetings and contributes to discussions where appropriate.

As envisaged in the EU Strategy, the Commission works proactively to facilitate cooperation at all levels. In this context, cooperation has been established with EMPACT THB to step up cooperation between civil society organisations and law enforcement authorities in the Member States.

According to the information available to the Commission, several Member States have set up structured mechanisms to enhance cooperation in addressing THB cases, mainly between existing law enforcement departments/units and other relevant national institutions. Others have opted to set up new specialised, multidisciplinary law enforcement units to address THB. Generally, such systems gather expertise on THB, organised crime, border control and migration issues and, in several cases, on cybercrime. Structured mechanisms for cooperation to address THB cases and specialised law enforcement units are often overseen by a national coordinator, who in some cases is also the national rapporteur or equivalent mechanism (NREM) for the Member State in question.

6.4. The role of the internet and online recruitment

The EU Strategy highlights that the **internet plays a key role today in facilitating THB and increases the challenges for law enforcement authorities**. Because of the relative anonymity it provides, the internet is used for recruitment through false job advertisements and also plays a crucial role in the sale of services provided through the exploitation of THB victims. According to Europol's *2013 Executive Report on Serious and Organised Crime Threat Assessment* (SOCTA 2013), the internet will be an even more important marketplace for illicit commodities and criminal services in the future. Criminals advertise facilitation services to potential migrants online, recruit THB victims and connect to customers in destination countries. Social media, dating sites and online forums are becoming increasingly prominent in online child sexual exploitation, THB and fraud respectively.

[22] The European Police College (CEPOL), the EU Judicial Cooperation Unit (Eurojust), the EU law enforcement agency (Europol), the European Asylum Support Office (EASO), the European Institute for Gender Equality (EIGE), the EU Agency for Fundamental Rights (FRA) and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

[23] http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/137401.pdf.

The EU Anti-Trafficking Day Conference in Vilnius in October 2013 was devoted to the role of the internet in THB. **As envisaged in the EU Strategy, the Commission has started work on a report to increase knowledge of the use of internet and social networks for recruitment for all forms of THB.** The report is expected to be finalised by mid-2015.

6.5. Mapping case-law on THB for the purpose of labour exploitation

A current study focuses on mapping relevant case-law and analysing practices across the Member States, including trends, police and judicial architecture, the relevant legal contexts and the challenges at national level. The results, due in the second half of 2015, are expected to feed into policy development and support Member States in ensuring effective investigations and prosecutions by increasing knowledge on the adjudication of THB in the EU.

Box 1: EU Anti-Trafficking Day

Since 2007, 18 October has been marked as EU Anti-Trafficking Day. Together with the Commission, successive EU Presidencies have organised high-profile events focusing on various areas, such as cooperation in the external dimension (Sweden) and partnerships (Belgium). The 2012 conference, held in Brussels under the Cypriot Presidency, focused on the EU Strategy and on future work to strengthen cooperation and partnerships, prevention, victim protection and assistance, and the prosecution of traffickers. The 2013 conference, held in Vilnius under the Lithuanian Presidency, focused on the role of the internet in THB.

7. COORDINATION, COOPERATION AND POLICY COHERENCE

Cooperation and partnerships among all actors working in the field are crucial to addressing THB. The **EU ATC is entrusted with overseeing implementation of the EU policy framework, in particular the EU Strategy**, ensuring overall coordination of THB-related activities within the Commission and with external stakeholders, and coordinating the allocation of funding so that it reflects EU priorities.

7.1. Informal network of national rapporteurs or equivalent mechanisms

Article 19 of the Directive provides for the **formal establishment of national rapporteurs or equivalent mechanisms (NREMs)** in charge, *inter alia*, of carrying out assessments of trends in THB, measuring the results of anti-trafficking action, including the gathering of statistics, in cooperation with civil society organisations, and reporting. The Directive further requires the Member States to facilitate the tasks of an ATC and transmit to the ATC the information referred to in Article 19, on the basis of which the ATC is to contribute to the Commission's two-yearly progress reports.

An informal network of NREMs was established under the Council Conclusions adopted on 4 June 2009.[24] Together with the EU Presidency, the EU ATC holds biannual meetings with the network, which plays an important role in discussing issues relating to the collection of comparable data and assessing trends based on commonly developed and agreed reporting templates, in line with Articles 19 and 20 of the Directive.

[24] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/108312.pdf.

Box 2: EU agencies' and bodies' joint statement

As regards greater coordination and coherence in anti-trafficking policies and action, the EU Strategy explicitly mentions Eurofound and seven JHA agencies directly involved in the implementation of the deliverables: CEPOL, Eurojust, Europol, EASO, EIGE, FRA and Frontex.

On the 5th EU Anti-Trafficking Day on 18 October 2011, the heads of the seven agencies were brought together by the Commission in Warsaw, under the Polish Presidency, to sign a joint statement[25] undertaking to address THB in a coordinated, coherent and comprehensive manner, in partnership with each other and with Member States and EU institutions, agencies and bodies.

The EU Strategy calls on the Commission to coordinate and monitor implementation of the joint statement. The agencies' THB contact points met initially in May 2012 and have come together at regular intervals since. On the 6th Anti-Trafficking Day, in 2012, Frontex presented a report on the implementation of the initiative and what had been achieved by the agencies one year on.

The agencies and the EU ATC continue to hold coordination meetings in order to monitor implementation of the EU Strategy and the joint statement. The second progress report is annexed to this report.

7.2. The EU Civil Society Platform

A key policy priority identified in the EU Strategy is to build up partnerships with all actors working against THB and most importantly with non-governmental organisations and civil society at large. One example of this was the launch, on 31 May 2013, of the **EU Civil Society Platform against THB** in Member States and selected non-EU countries.

The Civil Society Platform currently meets every two years, bringing together over 100 civil society organisations working in the field of THB in the Member States and in four neighbouring priority countries (Albania, Morocco, Turkey and Ukraine).

In March 2014, the Commission issued a call for expressions of interest to participate in the EU Civil Society e-Platform against THB, which is to complement the Platform and enable the continuity of the discussions beyond the biannual meetings in Brussels and ensure that they are broadened by including a higher number of organisations. The selection procedure has been finalised and **the e-Platform is now operational.**

The Commission will facilitate further exchange of information and ideas and invite the participants to discuss future action fostering open, inclusive and diverse participation.

Also, to facilitate cooperation between NREMs and civil society organisations, the Commission organised a joint meeting of the informal network of NREMs and the EU Civil Society Platform in May 2014, where participants were able to make contacts and strengthen cooperation in the context of reporting under Article 19 of the Directive, and propose specific contributions to the Commission in this respect.

[25] http://ec.europa.eu/anti-trafficking/EU+Policy/EU_s_fifth_Anti_Trafficking_day.

7.3. The external dimension and the action-oriented paper on strengthening the EU external dimension on action against THB

The EU policy framework on THB links the internal and external dimensions. A number of EU external policies and instruments help to address THB in non-EU countries, because:

- THB is a grave violation of human rights and tackling it is a clear objective of EU external action;
- non-EU countries are often countries of origin and transit for trafficking to the EU; and
- as a cross-border illegal activity, it is an important area for cooperation with non-EU countries.

The Commission funds numerous projects to address THB in a range of non-EU countries and regions. The EU ATC provides strategic policy guidance to ensure consistent and coordinated planning to address THB coherently within the EU and in relation to non-EU countries, and monitors the use of all appropriate forms of EU action.

7.3.1. Action-oriented paper

In 2009, the Council adopted an action-oriented paper (AOP)[26] geared to strengthening the commitment and coordinated action of the EU and the Member States to address all forms of THB, in partnership with non-EU countries, regions and organisations at international level. The AOP is based on respect for human rights and the rule of law and includes a gender and child rights perspective. It elaborates on the EU's external relations policy and the programming of activities with non-EU countries, regions and organisations at international level, including development cooperation.

The first implementation report, in 2011, gave an overview of THB projects in non-EU countries funded by the EU and Member States. The second, adopted in December 2012,[27] includes a list of priority countries and regions[28] with which cooperation on THB needs to be further strengthened and streamlined. The Council has invited the Commission to report on progress made in 2014 and to include this in the first report on the implementation of the EU Strategy.

At the request of the Council, the Commission and European External Action Service have produced an **information package on activities in the priority countries and regions addressing THB, and a list of relevant tools and instruments** available to the EU and the Member States. The package includes an overview of EU policies, including external policies,

[26] http://ec.europa.eu/anti-trafficking/EU+Policy/Action_Oriented_Paper_on_strengthening_the_EU_external_dimension_on_action_against_THB.

[27] http://ec.europa.eu/anti-trafficking/EU+Policy/Second_report_AOP.

[28] Priority countries and regions are grouped in three categories:
I. Albania, Brazil, China, Dominican Republic, Morocco, Nigeria, Russian Federation, Turkey, Ukraine and Vietnam;
II. Candidate and potential candidate countries in the Western Balkans, countries covered by the European Neighbourhood Policy, both Eastern Partnership and Southern Mediterranean countries; and
III. Community of Latin America and Caribbean States (CELAC) countries (in particular Paraguay and Colombia), the Silk Route region (in particular India), South-East Asian countries (in particular Thailand, Laos, Cambodia and the Philippines) and Western Africa (in particular Sierra Leone).

addressing THB and of projects funded by the EU and Member States in the field of THB. It serves as a reference tool for EU Delegations and Member States, to enhance cooperation and the coherence of anti-THB action and policy in their host countries. Member States are also requested to cooperate with the Commission and the EEAS in this area.

As envisaged in the EU Strategy, EU Delegations in priority countries have been asked to create partnerships and ensure coordination and coherence in their host countries, appointing a contact person for THB-related issues, organising coordination meetings, closely monitoring EU-funded projects on THB and ensuring a regular exchange of information with the host-country authorities. To facilitate their work, in June 2014 the Commission organised a three-day training course for EU Delegations on external cooperation in the area of THB, with a particular focus on priority countries and regions.

Member States have reported extensively on their cooperation on THB with priority countries and regions. They have funded projects addressing several dimensions of THB in some of the category I countries, e.g. Brazil, Vietnam, Albania, Ukraine, Nigeria. Often these projects were implemented jointly by several Member States, also in cooperation with international organisations such as the International Organisation for Migration (IOM) and UN bodies. THB seminars, workshops and study visits have been organised, including training for diplomatic staff. At operational level, initiatives have been taken to increase cooperation between Member States' police liaison officers in third countries, e.g. Russia, Ukraine, Belarus and Morocco, on THB prevention and prosecution, and protecting and assisting THB victims. Specific projects have involved cooperation with airlines or addressed child sex tourism, in particular in Brazil, Thailand, Nepal, India and Senegal. Efforts have been made to mainstream activities addressing THB in broader policy areas such as migration, gender equality and children's rights.

Some Member States reported that they had signed bilateral agreements with priority countries (Albania, Belarus, China, Morocco, Russia, Thailand, Ukraine and Vietnam) to strengthen cooperation in the area of THB, often in the context of fighting organised crime.

Member States also reported regional cooperation efforts to address THB, in particular with South-East European, Western Balkan, Eastern Partnership and Community of Latin American and Caribbean States (CELAC) countries. Existing mechanisms have been used to address a range of issues, such as national referral mechanisms, coordination of anti-trafficking initiatives and measures, awareness-raising and cooperation with civil society organisations.

The Member States also contributed to the work of international organisations to improve coordination and coherence in the field of THB.

The Commission has signed letters of intent on cooperation with the UN Office on Drugs and Crime (UNODC) and the UN High Commissioner for Refugees (UNHCR), including in the field of THB. In 2012, DGs HOME, DEVCO and ECHO, together with EEAS, established a framework for strategic cooperation with IOM which serves as a basis for interaction and outlines the structure and development of their relationship. The Commission is a full member of the Baltic Sea States' THB Task Force, which aims to enhance cooperation on migration, development, humanitarian response and human rights issues. The EU is party to the UN Transnational Organised Crime Convention and its Protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Commission closely followed the process on the standard-setting item on supplementing the Forced Labour Convention in the International Labour Conference.

7.3.2. The Global Approach to Migration and Mobility

Eradicating THB is a priority area of the Global Approach to Migration and Mobility (GAMM), which since 2005 has represented the overarching framework for the EU's external migration policy. The GAMM determines how the EU conducts its policy dialogue and operational cooperation with third countries in the area of migration and mobility, on the basis of clearly defined priorities and firmly grounded in its overall external action, including development cooperation. Particular emphasis is placed on prevention, the prosecution of perpetrators, the protection of victims and the specific situation of unaccompanied minors. Preventing and combating THB and protecting its victims are systematically addressed in all relevant agreements and partnerships with non-EU countries and in all EU dialogues on migration and mobility, including the visa liberalisation dialogues. Addressing THB was also identified as a priority in the Commission's 4 December 2013 Communication on the work of the Task Force Mediterranean.

Thus, THB is included in the Stabilization and Association Agreements between the EU and the Western Balkans countries. Progress made in this field is regularly assessed in the process of aligning with the EU acquis, as part of the accession negotiations (Chapter 24 Justice, freedom and security) with those candidate countries negotiating their accession to the EU and is reported in the annual Enlargement progress reports on candidate and potential candidates. THB is also addressed in the action plans with the Neighbourhood countries and progress is reported in the Neighbourhood Policy annual reports.

The EU has justice, freedom and security subcommittees with all the Eastern Partnership countries (except Belarus) under the Political Cooperation Agreements (PCAs), where the partner country reports on its achievements on THB and the Commission issues recommendations for further work. In addition, the Eastern Partnership Panel on Asylum and Migration holds regional-level experts' meetings on THB and the smuggling of human beings, the latest of which took place in Vilnius in June 2014.

Effectively combating THB and protecting its victims is also an integral benchmark in the two phases of the Visa Liberalisation Action Plans with Ukraine, the Republic of Moldova and Georgia, and in the common steps for visa-free arrangements in the EU-Russia visa dialogue. Progress is assessed in depth in the context of the Action Plans, which require the partner countries to adopt and implement laws in line with the best European and international practices.

In line with the GAMM, THB is systematically covered in all dialogues and cooperation frameworks with non-EU countries, in particular the Mobility Partnerships and Common Agendas on Migration and Mobility. Hence, THB is an essential component of the EU's dialogues on migration, mobility and security with the Southern Mediterranean countries and a number of initiatives in this field have been included in the Mobility Partnerships with Morocco, Tunisia and Jordan.

This also applies to regional dialogue with Africa, in particular the Euro-African Dialogue on Migration and Mobility, the Rabat Process (with the countries along the migratory routes in West Africa). Likewise, the stand-alone declaration on migration and mobility adopted at the EU-Africa Summit in April 2014 renewed both sides' commitment to stepping up their efforts to address THB, in particular through closer partnership and cooperation on prevention, protection and prosecution, and fighting against those taking advantage of all forms of exploitation, both in Europe and in Africa. Furthermore, like all Common Agendas, the recently adopted Common Agenda with Nigeria pays special attention to this issue.

THB is also covered in migration dialogues with other regions, such as Latin America, the African, Caribbean and Pacific (ACP) or the Silk Route countries, and bilateral dialogues with China, Russia and India.

The above frameworks and dialogues involve numerous Commission-funded projects on THB in a wide variety of non-EU countries. THB is covered in a number of country strategy papers and national and regional indicative programmes, e.g. in South and South-East Asian countries, where there is a persistent problem at both country and regional level.

In addition, the EU raises THB in the framework of its human rights dialogues with over 40 countries worldwide, as an important component of its Action Plan on Human Rights and Democracy in relations with third countries. It also supports international efforts in this field, advocating in various UN fora for prevention, victim protection and assistance, establishment of a comprehensive legislative framework, policy development and law enforcement, and improved international cooperation and coordination in the work on THB. For example, it played a central and influential role in the preparations for the second High-level Dialogue on International Migration and Development, which took place during the UN General Assembly in New York on 3-4 October 2013. The EU successfully advocated for stronger language on THB in the outcome document.

7.4. Enabling policy implementation

The EU Strategy recognises that the effectiveness of the EU framework on THB depends to a large extent on funding and the active involvement of all relevant stakeholders. **The Commission funds numerous projects within and outside the EU, which involve a wide range of promoters and partners, and address different dimensions of THB.**

The Commission is working to ensure that funding reflects the EU's priorities in addressing THB, as set out in the Strategy. A comprehensive inventory of all funded THB projects is being finalised so that they can be assessed in terms of impact and results. This will enhance coordination, avoid duplication and provide a solid basis for coherent, cost-effective and strategic planning.

Anti-trafficking projects are funded under a number of EU financial instruments (this includes projects not directly addressing trafficking, but other pertinent issues such as women's rights, integration of migrants, etc.); this reflects the importance the EU attaches to tackling this form of human rights violation.

The Prevention of and fight against crime (ISEC) financial programme has addressed THB as a priority since its inception in 2007 and has published several target calls for projects addressing THB. ISEC has funded many THB-related projects, covering topics such as gender, labour exploitation, child trafficking, identification and assistance, forced begging, sexual exploitation, etc. The number of applications from different types of stakeholder, including EU Member States and civil society, has increased sharply in the past three years.

About 62% of current home affairs funding is channelled through the Solidarity and management of migration flows (SOLID) general programme, which makes it by far the biggest delivery mechanism for home affairs policies. SOLID has comprised four funds[29] and supported action in the areas of migration, integration, asylum, external borders and return.

[29] The European Refugee Fund, the European Fund for the Integration of non-EU nationals, the External Borders Fund and the Return Fund. It also includes other instruments, such as the European Migration Network and the Pilot Project on Resettlement.

Under the new Multiannual Financial Framework (MFF), the funds, along with ISEC and the Prevention, preparedness and consequence management of terrorism and other security-related risks (CIPS) specific programme, have been replaced by two new funds in the area of home affairs: the Asylum and Migration Fund and the Internal Security Fund.

Various THB projects were also funded in the area of justice under the Daphne financial programme on violence against women and children. The funding supported NGOs helping victims, awareness campaigns and law enforcement cooperation with non-EU countries or countries of transit. Under the new MFF, Daphne III and the Fundamental Rights and Citizenship Programme were replaced by the Rights, Equality and Citizenship Programme.

Projects on THB are also funded under financial instruments dealing with cooperation with non-EU countries, both geographical, such as the Development Cooperation Instrument (DCI), the European Development Fund (EDF) and the European Neighbourhood Partnership Instrument (ENPI), and thematic, such as the Thematic Programme for Migration and Asylum (and, in the past, AENEAS) and the European Instrument for Democracy and Human Rights (EIDHR). In the area of development cooperation and security, funding for THB-related projects is also available under the Instrument contributing to Stability and Peace (former Stability Instrument).[30]

Action in the framework of the Technical Assistance and Information Exchange (TAIEX) instrument has included study visits to the Member States and seminars for law enforcement authorities, prosecutors, and police and social service personnel from candidate, potential candidate and Neighbourhood countries. Funding is also available under the Progress programme.

THB has been included as one of the topics to be covered by calls for proposals under the Seventh Framework Programme (FP7) devoted to socio-economic sciences and humanities (SSH) and security research, so as to make use of the academic community's considerable expertise in the area of trafficking.

In line with the EU Strategy, the anti-trafficking website is regularly updated with projects funded under various instruments and the Commission works to ensure that the inventory is complete. Streamlining information on funded projects is a key part of the work of the Commission's THB Inter-Service Group, where all relevant services contribute information.

[30] Some of these instruments changed from 2014, under the new (2014-20) MFF: ENPI is now ENI; the Thematic Migration and Asylum Programme is now included in the Global Public Goods and Challenges (GPGC) Programme; and the Instrument for Stability is now the Instrument contributing to Peace and Stability.

Box 3: The EU anti-trafficking website

http://ec.europa.eu/anti-trafficking/

The EU anti-trafficking website, one of the Commission's few horizontal websites, attracts significant internet traffic. It serves as an information hub inter alia *on EU legal and policy instruments, national information and updates on anti-trafficking measures and initiatives, case law, funding opportunities, publications and EU initiatives. It includes a database of EU-funded THB projects in EU and non-EU countries and serves as a portal for the Civil Society e-Platform.*

8. FOLLOW-UP

This report has highlighted the most important elements of the EU's legal and policy framework on THB and the efforts made to mainstream this work at regional, national, European and international levels. It has illustrated the Commission's coordinated and coherent approach to implementing the EU Strategy.

This work will continue in the coming years and be extended to take in a number of new measures, including:

- the establishing of a European Business Coalition;
- a review of all EU-funded THB projects;
- a mapping of funding allocation;
- awareness-raising;
- models and guidelines addressing demand reduction for all forms of exploitation;
- further strengthening the informal network of NREMs;
- ensuring support for the EU Civil Society Platform; and
- continued support for the work of EMPACT THB in the context of the EU Policy Cycle on Serious and Organised Crime and for JHA agencies' specific efforts on the basis of the joint statement.

In 2015, the Commission will submit reports:

- assessing Member States' measures to comply with the Directive; and
- on the THB situation in the EU, on the basis of information received by the Member States and other stakeholders (see Article 20 of the Directive).

Finally, in 2016, the Commission will assess the effect of existing national law criminalising the use of services that are the objects of exploitation of THB, accompanied, if necessary, by appropriate proposals (see Article 23 of the Directive).

The EU Strategy expires in 2016. The Commission plans to develop a new post-2016 Strategy in consultation with relevant stakeholders on the basis of the lessons learnt and needs identified.[31]

[31] Communication on *An open and secure Europe: making it happen* (COM(2014) 154 final).

ANNEX

SECOND ACTIVITY REPORT FOLLOWING THE JOINT STATEMENT OF THE HEADS OF THE EU JUSTICE AND HOME AFFAIRS AGENCIES

1. INTRODUCTION

The JHA agencies' activities on THB need to be coordinated so that they act together in a more coherent and comprehensive manner, taking advantage of synergies and avoiding a duplication of effort.

This is why, on the occasion of the 5th EU Anti-Trafficking Day (18 October 2011), the heads of seven justice and home affairs (JHA) agencies[1] signed a joint statement undertaking to align their planning on THB and to take action together.[2]

In order to ensure that the agencies regularly exchange information on all THB-related activities and whenever appropriate work together closely to generate synergies and avoid duplication of effort, keeping in mind the need for a multidisciplinary approach, three coordination meetings of the agencies' THB contact points are organised every year by the EU Anti-Trafficking Coordinator (EU ATC) in Brussels.

The agencies' first joint report was presented by Frontex in October 2012 in the context of the 6th Anti-Trafficking Day. This second report, which has been coordinated by EASO as chair of the agencies' network in 2014, covers **joint action by the agencies between October 2012 and September 2014** and will be incorporated in the mid-term report on the implementation of the EU Strategy towards the eradication of THB 2012-16.

In line with the EU Strategy, this report focuses on areas in which the seven JHA agencies have joined forces to help implement Directive 2011/36/EU on preventing and combating THB and protecting its victims.[3] The report follows the structure of the Strategy. An additional document listing the key measures taken by each agency individually in the field of THB will be made available on the agencies' websites.

A significant number of measures fall into the section on the prosecution of traffickers, as CEPOL, Eurojust, Europol and Frontex are all involved in that area. Also, the agencies have different mandates and therefore do not all act on all priorities.

2. COOPERATION AND COORDINATION

[1] The European Police College (CEPOL), the EU Judicial Cooperation Unit (Eurojust), the EU law enforcement agency (Europol), the European Asylum Support Office (EASO), the European Institute for Gender Equality (EIGE), the EU Agency for Fundamental Rights (FRA) and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

[2] http://ec.europa.eu/anti-trafficking/download.action?nodePath=/EU+Policy/Joint+statement+of+the+Heads+of+the+EU+Justice+and+Home+Affairs+Agencies.pdf&fileName=Joint+statement+of+the+Heads+of+the+EU+Justice+and+Home+Affairs+Agencies.pdf&fileType=pdf

[3] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0036.

The EU ATC in Brussels chaired five coordination meetings between October 2012 (when the first joint report was presented) and the date of publication of this report.

Six of the agencies were represented at each meeting; to date, EIGE has been unable to attend, but it has contributed to a number of the activities listed below. At each meeting, the Commission gave an update on the implementation of the EU legal and policy framework and each agency reported on its recent joint and individual activities, the aim being to improve cooperation and coordinate action. The agencies' representatives worked intensively to ensure that a clear mapping of their joint activities reflected the structure and content of the EU Strategy as a basis for the report at hand.

In addition, the agencies' network, in which the Commission actively participates, has included THB among its priority areas for further operational cooperation on JHA. The heads of the agencies and the JHA Contact Group have regularly included THB on their meeting agendas in 2013 and 2014 in order to enhance practical cooperation in this area.

To further promote cooperation, the **Europol** and **FRA** THB contact persons have taken part in exchange visits on the basis of an agreement signed by their directors in 2012. Inter-agency exchange in areas of common interest, including THB, is also envisaged in the 2013 memorandum of understanding between **Eurojust** and **Frontex. Eurojust** and **FRA** concluded negotiations for a memorandum of understanding on cooperation in July 2014. Also, **EASO** and **FRA** signed a working arrangement in 2013 under which they will share best practices, information and expertise relating to the protection of vulnerable groups, including victims of THB, and explore possible targeted activities in this area. Lastly, **EASO** and **Frontex** continued to implement their working arrangement (signed in 2012), which provides for a framework of cooperation on identifying persons in need of protection.

3. JOINT ACTIVITIES

PRIORITY A: IDENTIFYING, PROTECTING AND ASSISTING VICTIMS OF TRAFFICKING

In this priority area, **EASO**, **FRA**, **Eurojust, Frontex** and **CEPOL** in particular have been active in developing action plans, training modules and activities, surveys and mappings that concern the identification and further protection of the rights of vulnerable persons, with a specific focus on women, children and unaccompanied minors, and issues of legal guardianship and its key role for child victims or potential victims of THB.

The agencies' most relevant activities under this priority included the following:

- With support from **Frontex**, **FRA** carried out a study on fundamental rights at large airports in the EU, which looked *inter alia* at whether and how border guards are equipped to identify potential THB victims and refer them to the national protection authorities. The findings were presented to the Operational Heads of Airports Conference organised by **Frontex** in March 2014 and a report will soon be available on **FRA**'s website;
- The strategic project on **Eurojust's action against THB**[4] analysed the difficulties encountered in identifying THB victims and Member States' action to ensure that they are assisted and protected. The main findings and recommendations were presented to the Standing Committee on Operational Cooperation on Internal Security (COSI)[5] on 11 February 2013. The project has continued in 2014 to analyse THB cases registered by Eurojust in 2012 and 2013;
- **FRA** conducted a large-scale survey exploring women's experiences of violence, with input from **EIGE as part of the expert group assigned to follow the survey**. The survey was based on interviews with 42 000 women. The results (March 2014)[6] show that victims of serious violence usually approach healthcare services rather than reporting to the police. Although THB was not specifically covered by the survey, a number of its findings apply to women victims of THB;
- **EASO** is mapping and analysing Member State asylum authorities' current practices as regards identifying vulnerable applicants (including victims of THB). A meeting at EASO premises last June on the identification of persons with special needs led to **EASO** setting up a working group composed of Member State experts tasked with developing a practical tool for identifying such persons (including victims of THB);
- In March 2014, EASO organised a first experts' meeting on THB and asylum with support from the Commission and participation from **CEPOL, FRA, EIGE, Eurojust, Europol** and **Frontex**. The meeting focused on identifying Member States' main interests as regards THB; these may be addressed in subsequent meetings;
- **Frontex** produced a *Handbook on THB Risk Profiles* to be used by border control and other law enforcement authorities, and during Frontex joint operations. The aim is more efficient detection and dismantling of criminal groups in cooperation, *inter alia*, with **Europol** and **Eurojust**. The *Handbook* is now part of the permanent risk analysis programme and will be updated every year;
- Under the Action Plan on Unaccompanied Minors (2010-14), **EASO** (with **Commission** and **FRA** support) focused on the prevention of trafficking of children in an updated version of its training module on interviewing children. **EASO** published *Age assessment practice in Europe*,[7] a useful guide for officials dealing with child victims of THB, in December 2013 and held several expert meetings on children on topics such as safe return to avoid re-trafficking and the role of guardians in protecting the best interests of child or potential victims of THB;
- In close cooperation with the Commission and the EU ATC, **FRA** produced a *Handbook on Guardianship for Children deprived of Parental Care*,[8] aiming to reinforce guardianship systems to cater for the specific needs of child victims of trafficking. The *Handbook* provides specific guidance for Member State officials and guardians on how guardianship systems and individual guardians can cater for the particular needs of child THB victims and protect their rights;

[4] http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/Casework/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf.

