

# Documentation



## DEMAND REDUCTION IN RELATION TO TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION



317DT72 Thessaloniki, 6-7 April 2017



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While simultaneous interpretation will be offered during this event, not all the speakers' papers are available in all conference languages

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*Plenary sitting*

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**A8-0144/2016**

26.4.2016

## **REPORT**

on implementation of the Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective  
(2015/2118(INI))

Committee on Women's Rights and Gender Equality

Rapporteur: Catherine Bearder

Rapporteur for the opinion (\*):

Malin Björk, Committee on Civil Liberties, Justice and Home Affairs

(\* ) Associated committee - Rule 54 of the Rules of Procedure

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(\*) Associated committee – Rule 54 of the Rules of Procedure

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### **on implementation of the Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims from a gender perspective (2015/2118(INI))**

*The European Parliament,*

- having regard to Article 2 and Article 3(3), second subparagraph, of the Treaty on European Union (TEU) and Articles 8, 79 and 83 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 3, 5 and 23 of the Charter of Fundamental Rights of the European Union,
- having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), in particular to Article 6, which seeks to combat all forms of traffic in women and the exploitation of the prostitution of women,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),
- having regard to the 1948 Universal Declaration of Human Rights,
- having regard to the 1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others,
- having regard to the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women on 15 September 1995 and to the subsequent outcome documents adopted at the United Nations Beijing+5 (2000), Beijing +10 (2005) and Beijing +15 (2010) special sessions and at the Beijing +20 review conference,
- having regard to the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and in particular the internationally agreed definition of trafficking in human beings (THB) therein, supplementing the United Nations Convention against Transnational Organised Crime,
- having regard to the 1989 UN Convention on the Rights of the Child and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, and to the European Parliament resolution of 27 November 2014 on the 25<sup>th</sup> anniversary of the UN Convention on the Rights of the Child<sup>1</sup>,
- having regard to the Oviedo Convention on Human Rights and Biomedicine,
- having regard to the Hague Adoption Convention,

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<sup>1</sup> Texts adopted, P8\_TA(2014)0070.

- having regard the Joint UN Commentary on the EU Directive on preventing and combating trafficking in human beings and protecting victims, which demands that international protection be provided to victims of human trafficking in a gender-sensitive manner,
- having regard to ILO Convention No 29 on forced or compulsory labour, Article 2 of which defines forced labour,
- having regard to the Council of Europe Convention on Action against Trafficking in Human Beings and to the Council of Europe’s recommendations in this field,
- having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),
- having regard to Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA<sup>1</sup>,
- having regard to European Parliament and Council Directive 2012/29/EU 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<sup>2</sup>,
- having regard to European Parliament and Council Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA<sup>3</sup>,
- having regard to 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<sup>4</sup>,
- having regard to Directive 2008/115/EC of the European Parliament and the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals<sup>5</sup>,
- having regard 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<sup>6</sup>,
- having regard to the Commission communication entitled ‘EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016’ (COM(2012)0286),
- having regard to the Commission staff working document entitled ‘Mid-term report on the implementation of the EU Strategy towards the Eradication of Trafficking in Human

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<sup>1</sup> OJ L 319, 4.12.2015, p. 1.

<sup>2</sup> OJ L 315, 14.11.2012, p. 57.

<sup>3</sup> OJ L 101, 15.4.2011, p. 1.

<sup>4</sup> OJ L 168, 30.6.2009, p. 24.

<sup>5</sup> OJ L 348, 24.12.2008, p. 98.

<sup>6</sup> OJ L 261, 6.8.2004, p. 19.

Beings' (SWD(2014)0318),

- having regard to the Commission communication entitled 'The European Agenda on Security' (COM(2015)0185),
  - having regard to the Commission staff working document entitled 'Strategic engagement for gender equality 2016-2019' (SWD(2015)0278),
  - having regard to the Europol Situation Report: Trafficking in human beings in the EU (February 2016),
  - having regard to the Eurostat report 'Trafficking in human beings', 2015 edition,
  - having regard to the EPRS European Implementation Assessment of Directive 2011/36/EU, produced by the Directorate-General for Parliamentary Research Services,
  - having regard to the study on the gender dimension of trafficking in human beings, commissioned by the Commission, 2016,
  - having regard to its resolution of 25 February 2014 with recommendations to the Commission on combating Violence Against Women<sup>1</sup>,
  - having regard to its resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality<sup>2</sup>,
  - having regard to its resolution of 9 June 2015 on the EU Strategy for equality between women and men post 2015<sup>3</sup>,
  - having regard to Rule 52 of its Rules of Procedure,
  - having regard to the report of the Committee on Women's Rights and Gender Equality and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A8-0144/2016),
- A. whereas trafficking in human beings (THB) is a terrible violation of fundamental rights, as outlined in Article 5(3) of the EU Charter on Fundamental Rights, and a violation of human dignity and of the victims' physical and psychological integrity, causing severe damage that often affects them for the rest of their lives, as well as a serious form of, mostly organised, crime driven by high demand and profits, estimated at some USD 150 billion a year<sup>4</sup>, which undermines the rule of law; whereas differences between legislation in Member States greatly facilitate the activities of organised crime, there is still too low a risk of prosecution, and the sanctions applied to deter this crime are inadequate in comparison with the potentially high profits;
- B. whereas THB is defined in Article 2 of Directive 2011/36/EU as the recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or

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<sup>1</sup> Texts adopted, P7\_TA(2014)0126.

<sup>2</sup> Texts adopted, P7\_TA(2014)0162.

<sup>3</sup> Texts adopted, P8\_TA(2015)0218.

<sup>4</sup> ILO estimates, 2014, Profits and poverty the economics of forced labour.

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; whereas exploitation includes, 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;

- C. whereas THB takes many different forms, and victims of THB are found in different legal and illegal activities, including, but not limited to, agriculture, food processing, the sex industry, domestic work, manufacturing, care, cleaning, other industries (particularly the service industries), begging, criminality, forced marriage, sexual exploitation of children online, illegal adoptions and the trade in human organs;
- D. whereas, as stated by the Joint UN Commentary on the EU Directive – A Human Rights-Based Approach (2011), several UN agencies recall that ‘trafficking in both men and women should be acknowledged, and the similarities and differences in the experiences of women and men in relation to vulnerabilities and violations should be addressed’;
- E. whereas the current refugee crisis has shown up the lack of proper tools at a European level for jointly combating THB, especially when its aim is the sexual exploitation of women and children;
- F. whereas a ‘one size fits all’ strategy is not efficient and whereas the different forms of trafficking, such as trafficking for sexual exploitation, trafficking for labour exploitation and child trafficking, need to be addressed with specific and tailored policy measures;
- G. whereas Directive 2011/36/EU (‘the Directive’) should be commended for its human-rights and victim-centred approach, whereby victims of THB are entitled to certain rights and services under international law, regardless of their willingness or ability to take part in criminal proceedings (under Article 11.3 of the Directive);
- H. whereas all support services for victims of trafficking must be made truly non-conditional and ensure that there is no further victimisation;
- I. whereas THB is, on the one hand, the result of global economic and social inequalities and, on the other, is exacerbated by economic, societal and education and training inequality between women and men;
- J. whereas recent statistics show that most of the victims of THB are women; whereas gender itself does not inherently create vulnerability, and there are many contributing factors to create a situation of vulnerability for women and girls, including poverty, social exclusion, sexism and discrimination;
- K. whereas women and girls make up 80 % of registered victims of THB<sup>1</sup>, and this can be attributed partly to structural violence and discrimination against women and girls;

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<sup>1</sup> Eurostat report, ‘Trafficking in human beings’, 2015 edition.

- L. whereas the demand for women, girls, men and boys in the prostitution industries is a decisive pull factor for THB for sexual exploitation; and whereas the demand for cheap labour and incapacity to uphold labour rights are pull factors for THB for labour exploitation;
- M. whereas societal tolerance of gender inequality and violence against women and girls and the lack of public awareness of the issues surrounding THB perpetuate a permissive environment for THB;
- N. whereas trafficking in women, girls, men and boys for sexual exploitation has decreased in countries that have criminalised demand, including both pimping and the buying of sexual services;
- O. whereas minority and immigrant groups such as Roma people make up a disproportionate number of victims of THB as a result of being socially and economically marginalised;
- P. whereas gender expectations and discrimination are harmful to everyone, with men less likely to admit that they have been the victims of exploitation;
- Q. whereas economic and social empowerment of women and minority groups would reduce their vulnerability to becoming victims of THB;
- R. whereas identification of victims remains a challenge, and whereas, in order to help victims of trafficking and to prosecute and convict traffickers, victim support and protection needs to be reinforced, including the right of the victim to legally reside and work in the Member State to which the victim has been trafficked, as well as improving victims' access to justice and compensation;
- S. whereas children make up approximately 16 %<sup>1</sup> of registered victims of THB, with girls representing to 13 %<sup>2</sup>, and whereas they are particularly vulnerable, with child victims facing severe and lasting physical, psychological and emotional harm;
- T. whereas 70 % of the identified victims of THB and 70 % of suspected traffickers in the EU are EU nationals, and the most reported victims for the purpose of sexual exploitation are female EU nationals from Central and Eastern Europe<sup>3</sup>; whereas statistical information must be taken into account when developing identification systems in order to better identify all victims of THB;
- U. whereas the majority of the registered victims are women and girls trafficked for the purposes of sexual exploitation, together comprising up to 95 % of the victims trafficked for sexual exploitation<sup>4</sup>; whereas trafficking is a form of violence against women and girls;
- V. whereas THB is a complex transnational phenomenon that can be tackled effectively only if the EU institutions and Member States work together in a coordinated manner in

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<sup>1</sup> Idem, Eurostat report.

<sup>2</sup> Idem, Eurostat report.

<sup>3</sup> Europol, Situation Report: Trafficking in human beings in the EU (February 2016).

<sup>4</sup> Idem, Eurostat report.

order to prevent ‘forum shopping’ by criminal groups and individuals, but with the focus being placed on identifying and protecting potential and actual victims with an integrated intersectional perspective; whereas there is a clear distinction between THB and human smuggling, but particular attention should be given to asylum seekers, refugees, migrants and other vulnerable groups, especially children, unaccompanied minors and women as they face multiple risks and are particularly vulnerable to exploitation and further victimisation;

- W. whereas THB is often perceived as being carried out only by organised criminal groups, but in fact can also be carried out by the victim's family members, friends, relatives, romantic partners and ordinary employers;
- X. whereas the majority (70 %) of suspected, prosecuted and convicted traffickers are male, although female perpetrators form a sizeable minority (29 %) and can play a significant role in the process of THB<sup>1</sup>, especially in the case of child trafficking;
- Y. whereas in order to be effective any legislation to combat trafficking must be accompanied by a clear cultural shift from a culture of impunity to a culture of zero tolerance of trafficking;
- Z. whereas victims often lack information about their rights and how to exercise them effectively;
- AA. whereas THB as a concept is distinct from slavery and broader discussions of exploitation; whereas not all types of exploitation would qualify as THB;

***General assessment of measures taken to address the gender dimension of THB in the implementation of the directive***

1. Notes that Directive 2011/36/EU was due to be transposed into Member States’ national laws by 6 April 2013, and that all Member States except one have notified the Commission of the transposition of this directive into national law;
2. Calls on the Member States to speed up the full and correct enforcement of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims;
3. Emphasises that the EU’s legal and political framework recognises that trafficking is a gender-specific phenomenon, and calls on Member States to adopt gender-specific measures<sup>2</sup>; recalls that Article 1 of the Directive stresses the need to adopt a gender-sensitive approach to THB; highlights that women and men, girls and boys are vulnerable in different ways, and are often trafficked for different purposes, and that prevention, assistance and support measures must therefore be gender-specific; points out, further, that the EU strategy identifies violence against women and gender inequalities as being among the root causes of trafficking, and lays down a series of measures to address the gender dimension of trafficking;

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<sup>1</sup> 2015 Eurostat report.

<sup>2</sup> ‘Mid-term report on the implementation of the EU strategy towards the eradication of trafficking in human beings’ SWD(2014) 318 final, page 9.



4. Notes that the Commission is required to publish a number of reports in relation to the various aspects of implementation of the directive; expresses deep concern that these reports will be delivered late as this sends a worrying signal regarding their priorities on enforcement; calls on the Commission to meet the reporting obligations and timetable as outlined in the directive;
5. Recalls the Commission's obligation under Article 23, paragraph 1, of Directive 2011/36/EU to submit in April 2015 a report to the Parliament and Council with an assessment of the extent to which Member States have taken the necessary measures to comply with the Directive; underlines that this reporting task has not been completed on schedule;
6. Stresses that the gender dimension must be consistently monitored in the implementation of EU anti-trafficking legislation, and urges the Commission to continue to monitor this in its assessment of Member States' compliance and implementation of the Directive;
7. Commends the good work done by the EU Anti-Trafficking Coordinator in developing knowledge and evidence on the various aspects of THB, including research into the gender dimension and the particular vulnerability of children; is, however, of the view that in order to accelerate the EU's response to THB, the mandate of the EU Anti-Trafficking Coordinator could be extended;
8. Regrets that Europol's capabilities are not fully utilised among Member State law enforcement authorities in order to increase information sharing with Europol so that links can be made between investigations in different Member States and a broader intelligence picture on the most threatening organised crime networks active in the EU can be drawn;
9. Welcomes the Commission's creation of a webpage against trafficking that contains a database of EU-funded projects in the EU and elsewhere, up-to-date information on EU legal and political instruments, measures to combat people trafficking in the Member States, funding possibilities and EU initiatives;
10. Highlights the importance of having clear, consistent information for victims and for frontline staff who may come into contact with victims, security forces, judicial authorities, police and social services, including information on rights with regard to emergency assistance, medical treatment and healthcare, residence permits, employment rights, access to the courts and to a lawyer, the possibilities for seeking redress, the specific rights of children, etc.;
11. Emphasises that it is also important to pay greater attention to labour market intermediaries, contractors, subcontractors and employment agencies, especially in high-risk sectors, as a way of preventing people trafficking, particularly for the purpose of labour exploitation but also for the purpose of sexual exploitation concealed behind what purport to be contracts for services in the hotel and catering industry and personal care services;
12. Emphasises that the EU's legal and political framework on THB combines the internal and external dimensions, recognising that action to combat trafficking, which is a

serious human rights violation, constitutes a clear objective of the EU's external action; emphasises, likewise, that countries outside the EU are often the countries of origin and transit for trafficking within the EU and that trafficking, as an illegal cross-border activity, is an important area for cooperation with non-Community countries; welcomes, in this connection, the fact that, at the request of the Council, the Commission and the European External Action Service have put together a package of information on activities carried out to combat people trafficking in priority countries and regions, as well as a list of the tools and instruments available to the EU and Member States, including external policies that deal with trafficking, and projects funded by the EU and Member States in this field; calls on Member States to cooperate with the Commission and the EEAS in combating people trafficking;

13. Considers that asylum seekers, refugees and migrants are particularly vulnerable to trafficking and that special attention should be given to the trafficking of women, children and other vulnerable groups; calls on the Commission and the Member States to investigate the link between the increasing numbers of refugees arriving and THB; calls on Member States to increase cooperation, including in the hotspots, to identify potential victims and to use all means to combat traffickers and smugglers, including by improving data collection and ensuring compliance with existing protection standards; recalls the role of EU agencies and networks in the early identification of victims at EU borders and the fight against THB, and in this context underlines the need for greater cooperation between EUROPOL, Eurojust, national authorities and third countries, and through the use of ECRIS; calls for more resources for the JHA agencies to enable the appointment of gender-trained agency officers, especially in those Member States faced with increased mixed migratory flows; emphasises that the new 'hotspot' approach outlined in the Agenda for Migration should not be limited to quick processing and clearing of backlogs, but should include a proportionate anti-trafficking component geared towards the effective referral of potential victims";
14. Calls on the Member States to critically assess their registration of refugees and the relevant services and care structures, as this group, particularly unaccompanied minors, are very vulnerable to exploitation by criminal gangs and subsequent trafficking in human beings;
15. Considers that greater consideration should be paid to the situation of transgender victims, who often experience discrimination, stigmatisation and threats of violence because of their gender identity; is of the opinion that transgender people should be considered to be a vulnerable group, as they are particularly at risk of falling into the hands of traffickers seeking to exploit their despair; believes that this vulnerability factor should be taken into account when Member States conduct individual risk assessments, so as to ensure that victims of trafficking receive appropriate protection and care; calls on the Member States to provide officials likely to come into contact with victims or potential victims of trafficking in human beings with adequate training on the specificities of transgender victims, so as to be able to identify them more proactively and adapt assistance services to meet their needs;

#### ***Gender perspective in the prevention of THB***

16. Underlines that under Article 11 of the Directive, Member States have an obligation to

establish mechanisms to ensure the early identification of, assistance to, and support for victims, in cooperation with the relevant support organisations; stresses the need for an approach based on four key strategies: prevention, prosecution, victim protection and multi-level partnership;

17. Calls on the Member States to combat impunity, criminalise trafficking and ensure that perpetrators are brought to justice and that sanctions are strengthened; urges the Member States, therefore, to ratify all relevant international instruments, agreements and legal obligations which will make the efforts to combat trafficking in human beings more effective, coordinated and coherent, including the Council of Europe Convention on Action against Trafficking in Human Beings;
18. Calls for a consistent approach to prosecution of offences related to human trafficking, and for the Member States to step up their investigations and prosecutions; calls, in that regard, for the Member States to increase cross-border cooperation and collaboration with the relevant EU agencies;
19. Recalls that women and children may be compelled to exchange sex for protection, in order to survive, in order to advance along their migratory route, and for basic sustenance; underlines that women and children engaging in survival sex are not considered trafficking victims, and thus cannot receive the required assistance;
20. Stresses that, in order to prevent THB and people smuggling, it is important to create safe legal migration channels for women and children (such as humanitarian visas); points out that it is also important for destination countries to ensure that women migrants who have been granted legal residency in the destination countries have access to language teaching and other means of social integration, education and training in particular, with the aim of enabling them to exercise their rights as citizens;
21. Calls on the Member States to make use of properly structured victim interview techniques to help achieve a precise reconstruction of events without at the same time placing psychological pressure on victims who are already frightened and confused;
22. Stresses that all counter-trafficking efforts must balance the focus on prosecution with a responsibility to protect victims; notes that support for victims plays an important role in prevention of THB, as victims who are well supported are more able to recover from the trauma of their experience and to assist in the prosecution of offenders, preparation of prevention programmes and informed policy making, as well as to avoid being re-trafficked;
23. Stresses that the internet plays a key role in facilitating THB, thereby adding to the challenges in combating this serious form of organised crime; denounces the fact that, the internet is being used more and more for the recruitment of victims both within and outside the EU through false job offers, with advertising services provided by exploited victims, and for the exchange of information among criminal networks; calls on the Member States to ensure that their respective anti-trafficking policies take account of this, and that law enforcement efforts addressing cyber technologies have the gender expertise needed to prevent and efficiently fight against all forms of this crime, particularly in relation to THB for the purposes of sexual exploitation; stresses that new technologies, social media and the internet should also be used to disseminate good

practices to fight THB and to raise awareness and alert potential victims on the risks of trafficking; in this context calls on the Commission to investigate further the role of the internet in THB and to keep Parliament duly informed;

24. Regrets that the identification of victims remains one of the most difficult and incomplete aspects of implementation, but stresses that this does not diminish the responsibility of the Member States to protect these vulnerable people; highlights that owing to the coercive and deceptive nature of the crime, victims may be unable to recognise their own vulnerability; stresses that the actions that victims of THB are compelled to perform are criminal acts in some Member States, which in some cases impairs trust between victims and the authorities; notes that Directive 2011/36/EU prohibits the criminalisation of victims of THB; calls on Member States to implement Articles 11 to 17 of the Directive concerning protection and support of victims with a gender-sensitive approach (in particular by increasing the number of shelters for victims and by strengthening programmes for victims' reintegration into society) and to fully apply Directive 2012/29/ EU on establishing minimum standards on the rights, support and protection of victims of crime in order to ensure proper support and assistance for victims of THB, including as regards the right to reside in and access the labour market of the Member State to which the victim has been trafficked; stresses that these provisions should not be conditional on victims lodging complaints or cooperating in criminal investigations; calls on the Commission to strengthen the exchange of best practices on the protection of victims;
25. Stresses that non-governmental organisations (NGOs) and individuals working to protect and help victims of THB should not be held responsible for any crime;
26. Is strongly critical of the fact that it is not already a criminal offence to use the services of trafficked persons across all Member States, but acknowledges the difficulty of proving knowledge in a judicial context, and considers that this would be an important step towards recognising the seriousness of this crime, ensuring a real framework for the prevention of THB and for stopping the culture of impunity;
27. Calls on the Member States to put in place strong criminal penalties for crimes of human trafficking, modern slavery and exploitation; and to establish as a criminal offence the act of knowingly using the services of victims of human trafficking, including victims of trafficking in prostitution, 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; notes the low number of prosecutions and convictions for the crime of trafficking at a national level;
28. Notes that the principal source of information for the registration of victims is the police, pointing to the need for sufficient human and financial resources, including targeted and specialist training for law enforcement authorities, and for a greater gender balance among staff ; highlights the fact that the registration of victims of THB through prisons and detention centres in some Member States shows gaps in the system and in the knowledge of the professionals involved; insists that EU Member States must apply legislation against THB effectively, and stresses, likewise, that in order to improve the identification of victims and develop understanding of subtle means of trafficking, the

criminal justice system should focus more on the dynamics of exploitation and the application of the law; notes in this context that according to Regulation (EU) 2015/2219, CEPOL should promote common respect for and understanding of fundamental rights in law enforcement, including the rights, support and protection of victims;