[5] http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/internal-security/cosi/index_en.htm.

[6] http://fra.europa.eu/en/publication/2014/vaw-survey-main-results.

[7] http://easo.europa.eu/wp-content/uploads/AA.png.

[8] http://fra.europa.eu/en/publication/2014/guardianship-children-deprived-parental-care-handbook-reinforce-guardianship.

– **Frontex** is currently developing a handbook with practical guidelines for border guards on how to identify children in need of protection at border crossing points. The aim is to formulate a comprehensive EU approach on child trafficking by collecting best practices from air border authorities that already have systems in place at airports. These practices were merged in 2014, with the support of international organisations and **FRA**, in an EU manual focusing on the law enforcement perspective. They will be shared with a wide range of stakeholders and non-law enforcement operators. The manual will be tested in autumn 2014;

– In June 2014, **Europol** organised an experts' conference[9] where child trafficking was one of two topics in the spotlight. The conference attracted broad participation, from **CEPOL**, **EASO**, **Eurojust** and **Frontex**, Member State law enforcement officers and experts from international and non-governmental organisations, who looked into the investigation of cross-border child trafficking cases and the protection of the victims;

– To provide information on victims' rights, **FRA** is compiling tables with an overview of generic victim support services in the 28 Member States, which are also relevant for victims of trafficking, for publication on its website; and

– With **FRA** support, **CEPOL has been raising** fundamental rights awareness through courses on human rights and police ethics.[10] The focus has been on victims' rights and the challenge of protecting fundamental rights while implementing the law. In 2014, Germany held a CEPOL webinar on police and human rights, outlining the roles of the relevant EU institutions in this context; this was supported by Lithuania and **FRA**, and attended by 94 participants from 21 countries, **Frontex** and **Interpol**. **CEPOL** also hosted a presentation by the EU ATC in the context of a webinar[11] in 2014 which focused on the EU ATC's efforts to ensure implementation of Directive 2011/36/EU and the EU Strategy.

PRIORITY B: STEPPING UP THE PREVENTION OF THB

The JHA agencies' contributions and cooperation in this area involved awareness-raising and training on prevention programmes and demand reduction; they included:

– In 2013 and 2014, Sweden organised a **CEPOL** course on THB prevention mechanisms, with a specific focus on demand reduction.[12] Topics included international cooperation, with examples from Sweden, Poland and Belgium. **Europol** provided an expert on each occasion. (In November 2012, this course had been organised by **CEPOL** itself, with **Frontex** contributing);

– **Europol** regularly organises Europol Roadshows aimed at raising awareness of its activities among Member State law enforcement agencies working in the field. In 2013, three roadshows (in Portugal, Spain and Slovakia) specifically covered THB; and

[9] https://www.europol.europa.eu/content/increased-focus-link-between-internet-and-human-trafficking.

[10] 2013: 29 participants from 19 Member States (70 %); 2014: 27 participants from 24 Member States (86 %).

[11] A webinar is an online seminar.

[12] 2013: 27 participants from 18 Member States; 2014: 28 participants from 22 Member States.

– In 2013, **CEPOL** organised a webinar on best practices in THB prevention programmes,[13] involving a presentation by a **Frontex** expert on the early identification of victims and perpetrators, profiling, collecting intelligence, inter-agency cooperation and training.

PRIORITY C: INCREASED PROSECUTION OF TRAFFICKERS

The JHA agencies have sought to carry out more joint investigations and extend cross-border police and judicial cooperation:

– In 2014, **CEPOL** updated its Common Curriculum on Money Laundering[14] with the support of **Europol** in order to raise awareness of the importance of including financial investigators in THB cases. The CEPOL Common Curriculum on THB was updated with the support of **EASO, Europol, Frontex** and **Eurojust** to focus more on this issue. **Eurojust**'s Action Plan against THB encourages Member States to conduct financial investigations in THB cases with support from **Eurojust** and **Europol**;

– In 2012, **Eurojust** initiated a Strategic Project on Eurojust's action against THB.[15] The project and action plan address problems relating to the low number of investigations and prosecutions in the Member States, insufficient coordination of simultaneous action, financial investigations and asset recovery, and the setting-up and functioning of joint investigation teams (JITs) in THB cases, proposing solutions and possible action. The report and the action plan (for 2012-16) were first presented at the 6th EU Anti-Trafficking Day in Brussels on 18 October 2012. A mid-term evaluation report on the implementation of the action plan will be published in November 2014. The follow-up includes action focused on increasing the number of investigations and prosecutions, and promoting the involvement of **Eurojust** and **Europol** in all cross-border THB cases, in accordance with their mandates. **Eurojust** further supports Member States with coordination meetings, coordination centres and JITs. **Europol** is an associated partner in 5 JITs;

– **Europol** has actively supported implementation of the EMPACT THB project[16] under the first (2011-13) and subsequent (2013-17) policy cycles,[17] which have strong links to the EU Strategy. In 2013, in cooperation with **Eurojust** and **Frontex**, **Europol** published the *Serious and Organised Crime Threat Assessment*, on the basis of which THB was identified as a priority for the fight against serious and organised crime. The project seeks to foster a multidisciplinary, integrated and integral approach to address THB effectively and has been converted into operational action plans (OAPs). It started with 14 Member States, but four new Member States joined in 2012 and

[13] 48 attendees.

[14] https://www.cepol.europa.eu/education-training/trainers/common-curricula/money-laundering.

[15] http://eurojust.europa.eu/doclibrary/corporate/Casework%20publications/Eurojust%20action%20against%20trafficking%20in%20human%20beings%20(October%202012)/THB-report-2012-10-18-EN.pdf.

[16] The EMPACT THB Group is a multilateral cooperation platform to address THB at EU level. It is part of the intelligence-led policing approach to tackling organised crime, identifying priorities and establishing an international team-work approach to bringing down criminal groups that threaten the security of the EU.

[17] http://ec.europa.eu/dgs/home-affairs/what-we do/policies/pdf/4_council_conclusions_on_the_policy_cycle_en.pdf.

another five in 2013. Also in 2013, **Europol** organised three OAP meetings, where Eurojust, Frontex, CEPOL and the Commission were all represented;

- **CEPOL** supports the EMPACT THB project by giving it the opportunity to publicise it work to a wider law enforcement audience by means of an annual webinar;[18]
- **Frontex** has produced a handbook on the detection and disruption of criminal organisations involved in THB and smuggling at external air borders. It sets out best practices to counter smugglers and traffickers;
- In 2013-14, the **Europol** operational THB project (Analytical Work Files SOC- Focal Point Phoenix) received 4 514 national contributions relating to 555 new cross-border investigations initiated by the Member States. In this period, Focal Point Phoenix supported 33 high-profile cross-border operations, providing tailor-made operational support to the competent investigating teams. Of these, 10 were supported in close cooperation with **Eurojust**; and
- Lastly, as regards increasing cooperation beyond borders, in the context of EMPACT THB **Europol** and **Eurojust** joined (as associate partners) two ISEC[19] projects aimed *inter alia* at strengthening judicial cooperation on THB matters with Nigeria (ETUTU) and China (Chinese THB, in which **Frontex** also participates). They also both take part in the ISEC project on the use of JITs to fight THB in the Western Balkans at local level.

PRIORITY D: ENHANCED COORDINATION, COOPERATION AND POLICY COHERENCE

This priority is at the core of the JHA agencies' coordination effort, as it refers to cooperation between key actors. The agencies' focus is on creating a high level of public awareness and developing training programmes that enhance synergies across EU agencies. Inter-agency coordination also concerns the external dimension, judicial cooperation with non-EU countries and facilitating investigations beyond the EU's borders. Training for those working in the field plays a very important role.

- The **CEPOL** Common Curriculum on THB is currently being updated with the support of experts from the Member States and from **Europol, Eurojust, Frontex** and **EASO**. This is a tool to support the standardisation and promote the consistency of THB training content in order to ensure the success of cross-border cooperation. In 2013, **CEPOL** produced an e-learning module on THB[20] with support from **Frontex, Europol, Eurojust, FRA** and **EIGE**;
- A **CEPOL** course on the EU approach to THB was delivered in 2013 and 2014 in close cooperation with the EMPACT Group on THB and **Europol**.[21] **Eurojust** contributed to the course. Topics included international cooperation, JITs and methods of investigation and gathering intelligence. Lithuania is planning to hold the course in

[18] See point 2.5.

[19] Prevention of and fight against crime.

[20] https://enet.cepol.europa.eu/index.php?id=courses-elearning&no_cache=1.

[21] 2013: 27 participants from 18 Member States.

September 2014, with **Europol** and **Frontex** experts among the trainers and a representative from the EMPACT Group;

- In 2014, 10 officials took part in **CEPOL's European Police Exchange Programme**, under which law enforcement officers in different countries visit each other, exchange good practices on THB and learn about THB policing across the border;
- The **Frontex** THB training manual, which includes a toolkit and was developed in close cooperation with experts from Member States, Schengen associated countries, **JHA agencies** including **CEPOL** and **Europol**, and international organisations focuses on the role of first and second line officers in combating THB. The manual will be translated into all EU languages. It is the basis for training for non-EU countries' border guards and is updated on a regular basis. In 2014, two three-day training courses were held for trainers from Member States, with the participation of the Frontex partnership academies;
- **EASO** mainstreams awareness on THB issues in all its training materials. In particular, with the support of the Commission, it has been updating its 'interviewing vulnerable persons' training module to equip asylum officers with the skills to identify vulnerability indicators, including the ability to identify potential THB victims and prepare them for the asylum interview taking into account their special needs. EASO has also recently updated its 'country of origin information' (COI) module, introducing a distinct section on 'research on trafficking'; and
- **EASO** has set up a reference group to support the development and updating of **EASO** training material, of which the **Commission** is a core member. **Other EU agencies** may take part according to the material to be developed and their field of expertise.

PRIORITY E: INCREASED KNOWLEDGE OF AND EFFECTIVE RESPONSE TO EMERGING CONCERNS RELATING TO ALL FORMS OF THB

One way in which JHA agencies can inform each other and the Member States of all ongoing or upcoming trends, in order to ensure a timely response, is by collecting data. Efforts have therefore been stepped up to improve the collection, accessibility and sharing of information on trafficking victims and organised crime groups. Efforts have also been made to develop knowledge on the gender dimension of THB and to target all forms of trafficking for human exploitation:

- **Eurojust** and **Europol** have established a secure connection for the exchanging of e-mails and operational information. **Europol** shared with the other agencies early warning notifications on:
  - a new trend relating to trafficking victims and organised criminal groups involved in marriages of convenience; and
  - the exploitation of trafficking victims in pantomime activities;
- A pilot project is being developed by **EASO**, with the involvement of **Europol**, **Eurojust** and **Frontex**, in the framework of the Commission's Communication to the European Parliament and the Council *on the work of the Task Force Mediterranean*.[22]

[22] http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/docs/20131204_communication_on_the_work_of_the_task_force_mediterranean_en.pdf.

It aims to collect information during the asylum process on routes and *modi operandi* that facilitators of irregular migrants and traffickers use and then to analyse trends and profiles with a view to a possible wider use of the methodology and lessons;

- To help develop knowledge relating to the gender dimension of THB, **EASO** (with **Commission, FRA** and **EIGE** support) is working on a new 'gender, gender identity and sexual orientation' training module (expected December 2014);
- One day of a **Europol** expert conference in June 2014 (also attended by experts from **Eurojust, Frontex** and **CEPOL**) was devoted to the use of the internet and online recruitment in the context of THB; and
- **CEPOL's** 2014 webinar on the OAP on THB (62 attendees) included a presentation on labour exploitation, which will be an action point in the coming years in the EMPACT Group's OAP.

4. NEXT STEPS

The JHA agencies are committed to continued cooperation and joint activities addressing THB in a coordinated, coherent and comprehensive manner in line with the joint statement. When working with Member States, they should make a special effort to encourage the comprehensive and coherent implementation of Directive 2011/36/EU. The Commission, in particular the EU ATC, will monitor progress in line with the EU Strategy.

As part of the multi-disciplinary approach that THB requires, the agencies' cooperation is a key element of the Strategy to eradicate the phenomenon. The agencies are encouraged to continue discussing THB in the meetings of their network, with the Commission's participation, in order further to enhance their practical cooperation in this field.

EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 17 October 2014

Trafficking in human beings 2010-2014: eradicating the slave trade

During the years 2010-2012, EU Member States registered 30 146 victims of trafficking in human beings. Behind this number are human tragedies, broken hopes and destroyed plans for a better life. During the same period, 8 551 prosecutions against traffickers were reported across the EU. 80 percent of victims of trafficking were female, and over 1 000 child victims were registered as trafficked for sexual exploitation. This data is part of a statistical report on victims and perpetrators of trafficking released today by the European Commission. A report also shows that many concrete measures against this severe human rights violation have been undertaken during 2010-2014, such as better cooperation with civil society, and guidelines issued to border authorities and other stakeholders on how to better identify victims.

To mark the 8th EU Anti-trafficking day on 18 October 2014, the Commission is today taking stock of all coordinated efforts which have been made during the 2010-2014 European Commission mandate towards the goal of eradicating human trafficking. With the adoption of the EU Anti-trafficking Directive in 2011, courts all over Europe are now judging crimes relating to human trafficking as equally severe, with common prison sentences, and EU countries are obliged to provide proper support to victims. Also, in the EU 2012-2016 Strategy on Trafficking in human beings, the EU has set out 40 concrete and practical measures against trafficking in human beings, putting the protection and rights of the victims at the forefront.

The European Commission today presents a mid-term **report of the 2012-2016 EU strategy**, accompanied by the **statistical report on victims and traffickers** for the years 2010-2012. The Commission is also reporting on the use of the **Directive on residence permits to non EU victims of human trafficking.**

Commissioner for Home Affairs, Cecilia Malmström, said: *"When I took office as Commissioner in charge of Home Affairs almost five years ago, one of my main priorities was to work towards the eradication of trafficking in human beings. Back then, eradicating trafficking was not high on the political agenda and there was a lax attitude towards the crime in many countries. Today, we can be proud over what has been achieved to prevent this slave trade of our time. We have moved from words to real action. We must continue our work tirelessly, in Europe and beyond our borders. We owe it to the women, men, girls and boys who, as we speak, are being kept against their will and exploited in appalling conditions. Every victim of human trafficking is a victim too many."*

The EU 2012-2016 Strategy: Working towards the eradication of trafficking in human beings

Carrying out the concrete actions of the 2012-2016 EU Strategy on trafficking in human beings is well underway. A large amount of work has been done at EU level to get to the root of the problem, with initiatives aiming to:

- Better identify victims: Guidelines issued to authorities and other stakeholders on the identification of victims of trafficking in human beings, in particular for border guards and consular services
- Engage and closely cooperate with civil society: the creation of the EU Civil Society Platform against trafficking in human beings and the e-Platform for hundreds of civil society organisations working on trafficking in human beings
- Increase knowledge on the phenomenon: the launch of studies on case law on labour exploitation, evaluation of prevention initiatives and on children as high risk group
- Better inform victims of their rights: guidelines issued to all Member States on EU rights of victims of trafficking in human beings
- Better assist and protect children as particularly vulnerable: Handbook for authorities and other stakeholders - "Guardianship for children deprived of parental care"
- Make full use of the EU Agencies working on the topic of trafficking in human beings
- Strengthen cooperation with non-EU countries: the implementation of the 2009 Action Oriented Paper on strengthening the EU external dimension of trafficking in human beings.

Data collection: some key findings

Today, the European Commission publishes the second working paper at the EU level on statistics on trafficking in human beings, covering the years 2010, 2011 and 2012. This is the only statistical data collection existing at EU level on trafficking in human beings. Encouraging progress has been achieved in terms of availability of data, but the working paper also points to a need for further improvement. The working paper does not measure the full extent of trafficking in human beings, it provides data only on the victims and traffickers that have come into contact with authorities and actors at national level.

Victims

- 30 146 victims were registered in the 28 EU Member States over the three years 2010-2012. Member States' authorities are becoming better at identifying and getting in contact with trafficking victims.
- 80% of registered victims were female.
- 16% of registered victims were children.
- Over 1 000 child victims were registered as trafficked for sexual exploitation.
- 69% of registered victims were trafficked for sexual exploitation.
- 95% of registered victims of sexual exploitation were female.
- 71% of registered victims of labour exploitation were male.
- 65% of registered victims were EU citizens.

Traffickers

- 8 551 prosecutions for trafficking in human beings were reported by Member States over the three years 2010-2012.
- Over 70% of traffickers were male. This is the case for suspects, prosecutions and convicted traffickers.

- 3 786 convictions for trafficking in human beings were reported by Member States over the three years.

Protecting victims: Issuing residence permits to protect non-EU victims while enabling their cooperation with the authorities

In a separate Communication also published today, the Commission reports on the application of Directive 2004/81/EC that regulates the granting of a residence permit to non-EU victims of trafficking who cooperate with the authorities for the investigation and prosecution of traffickers.

Available figures show that the possibility of issuing temporary residence permits to non-EU victims is currently under-used. For example, in 2012 only 1 124 first residence permits were granted in the EU to victims who cooperated with the authorities, whereas for that very same year 23 Member States registered 2 171 non-EU citizens as victims of trafficking.

The Commission will continue to engage with Member States to ensure full and correct implementation of the legislation and to facilitate exchange of good practices, such as individual risk assessments for all victims prior to and during their cooperation.

Useful Links

Full statistical report on trafficking in human beings 2010-2012

Mid-term report on the 2012-2016 EU Strategy on trafficking in human beings

Communication on the application of Directive 2004/81/EC on residence permits to non EU victims of human trafficking.

Infographics

Cecilia Malmström's website

Follow Commissioner Malmström on Twitter

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DG Home Affairs website

Follow DG Home Affairs on Twitter

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Foreword

Cecilia Malmström,
EU Commissioner for Home Affairs

'Trafficking in human beings is the slavery of our times, and a gross violation of human rights. It is a serious crime affecting women, men, girls and boys of all nationalities, causing severe and lifelong harm to its victims. To protect and assist victims of human trafficking, and help them recover as far as possible, EU legislation grants them a number of rights — to legal assistance, medical help, temporary residence and more. For those rights to be known and applied effectively in practice victims and practitioners working in the field of trafficking in human beings need clear and accessible information about their content. I hope that this overview of the EU rights of victims of human trafficking will help authorities in EU Member States in their daily work to deliver the assistance and protection that victims need and deserve.'

Introduction

Addressing trafficking in human beings is a priority for the European Union and the Member States. The EU approach recognises the gender-specific nature of trafficking in human beings. It places the victim and its human rights at the centre, and recognises the need for a child-sensitive approach. It emphasises the need for coordinated, multidisciplinary action.

Clear and consistent information to victims of trafficking in human beings on their rights is essential. These rights range from (emergency) assistance and health care to labour rights, rights regarding access to justice and to a lawyer, and on the possibilities of claiming compensation. This document provides an overview of those rights based on the Charter of Fundamental Rights of the European Union, EU directives, framework decisions and European Court of Human Rights case-law. Additional rights for children have been included at the end of each chapter.

This document is addressed to victims and to practitioners seeking an overview of rights based on EU legislation, as well as to Member States developing similar overviews of rights of human trafficking victims at national level. EU legislation provides for minimum standards, Member States can go beyond these standards as appropriate.

Rights deriving from EU legislation which is due to be transposed into national law by Member States after the publication of this document are marked in italics in the text.

For the purpose of the rights and obligations set out in this document, a 'child' shall mean any person below 18 years of age. Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the victim is presumed to be a child.

'Victim' for the purposes of this document refers to an individual who is subject to trafficking in human beings.

'Perpetrator' and 'offender' for the purposes of this document refers to an individual or individuals who have been accused or found guilty of human trafficking.

'Third-country national' is an individual who is not a citizen of a Member State of the European Union.

With this document, the European Commission is implementing one of the actions in the EU strategy towards the eradication of trafficking in human beings 2012–2016, namely under PRIORITY A: Identifying, protecting and assisting victims of trafficking, Action 4: Provision of Information on the rights of victims.

'Trafficking in human beings' as defined in Directive 2011/36/EU, Article 2:

1. The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

2. A position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

3. Exploitation shall include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs.

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4 The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

The description of EU legislation and relevant case-law pertaining in this document is non-exhaustive, and therefore does not cover in detail the conditions for benefiting from the rights covered, or other rights that an individual might be entitled to under EU legislation depending on their circumstances. The rights in this document benefit victims of trafficking in human beings, even when the rights in the respective EU legislation are applicable to a broader group of persons. This document in itself does not constitute any binding obligations on any parties, but describes rights and obligations deriving from EU legislation that need to be transposed in national law of Member States. Articles of legislation referenced in this document were correct as of 1 January 2013 (legislation may be subsequently altered or repealed). This document in no way constitutes a binding interpretation of the legislation cited, but is intended to be a reference document designed for ease of use.

EU rights of victims of trafficking in human beings

This document intends to inform victims, practitioners and Member States on the rights of victims under EU law. It does in no way constitute a binding interpretation of EU legislation. All rights need to be read within the context of the full legal provision and appropriate legislation.

Chapter 1: Assistance and support

1.1 Victims are entitled to assistance and support as soon as the competent authorities have reasonable grounds to believe that they might have been trafficked.

1.2 Victims are entitled to assistance and support before, during, and for an appropriate time after the conclusion of criminal proceedings.

1.3 Assistance and support should not be conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial; in cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period.

1.4 Assistance and support can only be provided with the victim's consent on an informed basis.

1.5 Victims are entitled at least to a subsistence-level standard of living, appropriate and safe accommodation and material assistance.

1.6 Victims are entitled to necessary medical treatment including psychological assistance, counselling and information.

1.7 Victims are entitled to translation and interpretation services where appropriate.

1.8 Victims with special needs (in particular needs in relation to pregnancy, health, disability, physical or mental illness or have suffered serious physical, sexual or psychological violence) shall be attended to.

1.9 Victims, in accordance with their needs, have the right to access confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members are entitled to access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

1.10 Specialist support services must provide: (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation; (b) targeted and integrated support for victims with specific needs, including victims of sexual violence and victims of gender-based violence, including trauma support and counselling.

1.11 Victims who are third-country nationals must be informed of the reflection and recovery period and provided with information on the possibilities of obtaining international protection.

1.12 Victims have the right to seek asylum, and be informed of the possibilities for obtaining international protection and should be protected against refoulement (return to the country where there is a risk of death, torture or other inhuman or degrading treatment or punishment).

Child victims

1.13 The child's best interest shall be a primary consideration and shall be assessed on an individual basis. *A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.*

1.14 Child victims are entitled to assistance and support taking account of their special circumstances. Member States need to take necessary measures to provide a durable solution based on an individual assessment of the best interest of the child.

1.15 A guardian or representative will be appointed to a child victim when the holders of parental responsibility are precluded from ensuring the child's best interest and/or representing the child.

Chapter 2: Protection of victims of trafficking in human beings

Protection prior to criminal proceedings

2.1 Victims have the right to appropriate protection based on an individual risk assessment. *The individual assessment should be timely and should aim to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings due to the particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.*

2.2 Victims of trafficking should not be prosecuted or be subject of penalties imposed for their involvement in criminal activities which they have been compelled to commit as a direct result of being subjected to trafficking in human beings, in accordance with national law.

2.3 Victim personal data can be collected from victims only for specified, explicit and legitimate purposes and in the framework of the tasks of the competent authority and may be processed only for the same purpose for which the data was collected. Processing of this data has to be lawful, adequate, relevant and not excessive (in relation to the purpose for which it was collected).

2.4 Victim personal data must be deleted or made anonymous when it is no longer required for the purpose for which it was collected.

2.5 Victims are entitled to information from their first contact with the competent authorities (such as the police, judicial authorities, etc.) and as far as possible in languages commonly understood.

2.6 Victims are entitled to information on:

- the type of services or organisations to which they can turn for support;
- the type of support which they can obtain;
- where and how they can report an offence;
- procedures following such a report and their role in connection with such procedures;
- how and under what conditions they can obtain protection;
- to what extent and on what terms they have access to legal advice, legal aid or any other sort of advice;
- requirements for them to be entitled to compensation;
- if they are resident in another Member State, any special arrangements available to them in order to protect their interests;
- *how to receive reimbursement for the expenses incurred as a result of their participation in criminal proceedings.*

Protection during and after criminal proceedings

2.7 According to an individual assessment by the competent authority, victims are entitled under certain conditions to specific treatment aimed at preventing secondary victimisation, namely avoiding unnecessary repetition of interviews during investigations, prosecution or trial, visual contact between the victim and the perpetrator, giving evidence in open court and unnecessary questions about the victim's private life.

2.8 Victims have access without delay to legal counselling and to legal representation, including for the purpose of claiming compensation.

2.9 Legal advice and representation is free of charge where the victim does not have sufficient financial resources.

2.10 Victims have in accordance with their role in the relevant criminal justice system the right to a review of a decision not to prosecute.

2.11 Victims have the right to understand and be understood in criminal proceedings and to receive communications in an understandable manner, taking into account personal considerations such as disability.

2.12 Victims are entitled under certain conditions to be accompanied by someone of their choice who can help them understand or be understood in the first contact with a competent authority, unless this would be against the interests of the victim or proceedings.

2.13 If they make a formal complaint, victims are entitled to written acknowledgement of the complaint, receive translation or necessary linguistic assistance for making the complaint.

2.14 Victims must be informed that they are entitled to information about criminal proceedings as a result of the complaint (decisions on halting the investigation or not prosecuting the offender, what charges will be brought against the offender, the time and date of the trial, the final judgment and the state of criminal proceedings) without unnecessary delay, according to the wishes of the victim.

2.15 Victims can request to be notified without unnecessary delay if the offender is released or escapes from custody.

2.16 Depending on their formal role in criminal proceedings, victims have the right to interpretation free of charge, during interviews or questioning during criminal proceedings before investigative and judicial authorities and for their active participation in court hearings.

2.17 Depending on their formal role in criminal proceedings, victims are entitled to free-of-charge translation of information essential to the exercise of their rights in criminal proceedings in a language that they understand received during criminal proceedings.

2.18 Victims can use communication technology such as videoconference, telephones or the Internet for translation purposes unless the physical presence of an interpreter is required for the victim to exercise their rights or understand proceedings.

2.19 Victims have the right to participate voluntarily in restorative justice programmes based on their informed consent, which can be withdrawn at any time. The victim has a right to full and unbiased information about the process. Discussions which do not take place in public can remain confidential (unless agreed by the victim and perpetrator or if the information has to be released due to an overriding public interest, such as threats or acts of violence).

2.20 A European Protection Order may be issued when the victim is staying or residing in another Member State and a protection measure against the trafficker has been issued such as a prohibition to enter certain locations, places and areas where the victim resides or visits, or prohibition or regulation of contact (including phone, mail). A European Protection Order applies to a protection measure under criminal law in one EU country for a victim, by extending this protection to another EU country where he or she has moved.

2.21 Member States must minimise possible communication difficulties (for example if they speak a different language or have impediments) for victims who are witnesses or are involved in the proceedings in other ways so that they can understand their involvement in each step of criminal proceedings.

Child victims

2.22 Interviews with child victims should take place without unjustified delay. Child victims are entitled to be interviewed, where necessary, in premises designed or adapted for that purpose.

2.23 Interviews with child victims should be conducted by the same people if possible, limiting the number of interviews as much as possible and only where strictly necessary for criminal investigations and proceedings. The victim can be accompanied by a representative or adult of the child's choice (where appropriate) unless a reasoned decision against the appropriateness of that person has been made.

2.24 Criminal hearings involving child victims should take place without the presence of the public and without the direct presence of the child, who can be otherwise heard using appropriate communication facilities (such as video links, etc.).

2.25 Member States may prevent the public dissemination of any information that could lead to the identification of a child victim.

2.26 When possible and under the circumstances of each case, if the victim is a child, Member States could defer prosecution of the perpetrator(s) for a period of time after the child victim has reached the age of majority.

Chapter 3: Compensation

3.1 Victims are entitled to access existing compensation schemes for victims of violent intentional crimes.

3.2 Member States should promote measures to encourage perpetrators to provide adequate compensation to victims in the course of criminal proceedings.

3.3 Victims are entitled to obtain a decision on compensation by the perpetrator in the course of criminal proceedings within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

3.4 Victims are entitled to the return of their own property (unless urgently needed for criminal proceedings) which has been recovered or seized during criminal proceedings, without delay.

Access to compensation schemes in cross-border situations

3.5 Victims are entitled to apply in their Member State of habitual residence for compensation in the Member State where the crime was committed.

3.6 Victims are entitled to essential information on the possibilities to claim compensation. This includes information and guidance on how the application should be completed, what supporting documentation may be required and on requests for supplementary information.

3.7 Victims are entitled to receive, as soon as possible, information on the contact person or department responsible for handling their compensation claim, an acknowledgement of the receipt of the application, (if possible) an indication of the time by which a decision on their application will be made and on the decision taken.

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Chapter 4: Integration and labour rights

4.1 EU citizens have the right to remain within the territory of the Member States for up to three months provided that they have a valid passport or identity document, subject to limitations and conditions.

4.2 EU citizens have the right to remain anywhere in the EU provided that they have legal work or are studying at an accredited educational establishment and have comprehensive health insurance (or have enough money to ensure that they or their family members do not become a burden on their host's social security system) or have a family member satisfying any of these conditions.

4.3 Every EU citizen has the right to education and to have access to vocational and continuing training.

4.4 Every EU citizen has the freedom to choose an occupation and right to engage in work in any Member State (subject to certain restrictions) and nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of the citizens of the Union.

4.5 Every worker has the right to fair and just working conditions which respect his or her health, safety and dignity and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Third-country nationals

4.6 Member States should define the rules under which victims who are third-country nationals, holding a residence permit, have access to the labour market, to vocational training and education, limited to the duration of the residence permit.

4.7 Victims who are third-country nationals must have access to existing programmes or schemes aimed for them to recover to a normal life, including where appropriate courses designed to improve their professional skills, or preparation of their assisted return to the country of origin.

4.8 Victims who are third-country nationals are entitled to equal treatment with nationals of the Member State where they live with regard to working conditions, including pay and dismissal as well as health and safety at the workplace, freedom of association, education and vocational training, recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures, branches of social security, tax benefits, access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law.

4.9 Victims who are irregularly staying third-country nationals are entitled to lodge a complaint against their employer directly or through third parties such as trade unions or associations.

4.10 Victims who are irregularly staying third-country nationals have the right to claim outstanding remuneration (wages) against their employer, even if the victim has returned to the country of origin. They should be systematically and objectively informed about their rights before the enforcement of any return decision.

4.11 The level of remuneration should be at least as high as the wage provided for by laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless parties prove otherwise.

4.12 The victim who is an irregularly staying third-country national may introduce a claim against their employer and eventually enforce a judgment for any outstanding remuneration.

Child victims

4.13 Child victims who are third-country nationals are entitled to have access to the educational system under the same conditions as national children within a reasonable time.

Chapter 5: Reflection period and residence permit for victims who are third-country nationals

Reflection period

5.1 Third-country nationals who are victims of trafficking in human beings are entitled to a reflection period. This is intended to allow them to recover and escape the influence of the perpetrators so that they can make an informed decision on whether to cooperate with the police and judicial authorities.

5.2 Victims cannot be expelled from the country during the reflection period.

5.3 The reflection period may be ended if the victim renews contact with the perpetrator, or for reasons relating to public policy and the protection of national security.

5.4 Victims are entitled to receive at least emergency medical treatment and specific services, including psychological services for the most vulnerable during the reflection period.

Residence permit

5.5 Once the reflection period is over for the third-country national, the victim has the right to be considered for a residence permit based on whether the victim:

- is necessary for the investigation or judicial proceedings;
- has shown a clear intention to cooperate;
- has severed all relations with the people or person responsible for trafficking her/him;
- would pose no risk to public order, policy or security.

The permit must be valid for at least six months and can be renewed based on the same conditions.

5.6 After a residence permit has been granted, the victim who does not have sufficient resources is still entitled to be granted at least standards of living capable of ensuring subsistence, access to emergency medical treatment, and, where appropriate, translation and interpreting services. Specific attendance to the needs of the most vulnerable, including psychological services, should be ensured. Safety and protection needs must be taken into account in accordance with national law as well. Support may include free legal aid, according to national law.

5.7 The residency permit can be withdrawn if the victim renews contact with the people or persons responsible for trafficking her/him, when the victim's cooperation is fraudulent or the complaint is fraudulent or wrong, might pose a risk to public policy and to the protection of national security, ceases to cooperate or if the authorities decide to discontinue proceedings.

Long-term residents

5.8 A victim who is a third-country national and has resided legally within the Member State for at least five years, is entitled to long-term resident status. This is dependent on the victim having sufficient resources to maintain her/himself and her/his family without needing social security or sickness insurance.

Chapter 6: Return

6.1 If a victim who is a third-country national is not allowed to stay in the EU and therefore obliged to return to their country of origin, the victim will normally be granted a voluntary departure period of between 7 and 30 days.

6.2 This period can be extended to take specific circumstances into account, such as family, social links or children attending school and the length of stay.

6.3 Victims of trafficking who have been granted a residence permit and cooperate with the police and judicial authorities cannot be banned from entering Member State territory for a specified period if they comply with the obligation to return, provided they do not pose a threat to public policy or security.

6.4 A victim can always appeal to an authority, with legal advice representation and interpretation (if necessary).

6.5 Removal must be postponed when the principle of non-refoulement would be violated. It may also be postponed for other reasons taking into account specific circumstances of the individual case, in particular the victim's physical state or mental capacity, or technical reasons such as lack of transportation capacity or lack of identification of the victim.

6.6 Countries which have signed a readmission agreement with the European Union are obliged to automatically readmit their nationals, their (unmarried) children and their spouses, or those who hold or held a valid visa or residence permit.

Child victims

6.7 A child victim who is a third-country national, unaccompanied by a parent or guardian, can only be returned once the child's best interest has been taken into consideration and the Member State is satisfied that the child will be returning to the family, a nominated guardian or adequate reception facilities.

The EU rights of victims of trafficking in human beings

References

Chapter 1: Assistance and support

1.1 Directive 2011/36/EU, Article 11, paragraph 2:
2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

1.2 Directive 2011/36/EU, Article 11, paragraph 1:
1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

1.3. Directive 2011/36/EU, Article 11, paragraph 3:
3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

Directive 2011/36/EU, recital 18:
In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive.

Directive 2004/81/EC, Article 1:
The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

Directive 2004/81/EC, Article 6, paragraph 2:
2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

Directive 2004/81/EC, Article 7:
1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

Directive 2004/81/EC, Article 9:
1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

1.4–7 Directive 2011/36/EU, Article 11, paragraph 5:
5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living

capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

1.8 Directive 2011/36/EU, Article 11, paragraph 7:
7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

***1.9 Directive 2012/29/EU, Article 8,* paragraph *1 and 2*:**
1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

1.10 Directive 2012/29/EU, Article 8, paragraph 3:
3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

Directive 2012/29/EU, Article 9:
1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:
(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
(b) information about or direct referral to any relevant specialist support services in place;
(c) emotional and, where available, psychological support;
(d) advice relating to financial and practical issues arising from the crime;
(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:
(a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
(b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

1.11 Directive 2011/36/EU, Article 11, paragraph 6:
6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

1.12 Charter of Fundamental Rights of the European Union, Article 18:
The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Charter of Fundamental Rights of the European Union, Article 19:
1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Directive 2011/95/EU, Article 2(d):
(d) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply.

Directive 2004/83/EC, Article 21:
1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.

2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:
(a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or
(b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.

3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

Child victims

1.13 Directive 2011/36/EU, Article 13, paragraphs 1 and 2:
1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.

2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

***Directive 2012/29/EU, Article 1,* paragraphs *1 and 2*:**
1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

1.14 Directive 2011/36/EU, Article 14, paragraph 1:
1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child.

Directive 2011/36/EU, Article 16, paragraphs 1 and 2:
1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.

2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

1.15 Directive 2011/36/EU, Article 14, paragraph 2:
2. Members States shall appoint a guardian or a representative for a child victim of trafficking in human beings from the moment the child is identified by the authorities where, by national law, the holders of parental responsibility are, as a result of a conflict of interest between them and the child victim, precluded from ensuring the child's best interest and/or from representing the child.

Chapter 2: Protection of victims of trafficking in human beings

Protection prior to criminal proceedings

2.1 Directive 2011/36/EU, Article 12, paragraph 3:
3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

Directive 2012/29/EU, Article 22:
1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:
(a) the personal characteristics of the victim;
(b) the type or nature of the crime; and
(c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation. To determine whether and to what extent they would benefit from special measures as provided for under Articles 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article.

5. The extent of the individual assessment may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.

6. Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Articles 23 and 24.

7. If the elements that form the basis of the individual assessment have changed significantly, Member States shall ensure that it is updated throughout the criminal proceedings.

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European Court of Human Rights, Case of Rantsev v. Cyprus and Russia (application no. 25965/04)
286. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking (see, *mutatis mutandis*, *Osman*, cited above, § 115; and Mahmut Kaya v. Turkey, no. 22535/93, § 115, ECHR 2000-III). In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (see, *mutatis mutandis*, *Osman*, cited above, §§116 to 117; and *Mahmut Kaya*, cited above, §§ 115 to 116).

2.2 Directive 2011/36/EU, Article 8:
Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Directive 2011/36/EU, recital 14:
(14) Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.

2.3 Council Framework Decision 2008/977/JHA, Article 3, paragraph 1:
1. Personal data may be collected by the competent authorities only for specified, explicit and legitimate purposes in the framework of their tasks and may be processed only for the same purpose for which data were collected. Processing of the data shall be lawful and adequate, relevant and not excessive in relation to the purposes for which they are collected.

2.4 Council Framework Decision 2008/977/JHA, Article 4, paragraph 2:
2. Personal data shall be erased or made anonymous when they are no longer required for the purposes for which they were lawfully collected or are lawfully further processed. Archiving of those data in a separate data set for an appropriate period in accordance with national law shall not be affected by this provision.

2.5 Council Framework Decision 2001/220/JHA, Article 4, paragraph 1:
1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests.

2.6 Council Framework Decision 2001/220/JHA, Article 4, paragraph 1:
1. (a) the type of services or organisations to which they can turn for support;
(b) the type of support which they can obtain;
(c) where and how they can report an offence;
(d) procedures following such a report and their role in connection with such procedures;
(e) how and under what conditions they can obtain protection;
(f) to what extent and on what terms they have access to:
(i) legal advice or
(ii) legal aid, or
(iii) any other sort of advice,
if, in the cases envisaged in point (i)and (ii), they are entitled to receive it;
(g) requirements for them to be entitled to compensation;
(h) if they are resident in another State, any special arrangements available to them in order to protect their interests.

Directive 2012/29/EU, Article 4, paragraph 1:

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
(c) how and under what conditions they can obtain protection, including protection measures;
(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
(e) how and under what conditions they can access compensation;
(f) how and under what conditions they are entitled to interpretation and translation;
(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
(i) the contact details for communications about their case;
(j) the available restorative justice services;
(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

Protection during and after criminal proceedings

2.7 Directive 2011/36/EU, Article 12, paragraph 4:

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

(a) unnecessary repetition of interviews during investigation, prosecution or trial;
(b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
(c) the giving of evidence in open court; and
(d) unnecessary questioning concerning the victim's private life.

2.8 Directive 2011/36/EU, Article 12, paragraph 2:

2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation.

2.9 Directive 2011/36/EU, Article 12, paragraph 2:

2. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

Directive 2012/29/EU, Article 13:

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

2.10 Directive 2012/29/EU, Article 11, paragraphs 1, 2 and 3:

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

2.11 Directive 2012/29/EU, Article 3,* paragraphs *1 and 2:

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

2.12 Directive 2012/29/EU, Article 3, paragraph 3:

3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

2.13 Directive 2012/29/EU, Article 5:

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.

2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in panagraph 1, if they so request, in a language that they understand.

2.14 Directive 2012/29/EU, Article 6, paragraphs 1, 2, 3 and 4:

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:
(a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
(b) the time and place of the trial, and the nature of the charges against the offender.

2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:
(a) any final judgment in a trial;
(b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

2.15 Directive 2012/29/EU, Article 6, paragraphs 5 and 6:

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

2.16 Directive 2012/29/EU, Article 7, paragraph 1:

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2.17 Directive 2012/29/EU, Article 7, paragraphs 3 and 6:

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

2.18. Directive 2012/29/EU, Article 7, paragraph 2:

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

2.19 Directive 2012/29/EU, Article 12:

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

(a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;

(b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;

(c) the offender has acknowledged the basic facts of the case;

(d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;

(e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

2.20 Directive 2011/99/EU, Article 5:

A European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:

(a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

(b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or

(c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Directive 2011/99/EU, Article 6, paragraph 1:

1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

2.21 Council Framework Decision 2001/220/JHA, Article 5:

Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants.

Child victims

2.22 Directive 2011/36/EU, Article 15, paragraph 3:

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

(a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;

(b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose.

2.23 Directive 2011/36/EU, Article 15, paragraph 3(c), (d), (e) and (f):

3. (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;

(d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;

(e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;

(f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

2.24 Directive 2011/36/EU, Article 15, paragraph 4:

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

Directive 2011/36/EU, Article 15, paragraph 5:

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

(a) the hearing take place without the presence of the public; and

(b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

2.25 Directive 2012/29/EU, Article 21, paragraph 1:

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

2.26 Directive 2011/36/EU, Article 9, paragraph 2:

2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.

Chapter 3: Compensation

3.1 Directive 2011/36/EU, Article 17:

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

3.2 Directive 2012/29/EU, Article 16:

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

3.3 Council Framework Decision 2001/220/JHA, Article 9, paragraph 1:

1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.

3.4 Council Framework Decision 2001/220/JHA, Article 9, paragraph 3:

3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

Access to compensation in cross-border situations

3.5 Directive 2004/80/EC, Article 1:

Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.

3.6 Directive 2004/80/EC, Article 4:

Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate.

Directive 2004/80/EC, Article 5:

1. The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).

2. The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.

3. The assisting authority shall not make any assessment of the application.

3.7 Directive 2004/80/EC, Article 7:

Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:

(a) the contact person or the department responsible for handling the matter;

(b) an acknowledgement of receipt of the application;

(c) if possible, an indication of the approximate time by which a decision on the application will be made.

Chapter 4: integration and labour rights

4.1 Treaty on the Functioning of the European Union, Article 21, paragraph 1:
1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

Directive 2004/38/EC, Article 6:
1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Regulation (EC) No 562/2006, Schengen Border Code, Article 2, paragraph 5:
5. 'persons enjoying the Community right of free movement' means:
(a) Union citizens within the meaning of Article 17(1) of the Treaty, and third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement to whom Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (1) applies;
(b) third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens;

4.2 Directive 2004/38/EC, Article 7, paragraph 1:
1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:
(a) are workers or self-employed persons in the host Member State; or
(b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or
(c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and
– have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or
(d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

4.3 Charter of Fundamental Rights of the European Union, Article 14:
Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

4.4 Charter of Fundamental Rights of the European Union, Article 15:
1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

4.5 Charter of Fundamental Rights of the European Union, Article 31:
1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Third-country nationals

4.6 Directive 2004/81/EC Article 11, *paragraph 1*:
1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

4.7 Directive 2004/81/EC, Article 12:
1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes.

4.8 Directive 2011/98/EU, Article 12, paragraph 1:
1. Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to:
(a) working conditions, including pay and dismissal as well as health and safety at the workplace;
(b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;
(c) education and vocational training;
(d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;
(e) branches of social security, as defined in Regulation (EC) No 883/2004;
(f) tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned;
(g) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law;
(h) advice services afforded by employment offices.

4.9 Directive 2009/52/EC Article 13, paragraph 1:
1. Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers, directly or through third parties designated by Member States such as trade unions or other associations or a competent authority of the Member State when provided for by national legislation.

4.10-12 Directive 2009/52/EC, Article 9, paragraph 1(d):
(d) The infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings.

Directive 2009/52/EC, Article 6:
1. In respect of each infringement of the prohibition referred to in Article 3, Member States shall ensure that the employer shall be liable to pay:
(a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages;
(b) an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines;
(c) where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.

2. In order to ensure the availability of effective procedures to apply paragraph 1(a) and (c), and having due regard to Article 13, Member States shall enact mechanisms to ensure that illegally employed third-country nationals:
(a) may introduce a claim, subject to a limitation period defined in national law, against their employer and eventually enforce a judgment against the employer for any outstanding remuneration, including in cases in which they have, or have been, returned; or
(b) when provided for by national legislation, may call on the competent authority of the Member State to start procedures to recover outstanding remuneration without the need for them to introduce a claim in that case.

Illegally employed third-country nationals shall be systematically and objectively informed about their rights under this paragraph and under Article 13 before the enforcement of any return decision.

3. In order to apply paragraph 1(a) and (b), Member States shall provide that an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise.

4. Member States shall ensure that the necessary mechanisms are in place to ensure that illegally employed third-country nationals are able to receive any back payment of remuneration referred to in paragraph 1(a) which is recovered as part of the claims referred to in paragraph 2, including in cases in which they have, or have been, returned.

5. In respect of cases where residence permits of limited duration have been granted under Article 13(4), Member States shall define under national law the conditions under which the duration of these permits may be extended untilthe third-country national has received any back payment of his or her remuneration recovered under paragraph 1 of this Article.

4.13 Directive 2011/36/EU, Article 14, paragraph 1:
1. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

Directive 2004/81/EC Article 10(b):
(b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.

Chapter 5: Reflection period and residence permit for victims who are third-country nationals

Reflection period

5.1 Directive 2011/36/EU, Article 11, paragraph 6:
6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

Directive 2004/81/EC, Article 6, paragraph 1:
1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

5.2 Directive 2004/81/EC, Article 6, paragraph 2:
2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

5.3 Directive 2004/81/EC, Article 6, paragraph 4:
4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.

5.4 Directive 2004/81/EC, Article 7, paragraph 1:
1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

Residence permit

5.5 Directive 2004/81/EC, Article 8:
1. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion set out in subparagraph (b), Member States shall consider:
(a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and
(b) whether he/she has shown a clear intention to cooperate and
(c) whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).

2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions referred to in paragraph 1 shall be required.
3. Without prejudice to the provisions on withdrawal referred to in Article 14, the residence permit shall be valid for at least six months. It shall be renewed if the conditions set out in paragraph 2 of this Article continue to be satisfied.

5.6 Directive 2004/81/EC, Article 9:
1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

5.7 Directive 2004/81/EC, Article 14:
The residence permit may be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:
(a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or
(b) if the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or
(c) for reasons relating to public policy and to the protection of national security; or
(d) when the victim ceases to cooperate; or
(e) when the competent authorities decide to discontinue the proceedings.

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Long-term residents

5.8 Directive 2003/109/EC, Article 3:
1. This Directive applies to third-country nationals residing legally in the territory of a Member State.

2. This Directive does not apply to third-country nationals who:
(a) reside in order to pursue studies or vocational training;
(b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
(c) are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

Directive 2003/109/EC, Article 4, paragraph 1:
1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.

Directive 2003/109/EC, Article 5, paragraph 1:
1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:
(a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;
(b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

Directive 2004/83/EC, Article 29, paragraph 1:
1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.

Chapter 6: Return

6.1 Directive 2008/115/EC, Article 7, paragraph 1:
1. A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier.

6.2 Directive 2008/115/EC, Article 7, paragraph 2:
2. Member States shall, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links.

6.3 Directive 2008/115/EC, Article 11, paragraph 3:
3. Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that he or she has left the territory of a Member State in full compliance with a return decision.

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities shall not be subject of an entry ban without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned does not represent a threat to public policy, public security or national security. Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons. Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

6.4 Directive 2008/115/EC, Article 13:
1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of Directive 2005/85/EC.

6.5 Directive 2008/115/EC, Article 9:
1. Member States shall postpone removal:
(a) when it would violate the principle of non-refoulement, or
(b) for as long as a suspensory effect is granted in accordance with Article 13(2).

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account:
(a) the third-country national's physical state or mental capacity;
(b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.

3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations set out in Article 7(3) may be imposed on the third-country national concerned.

6.6 Directive 2008/115/EC, Article 3, paragraph 3:
3. 'return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:
— his or her country of origin, or
— a country of transit in accordance with Community or bilateral readmission agreements or other arrangements.

Child victims

6.7 Directive 2008/115/EC, Article 10:
1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Reference to EU legislation

2012/C326/47	Consolidated version of the Treaty on the Functioning of the European Union
2012/29/EU	*Directive on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (deadline transposition 16 November 2015)*
2011/99/EU	*Directive on the European protection order (deadline transposition 11 January 2015)*
2011/98/EU	*Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (deadline transposition 25 December 2013)*
2011/95/EU	*Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (deadline transposition of specific articles 21 December 2013)*
2011/36/EU	Directive on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
	European Court of Human Rights, Case of Rantsev v. Cyprus and Russia, Application no. 25965/04
2010/C83/02	Charter of Fundamental Rights of the European Union
2009/52/EC	Directive on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals
2008/977/JHA	Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters
2008/115/EC	Directive on common standards and procedures in Member States for returning illegally staying third-country nationals
(EC) No 562/2006	Regulation establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)
2004/83/EC	Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
2004/81/EC	Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

2004/80/EC	Council Directive relating to compensation to crime victims
2004/38/EC	Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
2003/109/EC	Council Directive concerning the status of third-country nationals who are long-term residents
2001/220/JHA	Council Framework Decision on the standing of victims in criminal proceedings

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Measuring Crime in the EU: Statistics Action Plan 2011- 2015

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Measuring Crime in the EU: Statistics Action Plan 2011- 2015

INTRODUCTION

1. PURPOSE

Statistics on crime and criminal justice are indispensable tools for developing evidence-based policy at EU level. Impact assessments, evaluations of the implementation of EU legislation from the Member States and assessment of the effectiveness of new laws are only some examples of the use of statistical information. While the need for factual statistics has long been recognised by the Member States and the European Commission, there is still a lack of reliable and comparable statistical information.

The purpose of this Communication is to inform stakeholders of the progress made in measuring crime and criminal justice over the last five years and to set out the main actions for the next five years in the form of an Action Plan 2011-2015.

2. STATE OF PLAY

2.1. Action Plan 2006-2010 - Background

In August 2006, the Commission adopted a 5-year EU Action Plan for the development of a comprehensive and coherent EU strategy to measure crime and criminal justice. DG Justice Freedom and Security (JLS) and, as of 2010, DG Home Affairs (HOME) in close collaboration with Eurostat, were responsible for its implementation.

At the same time, an Expert Group on the Policy Needs for Data on Crime and Criminal Justice was established[1] to assist the Commission, in order to identify the policy needs for data at EU level and to advise on the effective development and use of indicators in the area of crime and criminal justice. This Expert Group consists of Police, Justice or Interior officials from each EU Member State, and Candidate and EFTA[2] countries, as well as the relevant EU, European, and international organisations and agencies[3]. Academia and the private sector are also represented. The group has met five times since 2006.

In parallel, a Eurostat Working Group was established to implement the findings and recommendations of the Expert Group. All Member States are represented on the Working Group by government experts from the National Statistical Institutes. Other participants

1 By Commission decision (2006/581/EC)
2 European Free Trade Association: Iceland, Liechtenstein, Norway and Switzerland
3 EUCPN, EMCDDA, EUROJUST, EUROPOL, FRA, Council of Europe, European Sourcebook, UNODC, UNECE and UNICEF

represent EFTA and candidates countries, as well as numerous international bodies active in the area. Further experts are invited on an ad-hoc basis to discuss topics which are related to their specific areas of expertise. The Expert Group on Policy Needs sets the priorities, and the Eurostat Working Group discusses their feasibility and implementation, assesses the quality of collected data and, when necessary, defines the methodologies and procedures to be used. Additionally, a number of Expert sub-groups and Task Forces were established to examine particular Action Plan tasks. DG HOME established five sub-groups[4] and Eurostat two Task Forces[5].

2.2. Action Plan 2006-2010 – Achievements

Significant efforts have been made by both the Commission and the Member States to implement a far-reaching Action Plan . The main achievements can be summarised as follows:

International cooperation - Data collection mechanism: Particular focus was placed on setting up the basis for cooperation with Member States authorities, European agencies and international institutions by establishing networks of experts and identifying contact points. The outcome of this cooperation was the development of a functional mechanism for the collection of data which covers all stages of the process, from the identification of the common indicators to the actual publication of the collected data.

Better understanding of the needs: Equally important was the improvement of the knowledge with regard to the needs, the gaps and the limitations in collecting and analysing crime data at EU level. The exchange of information at expert meetings, the experience gained from collecting data throughout this period and the outcomes of research projects have made a significant contribution to this effort.

Development of indicators and data collections: Since 2007 Eurostat has produced, on an annual basis, a Statistics in Focus[6] publication on crime statistics containing data on the following: total crime, homicides, violent crime, robberies, domestic burglary, theft of a motor vehicle, drug trafficking, prison population and the number of police officers. In November 2010, the first working paper on Money Laundering was issued[7]. Statistics were based on the indicators identified by the Commission's expert sub-group on Money Laundering. Other lists of indicators produced so far concern Trafficking in Human Beings and Cybercrime.

EU Safety (victimisation) Survey: Police and court statistics should be complemented by statistics on victims, particularly in crime areas where the incidents are not always reported. Moreover, victimisation surveys are a valid source of fully comparable data, as long as a common methodology is applied. The development of a common methodology and a survey module on victimisation was therefore another important outcome of this Action Plan . The implementation of the survey has been scheduled for the period 2013-2014 and it will provide, for the first time in EU27, comparable information on the prevalence rates (victimisation rates) of specific types of crime and on aspects related to citizens' feelings about their safety. The active involvement of the National Statistical Institutes at every stage (from the design of the module to the field work and the estimations of the prevalence rates) guarantees full responsibility for the data quality, and this is particularly important for countries that do not conduct national surveys on victims, as they can use this opportunity to build up their own capacities.

Support for relevant research: Research activities in the field of Justice and Home Affairs were strongly supported through the programme "Prevention of and Fight against Crime" which provided the opportunity to a large number of research groups from all 27 Member States to carry out studies in areas of particular interest for the Commission. A characteristic example of the use of research results is the list of indicators on Trafficking in Human Beings, which is based on the suggestions and recommendations of relevant studies.

2.3. Action Plan 2006-2010 – Lessons learned

While significant work has been achieved in research, coordination and networking, only a few results are actually visible. This is particularly true regarding the objectives which require not only the development of common indicators, but also the actual collection of data. The latter issue has been the slowest and most problematic aspect of the implementation of the Action Plan.

The main reasons for the limited progress in the collection of comparable and harmonised data at EU level were summarised in the study on "The development of an EU-level classification system" initiated by the Commission in 2007[8]. They are as follows:

Differences in the offence definitions and the classification systems: Across the EU, at least 128 national authorities are involved in the collection and production of crime statistics, whereas at least 52 distinct offence classification systems have been identified.