29. Calls for greater priority and resourcing to be given by Europol and national police forces to the prosecution of those facilitating human trafficking, paying special attention to raising awareness among police forces and the general public alike about new forms of human trafficking;
30. Calls on Europol and the Member States to strengthen their action against recruiters, whether via a proactive approach or on the basis of a victim's testimony, in accordance with Article 9 of Directive 2011/36/EU; stresses that recruiters use a variety of channels, including social networks and internet sites (online recruitment agencies); calls on the Commission to expand the mandate of Europol's EU Internet Referral Unit (IRU) in the fight against trafficking in human beings;
31. Calls on the Commission to assess the effectiveness of cooperation between the Member States and Europol in combating trafficking in human beings; stresses the importance of systematic exchange of data and of all Member States contributing to the European databases used for this purpose, including the Europol databases Focal Point Phoenix and Focal Point Twins; stresses the need for border guards and coast guards to have access to Europol databases;
32. Notes that victims experience exploitation differently, and that a method of identification using a 'check list' of indicators can hinder formal identification and thereby have an impact on victims' access to services, help and protection;
33. Stresses that, to encourage victims of trafficking to report these crimes to the authorities and thus facilitate the early identification of victims, the law must be amended to recognise victims of trafficking as rights-holders in the eyes of the law; takes the view that victims of trafficking should be entitled to assistance and protection even if their case is dismissed by the courts; stresses the need to give more power to social workers, medical staff and immigration services to determine what constitutes trafficking and who is to be provided with assistance and protection by law;
34. Calls for better implementation and monitoring of Article 8 of Directive 2011/36/EU, so as to ensure the non-prosecution of and non-application of sanctions or penalties to victims of THB, and emphasises that this includes the non-application of sanctions or penalties to people in prostitution and non-punishment for irregular entry or residence in countries of transit and destination;
35. Notes with concern the evidence of some of the victims of THB being subject to arrest and deportation rather than being allowed and aided to access their rights as victims and the necessary help, as they should be under Directive 2004/81/EC;
36. Calls on the Commission to develop guidelines based on best practices to develop and mainstream gender expertise into the activities of law enforcement authorities across EU;

37. Calls on the Member States to cooperate in better developing guidelines on identifying victims of trafficking in human beings, which would help consular services and border guards in this task;
38. Stresses the importance of 'following the money' as a key strategy for investigating and prosecuting the organised crime networks that profit from THB, and calls on Europol and Eurojust to reinforce their capacities in the field of combating THB; calls for the Member States to work closely with Europol and each other in order to investigate the financial aspects and the laundering of money in human trafficking cases; stresses that Member States should strengthen cooperation in freezing and confiscating the assets of individuals involved in trafficking, as this could be an effective means of changing THB from a 'low risk-high profit' business into a 'high risk-low profit' one; calls on the Member States, in this context, to use more efficiently all existing tools available such as mutual recognition of court judgments, joint investigation teams and the European investigation order; believes that the confiscated assets of people convicted of trafficking offences should be used to support and compensate victims of trafficking; also notes that the huge funds raised by human trafficking and exploitation fund other kinds of serious crime;
39. Calls on Justice and Home Affairs (JHA) agencies such as Eurojust, Europol, the FRA, Frontex, CEPOL and the EASO to develop a sustained programme of improving gender balance in decision-making relevant to trafficking; calls for figures on the gender composition of their management boards and staff to be released, followed by discussions with Member States on the benefits of equitable recruitment and promotion in law and border enforcement services; calls likewise for programmes such as Europol's Female Factor to be rolled out across the most male-dominated JHA agencies on a periodic, rather than a one-off, basis;
40. Recalls that training of practitioners and officials is crucial for the early identification of potential victims and the prevention of crime; calls on the Member States, therefore, to fully apply Article 18(3) of Directive 2011/36/EU and to share best practices, in particular when creating gender-sensitive training programmes for those coming into contact with victims of THB in an official capacity, including police officers and other security forces, border officers, judges, magistrates, lawyers and other judicial authorities, front-line medical staff, social workers and psychological counsellors; stresses that training should include the development of understanding of gender-based violence and exploitation, the detection of victims, the formal identification process and appropriate, gender-specific assistance for victims;
41. Calls for the wider development and dissemination of awareness-raising publications aimed at improving the knowledge within professions, such as the 'Handbook for consular and diplomatic staff on how to assist and protect victims of human trafficking'<sup>1</sup>;
42. Recognises the importance of developing long-term relationships between law enforcement, service providers, various stakeholders and victims in order to build trust and sensitively address the needs of the latter; stresses that support organisations require

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<sup>1</sup> [https://ec.europa.eu/anti-trafficking/publications/handbook-consular-and-diplomatic-staff-how-assist-and-protect-victims-human-trafficking\\_en](https://ec.europa.eu/anti-trafficking/publications/handbook-consular-and-diplomatic-staff-how-assist-and-protect-victims-human-trafficking_en).

sufficient funding for projects, and expresses concern that many, especially women's organisations, are struggling because of funding cuts;

43. Stresses that funding from the Commission and the Member States should be targeted to the most suitable service provider, based on the needs of the victims, including gender- and child-specific requirements, the expertise of the provider and scope for the provider to engage in far-reaching and long-term assistance and care;
44. Calls on the Member States to actively include social partners, the private sector, trade unions and civil society, particularly NGOs working to combat trafficking and provide assistance to victims, in their initiatives to prevent THB, particularly in the field of labour exploitation, including as regards the identification of victims and awareness-raising activities;
45. Notes that while sexual exploitation is illegal in all Member States, this does not prevent trafficking for sexual exploitation; calls on the Member States to fully implement Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography and to step up their police and judicial cooperation to prevent and combat child sexual exploitation; calls on the Commission, in cooperation with the Member States, to examine how the demand for sexual services drives THB, including child trafficking, and how best to reduce demand; in this regard, recalls the obligation of Member States to pay special attention to child victims of trafficking, including unaccompanied minors coming from third countries, and to provide special protection to children in criminal procedures, with the best interests of the child being considered paramount at all times;
46. Notes that data collection on child trafficking should be based on a common definition of this criminal phenomenon; notes likewise that some Member States consider child trafficking to be a separate form of exploitation and others include child victims with adults, hindering the possibility of creating a comprehensive intelligence picture and of defining the best investigative responses at EU level;
47. Underlines the Commission's obligation under Article 23, paragraph 2, of the Directive to come forward, by 2016, with a report assessing the impact of existing national laws on the criminalisation of the knowing use of the services of a victim of THB, and the need for further action; stresses that the Commission should not rely solely on the reporting of a Member State, but should also assess compliance through engagement with civil society and other relevant bodies, such as GRETA and the country reports produced by the OSCE Special Representative on Human Trafficking and the UN Special Rapporteur on Trafficking and Contemporary Forms of Slavery;
48. Notes the lack of a common understanding among the Member States about what constitutes demand for exploitation, and calls on the Commission and the Member States to propose guidelines on the punishment of the client based on the Nordic Model, while raising awareness about all forms of THB, especially sexual exploitation, and making other forms of exploitation like domestic servitude visible;
49. Notes that the increased vulnerability of certain groups of people puts them at particular risk of falling victim to trafficking; deplors, however, the fact that trafficking takes place as a result of the high demand for products and services dependent upon the

exploitation of human beings, which is a very profitable form of organised crime;

50. Emphasises the data which confirm the deterrent effect that criminalisation of the purchase of sexual services has had in Sweden; highlights the normative effect of this model of regulation and its potential to change social attitudes in order to reduce overall demand for the services of victims of THB;
51. Calls on the Member States to fully implement Article 18(4) of the Directive and to develop specific strategies for reducing demand for trafficking for sexual exploitation, such as exit programmes and schemes to empower and protect the rights of those in prostitution and reduce their vulnerability to exploitation, and campaigns to discourage demand for the sexual services of trafficked persons, while also noting that the regulation of prostitution is a competence of the Member States; calls on the Commission to further examine any links between demand for sexual services and THB; believes that demand reduction can be achieved through legislation that shifts the criminal burden onto those who purchase the sexual services of trafficked persons rather than onto those who sell it;
52. Calls for the EU to pay attention to and make visible the new forms of trafficking and exploitation of human beings, including reproductive exploitation and trafficking in new-born children;
53. Notes with concern that very few Member States have clearly defined demand reduction programmes, and that, generally speaking, these have been focussed on trafficking for sexual exploitation; calls on the Member States to develop demand reduction programmes for all types of THB;
54. Notes that sham marriages can qualify as THB under certain circumstances if there is a forced or exploitative element, and that women and girls are more likely to become victims;
55. Stresses that efforts to improve gender equality contribute to the prevention of THB, and should contain strategies for education and empowerment programmes for women and girls in order to strengthen their position in society and make them less vulnerable to trafficking; calls on Member States to take more proactive preventative actions such as information and awareness-raising campaigns, training specifically designed for men, targeted workshops with vulnerable groups and education activities in schools, including promoting equality, combating sexist stereotypes and gender-based violence, as equal treatment should be an objective of the whole of society;
56. Highlights the effectiveness of awareness-raising schemes in educating consumers to select products from corporations that ensure a slavery-free supply chain, but notes that this in itself is not enough to reduce demand for THB;
57. Notes that it is already illegal under Directive 2009/52/EC for employers to use the work or services of third-country nationals with no legal residency status in the EU with the knowledge that they are victims of THB; acknowledges that EU nationals who are victims of THB are not included under this legislation; calls on the Member States to ensure that in their national legislation EU nationals who are victims of trafficking are protected from labour exploitation, and relevant sanctions are put in place;



58. Recalls that, according to Europol, about 10 000 unaccompanied children have disappeared after arriving in the EU in 2015, and that these children could be victims of trafficking and exposed to all kinds of exploitation and abuse; calls on the Member States to fully implement the asylum package and register children upon their arrival in order to ensure their inclusion in child protection systems; calls on the Member States to increase information sharing in order to better protect migrant children in Europe;
59. Expresses concern about the lack of data regarding Romani women and children at risk of being trafficked for forced labour or services, which include begging; calls on the Commission to provide data regarding Romani women and children recognised as trafficking victims, how many have received victim assistance and in which countries;
60. Stresses that forced marriage can be regarded as a form of trafficking in human beings if it contains an element of exploitation of the victim, and calls on all Member States to include this dimension; stresses that exploitation may be sexual (marital rape, forced prostitution or pornography) or economic (domestic work or forced begging), and that the ultimate aim of trafficking can be forced marriage (selling a victim as a spouse or entering a marriage under duress); stresses that it is difficult for the authorities to detect such trafficking, as it takes place in private; calls on the Member States to provide appropriate refuge services for these victims; calls on the Commission to strengthen the exchange of best practices in this regard;
61. Is concerned at the growing phenomenon of sexual grooming; points out that the victims are often in a state of emotional dependence, which hinders investigative work, as they are less easily identified as victims of trafficking in human beings and often refuse to testify against the people grooming them; calls on the Commission to strengthen the exchange of best practices in this regard; calls on the Member States to provide a specific refuge for these victims and to ensure that law enforcement and judicial services recognise their status as victims, in particular if they are minors, so as to avoid stigmatising them for ‘deviant behaviour’;

#### *The gender dimension of assistance and support to, and protection of, victims*

62. Expresses concern that not all victims are able to access services easily or have knowledge of them; stresses that there must be no discrimination in access to services;
63. Notes that victims of THB require specialised services, including access to safe short- and long-term accommodation, witness protection schemes, healthcare and counselling, translation and interpretation services, legal redress, compensation, travel assistance, access to education and training, including teaching of the language of their country of residence, job placement, (re)integration, family mediation and resettlement assistance, and that these services should be further individualised case by case, with specific consideration given to the issue of gender;
64. Stresses that the gender dimension of THB entails an obligation for Member States to address it as a form of violence against women and girls; highlights the fact that more attention must be paid to the exploitative dynamic and the long-term emotional and psychological harm that is associated with this; asks the Commission to come forward with a European strategy for combating gender violence, containing a legislative proposal on violence against women that includes THB;

65. Highlights the good work done by a number of government services and civil society in identifying victims of human trafficking and providing assistance and support to victims, although this work is not carried out consistently across Member States or with respect to the different types of THB;
66. Underlines the need to ensure adequate funding for independent NGOs and gender-specific refuges to adequately meet needs at all points of the victim pathway in destination countries and to work preventatively in relevant source, transit and destination countries;
67. Calls on the Member States to establish hotlines which victims of human trafficking and exploitation can call to seek assistance and advice; notes that such hotlines have proved to be successful in other areas such as radicalisation and child abduction;
68. Urges the Member States to ensure gender-specific provision of services to victims of THB that is appropriate to their needs, recognising any needs that may be specific to the form of trafficking to which they have been subjected; highlights that while a majority of victims are women and girls, there should be specialised services for victims of all genders;
69. Stresses that many victims of sexual exploitation are drugged for the purpose of keeping them in a state of physical and psychological dependence; calls, therefore, on the Member States to provide specialised support programmes for these victims and to recognise this as an aggravating circumstance in their criminal justice response to trafficking in human beings;
70. Stresses that the cumulative effect of different types of discrimination on the grounds of sexual orientation or gender identity makes LGBTI people particularly vulnerable to trafficking in human beings; calls on the Member States to address the unique needs of LGBTI people; calls on the Commission to promote the exchange of best practices in this regard;
71. Underlines the importance for all Member States to recognise systematically the right to access to safe abortion services for female victims of THB whose pregnancy is a result of their exploitation;
72. Takes the view that Article 11(5) of Directive 2011/36/EC should be expanded to introduce aid for future integration (language learning, familiarisation with the culture and community, etc.) where the victims' circumstances allow them to opt for a residence permit;
73. Notes that irregular legal residence status does not preclude one from being a victim of THB, and that such victims should therefore have the same rights as others; calls on the Member States not to conflate the issues of migration and THB, highlighting the principle of unconditionality of assistance set out in the directive;
74. Calls on all Member States to effectively guarantee the rights of victims and calls for the implementation of Directive 2011/36/EU to be analysed in the light of the provisions of Directive 2012/29/EU; calls on the Member States to provide free legal aid, including legal assistance and representation, psychological and medical support,

and information on the rights to assistance and health care, including the right to an abortion for victims of sexual exploitation, to all of those who either self-identify, or meet an adequate number of the criteria for identification, as victims of THB, to help them access their rights, compensation and/or legal redress; stresses that self-identification should never be the only requirement in order to access victims' rights and services;

75. Calls on the Member States to make legal aid available to victims of trafficking not only in criminal proceedings, but also in any civil, labour or immigration/asylum proceedings in which they are involved;
76. Calls on the Member States to recognise the longer time needed to recover from the harm of trafficking for purposes of sexual exploitation, as compared with the time needed to recover from other forms of trafficking, when deciding on limits to victim support; calls for protection measures offered to victims trafficked for sexual exploitation to be extended, in order to minimise harm, prevent re-trafficking and secondary victimisation and cater in every case for individual needs;

#### ***Assessment of other gender-sensitive measures taken in the implementation of the Directive***

77. Stresses that any obligation for victims to take part in the prosecution of traffickers can be harmful; highlights that in a human rights-based approach, such an obligation should not be a condition for access to services;
78. Underlines that all victims of THB should be systematically informed of the possibility of benefiting from a recovery and reflection period, and should actually be granted such a period; regrets that in some Member States these rights have only been transposed into migration laws and therefore do not apply to all victims of THB, but only to those in an irregular situation; recalls that these rights must be granted to all THB victims;
79. Recalls that, according to Directive 2004/81/EC, Member States are obliged to allow a period of reflection and recovery for victims of trafficking in human beings; calls on the Member States, when determining the duration of such a period, to take into account Article 13 of the Council of Europe Convention on action against trafficking in human beings and to extend the minimum 30-day recovery and reflection period included in this convention for victims trafficked for the purposes of sexual exploitation, given the significant and sustained harm caused by this form of violence;
80. Notes that the current EU Strategy towards the Eradication of THB comes to an end in 2016, and calls on the Commission to evaluate the current strategy and to introduce a new one that follows a human-rights-based approach, focusing on victims, includes a clear gender dimension and contains concrete actions in this regard, adequately and effectively addresses prevention, and continues to discourage the demand that fosters all forms of trafficking; calls for this strategy to be integrated and made coherent with other policy areas, with a view to ensuring effective implementation of anti-trafficking measures, including, but not limited to, security, gender equality, migration, cybersecurity and law enforcement;
81. Commends those Member States that have established effective national reporting mechanisms and national rapporteurs, and calls on them to ensure that these measures

are adequately resourced and independent, in order that they fulfil their tasks in the best way possible;

82. Calls on Member States to appoint, with a view to assessing their strategies and activities and improving efforts to combat trafficking, an independent national rapporteur with the legal right to appear before the national parliament and make recommendations on how best to combat THB;
83. Calls on the Member States to collect more detailed and up-to-date data by compiling reliable statistical information gathered from all the main actors, by ensuring that the data is homogeneous and disaggregated by gender, age, type of exploitation (within the subsets of types of THB), country of origin and destination, and by including internally trafficked people, in order to better identify potential victims and prevent crime; calls on the Member States to increase data sharing in order to better assess the gender dimension and recent trends in THB and combat trafficking more effectively ; calls on the Members States to ensure that national rapporteurs play a more significant role in the coordination of data collection initiatives, in close cooperation with relevant civil society organisations active in this field;
84. Notes that despite the clear definition of THB given in the Directive, a number of different definitions have been adopted in Member States' national legislation; calls on the Commission to conduct research on this and to report on what these differences in definition mean in practical terms for the application of the Directive; stresses the importance of conceptual clarity in order to avoid conflation with other related but separate issues;
85. Notes that stakeholders generally confirm that the vast majority of victims of THB go undetected; recognises that the trafficking of certain vulnerable groups such as (homeless) youth, children, and disabled and LGBTI people, has been somewhat overlooked; stresses the importance of improved data collection to enhance victim identification efforts with regard to these groups and developing best practice in dealing with the specific needs of these victims;
86. Stresses that, to improve efforts to combat THB in the European Union, the EU institutions must carefully assess the implementation of EU legislation in the Member States, and take further legislative and other measures, if necessary;
87. Calls on the Commission to develop standardised guidelines, including data protection, for data collection for the relevant bodies, such as law enforcement, border and immigration services, social services, local authorities, prisons, NGOs and other contributors;
88. Calls on the Commission to ensure that anti-trafficking is given greater priority in the European Agenda on Migration (COM (2015)0240), so as to facilitate the engagement of victims in the prosecution of traffickers, by reform to rules on residency of victims of trafficking;
89. Calls on the Commission to address the abuse of self-employment in the employment of migrant labour in some EU Member States in order to avoid local labour standards and employment obligations, recognising that bogus self-employment is often used in the

migrant labour domains most prone to trafficking;

90. Calls for the EU and the Member States to strengthen regional cooperation on trafficking in human beings along known routes, such as from the East to the EU, by using the Instrument for Stability and the ongoing continuing responsibilities of candidate countries;
91. Calls for the EU to provide, through Eurostat, estimates on the number of victims of trafficking in human beings, registered or otherwise, in line with the general pattern followed by organisations such as the International Organisation for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC) and the International Labour Organisation (ILO);
92. Calls on the Member States to include the principle of non-refoulement in their anti-trafficking directives, following the example of the UN Trafficking Protocol and the Council of Europe Trafficking Convention, and in accordance with states' obligations under international refugee law and international human rights law;
93. Encourages the EU and the Member States to conduct research into the newest trends and forms of THB, including the influence that the current migration crisis could have on THB, in order to address the new developments with an adequate and targeted response;
94. Asks that the Commission produce an analysis of the links between different types of trafficking and the routes between them in the upcoming report on the Implementation of Directive 2011/36/EU, as victims are often exploited in different ways simultaneously or move from one type of trafficking to another; and that it promote continued research into the main causes of THB and their impact on gender equality;
95. Calls on the Commission to assess the need to review the mandate of the future European Public Prosecutor's Office to include powers, once established, to tackle trafficking in beings;
96. Urges the European Commission, taking into account that the Istanbul Convention is an effective tool to prevent and combat violence against women, including trafficking, and to protect and assist the victims, to promote the Member States' ratification of the Convention;
97. Instructs its President to forward this resolution to the Council, the Commission and the governments of the Member States.

## EXPLANATORY STATEMENT

Trafficking in human beings (THB) is a violation of fundamental human rights under Article 5 of the Charter on Fundamental Rights of the EU, as well as a violation of the victim's personal integrity and a serious organised crime that undermines the state and the rule of law. It has been addressed at many levels of governance, most notably in the EU with Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, which established a legal framework to better enable criminal prosecutions against traffickers. More crucially, Directive 2011/36/EU (hereafter 'the Directive') aims to better protect the victims of trafficking in human beings and reduce the vulnerability of potential victims. The Directive is generally acknowledged to be a comprehensive piece of legislation with a commendable human-rights approach, and clearly stressing the gender dimension of THB.

The Directive was due to be transposed by 6 April 2013. 26 Member States (MS) have officially notified the Commission of transposition, with only Germany having not done so. Denmark is not bound by the anti-trafficking legislation.

In the Directive, the Commission was given a number of reporting obligations. Under Article 23, The Commission is obliged to report by 6 April 2015 assessing the measures MS have taken in order to comply with the directive. Within this report, there should be a description of the establishment of a criminal offence the use of services which are the objects of exploitation with the knowledge that the person is a victim of trafficking in human beings. According to the Commission, these reports are due to be published in late 2016. The Commission is also obliged to come forward with a report by 6 April 2016 assessing the impact of criminalisation of the use of services, accompanied if necessary with adequate proposals. The Commission has failed to follow the timetable as outlined in the Directive.

### Gender dimension

Although victims include a broad range of people across all genders, ages and backgrounds, the statistics clearly show that the majority (80%) of victims are women and girls. Gender is a vulnerability factor, for both men and women. For women, vulnerability can be attributed to barriers of access to education, the gender pay gap, unequal access to decent work opportunities, gender-based violence, unemployment or under-employment, feminisation of poverty and migration, gender-insensitive development strategies, restrictive migration laws and policies, and armed conflict. These inequalities mean that women are potentially less likely to see their experience as exploitation, but rather that they are fulfilling their role as caregivers and service providers. Socialisation of gender also affects men as they are socialised into understanding that their role is to provide for the family, and that to be exploited is showing weakness and is a failure to fulfil their role as 'provider'.

Under Article 1 of the Directive MS are obliged to integrate the gender perspective into their anti-trafficking initiatives, but it is not clearly defined what this obligation means in practice. MS have not clearly indicated that they have implemented this requirement in full, and victims of all gender face barriers in access to assistance services. For transgender victims there is an even bigger issue with adequate service provision.

As the majority of victims are women and girls, it is important that this report has its focus on

the identification, treatment and protection of victims and the support that is available to them. Despite the Directive, victims of THB are still not being identified early enough or consistently, and continue to struggle with access to justice, services and fair treatment as they are entitled to by EU law.