Cumbersome data flow: Coordination at national level has proved difficult, especially in the case of multiple data sources. Even when national contact points exist, they do not always have access to data covering every stage of the criminal justice system. As a result, all data collections encounter significant delays before achieving an integrated dataset.

Differences in the reporting systems: Different Member States apply different counting rules[9] to measure crime, which limits the comparability and often leads to double counting. Differences in the point in time at which offence data are recorded and the wide range of reporting practices across the EU create additional obstacles.

Proliferation of data collections by EU and international organisations: The collection of crime data at international level largely depends on the scope and the mandate of the organisation involved. As a result, Member State authorities frequently face similar but

[4] Sub-groups on Planning, Money Laundering, Criminal Justice, Trafficking in Human Beings, Police Cooperation and Cybercrime

[5] Task Forces on Victimisation and on Crime Data Availability

[6] http://epp.eurostat.ec.europa.eu/portal/page/portal/crime/publications

[7] http://epp.eurostat.ec.europa.eu/portal/page/portal/product_details/publication?p_product_code=KS-RA-10-003

[8] Tender JLS/D2/2007/03. Study on the development of an EU- level offence classification system and an assessment of its feasibility to supporting the implementation of the Action Plan to develop an EU strategy to measure crime and criminal justice.

[9] Based either on offenders or on offences.

slightly different requests for data, which adds to confusion and increases their administrative burdens.

Other sources of delay in implementing the actions described in the Action Plan were the lack of interest or different prioritisation for some activities at national level, budgetary and staff constraints and, finally, the increase in the administrative burdens due to new requests for data. As a result, only 50% of the objectives have been met[10].

It remains true that information on traditional forms of crime – considered to lie outside EU competency – is more robust, more comparable and generally of better quality than in the area of cross-border organised crime which relates more closely to EU policy needs. However, progress can be seen in complex new areas such as Money-Laundering, Trafficking in Human Beings and Cybercrime. Yet the fact remains that data on both traditional and cross-border organised crime depend on the quality and efficiency of the domestic structures underpinning the collection and provision of data.

3. POLITICAL COMMITMENTS

In the Stockholm Programme[11], the European Council invites the Commission to

"continue developing statistical tools to measure crime and criminal activities and reflect on how to further develop, after 2010, the actions outlined and partly implemented in the EU Action plan 2006-2010 on developing a comprehensive and coherent EU strategy to measure crime and criminal justice, in view of the increased need for such statistics in a number of areas within the field of freedom, security and justice."

Fighting and preventing Serious and Organised Crime as well as Cybercrime are within the five strategic objectives of the Internal Security Strategy[12] which sets the basis for a more effective cooperation between the Member States and the EU Institutions aiming at a more secure Europe. The exchange of information and the collection of statistics in particular areas like Trafficking in Human Beings, Money Laundering, Cybercrime and Corruption are in line with the proposed actions of the Internal Security Strategy.

4. FUTURE WORK

4.1. Action Plan 2011 – 2015 - Objectives

Given that its main focus was on setting up the necessary mechanisms, the Action Plan 2006-2010 must be seen as the first step in a long-term process. It has set the basis for an EU strategy to measure crime and criminal justice by developing and testing a functional mechanism for the smooth flow of information from and to the Member States. Building on lessons learned, it is now possible to apply this mechanism more effectively.

[10] Another 30% were partially achieved or they are still in process.
[11] OJ C 115/1, 4.5.2010, pp.21
[12] The EU Internal Security Strategy in Action: Five steps towards a more secure Europe. COM(2010) 673 final

The aim of the new Action Plan 2011-2015 is to continue and take forward the work started in 2006 and to focus on delivering results. The objectives presented in this Action Plan are based on the priorities set by the Internal Security Strategy with regard to specific crime areas and on the recommendations from the Expert Group on Policy Needs, as received in a written consultation during summer 2010. The main message of this consultation, which reflects the priorities of a wide range of stakeholders, was the need for a focused and feasible Action Plan with the emphasis on the quality of the collected data, the analysis and dissemination of the results, and a better coordination and collaboration of all the actors involved (Member States, EU Institutions, EU Agencies, International Organisations, Academia). In response to this request, the objectives of the Action Plan 2011-2015 are divided into the following four areas:

(1) Cooperation and Coordination at EU and International level

(2) Data quality

(3) Data analysis and dissemination of results

(4) Development of indicators and specific data collections

Cooperation at EU and International level

The objectives under this category respond to the experts' recommendations for better mapping of the needs of the policy makers, better communication of the stakeholders, promotion of the work on crime and criminal justice statistics among the EU institutions and better collaboration at EU and international level, in order to avoid duplication of the collection exercises. Some of the actions proposed to achieve these objectives are as follows:

- establishment of a new and wider expert group
- regular updates of the relevant Council working groups on the implementation of the Action Plan
- promotion and dissemination of best practices applied by Member States and international organisations, for collecting and reporting data
- data collections organised jointly with international organisations and/or EU agencies.

Data quality

The objectives of this category are set in order to improve the comparability of the data that are already being produced in a regular basis. Since the main reasons for not having comparable data are the differences in the criminal codes and the reporting systems, the emphasis is on the development of an International Crime Classification System for statistical purposes, taking account of multilingual needs. According to the experts consulted on the content of this Action Plan, improvement of the quality of the statistics published annually by Eurostat in Statistics in Focus should be the first priority. The suggested actions include the following:

- continue and promote the work of the UNODC-UNECE Task Force on Crime Classification by providing funding to those Member States that wish to test the proposed classification,

- decrease the level of aggregation and increase the list of crimes (in the Statistics in Focus on Crime and Criminal Justice) so as to achieve more homogeneous categories,

- introduce demographic variables (such as gender, nationality, age group) where appropriate,

- draft guidelines and common definitions, in particular for the new data collections on non-traditional types of crimes.

Data analysis and dissemination of results

The need to invest more in the analysis of the collected data was mentioned by the majority of the experts during their consultation. Because of the differences in recording, reporting and classifying crime across the Member State, comparisons of crime levels can be misleading, especially if absolute figures are not accompanied by additional information on their quality (metadata) - for example, if there are deviations from the instructions and guidelines received at the beginning of the process.

At the same time, the need for an EU Crime Report, which would pull together data and reports on Crime and Criminal Statistics, has long been recognised. The development of a framework for producing such a report was already among the objectives of the Action Plan 2006-2010 and also the subject of a study which was concluded in December 2010. However, there is still a need for further reflection on the feasibility of the proposed options.

Dissemination and open access to data, studies, reports and good practices were also requested by several stakeholders. To accommodate the above requests, the following actions have been planned:

- Systematic compilation and publication of metadata and contextual information, following the example of Statistics in Focus

- Development of an EU Crime Report based on the recommendations of the preliminary study and the assessment of the feasibility of the proposed options

- Production of working papers and explanatory notes for every new data collection.

Development of indicators and specific data collections

The objectives of this category reflect the general consensus on a concise and feasible action plan and they comply with the request of the Member States regarding additional workload. At the same time, they are based on the priorities set through the Internal Security Strategy with regard to specific crime areas.

Two types of activities have been planned:

- Ongoing activities, which started under the previous Action Plan , such as the implementation of the EU Safety Survey, the Business Victimisation Survey and the third Money Laundering data collection.

- Activities included in the previous Action Plan which have not advanced sufficiently, such as the data collection on Cybercrime, or have never started, such as the development of indicators on Corruption.

The collection of crime statistics should as from 2012 be further facilitated through the timely implementation by Member States of the (third pillar) decision establishing a European Criminal Record System (ECRIS)[13].

4.2. Action Plan 2011 – 2015 – Challenges

The successful implementation of the Action Plan requires intensive and continuous work at all levels (national, EU and international).

At national level there is a need to improve domestic coordination amongst the various governmental and non-governmental users and providers of data on crime. Experience has shown that this lack of coordination is a major source of delays in the collection exercises.

The financial crisis has forced some Member States to reduce their administrative costs and hence their ability to participate in expert groups and committees. The Commission being aware of the situation will seek to minimise the number of meetings and will also look into other means of communication, such as video and teleconferences.

At EU level the main challenge remains the comparability of the collected data. This is why a consistent approach to the classification of crime data is required. The need for a common classification system applies not only to the Member States, but also to EU agencies. Effort must be put into ensuring against the risk of replicating the current situation within some of the Member States, where multiple and often divergent crime classifications add an extra layer of complexity to the collection of comparable data.

At European and international level the focus is on coordination and exchange of good practices. Common data collections (i.e. Commission, UN bodies, the Council of Europe, etc.) would clearly lessen the burden on the statistical institutes of the Member States and thereby reduce the time needed for the collection, checking and transmission of the statistical information.

5. IMPLEMENTATION AND FOLLOW-UP

DG HOME will be responsible for the implementation of the Action Plan 2011-2015. Eurostat will continue the activities started under the previous Action Plan and will provide technical advice on the new tasks when needed.

The re-establishment of an expert group to support the Commission in identifying the policy needs for data on crime will help avoid the duplication of work on organised and volume[14] crime across the Commission, EU bodies and agencies and international organisations active in the field.

Subgroups and Tasks Forces will be set up to carry out particular tasks subject to the agreement of the expert group at its annual meeting.

The Action Plan will be updated as this work develops, and the activities identified will be included in the relevant Commission work programmes, as well as in the Community

[13] OJ L 93, 7.4. 2009, p.33

[14] Volume crime includes : Burglary, Robbery, Vehicle Theft, Assault, Vandalism etc.

Statistical Programme and its annual work programmes. The Action Plan may also need to cover measuring data related to the effective implementation of EU policies through criminal measures, as well as possible new instruments relating to crime and criminal justice. The new financial perspectives will reflect the need for support to Member States in implementing the action plan.

The Commission will inform the relevant Council working groups annually of the progress in the implementation of the Action Plan. In 2013 the Commission will prepare a mid-term review, and at the end of 2015 a final report will be submitted to the European Parliament and the Council on the achievements and the limitations in the implementation of the Action Plan.

TABLE OF ACTIONS FOR THE EU ACTION PLAN 2011 – 2015 ON MEASURING CRIME IN THE EUROPEAN UNION

1. COOPERATION AND COORDINATION AT EU AND INTERNATIONAL LEVEL

	Objectives	Responsible Party	Timeframe	Specific Actions
1.1	Set up a communication channel between policy makers (Commission included), data providers and end users	COM (HOME)	Commission Decision in 2011 Annual meetings, starting from 2012	a. Re establishment and enlargement[15] of an expert group to consult the Commission on the implementation of this Action Plan. b. Definition and regular update of the policy need through discussions and written consultations. c. Feedback from the users of the collected crime statistics for better understanding of the type of data required for policy and decision making.
1.2	Raise awareness and improve the visibility of the work on crime statistics among the EU institutions	COM (HOME)	Continuous	a. Annual updates of the relevant Council working group on the progress in the implementation of the Action Plan. b. Promotion and dissemination of best practices from the Member States and international organisations
1.3	Improve	COM	Continuous	Common access to meeting reports, presentations and supporting documents.

[15] So as to cover the 27 MSs, Acceding and Candidate countries, the Council secretariat, EU agencies, the Council of Europe, UN bodies, the European Sourcebook and representatives from the Academia

	cooperation between the new expert group and the Eurostat Working Group	(HOME, ESTAT)		
1.4	Avoid proliferation of statistical data and duplication of information by organising data collections in common with other International Institutions and/or EU agencies.	COM (ESTAT, HOME. JUST)	2011 the first common data collection	UNODC – EUROSTAT common data collection. Explore other possibilities. Commission – Council of Europe on prison population (SPACE I and II)
1.5	Work in close collaboration with the academic community and promote research activities with policy relevance in the priority crime areas of DG HOME.	COM (HOME, ESTAT, JUST, RTD, ENTR)	Continuous	a. Substantial representation of the Academia in the relevant Commission's expert group and sub-groups. b. Dissemination of information regarding research opportunities under the 7th and the 8th Framework Research Programme. c. Wide communication of final results and deliverables of the projects funded through ISEC Programme.

2. DATA QUALITY

2.1	Follow up and continue the work on the	COM (HOME,	Continuous	a. Contribute to the development of such

	development of an International Crime Classification System for statistical purposes in collaboration with UNODC and UNECE	ESTAT), UNODC, UNECE		classification and promote the final outcome to the relevant groups. b. Provide funding, through the ISEC programme, to the Member States that wish to test the proposed classification.
2.2	Continue and advance the annual publication of data on Crime and Criminal Justice (Statistics in Focus) so as to provide more information	COM (ESTAT, HOME, JUST,)	Continuous	a. Introduction of demographic variables (e.g. sex and age groups). b. Inclusion of information on nationality and residence for prison populations. c. Extend the publication to other types of crime.
2.3	Improve the comparability of the data collected and published so far.	COM (ESTAT and HOME)	Continuous	a. Disaggregation of the general classes of crimes into more homogeneous crime categories when possible.[16] b. Development of common definitions and guidelines particularly for the data collections concerning Eurocrimes where there is no previous experience.

3. DATA ANALYSIS AND DISSEMINATION OF RESULTS

3.1	Develop a coherent framework for reporting EU 27 data on crime avoiding misleading comparisons.	COM (HOME) with contributions from other DGs and international stakeholders	First print edition in 2013-2014	Development of a European Crime Report based on the recommendations of the preliminary study performed under the Action Plan 2006-2010 and the assessment of the feasibility of the proposed options.

[16] Very much depended on the outcome of objective 2.1:development of an International Crime Classification System for statistical purposes

3.2	Compile and publish metadata and contextual information on a systematic basis.	COM (ESTAT, HOME)	Continuous	Each data collection will be accompanied by a set of metadata and comments as provided by the Member States.
3.3	Publish working papers and explanatory notes	COM (HOME) and/or external experts depending on the case	Continuous	For each of the specific data collections (objectives 4.1- 4.6) results will be presented and, if possible, analysed in a working paper that will be publicly accessible.

4. DEVELOPMENT OF INDICATORS AND SPECIFIC DATA COLLECTIONS

4.1	Measuring Money Laundering	COM (HOME, ESTAT)	Data Collection in 2011. Publication of results first half of 2012	a. Third collection of Money Laundering Statistics based on the indicators developed under the Action Plan 2006-2010. b. Assessment of the need for a regular collection every two years.
4.2	Measuring Trafficking in Human Beings	COM (HOME, ESTAT for the collection)	First data collection in 2011-2012	a. First data collection on a small number of indicators in collaboration with the Network of National Rapporteurs. b. Assessment of the feasibility and the

				need for regular collection.
4.3	Measuring Cybercrime	COM (HOME, with technical advice from ESTAT)	First data collection in 2012	a. First data collection on the offences of the proposed EU directive on attacks against information systems[17]. b. The gradual expansion of the list to cover other computer-facilitated crimes, such as high-volume online fraud, will be assessed and discussed.
4.4	Measuring Corruption	COM (HOME with technical advice from ESTAT, OLAF)	First data collection in 2013	Development of indicators followed by a pilot data collection.
4.5	Measuring victimisation rates and safety feelings in a common EU survey (EU SASU)	COM (ESTAT, HOME. JUST), Member States	Implementation of the survey in 2013. Publication of results 2014-2015	a. Implementation of a household/personal survey in the European Union; the model was developed in close cooperation with the Member States and it covers the prevalence of specific types of crime (victimisation rates) and other aspects relating to citizens' feelings about their safety. b. Analysis and publication of the results
4.6	Measuring the extent and the type of victimisation in the Business Sector	COM (HOME)	Survey in 2011 – 2012 Results in 2013	Implementation of a Business Victimisation survey based on the feasibility study performed under the Action Plan 2006-2010.
4.7	Measuring the impact of EU legislation	COM (JUST)	Results in 2013	First collection of data based on study on legislation and practice regarding

[17] As adopted by the Commission on 30 September 2010 (COM(2010)517 final).

	on criminal sanctions on national practice			criminal sanctions.

European Commission

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016

Home Affairs
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2

1. SETTING THE SCENE

Trafficking in human beings is the slavery of our times. Victims are often recruited, transported or harboured by force, coercion or fraud in exploitative conditions, including sexual exploitation, forced labour or services, begging, criminal activities, or the removal of organs[1]. It is a severe violation of individual freedom and dignity and a serious form of **crime,** that often has implications which individual countries cannot effectively address on their own.

Trafficking in human beings takes many different forms, and evolves with changing socioeconomic circumstances. It targets women and men, girls and boys in vulnerable positions.

The latest estimates from the International Labour Organization of June 2012 covering the period 2002-2011 put the number of victims of forced labour, including forced sexual exploitation, to 20.9 million at a global level[2], with an estimated 5.5 million children being trafficked. However, this estimate is also believed to be conservative.

A lucrative form of crime, trafficking in human beings generates profits of dozens of billions of euro[3] for the perpetrators each year.

The 2010 report of the United Nations Office on Drugs and Crime states that worldwide 79 per cent of identified victims of human trafficking were subject to sexual exploitation, 18 per cent to forced labour and 3 per cent to other forms of exploitation. Of these victims, 66 per cent were women, 13 per cent girls, 12 per cent men and 9 per cent boys[4].

Data collected by the Commission in September 2011 on victims of human trafficking, police investigations, prosecutions and convictions is currently being analysed in terms of gender, age, form of exploitation and citizenship[5]. Preliminary results appear to be consistent with the statistics in the UNODC report. Three quarters of registered victims were trafficked for sexual exploitation (an increase from 70 per cent in 2008 to 76 per cent in 2010) and the rest for labour exploitation (a decrease from 24 per cent in 2008 to 14 per cent in 2010), forced begging (3 per cent) and domestic servitude (1 per cent). Twenty-one EU Member States were able to give gender-specific information. This shows that over the three years women and girls are the main victims of trafficking in human beings; female victims accounted for 79 per cent (of whom 12 per cent were girls) and male victims for 21 per cent (of whom 3 per cent were boys). Most Member States reported that most victims come from within the EU, mainly from Romania, Bulgaria, Poland and Hungary. Most reported victims from non-EU countries are from Nigeria, Vietnam, Ukraine, Russia and China.

Trafficking in human beings is a complex transnational phenomenon rooted in vulnerability to poverty, lack of democratic cultures, gender inequality and violence against women, conflict and post-conflict situations, lack of social integration, lack of opportunities and employment, lack of access to education, child labour and discrimination.

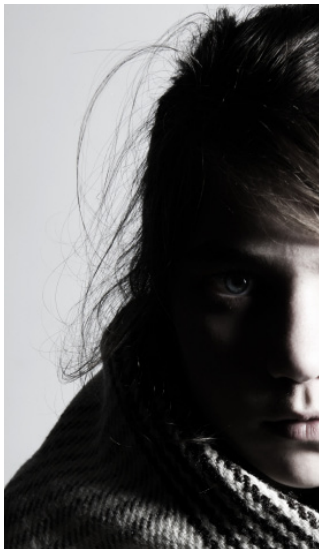
(1) Trafficking in human beings differs from human smuggling (facilitated migration) because it involves the use of force and involves exploitation, and because there is no need to cross a border or be physically transported.

(2) International Labour Organization, ' ILO 2012 Global estimates of forced labour', June 2012. The report states that human trafficking can be regarded as forced labour, and so the estimates captures the full realm of human trafficking for labour and sexual exploitation (page 13).

(3) Estimated global annual profits made from the exploitation of all trafficked forced labour are US$ 31.6 billion. Of this, US$ 15.5 billion, that is 49 per cent, is generated in industrialised economies (in Patrick Belser, 'Forced Labor and Human Trafficking: Estimating the Profits', Working Paper, Geneva, International Labour Office, 2005).

(4) The Globalization of Crime: A Transnational Organized Crime Threat Assessment, UNODC, 2010.

(5) The statistics collected via Eurostat provide a general overview based on the replies received from all 27 Member States for 2008 to 2010.



EU Action on Trafficking in Human Beings

Trafficking in human beings is specifically prohibited by Article 5 of the Charter of Fundamental Rights of the European Union.

The political commitment at EU level to address the problem of trafficking in human beings is reflected in the large number of initiatives, measures and funding programmes established in the area both within the EU and third countries as early as in the 1990s[6].

A major step forward recently was the adoption of **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**[7]. The Directive adopts a comprehensive, integrated approach that focuses on human rights and on the victims and is gender-specific. It is expected to have considerable impact, once fully transposed by the Member States by 6 April 2013. It not only focuses on law enforcement but also aims to prevent crime and ensure that victims of trafficking are given an opportunity to recover and to reintegrate into society.

In the meantime, a number of EU instruments in various policy areas contribute to addressing trafficking in human beings[8]. EU legislation on the right of victims of human trafficking to

(6) Communication *on trafficking in women for the purpose of sexual exploitation* (COM(96) 567 final), Communication *on Fighting trafficking in human beings: an integrated approach and proposals for an action plan* (COM(2005) 514 final), the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01) and Commission working document on *the Evaluation and monitoring of the implementation of the EU plan* (COM(2008) 657 final).

(7) Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ 15.04.2011, L 101.

(8) The Proposal for the Directive on the rights of victims (COM(2011) 275 final), action on violence against women, of which gender equality and anti-discrimination are fundamental elements; An EU Agenda for the Rights of the Child (COM(2011) 0060 final); the Action Plan on Unaccompanied Minors (COM(2010) 213 final); Directive 2009/52/EC on sanctions against employers who knowinglyemploy illegally staying third country workers; and the proposal for a Directive on seasonal employment of third-country nationals (COM(2010) 379 final).

reside in the EU, on the sexual exploitation of children, and on sanctions against employers who knowingly employ illegally staying third country workers, complement the Directive on trafficking in human beings. The **EU Internal Security Strategy in Action** further addresses trafficking in human beings[9].

The overarching framework of the EU external migration policy — **the Global Approach to Migration and Mobility**[10] — highlights the importance of cooperating with third countries of origin, transit and destination and identifies as one of its four pillars the prevention and reduction of irregular migration and trafficking in human beings. This line is also followed in the **2009 Action Oriented Paper on strengthening the EU external dimension against trafficking in human beings**[11].

Trafficking in human beings is also addressed in numerous external relations instruments, such as the annual progress reports on candidate and potential candidate countries, the roadmaps and action plans regarding visa liberalisation dialogues with third countries, the Country Strategy Papers and National and Regional Indicative Programmes and programmes in the framework of the European Neighbourhood Policy. It is also addressed in bilateral Action Plans and ongoing political dialogue with third countries[12].

With such a wide range of legislative and policy measures, there is a risk of overlapping and duplication of initiatives. The objective of this Strategy therefore is to provide a coherent framework for existing and planned initiatives, to set priorities, to fill gaps and therefore complement the recently adopted Directive. The Commission has already appointed an EU Anti-trafficking Coordinator who started work in March 2011[13] and will oversee the implementation of this Strategy. The Commission has also developed a website[14] dedicated to anti-trafficking that is regularly updated. The website aims to function as a one-stop-shop for practitioners and the general public.

International Action

A lot of attention has already been paid to trafficking in human beings at international level. The most prominent instruments are the UN Palermo Protocol on Trafficking in Persons, the Council of Europe Convention on Actions against Trafficking in Human Beings[15]. **Not all Member States have ratified both legal instruments and they should do so.** Indeed, the Commission urges the Member States to ratify all relevant international instruments, agreements and legal obligations which will make the work against trafficking in human beings more effective, coordinated and coherent[16].

(9) Communication on *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe*, COM(2010) 673 final.

(10) Communication on The Global Approach to Migration and Mobility (COM(2011) 743 final).

(11) 11450/5/09 REV 5, 19 November 2009 and 9501/3/11 REV 3, 4 July 2011

(12) In particular in the context of Human Rights Dialogues held with over 40 countries worldwide, the Migration and Mobility Dialogues amounting to seven regional processes covering more than a hundred countries and over twenty bilateral processes.

(13) Her tasks include addressing the urgent need to ensure consistent and coordinated strategic planning at EU level and with international organisations and third countries, to address this issue in a comprehensive manner.

(14) http://ec.europa.eu/anti-trafficking/index.

(15) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Treaty Series, vol. 2237, p. 319; Convention on Action against Trafficking in Human Beings (CETS No.197), Council of Europe, Warsaw, 16 May 2005.

(16) UN Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979, Treaty Series, vol. 1249, p. 13, UN Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, ILO Forced Labour Convention, 1930 (No 29), ILO Abolition of Forced Labour Convention, 1957 (No 105), ILO Worst Forms of Child Labour Convention, 1999 (No 182) and ILO Domestic Workers Convention, 2011 (No 189).

2. KEY PRIORITIES

With this Strategy, the European Commission seeks to **focus on concrete measures that will support the transposition and implementation of Directive 2011/36/EU, bring added value and complement the work done by governments, international organisations and civil society in the EU and third countries.**

The main responsibility for addressing trafficking in human beings lies with the Member States. The purpose of this Communication is to show how the European Commission intends to support the Member States in doing this. The *Rantsev v Cyprus and Russia*[17] judgment provides a decisive human rights benchmark with clear obligations for Member States to take the necessary steps to address different areas of trafficking in human beings. These include recruitment, investigation, prosecution, protection of human rights, and providing assistance to victims. If the authorities are aware of a case of human trafficking, or that an individual risks being a victim of human trafficking, they are obliged to take appropriate measures.

The measures included in this Strategy are the result of a thorough examination of measures and policies that are already in place, the work of the Group of Experts[18], extensive consultation with governments, civil society organisations, social partners, scholars, international organisations, national rapporteurs or equivalent mechanisms and other stakeholders. The views of victims of trafficking are also incorporated in the Strategy.

This Strategy identifies **five priorities** the EU should focus on in order to address the issue of trafficking in human beings. It also outlines a number of actions which the European Commission proposes to implement over the next five years in concert with other actors, including Member States, European External Action Service, EU institutions, EU agencies, international organisations, third countries, civil society and the private sector. Those priorities are as follows:

A. Identifying, protecting and assisting victims of trafficking

B. Stepping up the prevention of trafficking in human beings

C. Increased prosecution of traffickers

D. Enhanced coordination and cooperation among key actors and policy coherence

E. Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings

A multi-disciplinary, coherent policy against trafficking in human beings requires the involvement of a more diverse group of actors than before in policy-making. These should include police officers, border guards, immigration and asylum officials, public prosecutors, lawyers, members of the judiciary and court officials, housing, labour, health, social and safety inspectors, civil society organisations, social and youth workers, consumer organisations, trade unions, employers organisations, temporary job agencies, recruitment agencies and consular and diplomatic staff as well as those more difficult to reach, such as legal guardians and legal representatives, child and victim support services. Volunteers and people who work in conflict situations could also be involved.

(17) European Court of Human Rights, Rantsev v. Cyprus and Russia, Application No 25965/04, Judgment (final) 10 May 2010.

(18) Group of Experts advise the Commission on policy and legislation and are based on Commission Decisions, most recently OJ, 12.08.2011, L 207/14.

A

2.1. PRIORITY A: Identifying, protecting and assisting victims of trafficking

The identification of victims is difficult. Nonetheless, people from many sectors of society could potentially come into contact with a victim. It is crucial to identify potential victims, so that anyone who has dealings with a victim of human trafficking can best attend to the "five broad needs of victims", respect and recognition, assistance, protection, access to justice and compensation. This also enables police and prosecution authorities to better investigate and punish traffickers. At the same time, mechanisms to protect, assist and socially include victims of trafficking need to be established. In accordance with the 2011 Directive, assistance and support should be based on individual needs of the victim and should include at least appropriate and safe accommodation, material assistance, medical treatment, psychological assistance, counselling and information, translation and interpretation services.

Action 1: Establishment of National and Transnational Referral Mechanisms

Member States should **ensure that formal, functional national referral mechanisms are established.** These mechanisms should describe procedures to better identify, refer, protect and assist victims and include all relevant public authorities and civil society. The development of criteria for the identification of victims should be included, to be used by all those involved. Member States have already committed to establishing these mechanisms by the **end of 2012** in the context of the EU Policy Cycle to fight serious and organised crime[19].