### **Trafficking, defined**

The definition used in the Directive broadens the issue from the previous instruments. THB is made up of a large range of activities including sexual exploitation, forced labour, forced marriages, domestic servitude, organ harvesting, forced begging, illegal adoptions, forced marriage and other activities. These exploit different victims in different ways, and we should be adopting more detailed strategies accordingly. However, it is important to remember that there is a degree of overlap between these, in terms of the perpetrators having multiple interests and the movement of victims between the different forms of trafficking. For example, a girl who is initially trafficked into forced begging may later become a victim of sexual exploitation.

It is also very important to ensure that we do not prioritise one type of trafficking over another. The legal definition of trafficking makes no distinction between the different forms of trafficking and qualifies all as serious crimes, yet experience on the ground across the EU show that this is not the case. For example trafficking for labour exploitation is often considered a lesser crime than sexual exploitation, as it more likely to be seen as illegal work and breach of employment regulations rather than a crime. Alternatively, trafficking for sexual exploitation gets caught up in broader discussions on the sex industry (whether that is legal or illegal) and the focus on victims is lost.

### **Data**

Statistics do not give an exact representation of the real situation as there are a significant number of victims who are never identified. As THB is a crime that predominantly affects so-called 'hidden populations', there is significant underreporting of the crime in general and a poor record of identification of the victims of trafficking of all genders.

The Directive emphasised that 'the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics on THB' and provides for specific measures under Article 19. The national rapporteurs established in the implementation of the Directive should be adequately resourced and independent in order to provide the best quality data to feed into future initiatives to prevent THB.

Some MS provide more detail than others, but the full implementation of the Directive should help with this. Data is mostly provided by the police, but also comes from NGOs, border and immigration services, social services, local authorities and most distressingly, prisons and detention centres.

The use of different definitions leading to data that is not comparable. These differences in definitions mean that the data collected varies between MS. Furthermore, only 24 MS were able to provide gender specific data. In order to better assess the gender dimension of trafficking, MS should collect gender disaggregated and specific data.

### **Prevention**

Prevention is essential in tackling THB, and MS must ensure that they are doing all that they can in order to prevent people from becoming victims in the first place.

Initiatives to tackle gender inequality and empower women and girls (and marginalised groups) would reduce their vulnerability to trafficking. Education and empowerment schemes would assist with this. Furthermore, as has been requested previously by the Parliament, the Commission should come forward with a legislative proposal to tackle violence against women.

Many MS have campaigns in order to raise awareness in the general population to the risks of THB, but these need to be targeted in order to be effective. For example, some MS have made use of more proactive preventative actions like workshops targeted at specific populations who are vulnerable to trafficking and those working with them. Targeted action in schools could help to protect child victims.

Furthermore, the development of prevention initiatives should include those most relevant stakeholders. Therefore MS should formulate their prevention initiatives with social partners, civil society and survivors of trafficking, with reference to best practice.

### **Identification of victims**

Under the Directive, MS have an obligation to set up systems for early detection, identification and assistance to victims. However, the identification of victims is consistently flagged as an issue in tackling THB, and this has a number of different causes. Whilst there are a number of initiatives and projects funded by the Commission to assist with the identification of victims, practice on the ground demonstrates a clear implementation gap, indicating a lack of political will. The conflation of THB with other highly political issues such as migration or the arrival of refugees challenges progress that has been made and further endangers those people who are vulnerable to THB.

MS are obliged under Article 9 of the Directive to ensure that persons, units or services responsible for investigating or prosecuting THB are trained accordingly. This is clearly not the case consistently across MS. Training programmes should be expanded further to cover other relevant professionals including but not exclusive to police officers, judges, magistrates, lawyers, front line medical staff and social workers. This training should be focussed on the detection of victims, with particular regard to their vulnerability and specific needs, including gender-specific needs. Identification procedures that rely solely on a 'check-list' of indicators do not take into account the variety of experience that victims of THB have and their different outcomes. A 'one-size-fits-all' approach is too simplified and lets down some of the most vulnerable.

The Commission has produced a number of publications that are publicly available in order to raise awareness of these issues in specific professions, such as consular or diplomatic staff, and this should be developed to include other professions and disseminated more widely.

Awareness-raising initiatives in the general population are also hugely important, as there is often a misconception that THB cannot happen where you live. Awareness-raising on THB is as relevant in destination countries as it is in source countries. In source countries awareness-raising can help to prevent trafficking, but in destination countries it can help in identifying where trafficking victims are ending up.

### **Victim assistance**

According to the Directive, a person should be provided with assistance and support as soon as there is an indication that they might have been trafficked and irrespective of their willingness to act as a witness. These services should take the gender dimension into account, acknowledging that different genders (experiencing different types of trafficking) have



different needs from assistance.

According to the Commission's study on the gender dimension of trafficking in human beings, there are gender-specific harms for victims trafficked for the purposes of sexual exploitation compared to other forms, and therefore the services and assistance offered to victims should reflect this.

Interestingly, a 2014 study in Austria found that male victims tend to be disadvantaged in access to services in comparison with women because most services for victims have been designed with female victims of trafficking for sexual exploitation in mind. The study also found that male victims proved to be more defiant when it came to compliance with service provision rules.

Irrespective of their gender, the services for victims outlined in the Directive include accommodation, material assistance, medical treatment, including psychological assistance, counselling and information, and translation and interpretation services. Victims with special needs should receive additional help. Likewise victims are entitled to legal counselling and representation, including for the purpose of claiming compensation. This should be free of charge where the victim does not have the financial resources. The nature of trafficking means that victims are unlikely to have the resources to pay for this kind of assistance, therefore this should be free.

Adequate services and fair treatment for victims also acts as prevention, as victims who are well supported are more able to recover from the trauma of their experience and reintegrate into the economy and society, assist with prosecutions and raise awareness with public and policy makers. Furthermore, they are less likely to be re-trafficked.



11.4.2016

## **OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS(\*)**

for the Committee on Women's Rights and Gender Equality

on the implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims from a gender perspective (2015/2118(INI))

Rapporteur: Malin Björk

### **SUGGESTIONS**

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Women's Rights and Gender Equality, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- having regard to 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,
  - having regard to the 1948 Universal Declaration of Human Rights,
  - having regard to the 1979 UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW),
  - having regard to the UN Convention on the Rights of the Child of 20 November 1989,
  - having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention),
  - having regard to the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women on 15 September 1995, and to the subsequent outcome documents adopted at the United Nations Beijing +5, Beijing +10 and Beijing +15 special sessions and the Beijing +20 review conference,
  - having regard to Article 5 of the Charter of Fundamental Rights of the European Union,
- A. whereas, over the three-year period 2010-2012, 69 % of registered victims of trafficking in human beings (THB) were trafficked for sexual exploitation, 19 % for forced labour

and 12 % for other forms of exploitation such as removal of organs or criminal activities; whereas women account for 67 % of registered victims of THB in this period, men for 17 %, girls for 13 % and boys for 3 %, including transgender people; whereas different forms of trafficking need to be addressed with specific and tailored policy measures;

- B. whereas, as stated by the Joint UN Commentary on the EU Directive – A Human Rights-Based Approach (2011), several UN agencies recall that ‘trafficking in both men and women should be acknowledged, and the similarities and differences in the experiences of women and men in relation to vulnerabilities and violations should be addressed’;
- C. whereas THB is a modern kind of slavery that cannot be accepted in a society that is based on respect for human rights, including gender equality; whereas trafficking in human beings is transnational in nature; whereas a European approach, both in monitoring the phenomenon and in coordinating responses to it, is needed in order to effectively tackle this type of organised crime;
- D. whereas under Directive 2011/36/EU 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; whereas the own-initiative report on which this opinion is based is limited to an analysis of the implementation of Directive 2011/36/EU;
- E. whereas any effective anti-THB efforts must address the root causes of THB and the associated push and pull factors, including decreasing the demand and use of services involving victims of THB;
- F. whereas the demand for women, girls, men and boys in the prostitution industries is a decisive pull factor for THB for sexual exploitation; and whereas the demand for cheap labour and incapacity to uphold labour rights are pull factors for THB for labour exploitation;
- G. whereas there are contradictions between Directives 2004/81/EC and 2009/52/EC and Directive 2011/36/EU which prevent victims of THB from accessing proper support and assistance that are non-conditional on their participation in legal proceedings;
- H. whereas identification of victims remains a challenge, and whereas, in order to help victims of trafficking and to prosecute and convict traffickers, victim support and protection needs to be reinforced, including the right of the victim to legally reside and work in the Member State to which the victim has been trafficked, as well as improving victims’ access to justice and compensation;
- I. whereas the exploitation of others for sex shows should be considered to be trafficking in human beings;
- J. whereas new technologies and the internet can facilitate the recruitment of victims and the advertising and selling of services connected with trafficking in human beings on a global scale;

- K. whereas effective efforts against THB requires a strong framework for action with an integrated intersectional perspective on victims that includes for example gender and disabilities, and whereas special attention must be given to people living in extreme poverty, and vulnerable groups such as Roma, people with disabilities, lesbian, gay, bisexual, transgender and intersex (LGBTI) people, domestic workers, undocumented workers, asylum seekers, refugees and children, including unaccompanied minors;
- L. whereas women and children may be compelled to exchange sex for protection, in order to survive, in order to advance along their migratory route and for basic sustenance; whereas survival sex is frequently a direct consequence of gaps in assistance, failures of registration systems, family separations and the absence of safe and legal entry channels into the EU;
1. Calls on the Member States and the Commission to ensure that the implementation of Directive 2011/36/EU is based on an integrated, holistic and human rights approach, with an emphasis on victim assistance, support and protection;
  2. Stresses that migrant smuggling and THB are different phenomena but that they often overlap and need to be tackled in a consistent manner; recalls the role of EU agencies and networks in the early identification of victims at EU borders and in the fight against THB; insists therefore on the need for a better exchange of best practices, adequate training in THB for law enforcement personnel, with an emphasis on the gender dimension and the special needs of trafficked women, children and other vulnerable groups so that those involved fully understand the phenomenon they are seeking to tackle and know how to recognise it at an early stage, and greater cooperation between Europol, Eurojust, national authorities and third countries, and through the use of the European Criminal Records Information System (ECRIS), in order to prevent and combat all forms of human trafficking, including sexual exploitation in the EU;
  3. Calls on the Member States to cooperate in better developing guidelines on identifying victims of trafficking in human beings, which would help consular services and border guards in this task;
  4. Calls on the Member States to pay particular attention to vulnerable groups, which naturally include children; reiterates that Member States must consider poverty, gender, disability, pregnancy, state of health, migration status and the fact of belonging to an ethnic minority as factors when assessing the vulnerability of a victim;
  5. Considers that greater consideration should be paid to the situation of transgender victims, who often experience discrimination, stigmatisation and threats of violence because of their gender identity; is of the opinion that transgender people should be considered to be a vulnerable group, as they are particularly at risk of falling into the hands of traffickers seeking to exploit their despair; believes that this vulnerability factor should be taken into account when Member States conduct individual risk assessments, so as to ensure that victims of trafficking receive appropriate protection and care; calls on the Member States to provide officials likely to come into contact with victims or potential victims of trafficking in human beings with adequate training on the specificities of transgender victims, so as to be able to identify them more proactively and adapt assistance services to meet their needs;

6. Calls on the Member States to combat impunity, criminalise trafficking and ensure that perpetrators are brought to justice and that sanctions are strengthened; urges the Member States, therefore, to ratify all relevant international instruments, agreements and legal obligations which will make the efforts to combat trafficking in human beings more effective, coordinated and coherent, including the Council of Europe Convention on Action against Trafficking in Human Beings;
7. Calls on the Member States and intergovernmental organisations to ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination;
8. Calls on the Member States to accelerate the full and correct enforcement of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims;
9. Calls on the Member States to put in place strong criminal penalties for crimes of human trafficking, modern slavery and exploitation; and to establish as a criminal offence the act of knowingly using the services of victims of human trafficking, including victims of trafficking in prostitution, 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; notes the low number of prosecutions and convictions for the crime of trafficking at a national level;
10. Calls for greater priority and resourcing to be given by Europol and national police forces to the prosecution of those facilitating human trafficking, paying special attention to raising awareness among police forces and the general public alike about new forms of human trafficking;
11. Calls on the Member States and the Commission to develop concrete measures to decrease the demand for women, girls, men, and boys in prostitution as a key strategy to prevent and decrease THB; urges the Member States, in this context, to fully implement Article 18(4) of Directive 2011/36/EU, and the Commission to report back on the outcome;
12. Stresses that the cumulative effect of different types of discrimination on the grounds of sexual orientation or gender identity makes LGBTI people particularly vulnerable to trafficking in human beings; calls on the Member States to address the unique needs of LGBTI people; calls on the Commission to promote the exchange of best practices in this regard;
13. Calls on the Member States to establish hotlines which victims of human trafficking and exploitation can call to seek assistance and advice; notes that such hotlines have proved to be successful in other areas such as radicalisation and child abduction;
14. Calls on the Member States to make legal aid available to victims of trafficking not only in criminal proceedings, but also in civil, labour or immigration/asylum proceedings in which they are involved;
15. Stresses that forced marriage can be regarded as a form of trafficking in human beings if it

contains an element of exploitation of the victim, and calls on all Member States to include this dimension; stresses that exploitation may be sexual (marital rape, forced prostitution or pornography) or economic (domestic work or forced begging), and that the ultimate aim of trafficking can be forced marriage (selling a victim as a spouse or entering a marriage under duress); stresses that it is difficult for the authorities to detect such trafficking, as it takes place in private; calls on the Member States to provide appropriate refuge services for these victims; calls on the Commission to strengthen the exchange of best practices in this regard;

16. Is concerned at the growing phenomenon of sexual grooming; points out that the victims are often in a state of emotional dependence, which hinders investigative work, as they are less easily identified as victims of trafficking in human beings and often refuse to testify against the people grooming them; calls on the Commission to strengthen the exchange of best practices in this regard; calls on the Member States to provide a specific refuge for these victims and to ensure that law enforcement and judicial services recognise their status as victims, in particular if they are minors, so as to avoid stigmatising them for 'deviant behaviour';
17. Calls for the EU and the Member States to strengthen regional cooperation on trafficking in human beings along known routes, such as from the East to the EU, by using the Instrument for Stability and the ongoing continuing responsibilities of candidate countries;
18. Stresses that many victims of sexual exploitation are drugged for the purpose of keeping them in a state of physical and psychological dependence; calls, therefore, on the Member States to provide specialised support programmes for these victims and to recognise this as an aggravating circumstance in their criminal justice response to trafficking in human beings;
19. Calls for the Member States and the EU to collect and exchange reliable and detailed information regarding human trafficking;
20. Recalls that Regulation (EU) 2015/2219/EU on the European Union Agency for Law Enforcement Training (CEPOL) provides for CEPOL to promote, in its training activities, common respect for, and understanding of, fundamental rights in law enforcement, such as the rights, support and protection of victims, including safeguarding the rights of victims of gender-based violence; stresses the importance of these provisions in the context of trafficking in human beings, given the vulnerability of the victims, and calls on CEPOL to take full account of this dimension in the development of all future training;
21. Calls on the Member States to combat human trafficking by clamping down on those individuals using the internet and social networks to both recruit and exploit individuals;
22. Notes that Directive 2011/36/EU prohibits the criminalisation of victims of THB; calls on the Member States, in the light of the cross-border and intra-EU nature of THB, to fully implement Articles 11 to 17 of Directive 2011/36/EU on protection and support of victims of trafficking in human beings (in particular by increasing the number of shelters for victims and by strengthening programmes for victims' reintegration into society) and to fully implement Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime so as to ensure consistency and proper support and assistance, including as regards the right to reside in and access the labour market of

the Member State to which the victim has been trafficked; stresses that these provisions should not be conditional on victims lodging complaints or cooperating in criminal investigations; calls on the Commission to strengthen the exchange of best practices on the protection of victims;

23. Calls on the Member States to critically assess their registration of refugees and the relevant services and care structures, as this group, particularly unaccompanied minors, are very vulnerable to exploitation by criminal gangs and subsequent trafficking in human beings;
24. Recalls that, according to Europol, about 10 000 unaccompanied children have disappeared after arriving in the EU in 2015, and that these children could be victims of trafficking and exposed to all kinds of exploitation and abuse; calls on the Member States to fully implement the asylum package and register children upon their arrival in order to ensure their inclusion in child protection systems; calls on the Member States to increase information sharing in order to better protect migrant children in Europe;
25. Calls on all Member States to effectively guarantee the rights of victims, in particular by providing access to legal aid, legal assistance and representation, psychological and medical support, information on their rights to assistance and health care, including the right to an abortion for victims of sexual exploitation, their rights regarding access to justice and to a lawyer, and any possible compensation as well as possible access to witness protection programmes; notes that Directive 2012/29/EU lays down minimum standards on the rights, support and protection of victims of crime and that the implementation of Directive 2011/36/EU should be analysed in the light of the provisions of Directive 2012/29/EU; notes that special measures may also be put in place to protect victims from further victimisation and trauma during investigations and trials;
26. Stresses that prevention in terms of taking appropriate measures, such as education and training, to discourage and reduce demand, as well as information and awareness-raising campaigns, including on modern slavery, research and educational programmes aimed at reducing the risk of people becoming victims of trafficking, is of crucial importance to effectively combat trafficking in human beings; calls on the Commission and the Member States, therefore, to take targeted actions to discourage demand for THB; also calls on the Member States to put in place stronger penalties against the many employers and landlords who facilitate human trafficking by further exploiting individuals; asks that the Member States and law enforcement authorities also strengthen their cooperation with labour, social, health and safety inspectors, as well as fisheries inspectors;
27. Calls on the Commission to assess the effectiveness of cooperation between the Member States and Europol in combating trafficking in human beings; stresses the importance of systematic exchange of data and of all Member States contributing to the European databases used for this purpose, including the Europol databases Focal Point Phoenix and Focal Point Twins; stresses the need for border guards and coast guards to have access to Europol databases;
28. Calls on the Commission to investigate further, in the light of Directive 2011/36/EU, the role of the internet, social networks and new technologies in trafficking in human beings, in particular with regard to sexual exploitation on pornographic sites and sites offering online sex shows;



29. Calls on Europol and the Member States to strengthen their action against recruiters, whether via a proactive approach or on the basis of a victim's testimony, in accordance with Article 9 of Directive 2011/36/EU; stresses that recruiters use a variety of channels, including social networks and internet sites (online recruitment agencies); calls on the Commission to expand the mandate of Europol's EU Internet Referral Unit (IRU) in the fight against trafficking in human beings;
30. Calls on the Commission to develop a privileged partnership with the major internet companies and to keep Parliament duly informed;
31. Calls for better implementation and monitoring of Article 8 of Directive 2011/36/EU, so as to ensure the non-prosecution of and non-application of sanctions or penalties to victims of THB, and emphasises that this includes the non-application of sanctions or penalties to people in prostitution and non-punishment for irregular entry or residence in countries of transit and destination;
32. Stresses the importance of 'following the money' as a key strategy for investigating and prosecuting the organised crime networks that profit from THB, and calls on Europol and Eurojust to reinforce their capacities in the field of combating THB; calls for the Member States to work closely with Europol and each other in order to investigate the financial aspects and the laundering of money in human trafficking cases; stresses that Member States should strengthen cooperation in freezing and confiscating the assets of individuals involved in trafficking, as this could be an effective means of changing THB from a 'low risk-high profit' business into a 'high risk-low profit' one; calls on the Member States, in this context, to use more efficiently all existing tools available such as mutual recognition of court judgments, joint investigation teams and the European investigation order; believes that the confiscated assets of people convicted of trafficking offences should be used to support and compensate victims of trafficking; also notes that the huge funds raised by human trafficking and exploitation fund other kinds of serious crime;
33. Takes the view that Article 11(5) of Directive 2011/36/EC should be expanded to introduce aid for future integration (language learning, familiarisation with the culture and community, etc.) where the victims' circumstances allow them to opt for a residence permit;
34. Insists on the need for Member States to enhance their police and judicial cooperation, particular via Europol and Eurojust, including information sharing and combating online recruitment of people for THB;
35. Calls for the Member States to implement Directive 2011/36/EC, as well as all other relevant legal frameworks on THB, without delay; urges the Commission to take legal action against Member States neglecting their obligations;
36. Stresses that non-governmental organisations (NGOs) and individuals working to protect and help victims of THB should not be held responsible for any crime;
37. Calls on the Member States to educate their citizens on THB and victim identification through information campaigns; calls for the Member States and the EU to target funding to NGOs supporting victims of THB;

38. Calls on the Commission to examine how the different approaches to prostitution in national legislation affect trafficking in human beings;
39. Calls for the EU to pay attention to and make visible the new forms of trafficking and exploitation of human beings, including reproductive exploitation and trafficking in new-born children;
40. Calls for a consistent approach to prosecution of offences related to human trafficking, and for the Member States to step up their investigations and prosecutions; calls, in that regard, for the Member States to increase cross-border cooperation and collaboration with the relevant EU agencies;
41. Calls on the Member States to include the principle of non-refoulement in their anti-trafficking directives, following the example of the UN Trafficking Protocol and the Council of Europe Trafficking Convention, and in accordance with states' obligations under international refugee law and international human rights law;
42. Recalls that training of practitioners and officials is crucial to the early identification of potential victims and the prevention of crime; calls therefore on the Member States to fully apply Article 18(3) of Directive 2011/36/EU and to share best practices;
43. Calls on the Commission to assess the need to review the mandate of the future European Public Prosecutor's Office to include powers, once established, to tackle trafficking in beings;
44. Calls for the EU to provide, through Eurostat, estimates on the number of victims of trafficking in human beings, registered or otherwise, in line with the general pattern followed by organisations such as the International Organisation for Migration (IOM), the United Nations Office on Drugs and Crime (UNODC) and the International Labour Organisation (ILO);
45. Calls for stronger cooperation with online platforms on projects aimed at raising awareness of the risks of being targeted and recruited over the internet and via social networks;
46. Considers that migrants are particularly vulnerable to trafficking, especially children; calls on the Member States to increase cooperation, including in hotspots, in identifying potential victims and combating traffickers and smugglers; recalls, in this regard, the obligation of Member States to pay special attention to child victims of trafficking, including unaccompanied minors coming from third countries, and to provide special protection to children in criminal procedures – the best interests of the child must be considered paramount at all times (Articles 13, 14, 15 and 16);
47. Encourages the EU and the Member States to conduct research into the newest trends and forms of THB, including the influence that the current migration crisis could have on THB, in order to address the new developments with an adequate and targeted response;
48. Considers that safe and legal channels of entry into the EU would decrease vulnerability and trafficking in human beings;

49. Appreciates the work of the EU Anti-Trafficking Coordinator, who is responsible for improving coordination and coherence among EU institutions, EU agencies, Member States and international actors and developing existing and new EU policies to address trafficking in human beings; is of the view, however, that in order to accelerate the EU's response to THB, the mandate of the EU Anti-Trafficking Coordinator could be extended.

## RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

<b>Date adopted</b>	7.4.2016
<b>Result of final vote</b>	+:                31 -:                1 0:                18
<b>Members present for the final vote</b>	Jan Philipp Albrecht, Malin Björk, Michał Boni, Caterina Chinnici, Rachida Dati, Cornelia Ernst, Laura Ferrara, Monika Flašíková Beňová, Kinga Gál, Sylvie Guillaume, Jussi Halla-aho, Monika Hohlmeier, Sophia in 't Veld, Eva Joly, Sylvia-Yvonne Kaufmann, Timothy Kirkhope, Barbara Kudrycka, Kshetu Kyenge, Juan Fernando López Aguilar, Monica Macovei, Claude Moraes, Péter Niedermüller, Judith Sargentini, Birgit Sippel, Branislav Škripek, Csaba Sógor, Traian Ungureanu, Kristina Winberg, Tomáš Zdechovský
<b>Substitutes present for the final vote</b>	Laura Agea, Carlos Coelho, Anna Maria Corazza Bildt, Pál Csáky, Miriam Dalli, Daniel Dalton, Gérard Deprez, Anna Hedh, Jean Lambert, Jeroen Lenaers, Andrejs Mamikins, Morten Helveg Petersen, Emil Radev, Barbara Spinelli, Jaromír Štětina, Elissavet Vozemberg-Vrionidi
<b>Substitutes under Rule 200(2) present for the final vote</b>	Petras Auštrevičius, Herbert Dorfmann, José Inácio Faria, Eugen Freund, David McAllister, Marita Ulvskog

## RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

<b>Date adopted</b>	19.4.2016
<b>Result of final vote</b>	+:               26 -:               0 0:               6
<b>Members present for the final vote</b>	Maria Arena, Catherine Bearder, Beatriz Becerra Basterrechea, Malin Björk, Vilija Blinkevičiūtė, Anna Maria Corazza Bildt, Viorica Dăncilă, Iratxe García Pérez, Anna Hedh, Teresa Jiménez-Becerril Barrio, Elisabeth Köstinger, Agnieszka Kozłowska-Rajewicz, Angelika Mlinar, Maria Noichl, Marijana Petir, Pina Picierno, João Pimenta Lopes, Terry Reintke, Jordi Sebastià, Michaela Šojdrová, Ernest Urtasun, Elissavet Vozemberg-Vrionidi, Jadwiga Wiśniewska, Anna Záborská, Jana Žitňanská
<b>Substitutes present for the final vote</b>	Rosa Estaràs Ferragut, Kostadinka Kuneva, Constance Le Grip, Evelyn Regner, Marc Tarabella
<b>Substitutes under Rule 200(2) present for the final vote</b>	Julia Reid, Marco Zanni

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

26	+
ALDE	Catherine Bearder, Beatriz Becerra Basterrechea, Angelika Mlinar
EFDD	Marco Zanni
GUE/NGL	Malin Björk, Kostadinka Kuneva, João Pimenta Lopes
PPE	Anna Maria Corazza Bildt, Rosa Estaràs Ferragut, Teresa Jiménez-Becerril Barrio, Agnieszka Kozłowska-Rajewicz, Constance Le Grip, Elisabeth Köstinger, Elissavet Vozemberg-Vrionidi
S&D	Maria Arena, Vilija Blinkevičiūtė, Viorica Dăncilă, Iratxe García Pérez, Anna Hedh, Maria Noichl, Pina Picierno, Evelyn Regner, Marc Tarabella
VERTS/ALE	Terry Reintke, Jordi Sebastià, Ernest Urtasun

0	-

6	0
ECR	Jadwiga Wiśniewska, Jana Žitňanská
EFDD	Julia Reid
PPE	Marijana Petir, Michaela Šojdrová, Anna Záborská

Key to symbols:

+ : in favour

- : against

0 : abstention



Strasbourg, 28.4.2015  
COM(2015) 185 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**The European Agenda on Security**

The European Union aims to ensure that people live in an area of freedom, security and justice, without internal frontiers. Europeans need to feel confident that, wherever they move within Europe, their freedom and their security are well protected, in full compliance with the Union's values, including the rule of law and fundamental rights.

In recent years new and complex threats have emerged highlighting the need for further synergies and closer cooperation at all levels. Many of today's security concerns originate from instability in the EU's immediate neighbourhood and changing forms of radicalisation, violence and terrorism. Threats are becoming more varied and more international, as well as increasingly cross-border and cross-sectorial in nature.

These threats require an effective and **coordinated response at European level**. All the EU institutions have agreed that we need a renewed Internal Security Strategy for the coming five years.<sup>1</sup>

To meet this objective, this **European Agenda on Security** sets out how the Union can bring **added value** to support the Member States in ensuring security. As President Jean-Claude Juncker said in his Political Guidelines, "*Combating cross-border crime and terrorism is a common European responsibility*".<sup>2</sup> Member States have the front line responsibility for security, but can no longer succeed fully on their own. While respecting national responsibilities for upholding the law and safeguarding internal security, all relevant EU and national actors need to work better together to tackle cross-border threats. The European Agenda on Security must therefore be a **shared agenda** between the Union and Member States. The result should be **an EU area of internal security** where individuals are protected in full compliance with fundamental rights.

This Agenda will drive better information exchange, increased operational cooperation and mutual trust, drawing on the full range of EU policies and tools. It will ensure that the internal and external dimensions of security work in tandem. Whilst the EU must remain vigilant to other emerging threats that might also require a coordinated EU response, the Agenda prioritises **terrorism, organised crime** and **cybercrime** as interlinked areas with a strong cross-border dimension, where EU action can make a real difference.

## **1. WORKING BETTER TOGETHER ON SECURITY**

The EU has already put in place a range of legal, practical, and support tools to underpin a European area of internal security. The strategic objectives set out in the Internal Security Strategy 2010-2014 remain valid and should continue to be pursued.<sup>3</sup> The Treaty of Lisbon has put the EU on the right footing to achieve this, reinforcing the legal framework to pool efforts and ensure liberty and security, internal free movement and an effective European response to cross-border threats. The Treaty strengthened the protection of fundamental rights and democratic control over Union policies on internal security, and made the European Parliament an equal co-legislator on police and judicial cooperation in criminal matters. Since 1 December 2014, police and judicial cooperation in criminal matters fall within the normal EU legal order. Judicial control by the European Court of Justice and the Commission's role as Guardian of the Treaties now

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<sup>1</sup> European Council Conclusions EUCO 79/14 of 27.6.2014; European Parliament Resolution 2014/2918 of 17.12.2014; Council Conclusions of 4.12.2014 on the development of a renewed EU Internal Security Strategy.

<sup>2</sup> A New Start for Europe. My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission, 15.7.2014.

<sup>3</sup> Council Conclusions of 25.2.2010 on the Internal Security Strategy for the European Union: Towards a European security model; COM(2014) 154 final of 11.3.2014.



apply in full<sup>4</sup>, which will ensure individuals' rights are upheld, and increase legal certainty and confidence.

Now it is time to work better and more closely together. The success of the tools that the Union has put in place in recent years relies, first of all, on responsibility-sharing, mutual trust and effective cooperation between all actors involved: EU institutions and agencies, Member States and national authorities.

To this end, the Agenda sets out a shared approach for the EU and its Member States that is comprehensive, results-oriented and realistic. To maximise the benefits of existing EU measures and, where necessary, deliver new and complementary actions, all actors involved have to work together based on **five key principles**.

**First, we need to ensure full compliance with fundamental rights.** Security and respect for fundamental rights are not conflicting aims, but consistent and complementary policy objectives.<sup>5</sup> The Union's approach is based on the common democratic values of our open societies, including the rule of law, and must respect and promote fundamental rights, as set out in the Charter of Fundamental Rights. All security measures must comply with the principles of necessity, proportionality and legality, with appropriate safeguards to ensure accountability and judicial redress<sup>6</sup>. The Commission will strictly test that any security measure fully complies with fundamental rights whilst effectively delivering its objectives. The impact of any new initiative on free movement and the protection of personal data must be fully in line with the proportionality principle, and fundamental rights. This is a shared responsibility for all EU and Member State actors. EU bodies such as the EU Agency for Fundamental Rights (FRA) and the European Data Protection Supervisor have an important role in assisting EU institutions and other EU agencies to uphold and promote our values.

**Second, we need more transparency, accountability and democratic control, to give citizens confidence.** The European Parliament has taken up its full role as co-legislator, ensuring democratic oversight. The specific role of national parliaments in the area of freedom, security and justice<sup>7</sup> is reflected in the Commission's wider commitment to a renewed political dialogue with national parliaments. Twice a year the Commission will update the European Parliament and the Council on the implementation of this Agenda. The Commission will also develop performance indicators for key EU instruments. To further enhance transparency and participation, the Commission will set up in 2015 an EU Security Consultative Forum bringing together Member States, the European Parliament, EU agencies, and representatives of civil society, academia and the private sector.

**Third, we need to ensure better application and implementation of existing EU legal instruments.** One of the Commission's priorities will be to help Member States to further develop mutual trust, fully exploit existing tools for information sharing and foster cross-border operational cooperation between competent authorities. Peer evaluation and effective monitoring of the implementation of European measures both have a role to play.

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<sup>4</sup> Subject to the specific terms of Protocol 22 as concerns Denmark and Protocol 21 and 36 as concerns the United Kingdom and Ireland.

<sup>5</sup> Article 6 of the Charter of Fundamental Rights and Judgment of the European Court of Justice of 8 April 2014, in joined cases C-293/12 and C-594/12, paragraph 42.

<sup>6</sup> Article 52(1) of the Charter of Fundamental Rights; judgment of the European Court of Justice of 8 April 2014, quoted above.

<sup>7</sup> Article 69 TFEU.

**Fourth, we need a more joined-up inter-agency and a cross-sectorial approach.**

Given the increasing nexus between different types of security threats, policy and action on the ground must be fully coordinated among all relevant EU agencies, in the area of Justice and Home Affairs<sup>8</sup> and beyond. These agencies provide a specialised layer of support and expertise for Member States and the EU. They function as information hubs, help implement EU law and play a crucial role in supporting operational cooperation, such as joint cross-border actions. It is time to deepen cooperation between these agencies. The Commission will launch a reflection on how to maximise their contribution, through closer inter-agency cooperation, coordination with Member States, comprehensive programming, careful planning and targeting of resources.

Specific actions in a wide range of EU policies contribute to security objectives, including in the area of transport, finance, customs, education, maritime security policy, information technologies, energy and public health. Actions in the Digital Single Market and the European Neighbourhood Policy will complement and reinforce the European Agenda on Security. The Agenda builds also on existing sectoral strategies that can contribute – directly or indirectly – to a high level of security.<sup>9</sup>

This Agenda has to be seen in conjunction with the forthcoming European Agenda on Migration,<sup>10</sup> which will address issues directly relevant to security, such as smuggling of migrants, trafficking in human beings, social cohesion and border management.

**Fifth, we need to bring together all internal and external dimensions of security.**

Security threats are not confined by the borders of the EU. EU internal security and global security are mutually dependent and interlinked. The EU response must therefore be comprehensive and based on a coherent set of actions combining the internal and external dimensions, to further reinforce links between Justice and Home Affairs and Common Security and Defence Policy. Its success is highly dependent on cooperation with international partners. Preventive engagement with third countries is needed to address the root causes of security issues.

We should maximise the added value of existing policy **dialogues on security** conducted by the EU – and the linked EU financial instruments and activities – with enlargement and neighbourhood countries, key strategic partners, and relevant international and regional organisations. Dialogues should be extended to include priorities such as cooperation in fight against transnational organised crime and terrorism, smuggling of migrants and trafficking in human beings. This should lead to specific joint action plans with key third countries and be reflected in the targeted use of EU financial instruments.

EU Delegations in third countries are important for the dialogues on security, and therefore require expertise and stronger local coordination. The ongoing **deployment of security experts** in EU Delegations in European Neighbourhood Policy countries and other targeted non-EU countries should be a priority. We should also explore how to

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<sup>8</sup> The EU law enforcement agency Europol, the EU agency for the management of operational cooperation at the external borders Frontex, the EU judicial cooperation agency Eurojust, the European police college Cepol, the EU agency for large-scale IT systems eu-LISA, and the European Monitoring Centre for Drugs and Drug Addiction EMCDDA.

<sup>9</sup> EU Maritime Security Strategy (Council Conclusions of 24.6.2014); the Cyber Security Strategy (JOIN(2013) 1 final of 7.2.2013); the Strategy for Customs Risk Management (COM(2014) 527 final of 21.8.2014); the Strategic Framework for European Cooperation in Education and Training (Council Conclusions of 12.5.2009); the EU Youth Strategy (COM(2009) 200 final of 27.4.2009); EU strategy to step up the fight against cigarette smuggling and other forms of illicit trade in tobacco products (COM(2013) 324 final of 6.6.2013). The Agenda also complements ongoing initiatives such as the review of strategic export controls (COM(2014) 244 final of 24.4.2014).

<sup>10</sup> The European Agenda on Migration is one of the initiatives of the Commission Work Programme for 2015.

make full use of the expertise of Member State law enforcement officials seconded to non-EU countries, as well as consider the feasibility of posting EU agencies' liaison officers and magistrates in key third countries.

Mutual legal assistance (MLA) agreements with third countries (United States, Japan<sup>11</sup>) are key instruments for international judicial cooperation, and the Commission will assess whether it is necessary to develop other bilateral or multilateral agreements with key third countries.

Finally, the Union should further develop its relations with international organisations, such as the UN, the Council of Europe, and Interpol, and use multilateral forums such as the Global Counter Terrorism Forum more actively to promote best practices and meet common objectives.

External aspects of security will be more comprehensively developed in the framework of the Strategic Review that the High Representative for Foreign Affairs and Security Policy/Vice-President of the Commission has initiated, as well as in the ongoing review of the European Neighbourhood Policy.

## **2. STRENGTHENING THE PILLARS OF THE EU ACTION**

In operational terms, working better and more closely together means, above all, that all actors involved – be it EU institutions and agencies, Member States or national law enforcement authorities – fully implement existing instruments. This also calls, where necessary, for new or more developed tools to maximise the added value of EU measures for information exchange, operational cooperation and other support.

### *2.1 Better information exchange*

The Union provides a number of tools to facilitate the exchange of information between national law enforcement authorities. They should be used to the full by the Member States. Where there are still critical gaps, we should assess whether additional EU tools are necessary.

The **Schengen Information System (SIS)** is the most widely used information-sharing instrument today. Competent national authorities can use it to consult alerts on wanted or missing persons and objects, both inside the Union and at the external border. The SIS was upgraded in early 2015 to improve information exchange on terrorist suspects and to reinforce the efforts of Member States to invalidate the travel documents of persons suspected of wanting to join terrorist groups outside the EU. The Commission will look into possibilities to help Member States to implement travel bans set at national level. The Commission will evaluate the SIS in 2015-2016 to assess whether new operational needs require legislative changes, such as introducing additional categories to trigger alerts.

To further strengthen security at the external borders, there should be fuller use of the SIS together with Interpol's database on **Stolen and Lost Travel Documents (SLTD)**. The Commission will help Member States to use automated border controls with checks of the SIS and the SLTD, and it will continue to monitor if Member States implement their obligation to provide data to the SLTD.<sup>12</sup> The Commission is also updating the

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<sup>11</sup> Council Decisions 2009/820/CFSP of 23.10.2009 and 2010/88/CFSP/JHA of 30.11.2009.

<sup>12</sup> Common Position 2005/69/JHA of 24.1.2005.

handbook for border guards to better target border checks and to promote the full use of the SIS and the SLTD.

Member States bear responsibility for the entire Union when they control their part of the external borders. This is why **common risk indicators** should support the work of national border authorities when conducting checks on persons. On the basis of contributions from Member States, the Commission will finalise a first set of common risk indicators, in respect of foreign terrorist fighters, in the first half of 2015. Europol and Frontex will play a key role in the future maintenance of these risk indicators. The Commission will continue to monitor the effectiveness of the Schengen Border Code, and examine any emerging need for improvements.

Common high standards of **border management**, in full respect of the rule of law and of fundamental rights, are essential to preventing cross-border crime and terrorism. The European Agenda on Migration will further address border management. The revised proposal on Smart Borders which the Commission intends to present by the beginning of 2016 will help increase efficiency and effectiveness.

Complementary measures to improve security in relation to the **movement of goods** also contribute to tackle illegal activities at the border, such as trafficking of weapons, illicit drug and cigarette smuggling or illegal currency transfers. The Customs Advance Cargo Information System provides customs authorities with advance notification for security risk assessment of cargo arriving into and departing from the EU. This system should be fully exploited by ensuring effective sharing of information between customs and with other law enforcement authorities. The Anti-Fraud Information System (AFIS) provides a crucial platform for exchange of customs anti-fraud information supporting customs law enforcement to fight cross border crime.<sup>13</sup>

The **Prüm** framework<sup>14</sup> is another example of an information exchange tool at EU level that is yet to be used to its full potential. It can offer automated comparison of DNA profiles, fingerprint data and vehicle registration data – which are key to detecting crime and building an effective case. The system is falling short of its potential because at this stage only a limited number of Member States have implemented their legal obligations and integrated the network with their own systems. This impedes the overall effectiveness of the Prüm framework in catching and prosecuting criminals. Member States have received significant financial and technical support for implementation. The Commission will treat this area as a priority in using its powers to ensure the correct implementation of EU law.

Of course, legal implementation of EU instruments at national level is not enough. The tools of the EU security framework will only take full effect when national law enforcement agencies feel confident in existing instruments and share information readily. The proposal for a new legal basis for **Europol**,<sup>15</sup> currently before the co-legislators, seeks to enhance Europol's analytical capabilities, trigger operational action on the part of Member States, and reinforce the agency's data protection regime. Member States should use Europol as their channel of first choice for law enforcement information sharing across the EU. Europol's Secure Information Exchange Network Application (SIENA) allows Member States to exchange information in a swift, secure

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<sup>13</sup> AFIS is run by the European Anti-Fraud Office (OLAF).

<sup>14</sup> Council Decision 2008/615/JHA of 23.6.2008 and Council Decision 2008/616/JHA of 23.6.2008.

<sup>15</sup> COM(2013) 173 final of 27.3.2013. Part of the proposal was replaced by the proposal for a Regulation establishing a European Union agency for law enforcement training Cepol (COM(2014) 465 final of 16.7.2014).

and user-friendly way with each other, with Europol, or with third parties that have a cooperation agreement with Europol. The active use of information exchange instruments also needs the right interface between the EU's tools and national law enforcement systems, such as **Single Points of Contact**. Member States must put the right structures in place at national level to integrate and coordinate the work of the relevant authorities.

Tracking the movements of offenders is key to disrupting terrorist and criminal networks. It is now urgent that the co-legislators finalise their work on the establishment of an **EU Passenger Name Record (PNR)** system for airline passengers that is fully compatible with the Charter of Fundamental Rights while providing a strong and effective tool at EU level. Analysis of PNR information provided at the time of booking and check-in helps to identify high risk travellers previously unknown to law enforcement authorities. PNR data has proven necessary to identify high risk travellers in the context of combatting terrorism, drugs trafficking, trafficking in human beings, child sexual exploitation and other serious crimes. Once adopted, the PNR Directive will ensure better cooperation between national systems and reduce security gaps between Member States. Common risk indicators for the processing of PNR data will help to prevent criminals escaping detection by travelling through another Member State. Europol and Frontex can again play a key role in developing and distributing such risk indicators on the basis of information received from Member States.

The EU has concluded **PNR agreements** with the United States, Canada and Australia. Such cooperation has real added value in identifying and apprehending foreign terrorist fighters, drug traffickers or travelling sex offenders. The Union's future approach to the exchange of PNR data with non-EU countries will take into account the need to apply consistent standards and specific fundamental rights protections. Once the European Court of Justice has issued its opinion on the draft PNR Agreement with Canada, and based on the Court's conclusions, the Commission will finalise its work on legally sound and sustainable solutions to exchange PNR data with other third countries, including by considering a model agreement on PNR setting out the requirements third countries have to meet to receive PNR data from the EU.

Common rules on **data protection** will enable law enforcement and judicial authorities to cooperate more effectively with each other, as well as building confidence and ensuring legal certainty. Agreement by the end of 2015 on the Data Protection reform as a whole is key, and particularly on the proposal for a Data Protection Directive for police and criminal justice authorities. In addition, the European Union is negotiating with the United States government an international framework agreement ("Data Protection Umbrella Agreement") in order to ensure a high level of protection of personal data transferred between the EU and the US for the prevention, detection, investigation and prosecution of criminal offences, including terrorism.

**Communications data** can also contribute effectively to the prevention and prosecution of terrorism and organised crime. Following the judgment of the European Court of Justice on the Data Retention Directive<sup>16</sup>, the Commission will continue monitoring legislative developments at national level.

Fighting criminal organisations active in several EU countries also requires information exchange and cooperation between judicial authorities. 26 Member States are using the **European Criminal Records Information System (ECRIS)**, which allows for information exchange on previous convictions for EU nationals. However, it does not

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<sup>16</sup> Judgment of the European Court of Justice of 8 April 2014, quoted above.

work effectively for non-EU nationals convicted in the EU. The Commission will accelerate the work already under way to improve ECRIS for non-EU nationals and is ready to contribute to its effective implementation.

The real-time availability of existing data across Member States is an area for future work on information exchange. In response to a request made by the Council<sup>17</sup>, the Commission will assess the necessity and potential added value of a **European Police Record Index System (EPRIS)** to facilitate cross-border access to information held in national police records. In the meantime, the Commission is supporting the launch of a pilot project planned by a group of Member States to establish the mechanisms for automated cross-border searches in national indexes on a 'hit'/'no hit' basis.<sup>18</sup>

Finally, the **Maritime Common Information Sharing Environment (CISE)** will enable interoperability of relevant security data in areas such as piracy, terrorism, arms and drugs smuggling, human trafficking, environmental pollution, civil protection and natural disasters between competent authorities within their existing mandates.

*EU action must focus first of all on the **full implementation of rules already in place** – such as the Prüm framework – and **adoption of proposals already on the table** – such as the EU PNR Directive, the Europol Regulation and the Data Protection reform. This will already constitute a major step forward by putting in place a clear, secure, and properly-regulated set of tools to give the authorities the information they need – as long as these tools are used to their full potential. **Key instruments** like the Schengen Information System, the Schengen Border Code and ECRIS should also be kept under review and any gaps in coverage filled.*

## 2.2 Increased operational cooperation

The Lisbon Treaty provides legal and practical arrangements to make operational cooperation between authorities of different Member States effective.

Through the **EU Policy Cycle for serious and organised crime**, Member States authorities coordinate common priorities and operational actions. The Standing Committee on Operational Cooperation on Internal Security (COSI) plays a central role. The Policy Cycle provides a methodology for an intelligence-led approach to internal security, based on joint threat assessments coordinated within Europol. It targets available resources in view of immediate, mid-term and long-term security threats and risks. The Policy Cycle should be used more by Member States to launch concrete law enforcement operations to tackle organised crime, including with third countries. Operation Archimedes, coordinated by Europol in September 2014 to address a variety of serious crimes across Member States and third countries, provided a practical example of how this can help.<sup>19</sup> Such operations should be evaluated regularly in order to identify best practices for future action.

**EU agencies** play a crucial role in supporting operational cooperation. They contribute to the assessment of common security threats, they help to define common priorities for

<sup>17</sup> See Council Conclusions of 4.12.2014, mentioned above.

<sup>18</sup> The automated reply to a search in the index would only indicate if data is available ('hit') or not ('no hit') in the police record of another country. In case of a hit, additional data would need to be requested using existing channels for police cooperation.

<sup>19</sup> Operation Archimedes took place in September 2014; law enforcement authorities from 34 countries took part; coordination was provided by Europol. The operation targeted organised criminal groups and resulted in over 1000 arrests made across Europe.

operational action, and they facilitate cross-border cooperation and prosecution. Member States should make full use of the support of the agencies to tackle crime through joint action. Increased cooperation between the agencies should also be promoted, within their respective mandates. The revised cooperation agreement between Europol and Frontex, once implemented, will allow such synergies by enabling the two agencies to share personal data with appropriate data protection safeguards. Eurojust and Europol should further enhance their operational cooperation.

Based on contributions from EU agencies and in close cooperation with Member States, the Commission has acquired specific expertise in developing **risk assessments**. The Commission has developed Risk Assessment and Mapping Guidelines for Disaster Management<sup>20</sup> as well as Guidelines on the Assessment of Member States' Risk management capability, and conducted risk assessments on explosives in air cargo from third countries and on passenger checks at airports in Member States. The Commission intends to apply this methodology in other areas, such as critical infrastructures, money laundering and terrorist financing, and to assess in particular the cascading effects of systemic risks.

Coordination hubs can facilitate a coherent **European response during crises and emergencies**, avoiding unnecessary and expensive duplication of efforts. In the framework of the **Solidarity Clause**<sup>21</sup>, a Member State can request EU assistance in case of crisis, including terrorist attacks. The EU Emergency Response Coordination Centre acts as the main 24/7 coordination and support platform for all crises under the Union Civil Protection Mechanism<sup>22</sup>, the Solidarity Clause and the Integrated Political Crisis Response arrangements (IPCR). It relies on inputs from the Commission, EU agencies and Member States. With increasing and new disaster risks, Member States and the Commission need to work together to fully implement and operationalize the 2013 civil protection legislation,<sup>23</sup> including following up on the Sendai Framework for Disaster Risk Reduction 2015-2030.<sup>24</sup> The EU should continue reinforcing crisis management preparedness for a more efficient and coherent EU response to crises sparked by criminal acts, impacting on borders, public security and critical systems. This includes running more joint field exercises.

Cross-border tools are available at EU level to support operational cooperation. **Joint Investigation Teams (JITs)** provide a ready-made framework for cooperation between Member States, set up for a fixed period to investigate specific cases. JITs are a successful tool that should be used more regularly and draw systematically on the agencies. Where criminal cases have an international dimension, Member States should make use of the possibility to involve third countries in JITs. Similarly, **Joint Customs Operations (JCOs)** allow customs authorities to tackle cross-border crime in the customs area, using a multi-disciplinary approach. The Commission and the Member States have jointly developed common risk criteria for security risk assessments by customs of international goods movements. In line with the EU Strategy and Action Plan for customs risk management, the EU should continue to strengthen its capacity for detection of illicit trade in goods or cash.

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<sup>20</sup> SEC(2010) 1626 final of 21.12.2010.

<sup>21</sup> Article 222 TFEU.

<sup>22</sup> The Union Civil Protection Mechanism was established in 2001 to foster cooperation among national civil protection authorities across Europe.

<sup>23</sup> Decision 1313/2013/EU of 17.12. 2013 on a Union Civil Protection Mechanism.

<sup>24</sup> This encompasses making local and national level infrastructure more disaster-resilient, promoting innovation, creating more effective linkages between research, policy and operations, developing partnerships with the private sector and mainstreaming disaster risk management.

Cooperation in **networks of national specialised units** is another effective way of ensuring operational cooperation across borders. Cross-border cooperation between national Financial Intelligence Units (FIUs) and national Asset Recovery Offices (AROs) helps to combat money laundering and to access the illicit proceeds of crime. Similarly, **customs** authorities cooperate in the management of risks in the international supply chain while facilitating legitimate trade.<sup>25</sup> Enhanced coordination and cooperation between Coast Guard Functions performed at national level reinforces maritime security. Experts from different parts of the enforcement chain in the Member States also cooperate through various networks to tackle environmental crime. The Commission will support this approach in other areas.

**Police and Customs Cooperation Centres** (PCCCs) in border regions bring together on one site the law enforcement authorities of different Member States. The EU supports the growing number of PCCCs with co-funding and annual conferences to exchange experience and best practices. Although most of the information exchanged in PCCCs does not concern serious and organised crime, it is important that information on such cases is passed up to the national level and, where appropriate, to Europol.

As regards **regional cooperation**, the necessity and added value of measures under Article 89 TFEU relating to the operation of the competent authorities of one Member State in the territory of another could be considered after evaluating the existing tools, including hot pursuit and cross-border surveillance.

**Judicial cooperation in criminal matters** also relies on effective cross-border instruments. Mutual recognition of judgments and judicial decisions is a key element in the security framework. Tools like the European Arrest Warrant have proved effective but other instruments, such as freezing and confiscation of criminal assets, are not yet used systematically in all appropriate cases. National judges should take advantage of the European Judicial Network (EJN) for the execution of European Arrest Warrants and freezing and confiscation orders. The implementation of the European Investigation Order will add a further essential tool. Member States should use Eurojust more often to coordinate cross-border investigations and prosecutions. Eurojust can also be a great help for complex mutual legal assistance requests with countries outside the EU, especially with the network of the Eurojust contact points.

Finally, establishing the European Public Prosecutor's Office will provide a new dimension to the specific issue of protecting losses to the EU budget from criminal activity.

*The EU's institutions, agencies and existing cooperation tools already provide an effective set of instruments to make EU security policy an **operational reality**. More synergies between EU agencies, more systematic coordination and full use of tools like the Joint Investigation Teams, can make a real difference in the prevention, detection and reaction to security threats.*

### 2.3 Supporting action: training, funding, research and innovation

In addition to information exchange and operational cooperation, the EU provides support to security-related actions through training, funding and the promotion of security-related research and innovation. The Commission seeks to target this support in a strategic and cost-effective way.

<sup>25</sup> COM(2014) 527 final of 21.8.2014.



The effectiveness of cooperation tools relies on law enforcement officers in Member States knowing how to use them. Training is essential to allow authorities on the ground to exploit the tools in an operational situation. The European police college **CEPOL** organises courses, defines common curricula on cross-border cooperation and coordinates exchange programmes. The current legislative proposal on CEPOL would further reinforce its ability to prepare police officers to cooperate effectively and to develop a common law enforcement culture.<sup>26</sup> CEPOL should adapt its yearly training programmes to the priorities set out in this Agenda. National police academies should also use EU funding to make **cross-border cooperation** an integral part of their own training and practical exercises. Training for the judiciary and judicial staff should also be better aligned with EU priorities, building on existing structures and networks and with the support of the European Judicial Training Network (EJTN) and of the European e-Justice Portal and e-learning. The Commission has also established a European Security Training Centre that enables Member States to improve their capabilities in detecting and identifying illicit nuclear or radioactive materials for threat prevention.

The recently created **Internal Security Fund** provides a responsive and flexible tool to address the most crucial challenges up to 2020. This Agenda provides strategic direction for the Fund, with a focus on those areas where financial support will bring most value added. Priority uses of the fund should include updating national sections of the Schengen Information System, implementing the Prüm framework and setting up Single Points of Contact. The Fund should also be used to strengthen cross-border operational cooperation under the EU Policy Cycle for serious and organised crime, and to develop 'exit strategies' for radicalised persons with the help of best practices exchanged in the Radicalisation Awareness Network. Other EU funding instruments, such as Horizon 2020 for research and innovation<sup>27</sup>, the European Structural and Investment Funds, the EU Justice Programmes, the Customs 2020 Programme and financial instruments for external action can also contribute, in their respective areas, to support the priorities of the Agenda on Security.

The **mid-term review** of the Internal Security Fund in 2018 will provide an opportunity to take stock of how funding has helped to deliver the priorities of the Agenda and re-prioritise as necessary.

**Research and innovation** is essential if the EU is to keep up-to-date with evolving security needs. Research can identify new security threats and their impacts on European societies. It also contributes to creating social trust in research-based new security policies and tools. Innovative solutions will help to mitigate security risks more effectively by drawing on knowledge, research and technology. Horizon 2020 can play a central role in ensuring that the EU's research effort is well targeted, including factoring in the needs of law enforcement authorities by further involving **end-users** at all stages of the process, from conception to market. More focus on innovation is also needed in the area of **civil protection**, where the creation of a knowledge centre in the framework of the EU Emergency Response Coordination Centre, as well as the building of a community of users, will contribute to building an interface between research and end-users in Member States.

The Commission recently mandated European standardization organisations to produce a '**privacy by design**' standard aimed to promote the embedding of high standards of

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<sup>26</sup> COM(2014) 465 final of 16.7.2014.

<sup>27</sup> Horizon 2020, the EU Research and Innovation programme for the period from 2014 to 2020, section on "Secure societies – Protecting freedom and security of Europe and its citizens".

security and fundamental rights at the earliest stage in technological design. Compliance with this standard will ensure that EU security products and services respect individuals' rights and thereby enhance consumer confidence.

A competitive **EU security industry** can also contribute to the EU's autonomy in meeting security needs. The EU has encouraged the development of innovative security solutions, for example through standards and common certificates.<sup>28</sup> The Commission is considering further action, such as on alarm systems and airport screening equipment, to remove barriers to the Single Market and to enhance the competitiveness of the EU security industry in export markets.

Forensic science is critical to law enforcement and prosecution. Law enforcement and judicial authorities must be confident that the forensic data they rely on is of high quality, including if the data comes from another Member State. It is therefore important to ensure that the forensic data exchanged through information exchange systems, such as the Prüm framework for fingerprints and DNA profiles, can be effectively used in court. A **European Forensic Area**, to align the processes of forensic service providers in Member States, would foster cooperation and ensure confidence. The Commission will first engage with the relevant stakeholders in a stocktaking exercise and then define priorities and possible measures to achieve this goal. This may include exchange of best practices and the definition of common minimum standards.

*Security should be a **key priority** in a wide range of **funding instruments, research and innovation programmes** as well as **training initiatives**. Existing priorities should be adjusted as required.*

### 3. THREE PRIORITIES

In the coming five years, this framework for working better and more closely together should be deployed to address three main priorities for European security, while it is adaptable to other major threats that might evolve in future.

- Terrorist attacks in Europe – most recently in Paris, Copenhagen, Brussels – have highlighted the need for a strong EU response to **terrorism** and **foreign terrorist fighters**. European citizens continue to join terrorist groups in conflict zones, acquiring training and posing a potential threat to European internal security on their return. While this issue is not new, the scale and the flow of fighters to ongoing conflicts, in particular in Syria, Iraq and Libya, as well as the networked nature of these conflicts, are unprecedented.
- At the same time, **serious and organised cross-border crime** is finding new avenues to operate, and new ways to escape detection. There are huge human, social and economic costs – from crimes such as trafficking in human beings, trade in firearms, drug smuggling, and financial, economic and environmental crime. Organised crime groups involved in the smuggling of migrants exploit the vulnerabilities of people seeking protection or better economic opportunities and are responsible for the loss of lives in the name of profit. Organised crime also feeds terrorism and cybercrime through channels like the supply of weapons, financing through drug smuggling, and the infiltration of financial markets.

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<sup>28</sup> COM(2012) 417 of 26.7.2012.

- Finally, **cybercrime** is an ever-growing threat to citizens' fundamental rights and to the economy, as well, as to the development of a successful Digital Single Market.<sup>29</sup> As commerce and banking shift online, cybercrime can represent a huge potential gain to criminals and a huge potential loss to citizens. Cybercriminals can act from outside the Union to harm critical infrastructures and simultaneously target a large number of victims across Member States, with minimum effort and risk. Similarly, threats such as those posed by cyber-terrorism and hybrid threats could increase in the years to come. Criminals abuse anonymisation techniques and anonymous payment mechanisms for illicit online trade in drugs or weapons, for criminal transactions and money laundering. Cybercrime is also closely linked to child sexual exploitation, with a growing and alarming trend of child abuse through live streaming.

Terrorism, organised crime and cybercrime are the three **core priorities** which are highlighted in this Agenda for immediate action. They are clearly **interlinked and cross-border threats**, and their multi-faceted and international dimension shows the need for an effective and coordinated response at EU level.

### 3.1 Tackling terrorism and preventing radicalisation

Citizens and Member States expect the EU's support in fighting terrorism and radicalisation and facilitating coordination and cooperation between relevant authorities. **Europol** has developed a growing expertise on terrorism issues and this should be taken a step further by bringing together its anti-terrorism law enforcement capabilities, pooling resources and maximising the use of already existing structures, services and tools available to the Agency with a view to achieving economies of scale. This could be brought together as a **European Counter-Terrorism Centre** within Europol to step up the support provided at EU level for Member States, within a secure environment with the highest confidentiality in its communication.

The Centre would include (1) Europol's Focal Point Travellers on foreign terrorist fighters and related terrorist networks, (2) the EU-US Terrorist Financing Tracking Programme (TFTP), (3) FIU.NET, the decentralised computer network supporting Financial Intelligence Units, which will be embedded in Europol in 2016, and (4) Europol's existing capabilities on firearms and explosive devices. **Eurojust** should be fully involved in the activities of the Centre to improve coordination of investigations and prosecutions. Such a Centre would operate strictly within the legal mandate of Europol, and would not affect Member States' sole responsibility for safeguarding national security, nor the role of the EU Intelligence Analysis Centre (INTCEN) in the area of intelligence-based assessment of the terrorist threat.

The **Internet Referral Unit** (EU IRU), to be established in Europol by July 2015, would also be part of the Centre. The Unit will build upon Europol and Member States' experience to act as an EU centre of expertise, helping Member States to identify and remove violent extremist content online, in cooperation with industry partners.

Furthermore, the Commission will launch in 2015 an **EU-level Forum** with IT companies to bring them together with law enforcement authorities and civil society. Building upon the preparatory meetings organised in 2014, the Forum will focus on deploying the best tools to counter terrorist propaganda on the internet and in social

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<sup>29</sup> Internet users in the EU remain very concerned about cybercrime. 85% agree that the risk of becoming a victim of cybercrime is increasing (Eurobarometer on cyber-security published in February 2015).

media. In cooperation with IT companies, the Forum will also explore the concerns of law enforcement authorities on new encryption technologies.

**Tracking financial operations** can be central to identifying terrorist networks, as terrorists rely on finance for travel, training and equipment. FIUs can help to identify financial operations of terrorist networks across borders and detect their financial backers. The EU-US Terrorist Financing Tracking Programme (TFTP) allows Member States to request a search of financial data when there is reasonable suspicion of terrorist activity. To date, TFTP has provided leads relating to numerous terrorist suspects and their support networks. Member States and their competent authorities should make more active use of the possibilities under the TFTP. The forthcoming embedment of FIU.NET with Europol will further enhance capabilities in the fight against terrorist financing.

The Commission will also explore the need for and possible benefits of additional measures in the area of **terrorism financing**, including measures relating to the freezing of terrorist assets under Article 75 TFEU, to illicit trade in cultural goods, to the control of forms of payment such as internet transfers and pre-paid cards, to illicit cash movements and to the strengthening of the cash controls Regulation<sup>30</sup>.

The EU needs a solid **criminal justice response** to terrorism, covering investigation and prosecution of those who plan terrorist acts or are suspected of recruitment, training, and financing of terrorism as well as incitement to commit a terrorist offence. Many Member States already have or plan laws to criminalise these acts. More coherent laws against foreign terrorist fighters-related offences across the EU would address the cross-border practical and legal challenges in the gathering and admissibility of evidence in terrorism cases, and to deter departures to conflict zones. The Commission will launch an impact assessment in 2015 with a view to updating the **2008 Framework Decision on Terrorism** in 2016.<sup>31</sup> UN Security Council Resolution 2178 requires states to criminalise travel to a conflict zone for terrorist purposes, helping to build a common understanding of the offences of foreign terrorist fighters. The new legislative framework should open the door to intensified **cooperation with third countries** on foreign terrorist fighters – building on recent positive experiences of cooperation with Turkey.

One way to disrupt the activities of terrorist networks is to make it more difficult to attack targets and to access and deploy dangerous substances, such as Chemical, Biological, Radiological and Nuclear materials and explosives precursors. Protecting **critical infrastructures**, such as transport infrastructure, and **soft targets**, for instance at mass public events, present real challenges for law enforcement, public health authorities and civil protection authorities. The EU and the Member States cooperate to assess risks, evaluate mitigation strategies, gather best practices and produce guidance. The Commission helps practitioners by developing handbooks to assist their daily work, for example in the area of aviation security.

Terrorism in Europe feeds on extremist ideologies. EU action against terrorism therefore needs to **address the root causes of extremism** through preventive measures. Throughout the EU, the link between radicalisation and extremist violence is becoming ever clearer. Extremist propaganda has been shown to lead foreign terrorist fighters from Europe to travel abroad to train, fight and commit atrocities in combat zones, and to threaten the internal security of the EU on their return. Strengthening the EU's own

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<sup>30</sup> Regulation 1889/2005 of 26.10.2005.

<sup>31</sup> This will take into account the negotiations on an Additional Protocol supplementing the Council of Europe Convention on the Prevention of Terrorism.

strategic communication with common narratives and factual representation of conflicts is an important aspect of the EU's response.

The EU **response to extremism** must not lead to the stigmatisation of any one group or community. It must draw on common European values of tolerance, diversity and mutual respect, and promote free and pluralist communities. The EU must cut the support base of terrorism with a strong and determined counter-narrative. The Commission will ensure enforcement of relevant EU legislation in this area.<sup>32</sup> It will assess any gaps in legislation and support the monitoring of online hate speech and other actions. It will also assist Member States in developing proactive investigation and prosecution practices on the ground. EU funding will increasingly be used to support specific training of public officials and encourage monitoring, reporting and recording of incidents of hate crime and hate speech.

**Education, youth participation, interfaith and inter-cultural dialogue**, as well as **employment and social inclusion**, have a key role to play in preventing radicalisation by promoting common European values, fostering social inclusion, enhancing mutual understanding and tolerance. Inclusive education can make a major contribution in tackling inequalities and preventing marginalization. Youth work, volunteering, sport and cultural activities are particularly effective in reaching out to young people. Against this background, the Commission will prioritise combating radicalisation, marginalisation of youth and promoting inclusion with a series of concrete actions under the Strategic Framework for European Cooperation on Education and Training ("ET 2020"), the European Youth Strategy, the EU Work Plan for Sport and the Culture Work Plan.

To underpin these actions, the Commission will mobilise funding under the Erasmus+ and Creative Europe programmes, inter alia by increased support to mobility of teachers and youth workers, youth exchanges and volunteering, strategic partnerships in the field of education and youth policy, transnational networks, school cooperation platforms, joint projects on citizenship education, and collaborative partnerships in sport. Furthermore, the European Social Fund provides financial support to Member States to promote social inclusion, combatting poverty and any discrimination. The Commission will also initiate further research under Horizon 2020 to gain a better understanding of the causes and manifestations of radicalisation.

The EU has been a pioneer in helping communities under pressure to learn from other parts of the Union. In 2014, the Commission set out ten areas to structure efforts to address the root causes of extremism.<sup>33</sup> The **Radicalisation Awareness Network (RAN)**, an EU-wide umbrella network launched in 2011, connects organisations and networks across the Union, linking up more than 1000 practitioners directly engaged in preventing radicalisation and violent extremism. The network enables the exchange of experience and practices facilitating early detection of radicalisation and the design of preventive and disengagement strategies at local level.

The Commission is now in the process of setting up a **RAN Centre of Excellence**. This will act as an EU knowledge hub to consolidate expertise and foster the dissemination and exchange of experiences and cooperation on anti-radicalisation. It will add a new practical dimension to the cooperation between stakeholders on anti-radicalisation.

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<sup>32</sup> Framework Decision 2008/913/JHA of 28.11.2008, Directive 2000/43/EC of 29.6.2000, Directive 2000/78/EC of 27.11.2000, and Directive 2010/13/EU of 10.3.2010.

<sup>33</sup> COM(2013) 941 final of 15.1.2014.

The EU has also felt the effects of radicalisation in its neighbourhood. To counter this, RAN will develop its work with stakeholders in third countries, with a priority on Turkey and countries in the Western Balkans, Middle East and North Africa. At the same time, coordination should be ensured with EU external action, for example through a Round of Eminent Persons from Europe and the Muslim world, to encourage intellectual exchanges and a wider dialogue between societies.