Under the Directive on trafficking in human beings, victims should receive appropriate protection and assistance on the basis of individual risk and needs assessments. Carrying out the assessments should be part of the remit of the national referral mechanisms. Based on the first implementation of these national referral mechanisms by Member States, the Commission **will develop guidelines** on how to further develop them by 2015. They should also address issues such as compensation and safe return. The roles and responsibilities of all those involved should be clearly defined.

At present, when victims move across borders, problems are generally solved bilaterally on an ad hoc basis. This is often time-consuming and inefficient. In line with a victim-centred approach, by 2015 the Commission **will develop a model for an EU Transnational Referral Mechanism** which links national referral mechanisms to better identify, refer, protect and assist victims.

Action 2: Identification of Victims

The Commission currently funds a project that will **develop guidelines to better identify victims of trafficking in human beings** in 2014, taking into account the EC/ILO 2009 lists of indicators on trafficking in human beings. These guidelines will facilitate a more harmonised approach and will improve identification. They should also help practitioners to identify victims, especially victims of human trafficking for sexual exploitation and labour exploitation, removal of organs and child victims of trafficking.

Furthermore, as mentioned in the Commission Communication on the Action Plan implementing the Stockholm Programme, in 2012 the Commission **will develop specific guidelines for consular services and border guards** on the identification of victims of trafficking in human beings.

Action 3: Protection of Child Victims of Trafficking

Children are particularly vulnerable to victimisation and re-trafficking. A study done in 2010 by the International Organization for Migration (IOM) shows that of the 79 sample retrafficking cases, 84 per cent involved children or young adults under 25 years old.

(19) Doc. 15358/10 COSI 69.

Furthermore, in 18 per cent of these cases the minor was re-trafficked when (s)he became an adult. This shows that trafficked minors are at risk of being re-trafficked during their adult lives[20].

EU legislation provides for the protection of child victims and assistance and support to such victims[21]. Comprehensive child-sensitive protection systems that ensure interagency and multidisciplinary coordination are key in catering to diverse needs of diverse groups of children, including victims of trafficking. To better protect children, the Commission **will in 2014 fund the development of guidelines on child protection systems.**

Member States should **strengthen child protection systems** for trafficking situations and ensure where return is deemed to be the child's best interest, the safe and sustainable return of children to the country of origin, in and outside the EU, and prevent them from being retrafficked.

In addition, with respect to child trafficking, there is at present no uniform definition of a guardian and/or representative across the Member States[22] and their roles, qualifications and understanding of competences vary from one Member State to another[23]. In 2014, together with the European Union Agency for Fundamental Rights, the Commission intends to **develop a best practice model on the role of guardians** and/or representatives of child victims of trafficking.

Action 4: Provision of Information on the Rights of Victims

Correspondence to the Commission over the years illustrates the problems individuals face in contacting the appropriate authorities or organisations in order to receive clear information on their rights to assistance and health care, their right to a residence permit and their labour rights, their rights regarding access to justice and to a lawyer, and on the possibilities of claiming compensation.

To inform victims of their rights and help them effectively exercise them, **in 2013** the Commission **will provide clear, user-friendly information on the labour, social, victim and migrant rights that victims of trafficking in human beings have under EU law**[24]. As a follow-up, the Commission **will help Member States provide and disseminate similar information at national level** in 2014.

(20) IOM, 'The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database', 2010.

(21) Directives 2011/36/EU on trafficking in human beings and 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

(22) EU Expert Group on Unaccompanied Minors, Meeting on Guardianship of unaccompanied children on 21 June 2011.

(23) See also the European Union Agency for Fundamental Rights, 'Child Trafficking in the EU — Challenges, perspectives and good practices', July 2009.

(24) This information includes the rights based on Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking in human beings. The potential of the Directive is currently not being fully exploited and victims' lack of information about their rights has been identified as one of the key problem areas. The Commission has launched a study to analyse the current measures in place and schemes of protection for victims of trafficking provided in each Member State under the Directive, to understand whether the current somewhat divergent arrangements in the Member States hinder a consistent, effective approach to addressing trafficking in human beings. http://ec.europa.eu/anti-trafficking/index, http://ec.europa.eu/immigration and http://e-justice.europa.eu.

2.2. PRIORITY B: Stepping up the prevention of trafficking in human beings

A coherent approach to prevention must encompass prosecution and protection and address all areas of trafficking in human beings. Prevention needs to be stepped up in the light of the root causes which make people vulnerable to trafficking and addressing these causes should be a key aspect of prevention in the EU and in third countries.

Action 1: Understanding and Reducing Demand

The exchange of best practices can help reduce demand for all forms of trafficking, including sexual exploitation. It should build on work done in the areas of public awareness campaigns targeting consumers and users of services, corporate social responsibility, codes of conduct[25], business and human rights and initiatives aimed at eliminating human trafficking from the supply chains of businesses.

To increase understanding on the reduction of demand, in 2013, under the Seventh Framework Programme, the Commission will fund **research on reducing the demand for and supply of services and goods by victims of trafficking in human beings**, including victims trafficked for the purpose of sexual exploitation and specific categories of victims such as children. The research will provide material for the Commission's 2016 report on the legal measures that some Member States have taken to criminalise the use of services of victims of trafficking in human beings[26].

Action 2: Promote the establishment of a Private Sector Platform

Cooperation with the private sector is also essential in order to reduce the demand for trafficking in human beings and to develop supply chains that do not involve trafficking in human beings.

A European Business Coalition against trafficking in human beings will be established in 2014. The coalition should improve cooperation with businesses and other stakeholders, respond to emerging challenges and discuss measures to prevent trafficking in human beings, in particular in high-risk areas. In 2016, the Commission intends to work together with the Coalition to **develop models and guidelines on reducing the demand** for services provided by victims of trafficking in human beings, in particular in high-risk areas, including the sex industry, agriculture, construction and tourism.

Action 3: EU-wide Awareness Raising Activities and Prevention Programmes

Numerous anti-trafficking prevention programmes, in particular awareness-raising campaigns, have been implemented locally, nationally, internationally and in third countries. However, little has been done to systematically evaluate the impact of such prevention programmes in terms of their achieving their objectives, such as changes in behaviour and attitudes, thus reducing the likelihood of trafficking in human beings. Little is also known about the added value, coherence and consistency (where appropriate) of such initiatives and the links between them.

In 2013, under the home affairs funding programme, the Commission will thoroughly **analyse prevention initiatives already in place to target trafficking in human beings carried out by various actors.** The Commission will then develop EU-wide guidance on future prevention measures and gender-sensitive information campaigns with the Member States. Based on the analysis of prevention activities already in place, links to **existing awarenessraising campaigns will be established in 2015**[27].

In 2014 the Commission will **launch EU-wide awareness-raising activities** targeting

(25) Such as the IOM's Buy Responsibly Campaign http://www.buyresponsibly.org.

(26) Article 23 of the 2011/36/EU Directive on trafficking in human beings.

(27) Such as the UNODC's Blue Heart Campaign or the Blue Blindfold Campaign of the UK.

specific vulnerable groups, such as women and children at risk, domestic workers, Roma communities, undocumented workers and situations such as major sporting events, using the home affairs funding programme. The internet and social networks will be used as a means of effectively raising awareness in a targeted manner.

2.3. PRIORITY C: Increased prosecution of traffickers

C

Trafficking in human beings extends beyond individual Member States. Most traffickers work within well-established networks which allow them to move victims across borders or from one place to another within a country. In fact, internal trafficking, in which many of the victims are EU citizens who are trafficked within their own or another Member State, is on the rise. Although the investigation and prosecution of human trafficking cases have received more attention recently, the total number of cases prosecuted in the EU remains low. In fact, the comparable data showed a decrease in the number of convictions on trafficking in human beings, from 1534 in 2008 to 1445 in 2009 and 1144 in 2010.

Action 1: Establishment of National Multidisciplinary Law Enforcement Units

In the EU Policy Cycle to fight serious and organised crime, Member States have recognised in the strategic goals and operational actions the importance of being innovative, multidisciplinary and proactive to better investigate and prosecute cases of trafficking in human beings.

To better investigate and prosecute traffickers and further increase cross-border cooperation and centralise knowledge on trafficking in human beings, Member States should **establish national multidisciplinary law-enforcement units on human trafficking.** The units should function as contact points for EU agencies, in particular Europol[28] and forward the information collected to the Europol National Units for further transmission to Europol. The units should focus on all forms of human trafficking and improve the detection of human trafficking and the collection and analysis of information on the subject. Procedures need to be in place to regulate the exchange of information between local and regional law enforcement units and national units. The units should also address changing patterns, such as the recruitment of victims of trafficking in human beings and advertising of their services on the internet.

Action 2: Ensuring Proactive Financial Investigation

In line with the Organisation for Economic Co-operation and Development Financial Action Task Force Recommendations[29], **Member States should proactively conduct financial investigations of trafficking cases** in 2013, provide information for Europol's analytical work file and further cooperate with EU agencies, such as Eurojust and the European Police College (CEPOL).

Europol will do an analysis based on information received from Member States on the financial investigation of human trafficking cases by 2015. This analysis should lead to the identification of best practice and models for financial police investigations. Financial investigation has been recognised as a tool for gathering evidence. When collecting evidence with a view to prosecuting human traffickers, many investigations still depend largely on victims' statements. Evidence gathered from money trails might provide the necessary additional proof, particularly in high-risk sectors[30], thus relieving victims of the burden of testifying in court. Financial investigations may also be useful to feed into risk assessment, increase knowledge of the modus operandi of those who commit crimes related to human trafficking and refine detection tools.

(28) The units should function as a contact point for law enforcement bodies in other countries in and outside the EU and experts from the unit should participate in meetings such as the meeting of the Analytical Work Files group on human trafficking, meetings related to the EU policy cycle and meetings of the contact points mentioned in Europol's contact manual for human trafficking.

(29) International standards on combating money laundering and the financing of terrorism & proliferation, the FATF recommendations, OECD Financial Action Task Force, February 2012.

(30) Europol, 'EU Organised Crime Threat Assessment 2011'. These sectors are agriculture, construction, the textile industry, healthcare, domestic service and the sex industry, page 19.

Action 3: Increasing cross-border Police and Judicial Cooperation

The Commission recognises the importance of increasing the level of judicial cooperation in the area of trafficking in human beings. It therefore encourages national authorities and EU agencies to **create where relevant joint investigation teams and involve Europol and Eurojust in all cross-border trafficking cases. Member States should make full use of EU agencies** and to share information with a view to increasing the number and quality of crossborder investigations at the level of law enforcement and at judicial level. In accordance with their mandates, EU agencies should actively share information among themselves and with Member States. Member States should also cooperate with Eurojust in implementing the future Eurojust Action Plan against trafficking in human beings.

Action 4: Increasing Cooperation beyond Borders

The EU will fund in 2012 a pilot project to **strengthen regional cooperation on trafficking in human beings along routes from the East to the EU** using the Instrument for Stability. Further initiatives against organised crime and human trafficking will also contribute to coherence between the internal and external aspects of EU security policies. They will also increase knowledge of the links between criminal networks involved in trafficking in human beings and other crime areas. Their aim should be to improve systems of data collection, analysis and exchange at national and transnational level, to promote and assist in information sharing and regional coordination on trafficking in human beings and enhance national and transnational law enforcement cooperation and the capacity of prosecutors and consular and NGO staff.

2.4. PRIORITY D: Enhanced coordination and cooperation among key actors and policy coherence

D

There is a need for improved coordination and cooperation among key actors working in the field of trafficking in human beings, based on a multi-sectoral, multi-disciplinary approach. Coherence is also essential to ensure that related policies incorporate anti-trafficking policy. Cooperation amongst different actors can best be organised through formalised mechanisms and procedures that create a clear commitment and clarify the roles and tasks of those involved. The EU Justice and Home Affairs Agencies signed a joint statement on the 5th EU Anti-Trafficking Day on 18 October 2011. This agreement includes better prevention of trafficking, more efficient investigation and prosecution of perpetrators, and more effective protection of victims that complies with fundamental rights and takes the gender of victims into account[31]. The Commission will **coordinate and monitor the implementation of this agreement.**

Action 1: Strengthening the EU Network of National Rapporteurs or Equivalent Mechanisms

The Informal EU Network of National Rapporteurs or Equivalent Mechanisms was established in 2009 and meets every six months. Under Article 19 of the Directive on preventing and combating trafficking in human beings, all Member States need to establish national rapporteurs or equivalent mechanisms whose tasks include carrying out assessments of trends, measuring the impact of anti-trafficking efforts, and gathering data. In 2013, the Commission will **strengthen the EU-wide coordination mechanism to support the work national rapporteurs' do** to monitor the implementation of Member States' EU and international obligations; to collect data, analyse and research human trafficking trends at national level, and assess progress on preventing and combating human trafficking as well as on protecting victims, while ensuring the participation of civil society.

(31) The agencies in question are CEPOL, EASO, EIGE, Europol, Eurojust, FRA and Frontex, http://ec.europa.eu/anti-trafficking/entity.action?id=55a48066-dcf5-4e71-b191-cedcf0caa97a.

Action 2: Coordinating EU External Policy Activities

The Action Oriented Paper on strengthening the EU external dimension against trafficking in human beings and the Global Approach to Migration and Mobility both provide for better coordination of the EU's external policy activities and provide a coherent approach based on EU agreements, strategic partnerships and political dialogues. A list of priority third countries and regions for future partnerships should be developed. **Cooperation mechanisms in EU delegations on trafficking in human beings could be considered in priority third countries and regions in 2013** in order to strengthen cooperation, create partnerships and improve coordination and coherence.

The Commission will also work towards **strengthening and formalising partnerships with international organisations**[32] active in the field of trafficking in human beings to improve the exchange of information and ensure cooperation, particularly in the areas of policy planning, prioritisation, data collection, research and monitoring and evaluation.

As a severe violation of human rights mentioned in the Charter of Fundamental Rights, trafficking in human beings will continue to be covered **under the Human Rights Clauses in the EU's agreements with third countries, including the Free Trade Agreements,** providing the basis for cooperation on and promotion of human rights[33].

The Commission **will continue to fund projects** through the development cooperation and other external relations funding programmes in all relevant aspects of trafficking in human beings in **third countries and in regions,** including South-South trafficking, and covering prevention, protection and prosecution.

Action 3: Promoting the establishment of a Civil Society Platform

An EU Platform of civil society organisations and service providers working on victim protection and assistance in Member States and selected third countries **will be established** in 2013. The Commission will ensure that the funds in the home affairs funding programmes are available to do this.

Action 4: Reviewing Projects funded by the EU

Over the years, the European Commission has funded numerous anti-trafficking projects[34]. These projects have targeted different stakeholders and approached the issue from various angles. The Commission will ensure that information on all projects on internal and external aspects of trafficking in human beings that are funded by the EU is provided on its antitrafficking website. As a next step, reflecting the need for greater coherence in policies across sectors that affect anti-trafficking work and initiatives, in 2014 the Commission will **conduct a comprehensive review of these projects** to map the geographical areas, fields, different actors and types of projects, as well as their outcomes and recommendations. **This review will strengthen future projects and provide a solid basis for coherent, cost effective, and strategic EU policy and funding initiatives.**

Action 5: Strengthen the fundamental rights in anti-trafficking policy and related actions

Mainstreaming fundamental rights in anti-trafficking policy and legislation is necessary to ensure that anti-trafficking work is coherent. The Commission's Strategy for the effective

(32) The Commission has formalised partnerships in different forms and cooperates with the UN, the Council of Europe, the International Organization for Migration, the Organization for Security and Cooperation in Europe, the World Health Organization and the International Labour Organization. Continued cooperation with these organisations will be especially important in combating trafficking in human beings for the purpose of the removal of organs.

(33) Joint Communication: *Human Rights and Democracy at the Heart of EU External Action — Towards a more Effective Approach*, COM(2011) 886 final.

(34) Information on most projects is available on the Commission's anti-trafficking website.

implementation of the Charter of Fundamental Rights[35] requires the Commission to ensure from an early stage, by means of a "fundamental rights check", that its legislative and other acts are always in full compliance with the fundamental rights guaranteed by the Charter[36].

Important work has also been done by various organisations and bodies, namely the European Union Agency for Fundamental Rights, the Office of the United Nations High Commissioner for Human Rights and the Council of Europe. Moreover, a tool for civil society organisations to assess policy and legislation on trafficking in human beings[37] and a tool to give guidance on fundamental rights in Commission impact assessments have been developed.

To strengthen existing instruments, and building upon its past and on-going work on trafficking, in 2014 the European Union Agency for Fundamental Rights, will start **to develop a tool, such as a handbook or a guide, to assist Member States in addressing fundamental rights** issues specifically related to anti-trafficking policy and related actions, which will take into account relevant structures, processes, and outcomes and will focus on the rights of victims, incorporating a gender perspective and the best interests of the child. As a next step, the Commission will, through the future justice funding programmes **assist Member States in implementing this tool.**

Action 6: Coordinating Training Needs in a Multidisciplinary Context

One of the key points in the Directive on trafficking in human beings and something that is clear from the majority of the responses to the consultations on this Strategy is the need to **provide training for those who work in the field.** Training mechanisms and targeted, specialised programmes on trafficking in human beings must become more uniform and consistent[38]. People who regularly have to deal with human trafficking issues need to be trained. **The Commission will strengthen training focusing on the judiciary and crossborder law enforcement** through the Communications on Building trust in EU-wide justice and on the European Training Scheme, planned for the end of 2012. The **main focus** of the Commission will be to **bring together various actors** in order to increase policy coherence, and as appropriate, target specific areas and actors.

Possibilities of developing training frameworks for transition and developing countries will be explored, including through the European Training Foundation. The European Police College, Frontex, and the European Asylum Support Office will work further on training needs of their respective stakeholders[39]. The Commission will consider cooperation with the EU Delegations to provide them and, through them, third countries, with training in addressing trafficking in human beings.

(35) Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union COM(2010) 573 final, 19 October 2010, available at: http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:EN:PDF.

(36) Commission Staff Working Paper - Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments, SEC(2011) 567 final, 6.5.2011.

(37) The RighT Guide, http://ec.europa.eu/anti-trafficking/entity?id=7dbb0353-cb8a-4bcc-a3fa-34dfbe01bbca.

(38) Communication *Building trust in EU-wide justice: a new dimension to European judicial training*, COM(2011) 551 final.

(39) CEPOL provides training on trafficking in human beings as well as a Common Curriculum and an elearning module for police officers. Frontex has developed a specific training manual on human trafficking for border guards. Tools and information on detecting and referring human trafficking victims will be part of the European Asylum Support Office (EASO) tool box, for instance in training modules and manuals.

2.5. PRIORITY E: Increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings

The trends, patterns and working methods of traffickers are changing in all the different forms of trafficking in human beings, adapting to changing patterns of demand and supply. Forms of exploitation are often merged and intertwined, making it hard to detect the exact form of exploitation victims are subjected to. This makes it even harder to identify victims. It is necessary to be able to understand such trends quickly and ensure an effective response.

Action 1: Developing an EU-wide System for Data Collection

The Commission, together with the Member States, will **develop an EU-wide system for the collection and publication of data broken down according to age and gender.** Understanding the flows and trends of internal trafficking will be an important part of this work. Based on the results of the analysis of the first data collection initiative of 2012, the Commission will work with national rapporteurs to **ensure comparable, reliable data are collected in the follow-up initiative covering the years 2011 and 2012**. Results are expected in 2014.

In its Communication on measuring crime in the EU, the Commission emphasised the need to collect reliable, comparable data for evidence-based policy on trafficking in human beings. The Communication includes an Action Plan for 2011-2015[40] to collect data on a small number of indicators.

Action 2: Developing knowledge relating to the Gender Dimension of Trafficking and Vulnerable Groups

In 2013, the Commission will **develop knowledge on the gender dimensions of human trafficking**, including the gender specificities of the way men and women are recruited and exploited, the gender consequences of the various forms of trafficking and potential differences in the vulnerability of men and women to victimisation and its impact on them.

Vulnerability to trafficking and to different forms of exploitation is shaped by gender. While women and girls tend to be trafficked for exploitation in the sex industry, in domestic work or the care sector, men and boys tend to be victims of forced labour, in particular in agriculture, construction, mining, forestry sectors and on fishing fleets. In addition, the short and long term consequences on trafficked women and men might differ, depending on the form of trafficking and gender.

Vulnerable groups are at greater risk of human trafficking. Such groups include children, especially early school leavers, children left behind[41], unaccompanied children, and children with disabilities, as well as people in the Roma community[42]. Ensuring a gender perspective, in 2014 the Commission **will** also ensure that funding is available under the research funding programme to **increase understanding of such high-risk groups** and it will target actions in a more coherent manner in the future and collaborate with the Member States.

Action 3: Understanding Online Recruitment

In 2014 the Commission will, under the safer internet funding programme, support projects that aim to **increase knowledge of recruitment over the internet and via social networks — including recruitment done with the help of intermediaries.** The internet reaches a broad audience, offering numerous possibilities to recruit victims[43]. It offers employment opportunities (most often promoting attractive jobs abroad, for models, dancers, cabaret performers, etc.) which are accessible via simple search engines or pop-ups, chat rooms and spam mail. Social networking tools are becoming increasingly popular as recruitment tools.

Action 4: Targeting Trafficking for Labour Exploitation

To increase the number of cases of trafficking for labour exploitation that are investigated and prosecuted and to improve the quality of the investigation and prosecution of such cases, in 2013, under the home affairs funding programme, the Commission will fund a **study of case law in all Member States.** Many reports flag the different approaches in Member States to addressing trafficking for labour exploitation. Criminal law provisions and their implementation seem to differ among Member States. This may hamper cross-border cooperation. Better insight into case law in Member States might throw light on the differences in approach.

Labour (market) legislation and laws regulating migrants working in the EU, when implemented correctly, will also help to prevent the different forms of human trafficking. There needs to be a greater focus on the administrative aspects of trafficking in human beings such as on contractors and subcontractors and job recruitment agencies, in particular in highrisk sectors for trafficking in human beings. The EU's decent work agenda[44] and better social protection in countries of origin must also be promoted.

In 2015, the Commission will work with the European Foundation for the Improvement of Living and Working Conditions (Eurofound) to **develop a best practice guide for public authorities** on the monitoring and enforcement of temporary work agencies and intermediary agencies such as job recruitment agencies to prevent trafficking in human beings. The guide should include licensing systems and work related to the liability of such agencies.

The Commission will also **strengthen cooperation with labour, social, health and safety inspectors, as well as fisheries inspectors,** in relation to the identification and referral of victims of human trafficking and in raising awareness and training by including it on the agenda of EU networks in 2013.

(40) Communication *Measuring Crime in the EU: Statistics Action Plan 2011 – 2015,* COM(2011) 713 final.

(41) This refers to children whose parents work in a different Member State and leave their children behind in their country of origin.

(42) Taking into account research on the topic such as the Study on the Typology of and Policy Responses to Child Begging in the EU, JLS/2009/ISEC/PR/008-F2.

(43) See the Council of Europe's study on the Misuse of the Internet for the recruitment of victims of trafficking in human beings, 2007.

(44) Communication *Promoting decent work for all: the EU contribution to the implementation of the decent work agenda in the world,* COM(2006) 249 final.

3. EVALUATION AND MONITORING

Taking into account the multitude of reporting mechanisms in the field of trafficking in human beings across the EU[45], and how this Communication relates to the Directive on human trafficking, the Commission intends to establish effective monitoring and evaluation procedures that do not create repetitive reporting mechanisms. The Member States are encouraged to do their own evaluation and monitoring of national strategies and activities aimed at addressing human trafficking.

In accordance with the Directive on human trafficking, by April 2015 the Commission will assess the extent to which the Member States have taken the necessary measures to comply with that Directive in a report to the European Parliament and the Council.

Then, in accordance with the Directive, the Commission will **report every two years** to the Council and the European Parliament on the progress made in the fight against trafficking in human beings, facilitated by the Member States. The first report, to be issued in **2014, will include a first evaluation of this Communication.**

Finally, in 2016 a report will **assess the impact of national laws establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings.** If necessary, the report will contain adequate proposals.

In the light of the measures described in this Communication, the Informal Network of National Rapporteurs or Equivalent Mechanisms will be essential for both the monitoring and the evaluation of those measures. The reports they issue at Member State level will be taken into consideration. **The Commission strongly advises the National Rapporteurs or Equivalent Mechanisms to consult civil society** when preparing their reports.

Ensuring that this Strategy for the Eradication of Trafficking in Human Beings 2012 – 2016 will have the intended effect will depend to a large extent on the funding and on the involvement of all the actors mentioned in this Communication. EN 17 EN

(45) The intention is to exploit as far as possible existing reporting mechanisms in the field of trafficking in human beings, such as reporting under the EU Policy Cycle to fight serious and organised Crime, and the reports of the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe (GRETA).

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016

Summary of the actions of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016

PRIORITIES AND ACTION	RESPONSIBLE	TIMING
PRIORITY A: Identifying, protecting and assisting victims of trafficking		
Development of national referral mechanisms	MS/COM	2012
Guidelines on protection of victims	COM	2015
Model for an EU transnational referral mechanism	COM	2015
Guidelines for better identification of victims of trafficking in human beings	COM	2014
Guidelines for consular services and border guards for identification of victims of trafficking	COM	2012
Guidelines on child protection systems	COM	2014
Strengthening of child protection systems to ensure safe return and prevent re-trafficking	MS	2015
Best practice model on the role of guardians and/or representatives for child victims	COM/FRA	2014
Information on labour, social, victim and migrant rights under EU law	COM	2013
Dissemination of information on labour, social, victim and migrant rights at national level	MS/COM	2014
PRIORITY B: Stepping up the prevention of trafficking in human beings		
Research on reducing the demand for services provided by victims of trafficking	COM	2013
Establishment of a European Business Coalition against trafficking in human beings	COM	2014
Models and guidelines on the reduction of demand	COM/European Business Coalition	2016
Analysis of existing prevention initiatives carried out by stakeholders	COM	2013
EU-wide awareness-raising activities targeting specific vulnerable groups	COM	2014

Summary of the actions of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016

PRIORITIES AND ACTION	RESPONSIBLE	TIMING
PRIORITY C: Increased prosecution of traffickers		
Establishment of national, multidisciplinary law-enforcement units on human trafficking	MS	Ongoing
Proactive financial investigations of trafficking cases and cooperation with EU agencies	MS	2013
Analysis of information received from MS on financial investigation in human trafficking cases	Europol/MS	2015
Joint Investigation Teams	MS/EU agencies	Ongoing
Full use of EU agencies	MS/EU agencies	Ongoing
Implementation of Eurojust Action Plan against trafficking in human beings	Eurojust/MS	2013
Regional cooperation on human trafficking along routes from the East to the EU	COM	2012
PRIORITY D: Enhanced coordination and cooperation among key actors and policy coherence		
Coordination and monitoring of the implementation of the joint statement signed by EU JHA agencies	COM	Ongoing
Strengthening of the EU-wide coordination mechanism to support the Informal Network of National Rapporteurs or Equivalent Mechanisms	COM/MS	2013
Possible establishment of cooperation mechanisms in EU delegations in priority third countries and regions	COM/EEAS/MS	2013
Strengthening and formalisation partnerships with international organisations	COM/International Organisations/EEAS	Ongoing
Inclusion of human trafficking in the Human Rights Clauses	COM/EEAS	Ongoing
Funding of projects on trafficking in human beings in third countries and regions	COM/EEAS	Ongoing
EU platform of civil society organisations and service providers	COM	2013
Review of EU-funded projects on trafficking in human beings	COM	2014
Tool assessing fundamental rights in anti-trafficking policy and related actions	COM/FRA	2014
Assistance to Member States in implementing the assessment tool	COM/MS	Ongoing
Strengthening of training targeting judiciary and cross-border law enforcement officials	COM/EU agencies/ MS	2012
Increased policy coherence through training programmes	COM/MS	Ongoing

Summary of the actions of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016

PRIORITIES AND ACTION	RESPONSIBLE	TIMING
PRIORITY E: Increased knowledge of and effective response to changing trends in trafficking in human beings		
EU-wide system for the collection and publication of gender- and age- disaggregated data	COM/MS	2012
Comparable and reliable data in follow-up initiative 2011 and 2012	COM/MS/National Rapporteurs	2014
Research on the gender dimensions of human trafficking	COM	2013
Research on high-risk groups for human trafficking	COM	2014
Research on recruitment over the internet and through social networks	COM/MS	2014
Case-law study on trafficking or labour exploitation	COM/MS	2013
Best practices guide for public authorities on monitoring of temporary work agencies and intermediary agencies	EUROFOUND/COM	2015
Cooperation with labour, social and health, safety and fisheries inspectors	COM	2013

http://ec.europa.eu/anti-trafficking/

EU Anti-Trafficking Day

EUROPEAN COMMISSION

5th EU Anti-Trafficking Day

Together Against Trafficking in Human Beings

Joint statement of the Heads of the EU Justice and Home Affairs Agencies

We, the undersigned,

Dr. Ferenc Bánfi, Director of CEPOL – European Police College

Mr. Rob Visser, Executive Director of the European Asylum Support Office

Ms. Virginija Langbakk, Director of the European Institute for Gender Equality

Mr. Aled Williams, President of Eurojust

Mr. Rob Wainwright, Director of Europol

Mr. Morten Kjaerum, Director of The European Union Agency for Fundamental Rights

Brig. Gen. Ilkka Laitinen, Executive Director of Frontex

Together, we commit to address trafficking in human beings in a coordinated, coherent and comprehensive manner. In partnership with EU Member States, EU institutions and other partners, we will focus on better prevention of trafficking, more efficient investigation and prosecution of perpetrators, and a more effective protection of victims in compliance with fundamental rights standards. To this end, we will work closely with civil society organisations within and outside the EU.