**Local actors** are the people in direct contact with those most at risk of radicalisation. They need to be properly equipped to recognise the signs of radicalisation and assess what intervention might be needed, and to ensure the right cooperation with community leaders. Many Member States have launched training focused on the traditional target groups of law enforcement personnel and prison staff – and the evidence of prison as a focal point for radicalisation makes this a priority. With the support of the European Organisation of Prison and Correctional Services (EUROPRIS), the Commission will promote the exchange of best practices and training on de-radicalisation and prevention of radicalisation in prisons. Training and support can usefully be extended to other actors, such as social workers, teachers and healthcare workers. The RAN will also help to develop similar approaches for de-radicalisation and disengagement ('exit strategies').

The Commission and the European External Action Service will cooperate with the EU Counter-terrorism Coordinator to maintain an overview of all the instruments at the Union's disposal and will closely monitor their implementation.

***Actions:***

- *Reinforcing Europol's support functions by bringing together its anti-terrorism law enforcement capabilities in a European Counter-Terrorism Centre within Europol;*
- *Launching an EU Forum with IT companies to help counter terrorist propaganda and addressing concerns about new encryption technologies;*
- *Taking further measures to improve the fight against terrorism financing;*
- *Addressing any gaps in the response to incitement to hatred online;*
- *Reviewing the Framework Decision on terrorism with a proposal in 2016;*
- *Re-prioritising the EU's policy frameworks and programmes for education, youth and culture;*
- *Focusing on the prevention of radicalisation in prisons, and developing effective disengagement/de-radicalisation programmes;*
- *Launching the RAN centre of excellence and extending anti-radicalisation work with Turkey, the Western Balkans, the Middle East and North Africa.*

### **3.2 Disrupting organised crime**

The **EU Policy Cycle for serious and organised crime** has succeeded in delivering a more coordinated strategic direction and joint operations on the ground. **Neighbourhood countries** are already associated to the Policy Cycle, and their involvement in operational activities of the Policy Cycle should be intensified. One of the priorities of the Policy Cycle is to disrupt organised criminal networks involved in smuggling of migrants by stepping up cross-border investigations with the support of EU agencies. The joint operation MARE coordinated by Europol is a good example of how the Union can become more effective in identifying and tackling organised crime groups involved in the smuggling of migrants.

The primary goal of organised crime is profit. Law enforcement must therefore have the capacity to turn the spotlight on the **finance of organised crime**, often inherently linked to corruption, fraud, counterfeiting and smuggling. International criminal networks use legal business structures to conceal the source of their profits, so action is needed to address the infiltration of the licit economy by organised crime.

The recently-agreed Anti-Money Laundering package<sup>34</sup> will help to identify and follow up on suspicious transfers of money and facilitate the efficient exchange of information between Financial Intelligence Units (FIUs). The Commission will support the implementation of this legislation to make it harder for criminals to abuse the financial system, and work on a supranational assessment of risks that will address, among others, terrorist financing and virtual currencies. It will also establish a coherent policy towards third countries that have deficient anti-money laundering and counter-terrorist financing regimes. Linking up the work of national **Asset Recovery Offices** will improve cross-border freezing and confiscation of criminal assets. It is necessary to align and reinforce the powers of FIUs, as differences in their roles hinders cooperation and information exchange. Eurojust could also offer more expertise and assistance to the national authorities when conducting financial investigations. **Mutual recognition of freezing and confiscation orders** should be improved. In 2016, as requested by the co-legislators, the Commission will issue a feasibility study on common rules on non-conviction based confiscation of property derived from criminal activities.

Recent terrorist attacks have focused attention on how organised criminals are able to access and trade **firearms** in Europe, even military-grade firearms, in large numbers. The decision on who can hold a firearm and when they can be used is a societal choice for Member States. However, differences in national legislation are an obstacle to controls and police cooperation. As a priority, a common approach is needed on the neutralisation and de-activation of firearms to prevent reactivation and use by criminals. The Commission will review the existing legislation on firearms in 2016 to improve the sharing of information (e.g. by uploading information on seized firearms in Europol's information system), to reinforce traceability, to standardise marking, and to establish common standards for neutralising firearms. In the context of the on-going evaluation, the Commission will consider whether to include weapons designed for self-protection (alarm weapons) in the new provisions, as well as any other relevant aspect.

**Trafficking of firearms** has a critical **external dimension**, given that many illegal firearms in the EU have been imported from neighbouring countries where large stockpiles of military weapons remain. The recent operational action plan with the Western Balkans should be implemented to the full and, if effective, be replicated with other neighbours, in particular countries in the Middle East and North Africa.<sup>35</sup>

The market for **illicit drugs** remains the most dynamic of criminal markets, with a recent trend being the proliferation of new psychoactive substances (NPS). The production of NPS increasingly takes place in the EU and points to the urgency of adopting a new EU legislative framework. The EU should continue to support Member States' activities in fighting illicit drugs, including prevention, using the expertise of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol. The Commission will assess the progress made in implementing the EU Drugs Action Plan

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<sup>34</sup> 4<sup>th</sup> Anti-Money Laundering Directive and Regulation on information accompanying transfers of funds; see related Commission proposals COM(2013) 45 final of 5.2.2013 and COM(2013) 44 final of 5.2.2013.

<sup>35</sup> December 2014 operational action plan between the EU and the Western Balkans on the fight against illegal trafficking in firearms.

2013-2016, which also frames the EU external policy in the field of drugs, with its focus on drug demand and drug supply reduction. On this basis, the Commission will decide whether to propose a new EU Action Plan for the period 2017-2020.

One of the major problems the EU is currently facing is that criminal networks exploit individuals' need for protection or their desire to come to Europe. The more that such criminal smuggling can be stopped early, the less the risk of human tragedies as seen recently in the Mediterranean. Preventive action against the facilitation of irregular migration requires better information gathering, sharing and analysis. The key lies in **cooperation against the smuggling of migrants** inside the EU and with third countries. The EU should make this a priority in its partnership with third countries, offering assistance to help key transit countries to prevent and detect smuggling activities as early as possible. Reinforced action against the smuggling of migrants between the EU and key third countries will be part of the forthcoming European Agenda on Migration.

**Trafficking in human beings** is an extremely pernicious but highly lucrative form of crime. The EU has a dedicated legal and policy framework<sup>36</sup> to maximise cooperation and make this a priority for bodies such as Europol and Eurojust. Through a coordinated and coherent approach, the current strategy has contributed to the combating of trafficking in human beings at regional, national, European and international levels. The Commission intends to develop a post-2016 strategy that builds on the existing framework.

**Environmental crimes** can cause significant damage to the environment and human health, reduce government revenues and impose clean-up costs on taxpayers, for instance by illegal shipments and subsequent dumping of hazardous waste. The illegal trade in wildlife threatens biodiversity, as well as, in source regions such as in Africa, sustainable development and regional stability.<sup>37</sup> The Commission will consider the need to strengthening compliance monitoring and enforcement, for instance by increasing training for enforcement staff, support for relevant networks of professionals, and by further approximating criminal sanctions throughout the EU.

**Local authorities** have a critical role to play in tackling organised crime, alongside the work of law enforcement and judicial authorities. Organised crime often thinks globally but acts locally and thus requires a multi-disciplinary approach to effectively prevent and counter it. The EU has accordingly developed an approach that combines tools at administrative level to prevent infiltration in the public sector or the economy. In many cases, local authorities are in the front line to identify and prevent the infiltration of the licit economy by criminal networks, for example when allocating public tenders or granting casino licences, and they should have the tools to share information with other public administrative authorities or law enforcement. More prominence should also be given to the work of the **European Union Crime Prevention Network**. With financial support from the EU, the network shares best practices in preventing crime.

Preventing and fighting **corruption** in the European Union requires a comprehensive approach. The Commission published the first EU Anti-Corruption Report in 2014. The report provides an EU-wide overview, identifies trends and best practice, and analyses developments in each EU Member State, aiming to support governments, civil society and other stakeholders in preventing and combating corruption. The EU has taken a series of steps to fight corruption: policy and monitoring initiatives (including

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<sup>36</sup> Directive 2011/36/EU of 5.4.2011; COM(2012) 286 final of 19.6.2012.

<sup>37</sup> COM (2014) 64 final of 7.2.2014.



recognising the economic cost in the European semester), legislation, and funding programmes.

**Actions:**

- *Extending the work of the EU Policy Cycle to neighbouring countries;*
- *Reviewing possible measures for non-conviction based confiscation;*
- *Reviewing legislation on firearms with proposals in 2016;*
- *Adopting a post-2016 strategy on human trafficking;*
- *Launching joint actions and cooperation strategies with key third countries to combat smuggling of migrants;*
- *Reviewing existing policy and legislation on environmental crime, for proposals in 2016.*

### 3.3 Fighting cybercrime

**Cybersecurity** is the first line of defence against cybercrime. The 2013 EU Cybersecurity Strategy focuses on identifying high-risk areas, working with the private sector to close loopholes, and providing specialised training. An important element in implementing the Strategy will be the swift adoption of the proposal for a Directive on network and information security.<sup>38</sup> The implementation of this Directive would not only promote better cooperation between law enforcement and cybersecurity authorities, but also provide for cyber-security capacity building of competent Member States' authorities and cross-border incident notification. The EU Agency for Network and Information Security also contributes to the EU's response to cybersecurity issues by working towards a high level of network and information security.

**Ensuring full implementation of existing EU legislation** is the first step in confronting cybercrime. The 2013 Directive<sup>39</sup> on attacks against information systems criminalises the use of tools such as malicious software and strengthens the framework for information exchange on attacks. The 2011 Directive<sup>40</sup> on child sexual exploitation approximates national legislation to prevent child sexual abuse online. The Commission is working with the Member States to ensure correct implementation of these Directives. Rules also have to be kept up to date. Citizens are concerned about issues like payment fraud. However, the 2001 framework decision combating fraud and counterfeiting of non-cash means of payments<sup>41</sup> no longer reflects today's realities and new challenges such as virtual currencies and mobile payment. The Commission will assess the level of implementation of the current legislation, consult relevant stakeholders and assess the need for further measures.

Cybercrime is by its nature borderless, flexible and innovative. In prevention, detection and prosecution, law enforcement has to be able to match and anticipate the ingenuity of the criminals. Cyber criminality requires competent judicial authorities to rethink the way they cooperate within their jurisdiction and applicable law to ensure swifter cross-border access to evidence and information, taking into account current and future technological developments such as cloud computing and Internet of Things. Gathering electronic evidence in real time from other jurisdictions on issues like owners of IP addresses or other e-evidence, and ensuring its admissibility in court, are key issues. It also requires

<sup>38</sup> COM(2013) 48 final of 7.2.2013.

<sup>39</sup> Directive 2013/40/EU of 12.8.2013.

<sup>40</sup> Directive 2011/92/EU of 13.12.2011.

<sup>41</sup> Council Framework Decision 2001/413/JHA of 28.5.2001.

highly-skilled law enforcement staff able to keep pace with the considerable increase in the scope, sophistication and types of cybercrime.

Clear rules are needed to ensure that data protection principles are respected in full, while law enforcement gains access to the data it needs to protect the privacy of citizens against cybercrime and identity theft. **Cooperation** with the **private sector** is also of critical importance, with public-private partnerships to structure a common effort to fight online crime. The response to cybercrime (e.g. phishing) must involve the entire chain: from Europol's European Cybercrime Centre, Computer Emergency Response Teams in the Member States concerned by the attack, to internet service providers that can warn end-users and provide technical protection. In short, cybercrime demands a new approach to law enforcement in the digital age.

Europol's **European Cybercrime Centre** can build on its existing work to become a central information hub for law enforcement in this area. The Council of Europe's Budapest Convention on Cybercrime, ratified by most Member States, remains the international standard for cooperation and a model for national and EU legislation. All Member States should ratify the Convention. Initiatives such as the EU-US Working Group on Cybersecurity and Cybercrime and the Global Alliance against Child Sexual Abuse Online show the value of international cooperation and should be promoted, whilst synergies with cyber capacity building actions funded under external assistance instruments should be enhanced.

**Eurojust** should continue to facilitate the exchange of best practice and identify the challenges regarding the collection and use of e-evidence in investigations and prosecutions of Internet-facilitated crimes, with the necessary safeguards. The Commission will work to ensure that relevant modern means of communication (such as voice-over internet protocol) can be covered by judicial investigation, prosecution and mutual legal assistance. Different standards on the admissibility of evidence must not constitute an impediment to the fight against terrorism and organised crime.

***Actions:***

- *Giving renewed emphasis to implementation of existing policies on cybersecurity, attacks against information systems, and combatting child sexual exploitation;*
- *Reviewing and possibly extending legislation on combatting fraud and counterfeiting of non-cash means of payments to take account of newer forms of crime and counterfeiting in financial instruments, with proposals in 2016;*
- *Reviewing obstacles to criminal investigations on cybercrime, notably on issues of competent jurisdiction and rules on access to evidence and information;*
- *Enhancing cyber capacity building action under external assistance instruments.*

#### **4. THE WAY FORWARD**

The European Agenda on Security sets out the actions necessary to deliver a high level of internal security in the EU. It must be a **shared agenda**. Its successful implementation depends on the political commitment of all actors concerned to do more and to work better together. This includes EU institutions, Member States and EU agencies. It requires a global perspective with security as one of our main external priorities. The EU must be able to react to unexpected events, seize new opportunities and anticipate and adapt to future trends and security risks.

The Commission invites the European Parliament and the Council to endorse this Agenda as the renewed Internal Security Strategy, with a view to the forthcoming European Council of June 2015. The Commission invites active engagement in implementation of the Agenda, in close cooperation with all relevant actors. It invites EU institutions and Member States to take this agenda as the **basis for cooperation and joint action by the Union** on security in the next five years, with the aim to develop a genuine area of EU internal security.

**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 <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

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 <sup>(4)</sup>. Under the Stockholm Programme – An open and secure Europe serving and protecting citizens <sup>(5)</sup>, 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 <sup>(6)</sup> (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 <sup>(7)</sup> 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 <sup>(8)</sup> 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.

<sup>(1)</sup> OJ C 43, 15.2.2012, p. 39.

<sup>(2)</sup> OJ C 113, 18.4.2012, p. 56.

<sup>(3)</sup> 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.

<sup>(4)</sup> OJ L 82, 22.3.2001, p. 1.

<sup>(5)</sup> OJ C 115, 4.5.2010, p. 1.

<sup>(6)</sup> OJ C 187, 28.6.2011, p. 1.

<sup>(7)</sup> OJ C 285 E, 21.10.2010, p. 53.

<sup>(8)</sup> 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<sup>(1)</sup> 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<sup>(2)</sup> 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<sup>(3)</sup> 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<sup>(4)</sup> 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.

<sup>(1)</sup> OJ L 338, 21.12.2011, p. 2.

<sup>(2)</sup> OJ L 101, 15.4.2011, p. 1.

<sup>(3)</sup> OJ L 335, 17.12.2011, p. 1.

<sup>(4)</sup> 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 responsibility 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<sup>(1)</sup>.
- (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.

<sup>(1)</sup> 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<sup>(1)</sup> 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.

- (72) The European Data Protection Supervisor delivered an opinion on 17 October 2011<sup>(2)</sup> 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<sup>(3)</sup>,

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;

<sup>(1)</sup> OJ L 350, 30.12.2008, p. 60.

<sup>(2)</sup> OJ C 35, 9.2.2012, p. 10.

<sup>(3)</sup> 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 <sup>(1)</sup> for the purpose of hearing victims who are resident abroad.

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;

<sup>(1)</sup> OJ C 197, 12.7.2000, p. 3.

- (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 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  
The President  
M. SCHULZ

For the Council  
The President  
A. D. MAVROYIANNIS



EUROPEAN COMMISSION

Brussels, 19.6.2012  
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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

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

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL  
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

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

**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<sup>1</sup>. 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 socio-economic 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<sup>2</sup>, 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<sup>3</sup> 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<sup>4</sup>.

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<sup>5</sup>. 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

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<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> The Globalization of Crime: A Transnational Organized Crime Threat Assessment, UNODC, 2010.

<sup>5</sup> The statistics collected via Eurostat provide a general overview based on the replies received from all 27 Member States for 2008 to 2010.

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.

### **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<sup>6</sup>.

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**<sup>7</sup>. 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<sup>8</sup>. EU legislation on the right of victims of human trafficking to 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<sup>9</sup>.

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<sup>6</sup> 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).

<sup>7</sup> Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, OJ 15.04.2011, L 101.

<sup>8</sup> 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 knowingly employ illegally staying third country workers; and the proposal for a Directive on seasonal employment of third-country nationals (COM(2010) 379 final).

<sup>9</sup> Communication on *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe*, COM(2010) 673 final.

The overarching framework of the EU external migration policy — **the Global Approach to Migration and Mobility**<sup>10</sup> — 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**<sup>11</sup>.

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<sup>12</sup>.

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<sup>13</sup> and will oversee the implementation of this Strategy. The Commission has also developed a website<sup>14</sup> 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<sup>15</sup>. **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<sup>16</sup>.

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<sup>10</sup> Communication on *The Global Approach to Migration and Mobility* (COM(2011) 743 final).

<sup>11</sup> 11450/5/09 REV 5, 19 November 2009 and 9501/3/11 REV 3, 4 July 2011.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> <http://ec.europa.eu/anti-trafficking/index>.

<sup>15</sup> 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.

<sup>16</sup> 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*<sup>17</sup> 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<sup>18</sup>, 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

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<sup>17</sup> European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Application No 25965/04, Judgment (final) 10 May 2010.

<sup>18</sup> 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.

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.

## **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.

### (1) 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<sup>19</sup>.

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.

### (2) 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.

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<sup>19</sup> Doc. 15358/10 COSI 69.

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.

### (3) 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 re-trafficking cases, 84 per cent involved children or young adults under 25 years old. 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<sup>20</sup>.

EU legislation provides for the protection of child victims and assistance and support to such victims<sup>21</sup>. 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 re-trafficked.

In addition, with respect to child trafficking, there is at present no uniform definition of a guardian and/or representative across the Member States<sup>22</sup> and their roles, qualifications and understanding of competences vary from one Member State to another<sup>23</sup>. 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.

### (4) 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**

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<sup>20</sup> IOM, 'The Causes and Consequences of Re-trafficking: Evidence from the IOM Human Trafficking Database', 2010.

<sup>21</sup> 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.

<sup>22</sup> EU Expert Group on Unaccompanied Minors, Meeting on Guardianship of unaccompanied children on 21 June 2011.

<sup>23</sup> See also the European Union Agency for Fundamental Rights, 'Child Trafficking in the EU — Challenges, perspectives and good practices', July 2009.

**and migrant rights that victims of trafficking in human beings have under EU law<sup>24</sup>**. As a follow-up, the Commission **will help Member States provide and disseminate similar information at national level** in 2014.

## **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.

### **(1) 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<sup>25</sup>, 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<sup>26</sup>.

### **(2) 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.

### **(3) Action 3: EU-wide Awareness Raising Activities and Prevention Programmes**

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<sup>24</sup> 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>.

<sup>25</sup> Such as the IOM's Buy Responsibly Campaign <http://www.buyresponsibly.org>.

<sup>26</sup> Article 23 of the 2011/36/EU Directive on trafficking in human beings.

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 awareness-raising campaigns will be established in 2015**<sup>27</sup>.

In 2014 the Commission will **launch EU-wide awareness-raising activities** targeting 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**

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.

#### **(1) 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<sup>28</sup> 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

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<sup>27</sup> Such as the UNODC's Blue Heart Campaign or the Blue Blindfold Campaign of the UK.

<sup>28</sup> 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.

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.

(2) Action 2: Ensuring Proactive Financial Investigation

In line with the Organisation for Economic Co-operation and Development Financial Action Task Force Recommendations<sup>29</sup>, **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<sup>30</sup>, 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.

(3) 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 cross-border 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**.

(4) 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,

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<sup>29</sup> International standards on combating money laundering and the financing of terrorism & proliferation, the FATF recommendations, OECD Financial Action Task Force, February 2012.

<sup>30</sup> Europol, 'EU Organised Crime Threat Assessment 2011'. These sectors are agriculture, construction, the textile industry, healthcare, domestic service and the sex industry, page 19.

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**

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<sup>31</sup>. The Commission will **coordinate and monitor the implementation of this agreement**.

##### (1) 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.

##### (2) 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.

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<sup>31</sup> 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>.

The Commission will also work towards **strengthening and formalising partnerships with international organisations**<sup>32</sup> 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<sup>33</sup>.

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.

(3) 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.

(4) Action 4: Reviewing Projects funded by the EU

Over the years, the European Commission has funded numerous anti-trafficking projects<sup>34</sup>. 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 anti-trafficking 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.**

(5) 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 implementation of the Charter of Fundamental Rights<sup>35</sup> requires the Commission to ensure

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<sup>32</sup> 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 Co-operation 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.

<sup>33</sup> Joint Communication: *Human Rights and Democracy at the Heart of EU External Action — Towards a More Effective Approach*, COM(2011) 886 final.

<sup>34</sup> Information on most projects is available on the Commission's anti-trafficking website.

<sup>35</sup> 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://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0573:FIN:EN:PDF>.



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<sup>36</sup>.

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<sup>37</sup> 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.**

#### (6) 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<sup>38</sup>. People who regularly have to deal with human trafficking issues need to be trained. **The Commission will strengthen training focusing on the judiciary and cross-border 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<sup>39</sup>. 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.

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<sup>36</sup> Commission Staff Working Paper - Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments, SEC(2011) 567 final, 6.5.2011.

<sup>37</sup> The Right Guide, <http://ec.europa.eu/anti-trafficking/entity?id=7dbb0353-cb8a-4bcc-a3fa-34dfbe01bbca>.

<sup>38</sup> Communication *Building trust in EU-wide justice: a new dimension to European judicial training*, COM(2011) 551 final.

<sup>39</sup> CEPOL provides training on trafficking in human beings as well as a Common Curriculum and an e-learning 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.

### (1) 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<sup>40</sup> to collect data on a small number of indicators.

### (2) 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<sup>41</sup>, unaccompanied children, and children with disabilities, as well as people in the Roma community<sup>42</sup>. 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.

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<sup>40</sup> Communication *Measuring Crime in the EU: Statistics Action Plan 2011 – 2015*, COM(2011) 713 final.

<sup>41</sup> This refers to children whose parents work in a different Member State and leave their children behind in their country of origin.

<sup>42</sup> 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.

### (3) 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<sup>43</sup>. 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.

### (4) 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 high-risk sectors for trafficking in human beings. The EU's decent work agenda<sup>44</sup> 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.

## 3. EVALUATION AND MONITORING

Taking into account the multitude of reporting mechanisms in the field of trafficking in human beings across the EU<sup>45</sup>, and how this Communication relates to the Directive on human

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<sup>43</sup> See the Council of Europe's study on the Misuse of the Internet for the recruitment of victims of trafficking in human beings, 2007.

<sup>44</sup> Communication *Promoting decent work for all: the EU contribution to the implementation of the decent work agenda in the world*, COM(2006) 249 final.

<sup>45</sup> 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

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.

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the reports of the Group of Experts on Action against Trafficking in Human Beings of the Council of Europe (GRETA).

**Summary of the actions of the EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016**

PRIORITIES AND ACTION	RESPONSIBLE	TIMING
<b>PRIORITY A: Identifying, protecting and assisting victims of trafficking</b>		
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

<b>PRIORITIES AND ACTIONS</b>	<b>RESPONSIBLE</b>	<b>TIMING</b>
<b>PRIORITY B: Stepping up the prevention of trafficking in human beings</b>		
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

<b>PRIORITIES AND ACTION</b>	<b>RESPONSIBLE</b>	<b>TIMING</b>
<b>PRIORITY C: Increased prosecution of traffickers</b>		
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

<b>PRIORITIES AND ACTIONS</b>	<b>RESPONSIBLE</b>	<b>TIMING</b>
<b>PRIORITY D: Enhanced coordination and cooperation among key actors and policy coherence</b>		
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

<b>PRIORITIES AND ACTIONS</b>	<b>RESPONSIBLE</b>	<b>TIMING</b>
<b>PRIORITY E: Increased knowledge of and effective response to changing trends in trafficking in human beings</b>		
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





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<sup>1</sup> the protection of victims of crimes and the establishment of minimum standards, based on the Stockholm Programme and its Action Plan<sup>2</sup>. 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<sup>3</sup>.

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<sup>4</sup> 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<sup>5</sup>. In its resolution of 26 November 2009<sup>6</sup> 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

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<sup>1</sup> COM(2010) 623.

<sup>2</sup> OJ C 115, 4.5.2010, p. 1; COM(2010) 171.

<sup>3</sup> 2969th JAI Council meeting, 23/10/2009, 14936/09 (Presse 306).

<sup>4</sup> EU Citizenship Report 2010 - Dismantling the obstacles to EU citizens' rights - COM(2010) 603.

<sup>5</sup> Resolution of 7 May 2009 of the European Parliament on the development of a European Union criminal justice area (INI/2009/2012).

<sup>6</sup> P\_TA(2009)0098.

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<sup>7</sup>, in Council Directive on combating the sexual abuse, sexual exploitation of children and child pornography<sup>8</sup> presently under negotiation or in Council Framework Decision of 2002/475/JHA on combating terrorism<sup>9</sup> as modified by Council Framework Decision 2008/919/JHA of 28 November 2008<sup>10</sup>. 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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<sup>7</sup> OJ L 101/1 .

<sup>8</sup> OJ L [...].

<sup>9</sup> OJ L164, 22.6.2002, p. 3.

<sup>10</sup> 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<sup>11</sup>;
- Sexual abuse, sexual exploitation of children and child pornography, where a proposed new directive addresses the specific needs of child victims of those crimes<sup>12</sup>;
- 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<sup>13</sup>;
- Council Directive 2004/80/EC relating to compensation for crime victims which aims at facilitating access to compensation in cross-border situations<sup>14</sup>;
- Combating violence against women, being a strategic priority in the 2010-2015 Strategy on Gender Equality, and the focus of the Daphne III Programme<sup>15</sup>;
- Protection of the rights of terrorist victims<sup>16</sup>.

## 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<sup>17</sup>. Results from two surveys have

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<sup>11</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

<sup>12</sup> Proposal for a directive on combating the sexual abuse, sexual exploitation of children and child pornography, repealing FD 2004/68/JHA.

<sup>13</sup> 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.

<sup>14</sup> Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ L 261, 6.8.2004, p. 15).

<sup>15</sup> 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.

<sup>16</sup> Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism as modified by modified by Council Framework Decision 2008/919/JHA of 28 November 2008 (OJ L 330, 9.12.2008, p. 21-23).

<sup>17</sup> 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](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<sup>18</sup> 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<sup>19</sup>.

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.

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<sup>18</sup> APAV/Victim Support Europe, the Project "Victims in Europe", 2009 (hereinafter referred to as the "APAV Report").

<sup>19</sup> 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 targeted 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 officials' 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<sup>20</sup>,

Having regard to the opinion of the Committee of the Regions<sup>21</sup>,

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.

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<sup>20</sup> OJ C [...], [...], p. [...].

<sup>21</sup> 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 targeted 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<sup>22</sup> 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

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<sup>22</sup> 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]<sup>23</sup>.

- (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;

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<sup>23</sup> 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 provided 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*  
*The President*

*For the Council*  
*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 <sup>(1)</sup>,

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 <sup>(2)</sup>,

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 <sup>(3)</sup>, and an EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings <sup>(4)</sup> were adopted. Moreover, the Stockholm Programme — An open and secure Europe serving and protecting citizens <sup>(5)</sup>, 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.

<sup>(1)</sup> Opinion of 21 October 2010 (not yet published in the Official Journal).

<sup>(2)</sup> 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.

<sup>(3)</sup> OJ L 203, 1.8.2002, p. 1.

<sup>(4)</sup> OJ C 311, 9.12.2005, p. 1.

<sup>(5)</sup> 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 <sup>(1)</sup>.
- (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 <sup>(2)</sup> 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 <sup>(3)</sup> 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

<sup>(1)</sup> OJ L 328, 15.12.2009, p. 42.

<sup>(2)</sup> OJ L 261, 6.8.2004, p. 19.

<sup>(3)</sup> 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<sup>(1)</sup>. 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<sup>(2)</sup>, and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property<sup>(3)</sup>. 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<sup>(4)</sup> 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

<sup>(1)</sup> OJ L 190, 18.7.2002, p. 1.

<sup>(2)</sup> OJ L 182, 5.7.2001, p. 1.

<sup>(3)</sup> OJ L 68, 15.3.2005, p. 49.

<sup>(4)</sup> 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<sup>(1)</sup> 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

<sup>(1)</sup> 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 estab-

lished 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<sup>(1)</sup>, 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.

<sup>(1)</sup> 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 <sup>(1)</sup>;
- (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.

<sup>(1)</sup> 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<sup>(1)</sup> and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>(2)</sup> 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.

<sup>(1)</sup> OJ L 304, 30.9.2004, p. 12.

<sup>(2)</sup> 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. Member 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*

*The President*

J. BUZEK

*For the Council*

*The President*

GYŐRI E.

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## II

(Acts whose publication is not obligatory)

## COUNCIL

## COUNCIL DECISION

of 8 December 2000

**on the signing, on behalf of the European Community, of the United Nations Convention against transnational organised crime and its Protocols on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea**

(2001/87/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47, 62(2)(a), 63 first subparagraph (3)(b), and 95 read in conjunction with the first subparagraph of Article 300(2) thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) The elements of the Convention and the two Protocols thereto which are subject to Community competence were negotiated by the Commission, with the approval of the Council, on behalf of the Community.
- (2) The Council also instructed the Commission to negotiate the accession of the Community to the international agreements in question.
- (3) Negotiations were successfully concluded and the resulting instruments will be open for signing by the States and, within their areas of competence, by regional organisations for economic integration in Palermo from 12 to 15 December 2000 and thereafter at the United Nations headquarters for a period of two years.
- (4) The Member States having stated that they will sign the instruments as soon as they are open for signing in

Palermo, the European Community should also be able to sign,

HAS DECIDED AS FOLLOWS:

*Sole Article*

1. The President of the Council is authorised to designate the persons who are empowered, on behalf of the Community, to sign the Convention against transnational organised crime and the Protocols thereto on combating trafficking in persons, especially women and children, and the smuggling of migrants by land, air and sea.
2. The text of the Convention and its additional Protocols, which were adopted by the General Assembly of the United Nations in its Resolution No 25 of 15 November 2000, will be published in the *Official Journal of the European Communities* upon the accession of the Community.

Done at Brussels, 8 December 2000.

*For the Council*

*The President*

H. VÉDRINE



Brussels, 2.12.2016  
COM(2016) 722 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**assessing the extent to which Member States have taken the necessary measures in order  
to comply with Directive 2011/36/EU on preventing and combating trafficking in human  
beings and protecting its victims in accordance with Article 23 (1)**

## 1. INTRODUCTION

Trafficking in human beings is explicitly prohibited under Article 5(3) of the Charter of Fundamental Rights of the European Union. It is also listed in Article 83 of the Treaty on the Functioning of the European Union among those particularly serious crimes with a cross-border dimension.

A major step in the EU action to address this phenomenon was the adoption of **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims** ('the Directive'), which replaced the previous EU legal instrument on trafficking in human beings, Council Framework Decision 2002/629/JHA. The Directive applies to all Member States except for Denmark<sup>1</sup>.

The Directive sets out **minimum standards** to be applied throughout the European Union in preventing and combating trafficking in human beings and protecting victims and provides for the definition of trafficking in human beings. It is based on the human rights approach and gender perspective, to strengthen the prevention of this crime and the protection of and assistance to the victims thereof.

The Directive concerns: i) criminal measures, investigation and prosecution (Articles 2 to 10) ii) assistance, support and protection measures for victims (Article 11 to 17) iii) prevention measures enabling the reduction of demand, raising awareness, and fostering the training of persons likely to come into contact with victims (Article 18) and iv) National Rapporteurs or equivalent mechanisms (NREMs) and Coordination (Articles 19 and 20). The Directive also takes particular account of the best interests of the child and lays down provisions granting assistance, support and protection specifically tailored to children (Articles 13 to 16).

This report responds to the requirement for the Commission, as per Article 23(1) of the Directive, to 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 the Directive, including a description of action taken under Article 18(4). A separate report assesses 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<sup>2</sup>.

The Commission had organised three meetings with representatives of Member States before the transposition date in order to assist the Member States in the transposition processes and to allow them to exchange information and best practices, as well as to discuss problems they were encountering when transposing the Directive. The Directive has also been discussed in various meetings of the Network of National Rapporteurs or equivalent mechanisms (NREMs).

This Report represents the state of play of the transposition of the Directive at the time of drafting the Report, based on the information available to the Commission, and as such is not an exhaustive analysis of existing national provisions. The existence of further legislative developments or provisions not notified to the Commission cannot be excluded. Therefore this Report does not preclude the Commission from seeking additional information from Member States through bilateral contacts, if need be.

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<sup>1</sup>In this report 'Member States' means the Member States bound by the Directive.

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

## 2. STATE OF TRANSPOSITION AND MEASURES TAKEN BY THE MEMBER STATES

Member States were required to complete transposition of the Directive by 6 April 2013. In May 2013, the Commission initiated infringement procedures against Member States for not having communicated the transposition measures to complete transposition of the Directive by sending 13 letters of formal notice. In 4 of these infringement procedures the Commission addressed reasoned opinions to the Member States concerned. All Member States bound by the Directive have by now communicated their transposition measures<sup>3</sup>. Due to the late notification of transposition measures by Germany, the Commission could not complete its assessment of these measures. The report therefore does not include findings based on the assessment of these measures.

Given the wide and comprehensive nature of the Directive covering different areas of national laws, most Member States have chosen to transpose it with many and diverse acts, to be found within five main areas: criminal codes; specific acts concerning the combatting of trafficking in human beings; laws safeguarding victims of crimes; acts setting measures on protection of children; and legislation regulating the entry and residence of third-country nationals. This report assesses the transposition of the Directive into national laws without addressing its implementation.

### 2.1. Criminal measures, investigation and prosecution (Articles 2 to 10)

#### 2.1.1. Offences concerning trafficking in human beings (Article 2)

Article 2 sets forth a common definition of trafficking in human beings and establishes the types of intentional conducts which constitute the offence of trafficking in human beings.

All Member States have adopted provisions which criminalise the offence of trafficking in human beings. The definition of the offence set out in Article 2(1) comprises three constitutive elements (acts, means and purpose).

The **acts** of recruitment, transportation, transfer, harbouring or reception of persons are explicitly included in the definition of the offence by almost all Member States. Some Member States do not explicitly refer to the ‘exchange’ and the ‘transfer of control’ (**BG, CZ, EE, FR, IT, LV, NL, AT, PL, PT, RO, SI, SK, SE**). Those two acts are generally encompassed by other acts such as ‘recruiting a person’<sup>4</sup>. Concerning the **means**, the use of threat, force and other forms of coercion as well as the abuse of position of vulnerability are covered by all Member States. However certain means (abduction, fraud, deception, giving or receiving payments or benefits or abuse of power) are not explicitly included in the definition by a number of Member States<sup>5</sup>. Member States address in diverse ways the position of

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<sup>3</sup> On the date of closing the work on this report.

<sup>4</sup> SI does not include in the definition the "recruitment" and the UK (England/Wales and Northern Ireland) refers to the ‘arranging or facilitating the travel of another person’.

<sup>5</sup> For example, CZ, EE, FR, LV, HU, FI and UK (England/Wales, Northern Ireland and Scotland) there is no explicit mention of "abduction and fraud". ES and IT do not seem to include "abduction"; LT and SI do not refer to "fraud"; AT does not refer to "deception" and "abduction"; EE, HU, SI and UK (England/Wales, Northern Ireland and Scotland) do not refer to "giving or receiving of payments or benefit" and UK (England/Wales, Northern Ireland and Scotland) does not refer to "abuse of power".

vulnerability, which the Directive defines in Article 2(2) as a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

Article 2(3) stipulates that 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. Several Member States (**BG, ES, FR, CY, LT, LU, MT, NL, PT, SK, SE, and UK (Gibraltar)**) have included explicit references to those forms of exploitation, while in other Member States certain of those minimum forms are not expressly referred to<sup>6</sup>. In **SE**, the missing elements though are covered by the broader catch-all provision<sup>7</sup>. Since Member States can go beyond the minimum definition, some of them also make reference to additional forms of exploitation, such as the exploitation for adoption (**CY**), production of pornographic work (**CZ**), forced marriage (**ES, HR and SK**).

Pursuant to Article 2(4), the consent of the victim of trafficking shall be irrelevant in case that any of the means mentioned in Article 2(1) has been used. The majority of the Member States have this provision reflected in their national law; however, a number of Member States encompass it only via general law principles or case law. The information for **DE, LV and NL, AT** is not conclusive as to whether the provision of 2(4) is reflected in their national law.

Article 2(5) requires that child trafficking shall be punishable even if none of the means mentioned in Article 2(1) has been used. Almost all Member States fully reflect this requirement, in the case of **EL** and **CY** the information is not conclusive.

Article 2 (6) provides that for the purpose of the Directive, "child" shall mean any person below 18 years of age. However, some Member States do not appear to provide assistance and protection for all children up to the age of 18.<sup>8</sup>

### **2.1.2. Incitement, aiding and abetting, and attempt (Article 3)**

Article 3 obliges Member States to ensure that incitement, aiding and abetting and attempt to commit trafficking in human beings are punishable. All Member States have corresponding transposition measures in their national laws.

### **2.1.3. Penalties (Article 4)**

Article 4 lays down the minimum level of the maximum penalty that should be applicable for the offence of trafficking in human beings and provides for a number of aggravating circumstances, which carry higher maximum penalty.

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<sup>6</sup> Examples where some forms of exploitations are not explicitly referred to in national law: begging (**CZ, FI, HR, LV, SI and UK (England/Wales, Northern Ireland and Scotland)**); slavery and practices similar to slavery (**AT, BE, EL and IT**); exploitation for criminal activities (**EL, PL, RO, FI and UK (England/Wales, Northern Ireland and Scotland)**), the removal of organs (**AT, SE**).

<sup>7</sup> In **SE** begging, slavery, practises similar to slavery, servitude, the exploitation of criminal activities and removal of organs are covered by a catch-all provision.

<sup>8</sup> See 2.2.4 and 2.2.5.

Almost all Member States, in accordance with Article 4(1), have established that the offence is punishable by a maximum penalty of at least 5 years of imprisonment. **BE, HU, AT** opted for the maximum of 5 years penalty. All other Member States appear to apply stricter sanctions ranging between a maximum of 6 to 20 years.

Articles 4(2) and (3) list a number of aggravating circumstances whose application carries higher penalties of at least 10 years of imprisonment (when the offence has been committed: against a particular vulnerable victim; within the framework of a criminal organisation; while endangering the life of the victim deliberately or by gross negligence; by means of use of serious violence or by causing particular serious harm to the victim; by public officials in the performance of their duties). Most Member States transposed these provisions in their national laws. The information for **BG, DE, ES** and **HU** concerning the inclusion of the aggravating circumstances or not imposing at least a maximum of 10 years of imprisonment is not conclusive.

Article 4(4) provides that the penalty levels for the aiding, abetting, inciting or attempting of an offence concerning trafficking in human beings must be effective, proportionate and dissuasive and allow for surrender. All Member States have transposed these provisions. As regards the penalty levels, Member States punish aiders, abettors, instigators and the attempt to commit a crime either by the same term of imprisonment as the main offender allowing mitigation of penalty levels or by specific penalty level. The surrender for an offence referred to in Article 3 is possible in all Member States.

#### **2.1.4. Liability of legal persons (Article 5)**

Article 5 requires Member States to ensure that legal persons may be held liable for the offences referred to in Articles 2 and 3, and specifies the position or capacity of the perpetrator in relation to the legal person, which will lead to the legal person's liability.

All Member States have introduced criminal or administrative liability of legal persons for the different types of capacities or positions of the perpetrator that shall lead to responsibility. Some Member States ((**LT, MT** and **UK (Scotland)**) have introduced specific provisions dealing with corporate liability for the crimes of trafficking of human beings, while all others rely on general provisions on corporate liability, applicable to crimes. All Member States have introduced liability for legal persons in line with Article 5 (1)(a) to (c); **EL, CY, LT, MT, PL** and **SK** transposed it literally. Article 5(2) requires Member States to introduce liability for legal persons when a crime under Articles 2 or 3 has taken place due to the lack of control or supervision by a person holding one of the positions referred to in Article 5(1)(a) to (c). Such liability is explicit in all Member States, except for **LU** where the assessment is not conclusive. Article 5(3) requiring that the liability of a legal person may not exclude criminal proceedings against a natural person for the same crime is covered in all Member States.

Article 5(4) stipulates that the concept of 'legal person' shall exclude States or public bodies in the exercise of State authority and public international organisations. Based on the information available, none of the Member States include such public bodies or organisations

within the concept of a ‘legal person’ (or similar concepts applicable under the respective national laws).

### **2.1.5. Sanctions on legal persons (Article 6)**

Article 6 sets out the obligation for Member States to introduce effective, proportionate and dissuasive penalties for the legal persons held liable pursuant to Article 5. Member States have introduced administrative or criminal sanctions that are explicitly applicable to legal persons. The minimum and maximum fines vary between Member States. Article 6 also provides that Member States may include other optional sanctions. Based on the information available, most Member States,<sup>9</sup> with the exception of **DE, IE, and UK**, have chosen to introduce at least one other sanction.

### **2.1.6. Seizure and confiscation (Article 7)**

Under Article 7, Member States must ensure that competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3. All Member States have in place national measures to transpose this provision. While some Member States (**BE, EL, ES, FR, CY and UK (England/Wales)**) have introduced specific provisions dealing with seizure and confiscation concerning the crime of trafficking in human beings, the rest of the Member States appear to rely on general rules on seizure and confiscation under criminal law, which apply to all crimes, including trafficking of human beings.

### **2.1.7. Non-prosecution or non-application of penalties to the victims (Article 8)**

Article 8 requires Member States to 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 such a crime. The Directive leaves discretion to the competent authorities on how to regulate at national level the possibility not to prosecute or impose penalties.

Member States took measures of diverse nature to ensure this possibility for their national authorities. Some Member States (**BG, EL, ES, CY, LV, LT, LU, MT, NL, RO, SK and UK**) make an explicit reference to non-prosecution trafficking victims, while others foresee

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<sup>9</sup> : Examples, exclusion from entitlement to public benefits or aid (BE, CZ, EL, ES, HR, IT, CY, HU, MT, PL, PT); temporary or permanent disqualification from the practice of commercial activities (BE, CZ, EL, ES, FR, HR, IT, CY, HU, MT, LT, LV, AT, PL, PT, RO, SI, SE); placing under judicial supervision (CY, ES, FR, IT, MT, PT and RO); judicial winding-up ( BE, EL, ES, FR, HR, CY, HU, LT, LU, MT, NL, PT, RO, SI ); temporary or permanent closure of establishments which have been used for committing the offence ( BE, ES, FR, LT, LU, CY, MT, PT and RO). In addition to fines and the above-mentioned optional penalties, some Member States (BE, CZ, FR, PT and RO) have chosen to introduce the additional sanction of publication or display of the decision or judgement in which the legal person has been found guilty of the crime.

the non-prosecution of a person who was compelled, threatened or coerced to commit a criminal act (**HU, IT, PL, PT, SE** and **SI**). The information for **CZ** and **HR** is not conclusive.

### **2.1.8. Investigation and prosecution (Article 9)**

Article 9, laying down measures for the investigation and prosecution of trafficking in human beings, has been transposed by the majority of Member States.

As regards paragraph 1, all Member States provide that the submission of a complaint is not required in order to initiate the relevant investigation, and the withdrawal of a victim's statement does not have influence on the continuation of the investigation or prosecution.

Paragraph 2 requires Member States to take the necessary measures to enable the prosecution of trafficking in human beings for a sufficient period of time after the victim has reached the age of majority. Most Member States have such a provision in place, in the case of **IE** and **HR** the available information is not conclusive.

All Member States have foreseen measures for the training of persons/services responsible for investigating or prosecuting trafficking offences in accordance with Article 9(3), either in legal provisions or in soft-law measures such as national action plans, strategies or programmes.