Our approach is in line with the provisions of the Lisbon Treaty and the Stockholm Programme. We will therefore use the new powers provided by the Lisbon Treaty to further implement, together with other involved institutions and the Member States, the EU Action Oriented Paper on strengthening the EU external dimension on action against THB in order to create a coherent pan- European approach of the EU's efforts against trafficking in human beings.

We are equally committed to join efforts supporting the EU Member States in implementing the provisions of the newly adopted Directive of the 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

The fundamental rights of victims of human trafficking are central to EU policy in this field. Therefore, in addition to our specific mandate and activities, we are all committed to carrying out our work in full respect of human rights in line with the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights. We will also ensure that a gender perspective is integrated in our structures, policies, and programmes and that particular attention should be paid to the protection of rights and adequate treatment of vulnerable groups of victims of human trafficking, in particular women, children and unaccompanied minors.

Using our unique strategic position, knowledge and expertise we commit to working closely with the European Commission and the Member States to ensure that differences in practices and tradition will not jeopardise or prejudice the rights of victims of trafficking.

In our action we will respect the principles of subsidiarity and proportionality, keeping in mind that the agencies should be the operational tools for the Member States and for the EU institutions when protecting the freedom of citizens and ensuring the security of the EU.

A focus shall lie on prevention. In this context, it is important to work towards a high level of awareness in the population in order to combat trafficking. The evolving framework of the EU internal security requires the joint effort of the EU Agencies. This includes improving border security by identifying both traffickers and potential victims of human trafficking. At the same time we are conscious that many victims are trafficked and exploited within the EU borders. Acknowledging the many manifestations of trafficking, Agencies will work to ensure that the rights of victims are respected in practice, which includes due consideration of gender perspective and related factors that, in combination, can increase vulnerability. Towards this aim we will design complementary training programmes targeting senior and front line officials to ensure that the needs and rights of victims are addressed. In doing so, we are committed to enhancing synergies across EU agencies active in the preparation of training for law enforcement and judicial officials.

From the perspective of law enforcement and judicial cooperation, we are committed to assisting Member States to increase the number of human trafficking investigations and prosecutions as well as to coordinate cross-border action, so that human traffickers are brought to justice fairly and efficiently. Judicial cooperation in the fight against trafficking in human beings should be global in outlook and include cooperation with non-EU countries and the facilitation of investigations outside EU borders where appropriate.

From the same perspective, seizure of criminal assets in trafficking cases requires proper judicial follow-up to ensure that crime does not pay. Our agencies will help coordinate investigations and prosecutions conducted by Member States' authorities which address the financial aspects of organised crime. This means taking concrete steps to improve the tracing, confiscation and recovery of proceeds from human trafficking, while maintaining full regard for fundamental rights. We will promote the social re-use of assets seized, to facilitate the rehabilitation of victims of crime and to help prevent future exploitation. We will also seek to increase the number of Joint Investigation Teams, as well as parallel and mirror investigations, whenever possible and necessary for cross-border anti-trafficking operations.

Developing new threat assessment methodologies at the EU level as part of the new EU policy cycle for serious and organised international crime, refining analytical capabilities, defining intervention priorities and establishing links with national security strategies as well as the EU external security strategy are key elements that will help us developing necessary coordinated planning but also flexibility to respond to emerging threats and react more quickly to the new forms of human trafficking.

We will enhance our present efforts in order to ensure better collection, access and sharing of information related to trafficking victims and organised crime groups. In this process we will take the necessary steps to observe EU data protection rules.

In order to ensure better results in working towards the eradication of trafficking in human beings, each Agency will nominate a contact point, who will have an overview of the Agency's action in his/her field and may represent the Agency in EU and relevant fora. This person will ensure improved communication between the Agency and EU institutions, including the EU Anti Trafficking Coordinator and with relevant Intergovernmental Organisations or Nongovernmental Organisations in the field. The contact persons will meet when needed to discuss common actions at an expert level.

In order to translate this commitment into actions, and as the next step, we will establish and implement concrete joint priorities and activities in our planning and where relevant propose these for our upcoming work programmes.

It is only by working together through a properly integrated approach that we can help address the misery caused by human trafficking.

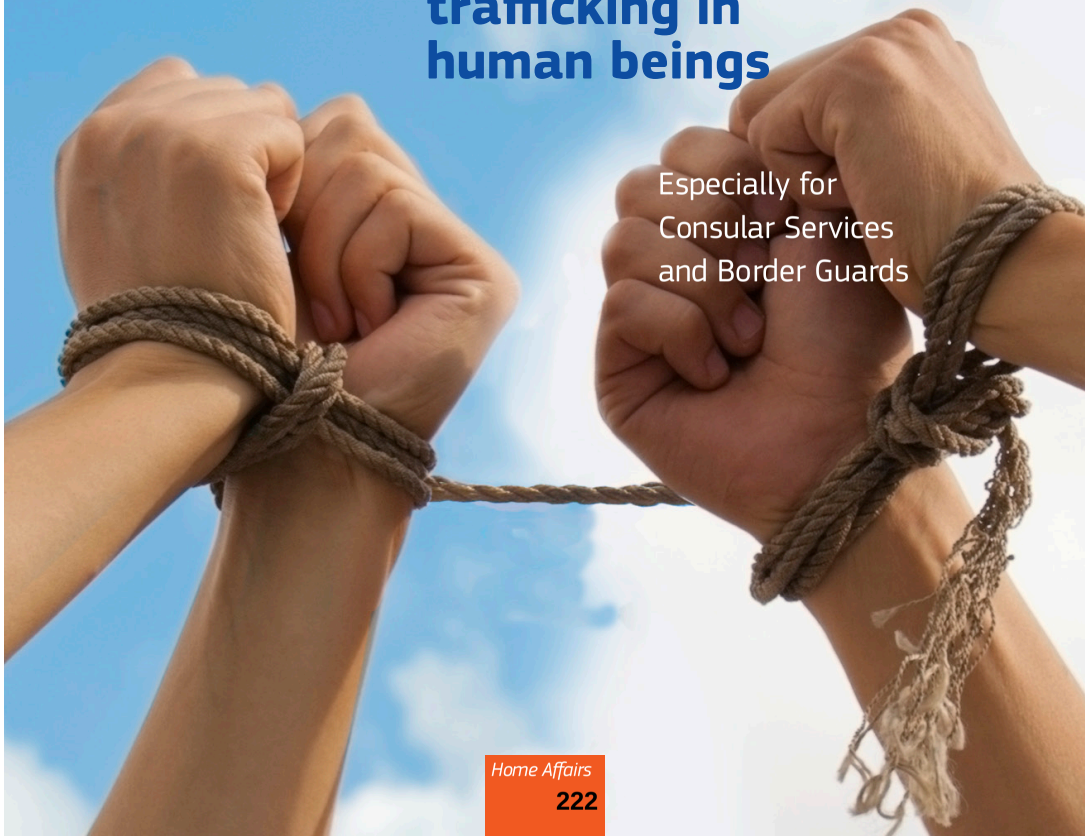
Dr. Ferenc Bánfi, Director of CEPOL – European Police College	Mr. Rob Visser, Executive Director of the European Asylum Support Office
Ms. Virginija Langbakk, Director of the European Institute for Gender Equality	Mr. Aled Williams, President of Eurojust
Mr. Rob Wainwright, Director of Europol	Mr. Morten Kjaerum, Director of The European Union Agency for Fundamental Rights
Brig. Gen. Ilkka Laitinen, Executive Director of Frontex	

European Commission

Reference document

Guidelines for the identification of victims of trafficking in human beings

Especially for Consular Services and Border Guards



Home Affairs

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EU legal and policy framework on trafficking in human beings

Trafficking in human beings is a serious crime and a grave violation of human rights prohibited under Article 5 on the prohibition of slavery and forced labour of the Charter of Fundamental Rights of the European Union[1].

Based on the Treaty on the Functioning of the European Union[2], over the last few years the EU has developed a comprehensive policy and legislative framework to effectively address trafficking in human beings. The framework focuses equally on the prevention of trafficking, prosecution of criminals, protection of victims and partnership across relevant disciplines and with the different stakeholders and actors involved. This integrated and multidisciplinary perspective is combined with a human-rights-centred and gender-specific approach.

On 19 June 2012 the Commission adopted the Communication 'The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016'[3] ('the Strategy') replacing the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings of 2005.[4] The Strategy focuses on concrete measures that support the implementation of the new Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims[5] ('the Directive').

The main responsibility for addressing trafficking in human beings lies with the Member States; the Strategy shows how the Commission will support Member States in addressing the challenges for the next five years in a way which is as concrete and practical as possible. The Strategy proposes a series of concrete actions (about 40) grouped under the following key priorities: identifying, protecting and assisting victims of trafficking; stepping up the prevention of trafficking in human beings; increased prosecution of traffickers; and enhanced coordination and cooperation among key actors and policy coherence; increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings. The Strategy includes a strong gender and human rights perspective whilst promoting a multidisciplinary approach which incorporates different actors.

On 25 October 2012, the Council adopted Conclusions endorsing the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016[6] which present a set of recommendations for EU Member States, relevant EU Agencies and the Commission.

Identification of victims of trafficking – a key challenge

The Directive **obliges Member States to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that he or she might be a victim of trafficking**. Member States also need **to establish appropriate mechanisms aimed at early identification,**

(1) Charter of Fundamental Rights of the European Union (2000/C 364/01), O J L 364, 18.12.2000, p. 1 / Article 5: Prohibition of slavery and forced labour

(2) Treaty on the Functioning of the European Union, article 79 on Policies on Border Checks, Asylum and Immigration and article 83 on Judicial Cooperation in Criminal Matters

(3) Communication The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016 COM(2012)286 final

(4) EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings of 9 December 2005, 2005/C 311/01

(5) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA, O J L 101, 15.4.2011, p. 1

(6) Council conclusions on the new EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, 3195th JUSTICE and HOME AFFAIRS Council meeting, Luxembourg, 25 October 2012

assistance, and support for victims based on their individual needs, at the very least including appropriate and safe accommodation, material assistance, medical treatment, psychological assistance, counselling and information and translation and interpretation services. The Directive also requires Member States to **grant special treatment to particularly vulnerable victims, including children, pregnant women and victims with disabilities**. In order to prevent trafficking in human beings, Member States are obliged to **promote the regular training for officials likely to come into contact with both victims and potential victims,** including front-line police officers, to enable them to identify and help them.

Against this background, it should be emphasised that **early identification is crucial to promptly assist, support and protect victims of trafficking in human beings and enables police and prosecution authorities to better investigate and punish traffickers**. At the same time, mechanisms to protect, assist and socially include victims of trafficking need to be established.

Under the priority 'Identifying, protecting and assisting victims of trafficking', the Strategy promotes concrete actions to improve identification of victims of trafficking. In this context, the Strategy highlights the crucial role consular services and border guards play in the identification of victims and potential victims of trafficking in human beings as front-line officers.

Development of the Reference Document for Consular Services and Border guards

In order to increase coherence and avoid duplication of efforts in this area, as well as bearing in mind the on-going projects related to identification of victims of trafficking in human beings funded by the Commission (*see List of projects in attachment*), the aim of this document is **to highlight existing documents and projects on the identification of victims,** and in particular those targeting consular services and border guards and thus encourage their systematic use by the respective officials.

Indeed, the Commission is currently **funding various projects addressing directly or indirectly the issue of identification of victims of trafficking**. More specifically, and as highlighted in the Strategy, the Commission currently funds a specific project under the ISEC Programme ("Development of Common Guidelines and Procedures on Identification of Victims of Trafficking in Human Beings" EuroTrafGuID) which aims to develop guidelines to better identify victims of trafficking in human beings, taking into account the EC/ILO 2009 lists of indicators on trafficking in human beings. The aim of the project is to propose tools to enhance and harmonise methods and procedures for the first level of identification of victims of trafficking within the EU in order to better address trafficking and to ensure equal treatment of victims as regards their rights, including the right to protection.

Regarding the existing handbooks and manuals on this matter, the Commission highlights in particular two specific documents addressed to border guards and consular services namely the **"Anti-trafficking Training for Border Guards – Trainer's Manual"** of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the "**Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking"** of the Council of the Baltic Sea States (CBSS).

Indeed, these two documents provide comprehensive guidance to early identify victims of trafficking addressing separately consular services and border guards in a clear, comprehensible format and provide helpful, targeted advice useful to front-line officers in the course of their day to day duties. These documents, combined with other existing handbooks of more general nature such as e.g. Recommended Principles and Guidelines on Human Rights and Human Trafficking of UN Human Rights Office of the High Commissioner as well as input from the Group of Experts advising the European Commission on trafficking in human beings[7], have fed into the Commission's indicative guidelines contained in this document.

In order to avoid duplication and to ensure that the Commission's document is of practical use to front-line officers the document contains only indicative guidelines presented in a concise way.

This document should also complement and

(7) Commission Decision of 10 August 2011 on setting up the Group of Experts on Trafficking in Human Beings and repealing Decision 2007/675/EC, 2011/502/EU http://ec.europa.eu/anti-trafficking/section.action?sectionId=d55a635a-4b9c-4cd8-b3be-17d1c7c2fc33&sectionType=LIST_ENTITIES_WITH_ATT

synergistically interact with other work streams such as the funded projects for the development of comprehensive guidelines to facilitate a pan-European Union, coordinated approach to the identification and assistance of victims. It should also offer an overview of the EU and policy framework on trafficking in human beings in order to provide a basic understanding and equip consular services and border guards with basic tools to identify situation of trafficking.

The indicative guidelines include basic provisions on identification, interviewing, referral, data collection, cooperation and prevention whilst also referencing existing documentation to provide more in depth information. Given the vulnerability of children the document contains special guidelines for children to attend the specificity of this group.

Anti-trafficking Training for Border Guards – Trainer's Manual (Frontex)

The FRONTEX Trainer's Manual on Anti-trafficking Training for Border Guards was developed in 2011 by the FRONTEX Training Unit in collaboration with experts from 13 Member States and Schengen Associated Countries as well as experts from CEPOL and EUROJUST. International organisations such as the IOM, OHCHR, UNHCR, UNICEF and the OSCE contributed to the development of the Manual to ensure the reflection of international standards and a human rights based approach.

The Manual aims at assisting national trainers to raise awareness on trafficking in human beings among first and second line border guards and equipping them with the special skills needed to identify and interview potential victims and perpetrators. The Manual provides practical guidance to support Member States in the early identification, assistance and support for victims of trafficking at the border by placing the fundamental rights of the victims at the centre of efforts addressing trafficking in human beings with particular regards for vulnerable groups such as children and persons in need of international protection.

As explained in the introduction to the Manual, the training package comprises three training modules; awareness, identification and interviewing. Each module is composed of learning objectives, lesson plans and training material and contains a dedicated chapter on children. The Awareness module increases understanding and enhances knowledge of trafficking in human beings and the human rights violations it entails, its characteristics, actors, functioning and mechanism. The Identification module is aimed at improving the ability of border guards to identify potential victims of trafficking and suspected traffickers by providing indicators illustrated by real world examples. The interviewing module helps experts determine whether the person is a victim of human trafficking, taking into account any need for assistance as well as the most effective referral for further follow-up.

Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking (CBSS)

The Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking has been published by the Council of the Baltic Sea States (CBSS) Secretariat in 2011 as the culmination of a two year training programme carried out by the CBSS Task Force against Trafficking in human beings (TF-THB) and the IOM mission to Moldova. The Handbook incorporates the expert inputs from trainers from NGOs, governmental authorities and International Organisations provided during the training seminars conducted between 2008 and 2010 by TF-THB and IOM.

The Handbook aims at increasing knowledge about trafficking in human beings among consular and diplomatic personnel and guiding them when dealing with suspected incidents of trafficking. It provides tools for consular personnel to properly identify assist and protect victims of trafficking in their daily work and for cooperating with relevant actors.

The Handbook is a practical and illustrative guide divided into chapters. It initially explains trafficking in human beings and the role of diplomatic and consular personnel and it provides an overview of the international legal framework, including EU law. The chapters include advice on how to identify and interview potential victims of trafficking and how to develop strategies to effectively work against human trafficking as well as data confidentiality, risk assessment and safe return. It contains specific guidelines for identifying and assisting children and finally provides a list of relevant referral organisations and contact points for further assistance for CBSS Member States.

Indicative guidelines for consular services and border guards on the identification of victims of trafficking

Objective/Purpose of the Guidelines

The EU Member States have a responsibility to act to prevent trafficking, to investigate and prosecute traffickers and to assist and protect victims of trafficking. Consular services and border guards play, as front-line officers, a very important role in the possible early identification of this crime, when traffickers decide to cross borders. The **indicative guidelines** complemented by all existing documents on this matter should be taken into account by consular services and border guards to help them to understand how, in the performance of their duties, to identify and adequately deal with victims of trafficking in human beings.

Definition

Offences concerning trafficking in human beings[8]:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Introduction

Trafficking in human beings is a serious crime and a gross violation of human rights. Consular services and border guards play, as front-line officers, a very important role in the possible early identification of potential victims and therefore contribute to the fight against this crime. As such consular services and border guards should refer the identified potential victims to the appropriate authorities for adequate follow up with due respect for the rights of the victims.

(8) DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

Member States shall ensure that the national competent authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being trafficked.

Consular services and border guards should ensure the raising of awareness of their staff that when an offence of trafficking in human beings was committed by public officials in the performance of their duties, it is regarded as an aggravating circumstance.

Operational Guidelines

General

Consular services and border guards should take the necessary measures in cooperation with the competent national authorities to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

Consular services and border guards should in cooperation with the competent national authorities endeavour to pay extra attention to particularly vulnerable' victims, in particular, pregnant women, people with a disability, a mental or psychological disorder, or people who suffered from a serious form of psychological, physical or sexual violence.

Identification

Consular services and border guards should conduct regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

Victims of human trafficking possibly suffer from various psychological problems as they may have experienced multi-traumatic incidents in their lives. Therefore, it is very important to acknowledge the impact of trauma upon trafficked persons and recognise the symptoms.

Interviewing

Victims of trafficking in human beings have the right to receive information as from their first contact with the national authorities relevant for the protection of their interests in the context of criminal proceedings.

Communication difficulties to understand what is going on and the role of the victim involved in the proceedings should be minimised. Where appropriate interpretation should be made available.

Investigation into or prosecution of trafficking in human beings offences is not dependent on reporting or accusation by a victim, and criminal proceedings may continue even if the victim has withdrawn his or her statement.

Information on a reflection and recovery period and information on the possibility of seeking and obtaining international protection should be provided to the potential victim at the beginning of the interview.

Referral

Consular services and border guards should take the necessary measures to ensure that a person is directed towards the competent national authorities that provide assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences related to trafficking in human beings.

Consular services and border guards should take the necessary measures to refer the potential victims to the competent national authorities that provide assistance and support for a victim.

Data Processing, including data collection

Individual

Information should be passed on as soon as possible, and to appropriate authorities and partners who are entitled to use it. This information should be treated in a legitimate way and with full respect for the victim's interests and privacy. The personal data of potential victims and victims of trafficking in human beings should always be treated in full compliance with applicable data protection rules.

Statistical

Consular services and border guards should consider ensuring in full compliance with relevant data protection rules that data concerning individuals who are trafficked is disaggregated on the basis of age, gender, nationality, form of exploitation and other relevant characteristics, like the use of documents and the travel route taken.

Cooperation

Consular services and border guards should consider developing cooperation arrangements to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in full compliance with applicable data protection rules .

From the moment there are reasonable grounds to suspect a person is a victim of trafficking consular services and border guards should be aware that assistance and support should be provided. Consular services and border guards should aim to develop together with the competent national authorities appropriate mechanisms that will allow this, eventually in co-operation with relevant support organisations like Non-Governmental Organisations.

Prevention and training

Consular services and border guards should consider identifying in cooperation with the relevant national authorities appropriate points of intervention to provide information to migrants and potential migrants about possible dangers and consequences of trafficking and to provide information that enables them to seek assistance if required.

Consular services and border guards should consider including anti-trafficking dossiers into internal training curricula. Anti-trafficking dossiers should also be introduced in the intranet and internet websites of both consular services and border guards (coherence should be established with relevant general anti-trafficking website if existing).

Special guidelines for Children

General

When the crime of trafficking in human beings involves a child, it shall be a punishable offence even if none of the means has been used, which implies that the definition of trafficking in children is : The recruitment, transportation, transfer, harbouring or reception of children, including the exchange or transfer of control over those children for the purpose of exploitation.

Child victims of trafficking in human beings shall be provided with assistance, support and protection.

Consular services and border guards shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection

Interviewing

Interviews of child victims should take place without unjustified delay after the facts have been reported to the competent authorities.

Interviews of child victims should take place, where necessary, in premises designed or adapted for that purpose.

Interviews with child victims should be carried out, where necessary, by or through professionals trained for that purpose.

The same persons, if possible and where appropriate, should conduct all of the interviews with a particular child victim.

The number of interviews should be as limited as possible. They should be carried out only where strictly necessary for the purposes of criminal investigations and proceedings.

The child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

ANNEX I:

Projects on identification of victims of trafficking in human beings funded by Commission under AGIS, ISEC, Return, TAIEX and External Borders Fund.

Reference	*Title*	*Promoter*	*Country*	*Partners*	*Country*	*EC Fund*
AGIS 2003 AGIS/2003/083	Identifying Rights: towards a standard protocol for identification and assistance of trafficked women	Anti-Slavery International, UK	UK	Eaves Housing for Women	UK	€ 140,000.00
				On the Road	Italy	
				Police Academy	Netherlands	
				Policy Academy	Albania	
				Policy Academy	Nigeria	
				Policy Academy	Thailand	
AGIS 2004 AGIS/2004/203	Awareness Training on Trafficking in Human Beings for Police, Border Guards and Customs Officials – Development of a European Curriculum	ICMPD – International Centre for Migration Policy Development	International Organisation	Czech Ministry of Interior	Czech Republic	€ 365,000
				Austrian Federal Ministry of Interior	Austria	
				On the Road	Italy	
AGIS 2004 AGIS/2004/011	Capacity building to Combat the Forced Labour Outcomes of Human Trafficking	International Labour Office	International Organisation	ICMPD — International Centre for Migration Policy Development	IO, HQ in Austria	€ 110,000
				Department for Work and Pensions	UK	
				Association for Technical Cooperation, GTZ	Germany	
					Poland	
					Romania	
					Moldova	
					Ukraine	

Reference	Title	Promoter	Country	Partners	Country	EC Fund
AGIS 2004 AGIS/2004/115	Forum to improve best practice in prevention, detection and the investigation of Human Trafficking. Examination of best practices aimed at fighting and preventing corruption of public officials in the Immigration administrations	Irish Police Service, Ireland	Ireland	National Criminal Intelligence Service (NCIS)	UK	€ 73,000
AGIS 2005 AGIS/2005/045	Development of a child-rights methodology to identify and support child victims of traffic	Save the Children, Italy	Italy	Bulgaria Foundations	Bulgaria	€ 155,000.00
				Caritas	Germany	
				Save the Children	Romania	
ISEC 2007 ISEC/2007/537	AGIRE. Acting for stronger private-public partnerships in the field of identification and support of children victims and at risk of trafficking in Europe	Save the Children, Italy	Italy	International Centre for migration Policy Development (ICMPD)	IO, HQ in Austria	€ 235,000.00
				Ministry of Interior, Criminal Intelligence Service.	Austria	
				Association for the Social Support of Youth, ARSIS	Greece	
				Hellenic Police State Security Division,	Greece	
				Central Directorate against Crime, State Police	Italy	
				Department of Equal Opportunities, Presidency of the Council of Ministers	Italy	
				Interdepartamental Centre on Human Rights of Peoples, University of Padua	Italy	
				National Agency against Trafficking in Persons	Romania	
				Save the Children	Romania	
TAIEX 2009 JHA IND/EXP 31785	Training for female Border Guards on How to fight against Trafficking in Human Beings	Ministry of the Interior, Albania	Albania			€ 14,000.00

Reference	Title	Promoter	Country	Partners	Country	EC Fund
ISEC 2009 ISEC/2009/054	Developing agreed methodology of identification and referral for trafficking for labour exploitation: guaranteeing the victims the access to protection	ACCEM, Spain	Spain	On the Road	Italy	€ 290,000.00
				Churches Commission for Migrants in Europe	IO, HQ in Belgium	
				Foundation Floarea Ialomiteana	Romania	
ISEC 2010 HOME-2010-ISEC-AG-016	Development of common guidelines and procedures on identification of victims of trafficking (CoGuideID-THB)	France Cooperation International, French Ministry of Foreign and European Affairs	France	National Commission for Combating Trafficking in Human beings	Bulgaria	€ 612,000.00
				Ministry for Equality	Spain	
				Ministry of Security and Justice,	Netherlands	
				General Inspectorate of the Police	Romania	
				Council of Europe	IO, HQ in France	
				International Labour organisation	IO, HQ in Switzerland	
				ICMPD	IO, HQ in Austria	
				UNDOC	IO	
ISEC 2011 HOME/2011/ISEC/AG/2493	FRONTLINE- cooperation in fighting against human trafficking by exchanging best practices on the investigation/enforcement in the prostitution branch	Amsterdam-Amstelland Police, Netherlands	Netherlands	County Administrative Board of Stockholm (National Task Force Against Prostitution/Trafficking), Sweden	Sweden	€ 200,000
ISEC 2012 HOME/2012/ISEC/AG/THB/4 000003911	Protection First: early identification, protection and assistance of child victims and at risk of trafficking and exploitation	Save the Children, Italy	Italy	On the Road	Italy	€ 430,658.42
				Cooperativa sociale Dedalus	Italy	
				Stiching Defence for Children International Nederland- ECPAT	Netherlands	
				Save the Children	Romania	

ANNEX II:

Descriptive of Projects on identification of victims of trafficking in human beings funded by Commission under AGIS, ISEC, Return, TAIEX and External Borders Fund.

Project	***Identifying Rights: towards a standard protocol for identification and assistance of trafficked women***
Reference	AGIS/2003/083
Promoter	Anti-Slavery International, UK http://www.antislavery.org/
Budget	€ 180 000 (€ 140 000 of EU support)
Timeframe	December 2003 — September 2005
Partners	Anti-Slavery International; Eaves Housing for Women, UK; Association On the road, Italy; Police Academy, Netherlands; Albania, Nigeria, Thailand
Objectives and results	The main objective of this project was to develop a model protocol for government officials to correctly interview migrants in order to determine whether they are victims of trafficking and related violence. To implement this protocol, training was organised for law enforcement officials and other front-line workers who encounter trafficked persons. It helped them deal more sensitively with migrants, especially those who may have been trafficked. Around 180 law enforcement officers from three member states took part in the training sessions.
Publications and other resources	Identification protocol for Identification and Assistance to Trafficked Persons Training kit
Further information	Ms Klara Skrivankova, Anti-Slavery International - k.skrivankova@antislavery.org Mr Rod Leith - r.leith@antislavery.org

Guidelines for the identification of victims of trafficking in human beings

Project	***Awareness Training on Trafficking in Human Beings for Police, Border Guards and Customs Officials — Development of a European Curriculum***
Reference	AGIS/2004/203
Promoter	ICMPD — International Centre for Migration Policy Development http://www.icmpd.org/
Budget	€ 691 000 (€ 365 000 of EU support)
Timeframe	December 2004 — March 2006
Partners	Czech Ministry of Interior; Austrian Federal Ministry of Interior; On the Road Association, Italy
Objectives and results	The objective of the project was to enhance the capabilities of law enforcement services to detect, investigate and counteract trafficking and to support victims. For this purpose training modules were developed for police officers, border guards and customs officials of all ranks. Based on European and UN standards and guidelines, the modules were tested in 10 Member States and candidate countries. The curricula were disseminated at the EU level via CEPOL and ACT (Ad Hoc Centre for Training of Border Guards) and could be adapted to each national context. Consideration was also given to stepping up cooperation with NGOs by involving them closely in the victim support activities. Two meetings were organised to exchange information and best practice — in June 2005 in Budapest and in Traiskirchen, Austria, in February 2006.
Publications and other resources	Website www.anti-trafficking.net Training manuals with lesson plans and exercises and a summary of the project
Further information	Mrs B. Stevkovski, ICMPD – Brigitte.stevkovski@icmpd.org

Project ***Capacity building to Combat the Forced Labour Outcomes of Human Trafficking***

Reference AGIS/2004/011

Promoter International Labour Office (ILO)
www.ilo.org

Budget € 230 000 (€ 110 000 of EU support)

Timeframe September 2004 — December 2006

Partners International Centre for Migration Policy Development (ICMPD); Department for Work and Pensions (DWP), UK, Association for Technical Cooperation (GTZ), Germany, Poland, Romania, Moldova, Ukraine.

Objectives and results The project made a contribution to the prevention and progressive elimination of human trafficking for the purposes of forced labour and sexual exploitation. Its main focus was on administrative controls to detect forced labour. The cover activities of private recruitment agencies were explored, especially regarding travel, mail-order bride, model and other agencies — part of the *modus operandi* of the trafficking criminals.

The three main components of the project were:

1) Help law enforcement officials from countries of origin and destination to better understand the forced labour outcomes of human trafficking

2) Incorporate in national training curricula the ILO training module on monitoring private recruitment agencies

3) Encourage private recruitment agencies and their business associations to adopt self-regulation mechanisms.

The project was intended to help EU Member States fulfil their obligation to implement the provisions of the Palermo Protocol and to help the EU harmonise its anti-trafficking response on this issue.

Publications and other resources Website www.anti-trafficking.net

Publication of reports and a translation of the ILO manual in English, German, Romanian, Ukrainian, Polish, and Portuguese

Further information Overkaemping Sabine, ILO - overkaemping@ilo.org

Project ***Forum to improve best practice in prevention, detection and the investigation of Human Trafficking. Examination of best practices aimed at fighting and preventing corruption of public officials in the Immigration administrations***

Reference AGIS/2004/115

Promoter Irish Police Service, Ireland
www.garda.ie

Budget € 120 000 (€ 73 000 of EU support)

Timeframe December 2004 — March 2006

Partners National Criminal Intelligence Service (NCIS), UK; Immigration Service, UK; Protective Service of Law Enforcement Agency (PLSEA), Hungary; Hungarian Border Guards; Ireland, Czech Republic, Latvia, Italy, Lithuania, Holland, Spain

Objectives and results This project aimed at exploring immigration trends in trafficking in human beings and at exchanging best practice and other information on prevention, detection and investigation. A particular focus was put on preventing corruption in public administration. Another important goal was to step up cooperation with the applicant countries, other non-EU countries and appropriate regional and international organisations.

The project comprised data gathering, seminars and study visits.

Publications and other resources CD-ROM with the results of the project

Further information Thomas Dixon — tom.dixon@garda.ie or
Catherine Whelan - gnib@iol.ie or
Orla McPartlin - gicu@iol.ie from Irish National police

Project	***Development of a child-rights methodology to identify and support child victims of traffic***
Reference	AGIS/2005/045
Promoter	ONLUS — Save the Children, Italy http://www.savethechildren.it/
Budget	€ 214.000 (€ 155.000 of EU support)
Timeframe	December 2005 — December 2007
Partners	Bulgaria Foundations, Bulgaria; Caritas, Germany; Save the Children, Romania
Objectives and results	The project was designed to develop a child-rights-based methodology and techniques for correctly interviewing, properly identifying and adequately supporting and assisting child victims of trafficking. It also aimed to increase the knowledge and strengthen the professional skills of the practitioners involved.
Publications and other resources	Results of and materials used in the project, published on the website www.savethechildren.it Research report and a summary of methodology (pva)
Further information	Costella Giuseppe, Save the children, Italy - pippo@savethechildren.it

Project	***AGIRE. Acting for stronger private-public partnerships in the field of identification and support of children victims and at risk of trafficking in Europe***
Reference	ISEC/2007/537
Promoter	Save the Children Italia Onlus http://www.savethechildren.it/
Budget	€ 336 000 (€ 235 000 of EU support)
Timeframe	December 2007 – December 2010
Partners	International Centre for Migration Policy Development (ICMPD), Austria; Federal Ministry of Interior, Criminal Intelligence Service, Austria; Association for the Social Support of Youth, ARSIS, Greece; Hellenic Police, State Security Division; Central Directorate against Crime, State Police, Italy; Department for Equal Opportunities, Presidency of the Council of Ministers, Italy; Interdepartmental Centre on Human Rights and the Rights of Peoples, University of Padua, Italy; National Agency against Trafficking in Persons, Romania; Save the Children, Romania
Objectives and results	The project aimed to help prevent and combat child trafficking by developing a strong private-public partnership. It paid a special attention to the following aspects: review of existing methodologies for supporting and identifying children who are victims of, or at risk from, trafficking; research into the profile of children who are victims or at risk, with a view to developing relevant indicators; adapting existing training modules to better enable private-public actors to use identification and support methodologies; developing best practices for identification, support and assistance. Four training seminars and four training courses in central police schools were planned, involving around 240 participants.
Publications and other resources	http://www.savethechildren.it/IT/Page/t01/view_html?idp=498
Further information	Ms Carlotta BELLINI, Save the Children Italia Onlus - carlotta.bellini@savethechildren.it and sarah.digiglio@savethechildren.it

Project	***Developing agreed methodology of identification and referral for trafficking for labour exploitation: guaranteeing the victims the access to protection***
Reference	ISEC/2009/054
Promoter	Catholic Commission for Migration Association, Spain www.accem.es
Budget	€ 290 000 of EU support
Timeframe	From February 2010 to January 2012
Partners	Opere Riunite Buon Pastore, Association on the road, Italy; Churches Commission for migrants in Europe, Belgium; Foundation Floarea Ialomiteana, Romania
Objectives and results	The main aim of the project was to develop a methodology for identifying and referring risk situations, as this is the only way to ensure that the victims of human trafficking have access to protection. The main activities were: - Mapping sectors and circumstances where trafficking for labour exploitation is more likely to happen in targeted countries. - Country visits and training sessions. - Preparing awareness-raising materials to be disseminated in each targeted country. - Drawing up the final methodology
Further information	Maria Reyes Castillo, Catholic Commission for Migration Association - internacional@accem.es

Project	***Training for Female Border Guards on How to Fight against Trafficking in Human Beings***
Reference	JHA IND/EXP 31785
Promoter	Ministry of the Interior, Albania
Budget	14.000€
Timeframe	2009
Objectives and results	The objective was to train female border guards on how to detect victims of trafficking with a particular focus on interrogations. In co-operation with the Belgian Federal Police (Directorate for the fight against criminality against persons), the project supported the improvement of the existing mechanism for detection of victims of trafficking in human beings. Particular emphasis was paid to cases of trafficking for sexual exploitation and forced labour. Scientific policing, financial investigation and internet monitoring cases were covered by the experts. The Belgium experts stressed the need to set up an integrated approach to the phenomenon of human trafficking (cooperation with labour inspectorates and state social services) and the importance of facilitating the cooperation between law enforcement agencies and the victims.
Further information	Technical Assistance and Information Exchange Instrument (TAIEX), DG Enlargement, European Commission - Elarg-Taiex@ec.europa.eu

Project	***Development of common guidelines and procedures on identification of victims of trafficking (CoGuideID-THB)***
Reference	HOME-2010-ISEC-AG-016
Promoter	France Cooperation International, French Ministry of Foreign and European Affairs
Foreseen Budget	612.000€
Timeframe	2011-2012
Partners	National Commission for Combating Trafficking in Human Beings, Bulgaria; Ministry for Equality, Spain; Ministry of Security and Justice, Netherlands; General Inspectorate of the Police, Romania; Council of Europe; International Labour Organisation (SAPFL); UNODC; ICMPD
Objectives and results	The overall objective of the project was to enhance and harmonise the methods and procedures for the identification of victims of trafficking (adults and children) within the EU in order to better tackle trafficking and to ensure equal treatment of victims. More specifically, the project intended to: 1. Develop a network of national contact points in the participating countries (Bulgaria, France, Greece, Romania, Spain and The Netherlands) with the aim of collecting and exchanging best practices among law enforcement officers, prosecutors, judges, labour inspectors, organisations providing services to victims, NGOs and trade unions. 2. Develop common guidelines and procedures on identification of victims on the basis of national reports. The guidelines were tested during a 4-month pilot phase in Spain before final endorsement and publication in 7 EU official languages. 3. Dissemination and training sessions for key experts Nearly 150 persons participated in the project.
Expected Publications and other resources	Guidelines and procedures for the identification of victims of trafficking
Further information	Mr Alan Dreanic – Ministry of Foreign and Euroepan Affaires, Paris - alan.dreanic@diplomatie.gouv.fr

Project	***FRONTLINE - cooperation in fighting against human trafficking by exchanging best practices on the investigation/enforcement in the prostitution branch***
Reference	HOME/2011/ISEC/AG/2493
Promoter	Amsterdam-Amstelland Police, the Netherlands www.amsterdam.politie.nl
Budget	253.000€ (200.000€ of EU requested support)
Timeframe	2012 - 2014
Partners	County Administrative Board of Stockholm (National Task Force Against Prostitution/Trafficking), Sweden; Stockholm County Police, Sweden; Stichting HVO-Querido, the Netherlands
Objectives and results	FRONTLINE project is a partnership between police and social welfare organisations in Sweden and The Netherlands. Other actors such as municipalities, health care, prosecution, lawyers etc. will be involved as well. Inspections and supervision in the prostitution sector are important tools for the police in the fight against trafficking. Shelter and support for victims can be of great value to the police since victims who feel safe can provide useful information to the investigation. Even if Sweden and the Netherlands have different legislations regarding prostitution, they consider the detection of hidden prostitution as a priority. Exchange of best practices should contribute to the improvement of the detection and investigations and search for efficient and innovative solutions. Best practices can among others relate to investigation and prosecution of punishable customers and investigations on the use of the Internet. The project includes training sessions involving a wide range of experts. The results will be made available for all THB professionals in Europe through a toolkit and a film presenting best practices.
Further information	Ms Corine Horstra - corine.horstra@amsterdam.politie.nl

Project ***Protection First: early identification, protection and assistance of child victims and at risk of trafficking and exploitation***

Reference HOME/2012/ISEC/AG/TH/B/4000003911

Promoter Save the Children (IT)

Budget 478.509€ (maximum EU grant – 430.658€)

Timeframe 24 months.

Partners On the Road ONLUS (IT); Cooperativa sociale Dedalus (IT); Stiching Defence for Children International Nederland-ECPAT Nederland (NL); Organizatia Salvati Copiii (Save the Children Romania) (RO)

Objectives and outputs The project is implemented in Italy, The Netherlands and Romania. Its general objective is to improve knowledge on child trafficking and to prevent child trafficking and protect child victims and children at risk of trafficking and any form of exploitation, including the less known ones (e.g. involvement in criminal activities) through research, the use of identification tools and awareness raising.

The specific objectives are:

To improve the identification of child victims or at risk of trafficking and exploitation in care facilities in Italy, The Netherlands and Romania;

To raise awareness among child victims and children at risk and improve their capacity to self-assess the risks and if they are in the process of trafficking/exploitation.

Some of the results expected are:

A desk review and a research collecting 18 case studies on child trafficking and exploitation;

Development of nine new tools on early identification, children's self-assessment and aware raising;

Four trainings to 105 care workers and guardians;

A EU final event in Brussels.

Further information Ms Elisabetta Leonardi – Italy-EU Programmes Unit Coordinator
elisabetta.leonardi@savethechildren.it

http://ec.europa.eu/anti-trafficking/

European Commission DG Home Affairs

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EUROPEAN COMMISSION

PRESS RELEASE

Brussels, 19 June 2012

Combatting the slavery of our times: 40 new measures for an EU strategy against trafficking in human beings

Hundreds of thousands of people are trafficked in the EU every year. Women and men, boys and girls in vulnerable positions are traded for the purpose of sexual or labour exploitation, removal of organs, begging, domestic servitude, forced marriage, illegal adoption as well as other forms of exploitation.

Today, the Commission adopted the EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016), a set of concrete and practical measures to be implemented over the next five years. These include the establishment of national law enforcement units specialised in human trafficking and the creation of joint European investigation teams to prosecute cross-border trafficking cases.

"*Unfortunately slavery hasn't yet been left to the history books. It is appalling to see that in our times human beings are still being put up for sale and being trafficked into forced labour or prostitution. Ensuring that victims can get support and bringing traffickers to justice is at the heart of our actions. We are far from there yet, but we can have only one aim: to eradicate trafficking in human beings*", said Cecilia Malmström, Home Affairs Commissioner.

A new European strategy

The strategy includes prevention, protection and support of the victims, as well as prosecution of the traffickers. It identifies five priorities and outlines a series of initiatives for each of them, such as:

- Supporting the establishment of national law enforcement units specialised in human trafficking.
- Creating joint investigation teams and involving Europol and Eurojust in all cross-border trafficking cases.
- Providing clear information to victims on their rights under EU law and national legislation, in particular their right to assistance and health care, their right to a residence permit and their labour rights.
- Creating an EU Mechanism to better identify, refer, protect and assist trafficked victims.
- Establishing a European Business Coalition against trafficking in Human Beings to improve cooperation between companies and stakeholders.
- Establishing an EU platform of civil society organisations and service providers working on victim protection and assistance in Member States and third countries.
- Supporting research projects examining the Internet and social networks as increasingly popular recruitment tools for traffickers.

Spokespersons' Service
Service des Porte-parole

IP/12/619

Some figures

Recent estimates from the International Labour Organisation (ILO) put the number of victims of forced labour, including forced sexual exploitation, at 20.9 million worldwide. 5.5 million of them are children. According to Europol, children forced into criminal activities, such as organised begging and shoplifting, are being traded as commodities with €20 000 price tags.

The estimated number of victims in the developed economies (US, Canada, Australia, Japan, Norway and EU countries) amounts to around 1.5 million forced labourers, 7% of the total worldwide. Trafficking in human beings generates more than €25 billion profits a year for international criminal organisations worldwide. While many victims come from non-EU countries, internal trafficking (i.e. EU citizens trafficked within the EU) appears to be the rise.

Preliminary data collected by Member States at EU level appear consistent with those provided by international organisations such as the United Nations Office on Drugs and Crime (UNODC), showing that three quarters of victims identified in EU Member States are trafficked for sexual exploitation (76% in 2010). Other victims are forced into labour exploitation (14%), begging (3%) and domestic servitude (1%).

From a gender-specific point of view, preliminary data available show that women and girls are the main victims of trafficking in human beings; female victims accounted for 79% (of whom 12% were girls) and men for 21% (of whom 3% were boys) of victims between 2008 and 2010.

Yet too few perpetrators end up behind bars while victims struggle to recover and re-integrate themselves into society: preliminary results of recent data collected shows that the number of convictions in trafficking cases has decreased from around 1 500 in 2008 to around 1 250 in 2010. Europeans agree that something needs to be done: in the latest survey 93% of citizens agreed that EU Member States should cooperate to tackle trafficking in human beings.

Background

With the "EU Strategy towards the eradication of trafficking in Human Beings (2012-2016)", the Commission is focusing on concrete actions that will support and complement the implementation of EU legislation on trafficking (Directive 2011/36/EU) - whose deadline for transposition is April 2013.

The measures included in the strategy are the result of extensive consultations with experts, governments, civil society and international organisations, social partners and academics. They reflect their main concerns, as well as the views of victims, and will complement existing efforts.

The Strategy will now be discussed by the European Parliament and the Council.

The Commission will continue to assess progress made in addressing trafficking and will report every two years to the European Parliament and the Council. The first report, to be issued in 2014, will include a midterm evaluation of the Strategy.

For more information

MEMO/12/455

Interviews with victims of trafficking in downloadable versions:

http://ec.europa.eu/avservices/focus/index.cfm?&focusid=264&page=focus&sitelang=en

Homepage of Cecilia Malmström, Commissioner for Home Affairs:

http://ec.europa.eu/commission_2010-2014/malmstrom/welcome/default_en.htm

Homepage DG Home Affairs:

http://ec.europa.eu/dgs/home-affairs/index_en.htm

European Commission Anti-trafficking website:

http://ec.europa.eu/anti-trafficking/index

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COUNCIL OF
THE EUROPEAN UNION

EN

Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017

JUSTICE and HOME AFFAIRS Council meeting
Luxembourg, 6 and 7 June 2013

The Council adopted the following conclusions:

"THE COUNCIL OF THE EUROPEAN UNION

HAVING REGARD TO the Council conclusions on the creation and implementation of an EU policy cycle for organised and serious international crime (EU policy cycle),[1] which establish a multi-annual policy cycle and clear methodology for setting, implementing and evaluating priorities in the fight against organised and serious international crime,

RECALLING that an initial and reduced policy cycle was and is being implemented between 2011 and 2013 on the basis of the EU crime priorities agreed by Council on 9-10 June 2011[2],

RECOGNISING the importance of the measures which Member States together with JHA Agencies have taken to implement this Policy Cycle, notably within the framework of the Operational Action Plans (OAPs) which have contributed to the fight against organised crime,

REFERRING to the experiences learnt from the implementation of this cycle which have been integrated in the preparations for the fully fledged 4 year policy cycle,

1 doc. 15358/10 COSI 69 ENFOPOL 298 CRIMORG 185 ENFOCUSTOM 94
2 doc. 11050/11 JAI 396 COSI 46 ENFOPOL 184 CRIMORG 81 ENFOCUSTOM 52 PESC 718 RELEX 603

P R E S S

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STRESSING the need to capitalise on the results of the first Policy Cycle when implementing the new policy cycle,

TAKING NOTE OF the priorities and tasks in the fight against serious and organised crime that were set out in strategic documents, such as the Stockholm Programme,[3] the Internal Security Strategy,[4] the Commission communication on the Internal Security Strategy in Action[5] and subsequent Commission reports on the implementation of this Communication, the Council conclusions on the Commission communication on the European Union internal security strategy in action,[6] the European Pact to combat international drug trafficking – disrupting cocaine and heroin routes,[7] European pact against synthetic drugs[8], "Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace"[9], the EU Action on Migratory Pressures[10], the Frontex Annual Risk Analysis (2012 edition), the EU Drugs Strategy 2013-2020[11], the draft EU Action Plan on Drugs 2013-2016[12]and the EU Strategy towards the Eradication of Trafficking in Human Beings 2012 - 2016[13] (11780/12), Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions and the Court of Auditors on the Commission Anti-Fraud Strategy (SEC 2011 791 final),

STRESSING that the present Council priorities and the EU policy cycle must remain consistent with the actions to implement the above strategic documents,

HIGHLIGHTING the importance of setting clear priorities for the fight against serious and organised crime that can be realistically implemented at European and, where relevant, national or regional level against agreed Multi-Annual Strategic Plans and via EU annual Operational Action Plans,

EMPHASIZING the need when implementing these priorities to take into account the geographical dimension of organised crime relating to regions such as West Africa and the Western Balkans,

RECALLING that one of the key elements in the success of the policy cycle is the engagement of all actors involved and the need for Member States to ensure a real follow-up with operational commitment, including of resources, and the appointment of competent drivers and other experts,

3 OJ C 115, 4.5.2010, p. 1
4 doc. 7120/10 JAI CO EUR-PREP 8 JAI 182
5 doc. 16797/10 JAI 990
6 doc. 6699/11 JAI 124
7 doc. 8821/10 JAI 320 COSI 20 CORDROGUE 40 CRIMORG 79 JAIEX 39
8 doc. 15544/11 JAI 740 COSI 82 CORDROGUE 66 ENFOPOL 360 CRIMORG 184 JAIEX 111 UD 261
9 doc. 6225/13 POLGEN 17 JAI 87 TELECOM 20 PROCIV 20 CSC 10 CIS 4 RELEX 115 JAIEX 14 RECH 36 COMPET 83 IND 35 COTER 17 ENFOPOL 34 DROIPEN 13 CYBER 1
10 doc. 9650/12 MIGR 45 FRONT 67 COSI 25 COMIX 288, doc. 6443/13 MIGR 17 FRONT 12 COSI 15 COMIX 102
11 doc. 17547/12 JAI 901 CORDROGUE 101 SAN 324 JAIEX 124
12 doc. 5418/1/13 REV 1 CORDROGUE 5 SAN 18 ENFOPOL 12 RELEX 42
13 doc. 11780/12 JAI 465 GENVAL 43 COSI 53 ENFOPOL 208 JAIEX 48 RELEX 589 EUROJUST 58

UNDERSCORING that national competent authorities, including, where relevant, the police, border guard, customs, judicial and administrative authorities, the Commission and other EU institutions and agencies must cooperate very closely in implementing the present priorities and aim to strike a balance between prevention and tackling the consequences of threats to EU internal security posed by organised crime,

HIGHLIGHTING the importance of effective national coordination between relevant authorities,

CONSIDERING the importance of training and awareness raising regarding the Policy Cycle and the EU crime priorities in Member States, EU Institutions and Agencies,

STRESSING that the external dimension of internal security and cooperation with third countries and relevant International Organisations ought to be taken into account in implementing the Council priorities and the EU policy cycle, notably by improving operational law enforcement cooperation with such partners and by helping to strengthen the operational capacity of third countries' law enforcement authorities,

RECOGNISING the links between a robust and thriving economy and confidence in the internal security arrangements of the EU and its Member States,

CONSIDERING Europol's analysis and recommendations formulated in the EU SOCTA 2013 in accordance with actions 26 and 27 of the policy cycle and the SOCTA Methodology established by COSI on 19 June 2012[14],

NOTING that all actors involved must retain a margin of flexibility to address unexpected or emerging threats to EU internal security, in particular regarding environmental crime and energy fraud,

ACKNOWLEDGING the need to obtain adequate funding under the future Internal Security Fund,

WELCOMING the measures taken by Europol and Cepol to support the implementation of the policy cycle,

THE COUNCIL sets the following priorities, in no particular order, for the fight against serious and organised crime between 2014 and 2017:

- To disrupt OCGs involved in facilitation of illegal immigration operating in the source countries, at the main entry points to the EU on the main routes and, where evidence based, on alternative channels. To reduce Organised Crime Groups' (OCGs) abuse of legal channels for migration including the use of fraudulent documents as a means of facilitating illegal immigration.

- To disrupt OCGs involved in intra-EU human trafficking and human trafficking from the most prevalent external source countries for the purposes of labour exploitation and sexual exploitation ; including those groups using Legal Business Structures to facilitate or disguise their criminal activities.

[14] doc. 12159/12 COSI 59 ENFOPOL 219 CRIMORG 88 ENFOCUSTOM 72

- To disrupt OCGs involved in the production and distribution of counterfeit goods violating health, safety and food regulations and those producing sub-standard goods.

- To disrupt the capacity of OCGs and specialists involved in excise fraud and Missing Trader Intra Community MTIC fraud.

- To reduce the production of synthetic drugs in the EU and to disrupt the OCGs involved in synthetic drugs trafficking.

- To reduce cocaine and heroin trafficking to the EU and to disrupt the OCGs facilitating the distribution in the EU.

- To combat cybercrimes committed by OCGs and generating large criminal profits such as on-line and payment card fraud, cybercrimes which cause serious harm to their victims such as online Child Sexual Exploitation, and cyber-attacks which affect critical infrastructure and information systems in the EU.

- To reduce the risk of firearms to the citizen including combating illicit trafficking in firearms.

- To combat organised property crime committed by Mobile Organised Crime Groups.

ENCOURAGES Member States to consider taking the following issues into account when drafting the MASPs and OAPs:

- regional dimension issues relating for example to the Western Balkans and West Africa,
- disrupting OCGs involved in money laundering,
- asset recovery,
- where relevant, focusing on network based OCGs such as Mafia-style OCG's or outlaw motorcycle gangs when tackling all forms of serious and organised crime,
- the growing tendency of OCGs towards poly crimes.

INSTRUCTS COSI, within its mandate[15] and as specified in the Council conclusions on the creation and implementation of an EU policy cycle for organised and serious international crime, to coordinate, support, monitor and evaluate, as set out in the EU policy cycle, the implementation of Multi-Annual Strategic Plans (MASPs) and annual Operational Action Plans (OAPs) for each priority.

COSI must ensure consistency in the implementation of operational actions necessary to strengthen internal security within the Union, including effective cooperation between the relevant national authorities and between the EU agencies. In particular, it must ensure that the MASPs that COSI is due to adopt, and the annual OAPs that COSI is due to validate, on the basis of crime priorities hereby established by the Council remain consistent with the implementation of the Internal Security Strategy. COSI must also liaise with the relevant Council preparatory bodies to ensure that the implementation of these crime priorities is coordinated with other policy areas, particularly in the Union's external action,

[15] OJ L 52, 3.3.2010, p. 50

INVITES all Council preparatory bodies, with due regard for the provisions of the Treaties, to take these priorities into account in their respective policy fields,

INVITES the Commission, Member States, JHA Agencies and the European External Action Service to consider all financing possibilities to effectively support the activities agreed upon within the EU policy cycle, including, where appropriate Article 58(1)(c) of Regulation (EU, EURATOM) No. 966/2012, to ensure the timely and efficient delivery of the activities and projects,

APPEALS TO Member States to actively use, in addition to the traditional criminal justice-based approach, alternative and complementary approaches and instruments to fight serious and organised crime,[16]

INVITES Member States, EU Institutions and JHA Agencies to commit the necessary resources, wherever relevant, to implement this policy cycle and ensure coordination between the policy and operational levels."

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[16] The Complementary approaches and actions to prevent and combat organised crime: A collection of good practice examples from EU Member States (doc. 10899/11 JAI 380 COSI 44 CRIMORG 77 ENFOPOL 179), compiled by the Hungarian Presidency, lists a number of best practices to prevent and combat organised crime

EUROPOL PUBLIC INFORMATION

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The Hague, October 2014
Intelligence Notification 16/2014
SOC Business Area
Focal Point PHOENIX
SOC Strategic Analysis Team

Intelligence Notification

Child trafficking for exploitation in forced criminal activities and forced begging

Children are one of the most vulnerable groups targeted for the trafficking in human beings (THB). Organised crime groups (OCGs) choose to traffic children as they can be easily recruited and quickly replaced. OCGs can also maintain child victims relatively cheaply and discreetly. The exploitation of children violates the human rights of children; to have a safe childhood in their family setting, to receive education, to have time to play and to be protected from exploitation.

Child trafficking involves the recruitment of victims, their transportation, transfer and harbouring of children for the purpose of exploitation. Coercion, violence or threats are not necessary elements in cases of child trafficking as children cannot consent.[1]

Children are trafficked for the same purposes as adults: for sexual exploitation, for labour exploitation but also for exploitation in a range of criminal activities, including begging. This Intelligence Notification focuses on the exploitation of children forced into committing criminal activities and forced begging. The victims of these types of exploitation are frequently falsely identified as suspects rather than victims of THB.

Key trends

- It is often difficult to identify victims of trafficking in human beings. This is particularly true in cases of child trafficking.
- Cases of trafficking of children for exploitation in forced begging or in forced criminal activity are often falsely perceived as public order issues or petty property crimes.
- Children are at high risk of undergoing secondary victimisation by being considered perpetrators of petty crime rather than victims of exploitation. Child victims are also at risk of being re-trafficked after their release from the authorities.
- OCGs specifically target families in difficult social and economic circumstances.

Exploitation in forced criminal activity and forced begging

Child victims of THB are forced to engage in a wide range of criminal activities. These criminal activities include drugs crimes, different forms of property crime, social benefit fraud and organised begging. Many victims exploited as part of child trafficking are forced to commit different kinds of crime at the same time.

Recruitment and transportation

Minors are typically recruited from families in difficult economic circumstances. In some cases, children are sold by their families to the traffickers. Pregnant women are also sometimes recruited and forced to sell their babies. For trafficked children between the ages of 6 months and 10 years, OCGs can pay between EUR 4 000 and EUR 8 000. In some cases children have been sold for up to EUR 40 000. While illegal adoption does not necessarily constitute THB, in a number of cases illegally adopted children are trafficked for exploitation.

Intelligence Notification

Communities dispersed from their original countries of origin and established in the countries of exploitation are reported as major facilitators of this type of trafficking. Poverty, unemployment and social exclusion of these communities increase their susceptibility to debt and vulnerability to exploitation. Trafficking networks specifically target economically deprived families and use complicit money lenders to push them into debt. Extremely high interest rates prevent the families from paying off their debts and force them in an exploitative situation. Children are taken away from parents as a way to pay back incurred debts.

Moving children across controlled borders is relatively uncomplicated. In many cases, the victims travel on genuine passports of non-related adults. The OCGs involved in these types of exploitation are very mobile and typically active in several countries making use of contacts in diaspora communities.

Children exploited to commit property crime

Children are trafficked to be forced to commit different types of property crime, such as burglaries, robberies, shoplifting, cargo thefts, metal thefts, home-jackings or ATM theft.

In order to enforce obedience, the criminals intimidate their victims using threats of violence or deprivation (e.g. food deprivation) and different methods of psychological manipulation. The traffickers take away the childrens' personal documents, leaving them with a photocopy, in case of police controls. The victims are under the constant supervision of offenders.

Children exploited in forced begging

OCGs involved in trafficking children for forced begging specifically target vulnerable people such as children in orphanages, young adults with disabilities, or single mothers with children. Victims are under strict surveillance when begging and also forced to commit thefts.

2

Children exploited for benefit fraud

OCGs traffic families with several children or only children to the UK and register them under different addresses in order to exploit the social benefits system. In some case traffickers only use child victims' documents in order to obtain social benefits without trafficking them to the UK. These traffickers also open bank accounts in the name of their victims subsequently controlling the accounts and withdrawing the benefits payments received.

Children exploited in drug production and trafficking

Anti-Slavery International reports it is reported that Vietnamese minors are often exploited in cannabis production. 81% of the victims exploited are underage.

Opportunities for OCGs

Children are easily coerced and controlled in many different ways. Traffickers often do not need to resort to physical violence which would make the exploitation more visible. Children are more easily threatened and manipulated than adult victims of THB. OCG involved in child trafficking maintain constant surveillance of their victims and pressure them to evade law enforcement. Children easily escape from law enforcement enabling the traffickers to remain anonymous. Trafficked children do not consider themselves to be in an exploitative situation, but rather perceive their exploitation as loyalty to their family.

When trafficked children forced to commit crimes are apprehended by law enforcement, they are typically placed in childcare facilities from where they easily abscond. In other cases, the victims are handed back to their 'family' members or guardians and can then be re-trafficked.

EUROPOL PUBLIC INFORMATION

Intelligence Notification

Challenges for law enforcement

Identifying victims of THB is a challenge in general. However, identifying child victims of THB is even more difficult. Practitioners often do not realise that exploitation in forced criminality is child abuse. Children forced to commit crimes are often treated as offenders. Often, these victims resist cooperation with law enforcement and are at risk of disappearing or to being re-trafficked if they are handed back to their exploiters. There is a clear need to continue raising awareness among law enforcement officers on the victim status of exploited children. The EU Trafficking Directive (2011/36) requires MS to implement non-punishment provisions: "Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being [trafficked]".[2]

The use of threats, force or other forms of coercion are not required elements to establish cases of child trafficking. Children cannot give consent and their consent to an exploitative situation is considered irrelevant. However, this irrelevance of consent remains challenging to apply for law enforcement and the judiciary in cases of child trafficking, especially for teenagers and adolescents.[3]

Children often do not consider themselves as victims of exploitation further complicating their identification as victims rather than perpetrators. These victims perceive their exploitation as normal.

In addition to identifying child victims, it is often difficult to confirm the true personal details of the victims as they typically do not carry identification documents and make use of aliases. Adult organisers of child trafficking also often do not carry any identification documents, use numerous aliases, and exploit the possibility to legally change their names in their countries of origin. Some exploited children are born on the road and remain unregistered.

Cases involving children are too often dismissed due to a lacking strategic intelligence picture on the phenomenon. Links to organised crime involvement and organised trafficking in human beings are often not recognised or investigated. In order to establish an intelligence picture assessing the scale of the OCGs activities and to effectively combat this phenomenon investigations will have to extend beyond identifying child victims and target the family structures sustaining the trafficking and exploitation of children.

3

In some countries, the private sector (shop owners and private security firms) and law enforcement collaborate to address the involvement of children in shoplifting and stealing. These schemes involve the collection and systematic comparison of data on the adults picking up the child.[4]

Law enforcement agencies often focus on the most visible criminal activity such as property crime or cannabis production without exploring THB aspects. Even if victims of THB are identified, there is often no follow up on the trafficking aspect on the judicial level.

In the cases of exploitation in forced begging, interpretation of what actually constitutes the concept of begging may differ. There is no consensus as to what constitutes begging which may also include street art, street music or selling small items on the street.[5]

Conclusion

Child victims of trafficking in human beings are not easily identified. Types of exploitation other than sexual or labour exploitation are highly underreported. In order to better fight exploitation of minors for forced begging or forced criminal activities, it is necessary to increase the awareness of this phenomenon and increase cooperation between EU law enforcement agencies.

[1] International Labour Organisation, *Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation*, Textbook 1, Geneva, 2009.
[2] EU Trafficking Directive (2011/36) Art. 8.
[3] EU Trafficking Directive (2011/36) Art. 8 and Council of the Baltic Sea States, Child Centre, Expert Group for Cooperation on Children at Risk, *Children Trafficked for Exploitation in Begging and Criminality: A Challenge for Law Enforcement and Child Protection*, Lithuania, Poland, Norway and Sweden, 2013.
[4] Council of the Baltic Sea States, Child Centre, Expert Group for Cooperation on Children at Risk, *Children Trafficked for Exploitation in Begging and Criminality: A Challenge for Law Enforcement and Child Protection*, Lithuania, Poland, Norway and Sweden, 2013.
[5] *Ibid.*

Strategic meeting on trafficking in human beings

Eurojust, The Hague, 16-17 April 2015

OUTCOME REPORT

THB Project Team

1. Introduction

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

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

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

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

2. Opening session

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

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

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

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

Regarding the implementation of the THB Directive in the Member States, the EU ATC informed the participants that, thus far, 25 Member States have given notification of the transposition of this EU instrument at national level. The information provided is currently being analysed by the Commission in light of its 2016 report to the European Parliament and the Council of the EU on the compliance of the Member States with the implementation of the THB Directive. The EU ATC said that the Commission will not hesitate to take the necessary steps for the full implementation of the THB Directive in all Member States, and referred to the recent developments in the Commission's main activities in addressing against THB. She highlighted the release in 2014 of a mid-term review report on the implementation of the EU Strategy towards the Eradication of THB, 2012-2016. The annex of this report describes the instrumental work of the JHA Agencies, including Eurojust, between 2012 and2014. Other new developments included the setting up of a new civil society platform to deal with aspects related to the assistance and protection of victims, as well as numerous studies and guidelines issued by the Commission, including the upcoming publication of a study on case law on THB for labour exploitation to be published by the Commission in June 2015.

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

against THB, as the number of child victims remains very high and, despite numerous activities, including studies, handbooks, guidelines and the work of EMPACT in addressing child trafficking, there remains a lot more to be done.

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

3. Plenary session

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

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

Mr Starý introduced the mid-term evaluation report which follows the six main priorities laid down in the Action Plan and for which 25 selected THB cases dealt with by Eurojust were analysed. He highlighted, particularly, Chapter 1 on the exchange of information and noted: (i) the small number of Article 13 notifications; (ii) the high number of Eurojust coordination meetings considering the small number of registered THB cases; and (iii) that 68% of coordination meetings were attended by Europol. With regard to Chapter 2 on investigation, prosecution and judicial cooperation in THB cases, the analysis showed that THB cases are often linked to illegal immigration, that the number of

multilateral THB cases is lower than the number of bilateral cases, and that the number of JITs is increasing, also thanks to JITs funding provided by Eurojust. Mr Starý invited the participants to visit the THB section on Eurojust's website where all relevant THB information can be found and, in particular, to read Chapter 2.2 of the mid-term report on best practice and obstacles in judicial cooperation in THB cases. The problems identified by Eurojust's THB Project Team correspond with the problems reported in the responses to the THB questionnaire sent prior to the strategic meeting.

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

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

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

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

Parallel financial investigations were instrumental in taking away profits from criminals and in providing more solid evidence to the case and a possibility of compensation for the victim. Another challenge was the monitoring of social media (including Facebook) and the difficulties associated with the use of the dark net by criminals. The line between legal and illegal parts of a website is often blurred and searching the internet can be time consuming. However, in the case studies presented, the

police proactively searched the web for suspicious advertisements and closed down websites suspected of assisting THB. Mr ten Kate concluded his presentation by remarking that international cooperation in these cases is essential, although it requires time and effort from each side to set up a good working relationship. In certain cases it might be advisable to jointly address a non-EU State, instead of sending many MLA requests from different countries. Joint investigation teams were highlighted as a very effective platform for international cooperation.

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Outcome of workshops

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

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

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

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

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

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

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

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

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

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

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

Participants drew the following main <u>recommendations:</u>

(i) Direct contact between national authorities and clear communication about specific MLA requirements are key elements in addressing the challenges in judicial cooperation requests related to the hearing of THB victims/witnesses.

(ii) The risk of re-victimisation should be reduced as far as possible in line with the THB Directive.[3] For this reason, a case should not be built only on the testimony of victims, but other corroborative evidence should be sought (e.g. electronic interception, financial transactions).

(iii) Investigating authorities need to engage with NGOs as soon as possible to ensure effective support and to assist in facilitating victim testimony.

(iv) There is a need to 'think outside the box' and, therefore, if it is not feasible to prosecute for THB for labour exploitation, consider other disruptive measures, e.g. indict for breaches of health legislation, minimum wage regulations, tax evasion, fraud, money laundering and labour laws.

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

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

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

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

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

[3] Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

could not be considered. The consent of the victims to poor work conditions, very long working hours, very poor payment, improper housing, etc., led in some jurisdictions to the conclusion that there was no exploitation involved. For example, in one Member State, such consent associated with victims' freedom of movement determined an acquittal for the THB offence, as victims were considered as having the choice of not working for the defendants.

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

In response to these challenges, participants drew the following <u>recommendations and best practice</u>:

(i) The need for clearer definitions, legislation and guidelines, as well as awareness, training and exchanges to assist law enforcement and judicial authorities in assessing and proving the labour exploitation purpose;

(ii) The use of pre-trial statements of victims as evidence in court;

(iii) It is important to focus on support and assistance for victims with a view to securing their testimonies. Good practice consists of avoiding interviewing victims immediately - when they are traumatised – but firstly offering them professional support and advice, including information on their rights;

(iv) Victims are more likely to testify when interviewed by investigators and prosecutors that are specially trained in working with victims of serious crimes;

(v) It is advisable to avoid relying only on victim statements for securing convictions and to use all possible circumstances and evidence available;

(vi) Good practice consists in investigating and prosecuting other offences in parallel with the THB offence. Consideration could then be given to working in joint teams consisting of different authorities involved in the investigation of the parallel offences, being aware of the need to ensure that sufficient communication and cooperation exists;

(vii) Identify additional measures to fight trafficking chains, such as sanctions for those who profit from the use of cheap labour (e.g. construction companies); financial investigations; administrative measures for violating health and safety regulations; labour, tax or immigration laws; and non-conviction based confiscation;

(viii) Encourage multidisciplinary approaches to fight THB for labour exploitation by involving other authorities, such as labour inspectorates and immigration services;

(ix) Non-prosecution of victims for offences committed by THB victims when they have acted through necessity (coercion or threat);

(x) Assistance from Eurojust in organising coordination meetings and coordination centres and in setting up JITs.

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

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

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

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

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

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

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

In the context of the case scenario, several participants suggested the setting up of a joint investigation team (JIT) as a cooperation tool to ensure the flow of information between all partners; to trigger involved States to initiate their own national proceedings; and to operate together and to tackle the

entire THB business model. JITs funding, which is now also available for JITs set up with a third State, was regarded as particularly beneficial. The recommendation was given to include victim protection and shelter aspects in the JIT agreement. Another recommendation was to charge suspects with THB and membership of a criminal organisation.

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

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

A number of recommendations were formulated:

(i) THB crimes should be seen as economic crimes;

(ii) FIU Network/AROs should be involved from the beginning of investigations to detect suspicious transactions and collect information on assets;

(iii) Specialised Asset Recovery/Forfeiture Units should be set up at Public Prosecution Offices to run parallel investigations from the very beginning with a focus on asset seizure and confiscation;

(iv) Consideration should be given to including a clause in JIT agreements regarding the conduct of financial investigations in THB cases;

(v) Training and awareness on profits generated through THB are essential;

(vi) Multidisciplinary, cross-border cooperation should be strengthened;

(vii) It is important to inform victims of their right to compensation.

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

5. Conclusions and closing remarks

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

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

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CENTER FOR THE STUDY OF DEMOCRACY

ANTIMAFIA: THE ITALIAN EXPERIENCE IN FIGHTING ORGANISED CRIME

Policy Brief No. 31, October 2011 r.

In recent decades the Italian authorities implemented a number of measures and policies as a direct response to the threat of organized crime. These new measures were intended to expand the scope and the number of law enforcement and judicial instruments and were **an attempt to complement the conventional approaches,** which were no longer effective in light of the persisting mafia influence against public institutions. This is why the Italian experience is specifically[1] valuable for countries like Bulgaria, which are vulnerable to corruption and organized crime.

The key measures, adopted by the Italian government included new legislation targeting new types of criminal activities (like complicity in organised crime activities), broadening the powers of the investigative authorities, prevention confiscation of mafia assets, introducing the figure of 'collaborator of justice', as well as special legislation for prosecuting of mafia members.

Italy also reconsidered the sanctions proceedings (the scale of sanctions, the penitentiary regimes and the confiscation of criminal assets). All these new instruments allow the law enforcement authorities not only to impose **measures of repression**, but also

KEY POINTS

The Italian approach to countering organized crime encompasses a number of complementing measures, which are tailored to the specific threats posed by the mafia.

- Specialised legislation for facilitating and accelerating of pre-trial and judicial proceedings against mafia leaders and members
- Harsher penalties and special penitentiary regimes against high level members of organised crime groups, which pose a serious threat to society.
- Preventive confiscation allowing for expropriating mafia assets in favour of the society and the state.
- Holistic antimafia policies have been pursued in the infiltrated by the organised crime municipalities and provinces. These policies include dissolving of the mafia controlled local authorities and implementing programs for improving security and economic development in Southern Italy.

[1] „Antimafia". The Italian experience in fighting organized crime. Sofia. Center for Study of Democracy, 2011.

to use a number of **prevention measures,** like wiretapping, protective custody, confiscation of assets, operations with undercover officers, use of special intelligence information.

These preventive measures could be based on evidence from judicial corroborators or wiretaps on telephone conversations. The enforcing of the prevention measures is accompanied by investigations of the assets of suspects. The confiscation measures could be imposed on all kinds of property – real estate, land, enterprises, financial assets, etc. These measures are implemented as an independent action and regardless of the outcomes of the trial against the suspects.

Another specific of the Italian approach is that freeing from guilt of a mafia member does not lead directly to lifting the judgment for social threat of his activities. Furthermore this judgment gives ground for imposing measures for confiscating of suspect's property, and these measures can be extended even after he is freed of guilt by the court. This is a rare example of approach, which cannot be found in the other western democracies.

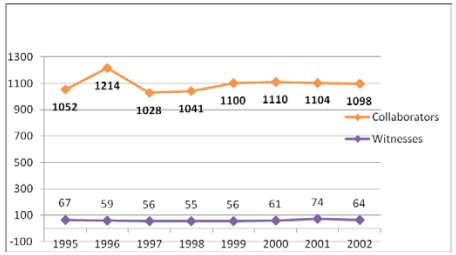
There are also specific legislative norms, which target suspicious financial transactions and money laundering. The attempt to conceal the illegal origin of cash, property or other economic or financial assets could be linked to organized crime, as well as other more conventional violations of law. The aforementioned legislative norms allow increasing the effectiveness of countering money laundering through infiltration of police officers, active involvement of banks and other financial institutions.

The broadening of the powers of the Italian authorities for fighting organized crime has been accompanied with establishing of **specialised institutions and structures** like the National Directory Antimafia and the Antimafia Investigation Directory. Their experience is of specific value to the similar units within the Bulgarian police and prosecution.

Collaborators of justice

A key development in the policies for countering organized crime in the 90's is the introduction of the so called 'collaborators of justice'. The new law amendments delineate their protection and involvement in the judicial proceedings as witnesses and victims of mafia-related crimes. The collaborators are usually persons, which have been involved in mafia activities, but at certain point of time (usually when arrested) have decided to collaborate to the police and the prosecution. The legislative norms specify that a collaborator should testify not later than six months after he declares his will to collaborate to the law enforcement or prosecution authorities.

Figure 1. Number of collaborators of justice in Italy (31.12.1995 - 31.12.2002)



This approach has led to significant results, but together with this has brought a number of problems related to increased risks of mafia revenge to collaborators and their families. Taking into account these risks, the law provides for witness protection program, which could be offered to the collaborator. The prosecutor who documents the testimony of the collaborator and is responsible for assessing the credibility of the evidence, could offer such protection.

The witness protection program provides for that the collaborator (and family) to change his / her residency, to be transferred to a special penitentiary regime with the right to change his penalty with alternative measures. In exceptional cases the collaborators are allowed to acquire new identity and together with this to receive substantial reduction to their sentence and financial aid. Yet, the law introduces a rule that a collaborator is supposed to serve at least ¼ of his / her sentence, before s/he would be allowed to change it with alternative measures.

Legal proceedings against the Mafia

Changes were made to facilitate the documents' circulation between related legal proceedings in order to speed up the lawsuits against hundreds of members of organized criminal groups and to guarantee better use of the available evidence without infringing the requirements of confidentiality and the procedural norms on Mafia-style crimes. According to these norms, the depositions of the indicted persons may be effectuated virtually via videoconference communication in order to avoid their transportation to the courts; they also require that the arrested defendants should be kept in separate locations to avoid any contact between them.

Law 63/2001 guaranties "fair proceedings" and introduces some general rules, related to the legal procedures against the Mafia. It defines the legal figure of the **"defendants-witnesses"** in the cases where a defendant repents about his crimes. Past experience shows that often collaborators were accusing other persons and giving evidence as witnesses, but at the same time avoided answering difficult questions asked by the prosecution, referring to their inalienable right not to give prejudicial evidence that will harm them. According to the new law however, when a defendant-witness decides to accuse another person, s/he will be treated as a common witness, who will be held responsible for his / her depositions according to the law.

In addition to the testimonies of the collaborators of justice, which the magistrate in charge has accepted as a valid and sufficient evidence, 'hearsay' type of testimonies could also be accepted on condition that the individuals who provided the witness with the information are either deceased or could not be summoned to witness before the court. The ensuing practice however shows that this legal text is seldom applied in order to avoid possible misuse. Instead, the prosecution is asked for additional evidence is to back its accusations.

Another new element is the use of the so-called 'external complicity' in Mafia type criminal activities (which is applied when there are numerous participants in the same criminal act). This legal category is enacted in legal proceedings of white collar criminals – professionals, entrepreneurs or politicians, who nurture relations with the Mafia. One of the most well known judicial processes using the accusation of collaborators was against the former Italian PM Giulio Andreotti.

Penalties and prison regimes

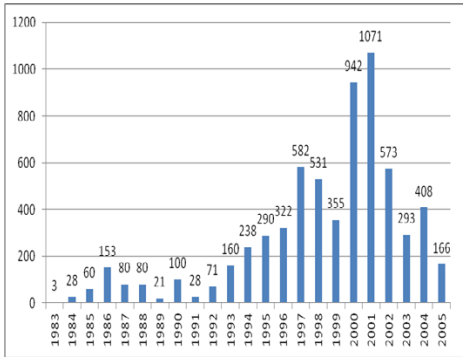
Both the penalties and the prison regimes of the persons convicted for Mafia-style crimes are strict. These persons cannot make use of alternative forms of serving their sentences. In addition, the contacts between those persons and the outside world are strictly limited in order to avoid the possibility of Mafiosi entertaining relations with other criminals, including their collaborators who remain at large. This strict prison regime (in accordance with article 41 par. 2 of the *Law of the Penitentiary Administration*) discriminate those Mafiosi, whose position is higher in the hierarchy and whose role is deemed more destructive for society. *Law 279/2002* introduces such a regime for other convicts, in addition to the members of the Mafia (it defines the concrete conditions, which permit a convict to apply for a lighter regime thus limiting the prison administration discretion in deciding against the strict regime of a convict; it also stipulates that the daily open-air prison stroll could not surpass four hours and that the maximum number of the group of convicts should be limited to five persons).

Confiscation of Mafia assets

Law 646 (1982), supplements the Penal Code with article 416, par. 2, which incriminates participation in a Mafia type organization. When a sentence for this crime is pronounced the profits from it or the assets acquired should be confiscated (art.416, par.2, 7) Another special measure is introduced with *Law 504* adopted in 1994, which supplements *Law 356/1992* with article 12, par.6. This special form of confiscation is applied to persons, convicted for crimes usually linked to the activities of organized criminal groups. According to the Italian Minister of the Interior Roberto Maroni, in the period 2009-2010 the seized assets in Italy are valued at more than 21 billion Euros. After the pronouncement of a verdict the assets in possession of the convicted person that cannot be justified with the amount of his income or from the profits of his business activities are confiscated.
A preliminary expropriation could also be applied in all the different types of confiscation resulting from criminal proceedings. This possibility is introduced by article 321, par.2 of the *Penal Code*, which stipulates: "the Judge could also decide to proceed with a preliminary expropriation of the assets, which are to be confiscated"

The above mentioned *Law 646 (1982)* alters substantially *Law 575 (1965)* and widens the "preventive measures against persons", that include special monitoring motivated by public security and the arrest of persons, which are suspected for participating in a criminal group and deemed dangerous for society.

Figure 2. Number of the confiscated assets. Final number of confiscations by year (1983-2005)



In addition to these measures, civil confiscation (called confisca di prevenzione) may be applied against the aforementioned dangerous persons. The preventive measures against organized criminals and their assets undertaken before and without relation to the criminal activity are aimed to prevent eventual new offences they may commit. Such measures are undertaken without reference to previous offences by a person.

The confiscation warrant usually follows the preventive measure undertaken against a person. Pursuant to *Law 575* the income sources of the people suspected of involvement in criminal activities should be assessed with regard to their way of life, finances, properties and economic activity. This measure not only provides for investigations of suspects but also of their spouses, children and the persons they have lived with officially over the past five years. Furthermore, each

legal or natural entity or other entity that benefits directly or indirectly from the criminal in question might also be the subject of such financial investigations. The application of measures with regard to freezing and confiscation are regulated in article 2, paragraph 2 of the *Law*. During the proceedings related to the application of the measure against the person on trial the court might rule out seizure of defendant's assets. Two conditions are required in order to apply this measure. The first one is the assets in question to be at the direct or indirect disposal of the defendant. The second one is: 1) discrepancy between the wealth of the defendant and the low level of his official income or economic activity, or 2) sufficient evidence that the property in question was acquired from criminal activity or resulted from such activity. Along with the application of the measure the court rules out confiscation of the assets whose legal origin the defendant cannot prove.

Following a complex procedure the real estate is handed over to: a) the state to be used by the judiciary, law enforcement or civil protection bodies; or b) local authorities for institutional or social purposes. Company property is also handed to the state to be sold, liquidated or rented out. Private property and stocks are sold and collected proceeds along with the money from the sales, rental fees or total sales of company property are invested in a special fund to finance social programs.

Dissolution of local municipal bodies

One of the most radical measures to counter organized crime is the option to dissolve a municipal or regional body as a result of identified infiltration of mafia structures (the measure also includes termination of the mandate of municipal and regional councilors, as well as this of the mayor and the president of the respective province). This measure was applied intensively in the period 1991-2004 when 141 local authority bodies were dissolved, the majority of which in the Provinces of Campagna, Sicily and Puglia.

These measures are intended only for political positions and this brings around the necessity to implement corresponding measures for compulsory reallocation and suspending from position to the regular officers, which have bonds with mafia. The dissolution of municipal and regional bodies comprises substantial political risk, as it puts the government above democratically elected local governing bodies. Apart from that, the practice shows that assigning commissioners on elective positions in combination with the disruptive actions of the mafia controlled municipal companies often leads to poor socio-economic results, which backfires on political level.

Indirect policies against mafia

Together with the repressive measures for countering organized crime, the Italian government cooperates closely with the European Union in order to accelerate the economic development of South Italy as a measure for limiting the mafia influence there. The financing of these measures is provided from the European funds through Operational Program "Security for development 2007-2013". The operational program is focused at enhancing security in the regions with high levels of organized crime like Calabria, Campagna, Puglia and Sicily[2]. The three pillars of this program are security, economic development and the rule of law. So far, 1158 million Euro have been allocated for the implementation of this program and 50 % of the

[2] Programma Operativo Nazionale "Sicurezza per lo sviluppo - Obiettivo Convergenza 2007 - 2013" (http://www.sicurezzasud.it/).

funding is covered by the European Fund for Regional Development. In order to improve the socio-economic cohesion in this region the European Union is financing a number of activities matching the objectives set by this national operational program through its Structural funds. The overall goal of the program is to create better conditions for assuring security, justice and rule of law in the regions, where the mafia restricts economic development.

The impact over the organized crime

The fact that a large number of influential mafia leaders have faced trials in court is a significant result of the 'Antimafia' policies. Most of the well-known leaders of the mafia, as well as a large number of 'officers' and 'soldiers' from the organized crime groups are in prison and their property is seized or already confiscated. All these results bring major changes in the public perceptions and attitudes. The affiliation with mafia no longer brings prestige, because of the impunity. This also affects the overall strategy of major organized crime groups, which prefer to get more covert. Another indicator for the effectiveness of these policies is the fact that some mafia bosses, who have been put in total isolation in prison, are now offering deals to the prosecution in order to receive alleviation of their penalty.

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Home Affairs

Notes