Finally, all Member States have taken measures to ensure the availability of effective investigative tools to persons, units or services responsible for investigating or prosecuting trafficking in human beings (Article 9(4)). The investigative tools foreseen in the Member States include interception of communications (**BE, BG, DE, EE, EL, FI, HR, IT, MT, NL, AT, PL, RO, SI, SE** and **UK**<sup>10</sup>); covert surveillance (**BE, BG, CZ, EE, EL, ES, FI, FR, HR, IT, LU, HU, NL, AT, PL, PT, RO, SI, SK** and **UK**<sup>11</sup>); the monitoring of bank accounts and other financial investigations (**BE, FR, HR, HU, IT, AT, PL, PT, RO, SI, FI** and **UK**); and electronic surveillance or similar measures (**BE, BG, CZ, DE, EL, FR, HR, HU, NL, AT, PL, PT, RO, SI, SE** and **UK**).

### **2.1.9. Jurisdiction (Article 10)**

Article 10 (1) refers to the situations in which Member States must establish their jurisdiction over the offences referred to in Articles 2 and 3. Article 10 (2) sets out a number of optional jurisdictional grounds, which the Member States may *inter alia* choose to adopt. Article 10 (3) refers to the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned and stipulates that "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

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<sup>10</sup> England/Wales, Northern Ireland and Scotland

<sup>11</sup> England/Wales, Northern Ireland and Scotland



in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed".

Article 10(1)(a) obliges Member States to take the necessary measures to establish jurisdiction when the offence is committed in whole or in part within their territory. All Member States have transposed this provision; however, in **HR, CY, LV** and **SI**, it is unclear whether jurisdiction is established also when a crime has been partially committed within the territory.

Article 10(1)(b) requires Member States to take the necessary measures to establish jurisdiction when the offender is one of their nationals. All Member States took measures to transpose this provision.

Article 10(2)(a) to (c) sets out some optional jurisdictional grounds and most Member States have adopted at least one of these. For **BG, DE** and **FR** no optional jurisdictional grounds have been identified.

As regards Article 10(3)(a), most Member States transposed this provision in the national law and have not introduced such a requirement when determining jurisdiction under Article 10(1). However, in **EE, NL, PT** and **RO** jurisdiction (under Article 10(1)(b)) is only established when the offence is criminalised in the place where it is committed.

Concerning Article 10(3)(b), specifying that jurisdiction based on the principles of territoriality and active personality shall not be subject to the requirement that 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, none of the Member States have introduced such a requirement. They thus all transposed the Directive as regards the obligatory jurisdictional grounds under Article 10(1).

## **2.2. Assistance, support and protection measures for victims**

### **2.2.1 Assistance and support for victims of trafficking in human beings (Article 11)**

Article 11 lays down a number of obligations related to the assistance and support for victims of trafficking in human beings, including measures on identification. The necessary measures required by this Article are often included not only in legislative acts but also in national action plans, strategies and programmes. The majority of the Member States have transposed the different provisions of the Article, although some issues concerning the transposition of paragraphs 2 and 7 require closer attention.

As regards Article 11(2), only half of the Member States clearly require that assistance and support should be provided as soon as the competent authorities have an indication or reasonable grounds to believe that the person is a victim of trafficking in human beings (**BG, EE, ES, FR, CY, IE, LT, LU, NL, RO, SK, FI** and **UK**). Some Member States have transposed Article 11(2) also by referring to a list of indicators enabling the "reasonable ground" identification of a person as a victim (**BG, LT, LU** and **RO**).

A key aspect of the Directive, as stipulated in Article 11(3), is the requirement on Member States 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. Member States took measures to transpose this provision, which is almost literally reflected in the legislation of **CY, MT and UK (Gibraltar, Scotland and Northern Ireland)**. The information available for **BE** is not conclusive as to whether unconditional provisions of assistance and support are available and applicable for all victims irrespective of nationality. In **SK** it appears that if the victim's presence is not necessary for the purposes of criminal proceedings, he/she can be discarded from the assistance programme.

In most cases, national law does not contain a condition requiring the willingness of the victim to cooperate in the criminal investigation (**AT, BG, CZ, EL, FI, HR, HU, IT, LT, LU, LV, NL, PL, PT, SE, SI and UK (England/Wales)**). Some Member States, such as **EE, ES, FR, IE, CY, MT, RO and UK (Scotland, Northern Ireland and Gibraltar)**, clearly foresee that willingness to cooperate is not necessary for the assistance to be provided to the victims. In the majority of the national measures, transposition was also illustrated by rules transposing Directive 2004/81/EC in regard to victims who are third-country nationals<sup>12</sup>. Member States established mechanisms of diverse nature<sup>13</sup> aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations under Article 11(4).

The minimum requirements of Article 11(5) on assistance and support measures to the victims are reflected in various ways, e.g. including the provision of the Directive literally in the national law (**CY, MT, UK (Gibraltar)**) or spelled out in a disperse manner in the provisions of different acts (**BE, BG, EL, ES, FR, HU, IT, LV, LT, NL, AT, PL, PT, RO, SI and SK**) or via catch-all provisions ensuring other form of assistance (**BG, ES, HR, RO**). National approaches are diverse in ensuring that assistance and support is provided on a consensual and informed basis.

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<sup>12</sup> 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, OJ L261, 6.8.2004, p.19.

<sup>13</sup> For most Member States, concerning Article 11(4) consideration was given to the collaboration, for the purposes of identification of victims of trafficking in human beings, between governmental competent authorities, local public bodies, and private entities such as NGO's, shelters or any other associations recognised and registered by the State and who are likely to come into contact with victims. As a rule, the national transposing measures highlight the duty for the public authorities to report situations of trafficking in human beings, bearing in mind that any person can carry out such report. The strengthening of proactive and early victim identification and swift provision of information and assistance to victims constitute major objectives in the national action plans, strategies and programmes. Often, the latter provide for guidelines on the identification procedures. Habitually, the identification procedure is divided in several stages. The national instruments of **BG, FR, LU, CY MT and SI** refer specifically to a list of indicators for the purposes of identification of victims. Some national mechanisms also include the setting up of manuals, guidelines, and recommendations for the purposes of the identification of victims (**CZ, EE, ES, LV, LT, CY, MT, SI, SE**). In **BE** law, the mechanism put in place applies only to non-Belgian victims.

Article 11(6) on information to be provided under the assistance and support is reflected in the national laws of most Member States (**BG, CY, CZ, EE, EL, ES, FR, HR, LT, LU, MT, AT, PL, PT, RO, SK, FI** and **UK**). Based on the information available, the latter do not ensure that the victims are provided with information that covers the reflection and recovery period pursuant to Directive 2004/81/EC, as well as the possibility of granting international protection and refugee status pursuant to Directive 2004/83/EC and Directive 2005/85/EC. Apart from **CY, MT** and **UK (Gibraltar)**, where this requirement is almost literally transposed, it is mainly inferred from a set of provisions on the procedures of granting of residence permits for third-country nationals. Most frequently, the national measures foresee the duty to inform foreigners in a broad manner and not specifically victims of trafficking in human beings. Based on the information submitted to the Commission, the provision of information on the reflection period is clearly foreseen in **EE, ES, FI, FR, IE, CY, LT, LU, MT, PT, SK** and **UK (Gibraltar)**.

The Directive requirement on the information on international protection and refugee status is clearly foreseen in **BG, EE, IT, CY, MT, PL, SK** and **UK (Gibraltar)**. **BG** and **SK** specifically address victims for trafficking in human beings.

The provision of information on international protection in **HU, IE, NL** and **SE**, on the reflection period in **IT**, or both types of information in **BE, LV** and **SI** might need closer examination.

Member States used legislation (**EE, EL, FI, HU, IT, CY, LV, LT, LU, MT, NL, PL, PT, RO, SK** and **SE**) or legislation with accompanying soft law measures (**BE, BG, CZ, ES, FR, IE, HR, AT, SI** and **UK**) to transpose Article 11(6). Moreover, in some Member States the Directive requirement is present in acts specifically addressing trafficking in human beings (**CY**), acts with a general scope (**EE, EL, HU, IT, AT, PL, PT, SE**) or in both (**BE, BG, CZ, ES, FR, IE, HR, LV, LT, LU, MT, NL, RO, SK, FI**).

The transposition of the provision in Article 11(7) requiring Member States to attend to victims with special needs, whether those needs derive from pregnancy, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered, requires further examination. Based on the information available divergences have been observed with regard to the transposition of this requirement.

### **2.2.2 Protection of victims of trafficking in human beings in criminal investigation and proceedings (Article 12)**

Article 12 establishes a number of protection measures for victims of trafficking in human beings in criminal investigations and proceedings. While it has been transposed by the majority of Member States, some issues concerning the transposition mentioned below of paragraphs 2 and 4 of this Article require closer attention.

The provisions set by Article 12 have been transposed mainly in national criminal procedure laws, while some Member States have included them in specific acts addressing trafficking in

human beings (**EL, LU, CY, NL, RO, SK, FI** and **UK**) or acts on protection of victims of crimes (**CZ, ES** and **PT**).

As required by Article 12(1), all Member States<sup>14</sup> ensure that the protection measures set out in their legislation apply in addition to the rights set out in Framework Decision 2001/220/JHA, currently Directive 2012/29/EU<sup>15</sup>.

Article 12(2), requiring Member States to provide victims of trafficking in human beings with access without delay to legal counselling and legal representation, including for the purpose of claiming compensation, and free of charge where the victim does not have sufficient financial resources, is reflected in national laws of most Member States (**BG, CZ, EE, EL, ES, FR, HR, CY, LV, LT, MT, AT, PT, SI, SK, FI, SE** and **UK**). Most Member States provide for the possibility of a legal aid free of charge in cases where a person does not have sufficient financial resources. **EL, HR, LV** and **SE** go further as such aid is granted for free regardless of the resources of the victim. Regarding the provision of legal representation and legal counselling ‘without delay’, **EE, ES, MT** and **UK (Gibraltar)** reflect this condition in an explicit manner in their respective laws. Moreover, regarding the scope of access of legal representation the information concerning **IT** and **LU** is not conclusive and might require further examination.

With regard to Article 12(3) all Member States 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.

Paragraph 4 establishes a number of procedures and situations that should be avoided in criminal investigations and proceedings, such as unnecessary repetition of interviews, visual contacts between victims and defendants, giving of evidence in open court and unnecessary questioning concerning the victim's private life. Most Member States have taken measures to transpose this provision, however due to the fact that some procedures are not covered explicitly in the national legislation, the Commission might need to further examine the practical implementation of this provision

### **2.2.3 General provisions on assistance, support and protection measures for child victims of trafficking in human beings (Article 13)**

Article 13 stipulates that child victims of trafficking shall be provided with specific assistance, support and protection measures which consider their best interests. Most of the provisions have been transposed by the majority of the Member States. An important principle set forth by the Directive is the presumption of childhood. Nevertheless, a number of issues arise for **LT, IT, BE, CZ, FI, FR, HU, IE, LV, NL, AT, PL, RO, SE** and **SI** in regard to the transposition of paragraph 2, which provides that assistance, support and

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<sup>14</sup> CZ, PT and UK (Gibraltar) which transposed Article 12(1) explicitly.

<sup>15</sup> 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, OJ L 315, 14.11.2012.

protection measures should be also offered to those victims whose age is unknown, but who can be presumed to be children.

#### **2.2.4 Assistance and support to child victims (Article 14)**

Article 14 requires Member States to adopt specific assistance and support measures which are tailored to children who have become victims of trafficking in human beings. Most Member States (**BG, CZ, EE, ES, FR, CY, HU, LT, PT, RO, SK** and **UK**) make a general reference to the provision of assistance and support measures, covering counselling, social support as well as access to healthcare services and an appropriate form of accommodation. Others (**HR, IT, LU, AT** and **SI**) make reference to specific psychological and medical assistance measures, the placement in the social welfare system (**HR**), the provision of a temporary residence permit (**SI**) and the setting up of child protection groups in hospitals (**AT**). These assistance and support measures should be granted to the child victim after an individual assessment. The assistance and support measures offered by some Member States (**BE, EL, LV** and **PL**) are applicable to all victims. It is difficult to assess whether the approach sufficiently addresses the specific needs of child victims, including access to education for child victims and the children of victims, and the Commission will examine this further.

Article 14(1) provides that these measures should assist and support the child "in the short and long term": only **FR** makes explicit reference to the time period of the duration of the assistance measures, while the other Member States seem to provide such measures for a "*reasonable time*" without specifying the precise time frame.

Article 14(2) establishes that a guardian or a representative should be appointed for a child victim of trafficking in human beings once the child is identified, where the holders of the parental responsibilities due to a conflict of interest cannot ensure the best interests of the child. All Member States reflect this provision: a few Member States (**CY, NL** and **UK**) adopted specific provisions to that purpose, while the others ensure the appointment through their general rules.

Article 14(3) lays down that Member States should provide assistance and support, where appropriate and possible, also to the family of the child victims that live on the territory of the Member State. Half of the Member States (**BG, ES, CY, LT, LU, MT, PL, PT, SI, SK, FI, SE**, and **UK**) have adopted specific measures for the family of the child victim<sup>16</sup>.

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<sup>16</sup> The types of measures vary from Member State to Member State. They include access to social services (**BG, LT, PL** and **SK**), assistance in regard to the upbringing of the child by means of providing families with the necessary access to services (**FI** and **UK** (England/Wales, Northern Ireland and Scotland)), the provision of information, legal representation as well as family support and, if appropriate, financial help (**PT**), access to the same type of information as the victim (**CY**), psychological, social and educational assistance (**LU** and **MT**) or support and help (**SE**).

### **2.2.5 Protection of child victims of trafficking in human beings in criminal investigations and proceedings (Article 15)**

Article 15 lays down an obligation for Member States to establish a number of protection measures for child victims of trafficking in human beings during criminal investigations and proceedings. All national legislations appear to include provisions corresponding with Article 15(1) to ensure that in criminal investigations and proceedings, a representative is appointed for the child victim of trafficking where the holders of parental responsibility are precluded from representing the child as a result of a conflict of interest. The right to legal counselling and legal representation for the child victim of trafficking foreseen in paragraph 2 tends to be covered by general rules of criminal and civil law applicable to everyone, including adults and children.

Member States reflect the specific protection measures listed in Article 15(3)(a) to (f) mainly through general provisions of criminal procedure laws or acts protecting victims of crimes in general. Thus while general measures and provisions in criminal procedures laws on protecting victims of crime exist, there seems to be a lack of specific measures for children victims of trafficking. Specific national measures for child victims of trafficking have been identified in **EL, CY, LV, NL, MT, RO, and UK**. This provision might require closer examination as some Member States seem to apply all or some of the protection measures only to children under 14 (**DE, EE, IE, LV, AT, RO**) or 15 years old (**PL**), while Article 2(6) of the Directive states that child shall mean any person below 18 years of age.

In compliance with Article 15(4), the majority of the Member States ensure that in criminal investigations of trafficking in human beings all interviews with a child victim or witness may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings.<sup>17</sup> Predominantly Member States reflect this provision in their criminal procedure laws. Those cases require attention, where the provisions are limited based on the age of the minors.

Article 15(5) requiring that Member States adopt the necessary measures to ensure that in criminal court proceedings specific protection measures may be ordered is ensured mainly through general measures of criminal procedure law. Most Member States ensure that the hearing of the minor victim or witness takes place without the presence of the public, but in some Member States it is subject to specific conditions. Most Member States generally provide that the child victim can be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies, but in some MS this option is linked to the age of the minor.<sup>18</sup>

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<sup>17</sup> EE, CY, LU, MT and NL transposed Article 15(4) literally.

<sup>18</sup> The identified national measures appear to cover minors under 14 years old (HU and LV), under 15 years old (FI and PL) or under 16 years old (MT).

### **2.2.6 Assistance, support and protection for unaccompanied child victims fo trafficking in human beings (Article 16)**

Article 16 concerns unaccompanied child victims of trafficking and requires Member States to provide them with assistance, support and protection measures that meet their specific needs. Such measures should not only take into account the best interests of the unaccompanied children, but also provide them with a durable solution.

Specific measures in relation to the medical and psychological care, as well as the representation and the accommodation of unaccompanied child victims exist in some Member States (**HU, IE, CY, AT, SK and FI**), while in others (**BG, EE, HR, LV, PT, SI, UK**) unaccompanied child victims appear to be covered by general rules. Limited number of measures, in addition to the general rules applicable to all children, tailored specifically for unaccompanied child victims exist in **FR, LU and NL**

Most Member States ensure that unaccompanied child victims are provided with specific assistance and support measures – such as medical and psychological support and access to appropriate accommodation – in accordance with their best interests. Most of them ensure as well measures that aim at seeking long term stability and a durable solution for each individual child victim. Some requirements might need closer examination with regard to **EL, LV and SE**.<sup>19</sup>

Pursuant to Article 16(3) and (4) Member States shall ensure that a guardian and a representative responsible in criminal investigations and proceedings are appointed to unaccompanied child victims of trafficking. This obligation is reflected in national laws of all Member States..

### **2.2.7 Compensation to victims (Article 17)**

Article 17 requires Member States to ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent. All Member States provide the possibility for such compensation, available to all victims irrespective of nationality. In **SI** compensation appears to be provided to victims who are Slovenian or EU citizens.

The type of compensation provided and the procedures for awarding the compensation varies between the Member States, while generally including payment for medical and psychological treatment, loss of income, legal fees and funeral expenses. Some Member States (**AT, SK, FI, and UK**) also compensate for non-material damages, such as physical and psychological suffering.

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<sup>19</sup> Based on the available information, in Greece the national legislation does not foresee that an individual assessment shall take place upon the initial identification of the child victim; in Latvia the national measures appear to be addressed to victims in general and do not appear to specify in the law special needs and best interests of the unaccompanied child.

As for the procedures to obtain compensation, many Member States (**BG, CZ, ES, IE, LT, MT, NL, PT** and **SE**) provide for a dual system whereby the victim can bring a civil action for compensation against the perpetrator within the criminal procedure; if the victim is not fully compensated through this procedure, there is still a possibility to receive compensation from the State.

Other Member States (**EE, EL, HU, LV, PL, RO, SK** and **UK**) have special provisions governing compensation for victims of crimes (including violent crimes) or for injuries obtained through such crimes. In **BE, FR** and **HR**, a special fund for victims of violent crimes has been set up from which victims receive compensation from the State.

### **2.3 Prevention (Article 18)**

Article 18 sets forth an obligation to Member States for taking measures to discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings.

The necessary measures required by this Article are often included not in legislative acts but in national action plans, strategies and programmes.

Paragraph 1 provides that Member States must adopt appropriate measures, such as education and training, while paragraph 2 concerns, in particular, information and awareness-raising. Most Member States (**BE, EE, EL, ES, FR, HR, HU, IE, CY, LT, MT, NL, AT, PL, PT, RO, SI, SK, SE** and **UK**) have adopted action plans that include general training and education measures together with specific awareness-raising projects.

Pursuant to paragraph 3, Member States are obliged to promote the regular training of officials that are likely to come into contact with victims or potential victims of trafficking in human beings. All Member States have adopted measures to ensure that their officials are trained. The majority of Member States generally refer to officials that are likely to come in contact with victims of trafficking in human beings, while some others make explicit reference to the training of immigration officers (**BE, FR** and **LU**), judges (**AT, BE, BG, CZ, HU, LT, MT, PL, PT, SE** and **SI**), prosecutors (**BG, CZ, EE, ES, HU, IT, LT, MT, NL, AT, PL, SI** and **SE**), law enforcement bodies (**EE, NL** and **PL**), judicial police (**ES**), employees of different Ministries (**BE, CY, ES, MT** and **SI**), media representatives (**BG**), labour inspectors (**CZ, FR** and **SI**), army officers participating in missions abroad (**CZ**), healthcare professionals (**FR, PT** and **SK**), boarder control staff (**HU, LT** and **PT**) as well as social workers and staff of assistance services (**BG, HU, IT, LT, LU, MT, PT, SI** and **SK**).

A more detailed assessment of measures taken or considered by Member States in the context of Article 18(4) of the Directive aiming to establish as a criminal offence the use of services which are the objects of exploitation of victims of trafficking, with the knowledge that the person is such a victim, is presented as a separate report<sup>20</sup>.

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<sup>20</sup> See footnote 3



## 2.4 National Rapporteurs or Equivalent Mechanisms and Coordination of the Union strategy against trafficking in human beings (Article 19 and 20)

According to Article 19, Member States shall establish national rapporteurs or equivalent mechanisms (NREMs) with the task of carrying out assessment of trends, measuring of results of anti-trafficking actions, and gathering of statistics. Recital 27 clarifies that NREMS should be established in the way that Member States consider appropriate "*according to their internal organisation, and taking into account the need for a minimum structure with identified tasks*". Therefore, NREMs have different statuses and structures; in particular, some Member States have established NREMs which are independent from the government, whereas the vast majority have NREMs which are part of the national administration. The Directive does not refer to the concept of independence for the NREMs, but rather describes their tasks and reporting obligations.

Most Member States have appointed a national rapporteur carrying out the tasks set by this Article; some Member States<sup>21</sup> have appointed a specific person, others a body<sup>22</sup>, while the rest have established equivalent mechanisms. Article 20 requires Member States to facilitate the tasks of the EU anti-trafficking coordinator (ATC) and in particular, to transmit to the ATC the information referred to in Article 19, on the basis of which the ATC will contribute to reporting carried out by the Commission every 2 years on the progress made in the fight against trafficking in human beings. All Member States have complied with this obligation by transmitting their inputs for the first Commission's report on the progress in the fight against trafficking in human beings adopted on 19 May 2016<sup>23</sup>.

Furthermore, the transposing measures in **EL, IT, CY, LT** and **MT** foresee in an explicit manner that information on the fight against trafficking in human beings is communicated to the ATC. More particularly, while **CY** requires that the national rapporteur provides information to the ATC every 2 years, **EL** and **IT** set out the submission of an annual report and a biennial report, respectively.

Other Member States, such as **BG, ES, FR, HU** and **RO** transposed Article 20 through a general obligation of information exchange and cooperation with the competent authorities of other countries and international organisations. Transposition could also be concluded as regards the remaining Member States mainly based on the general tasks allocated to the national rapporteur.

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<sup>21</sup> BE, FR, HU, NL, PT and UK (Gibraltar)

<sup>22</sup> BG, CZ, EE, EL, ES, FI, HR, IT, CY, IE, LT, LU, LV, MT, AT, PL, RO, SI, SK, SE and UK (England/Wales, Northern Ireland and Scotland).

<sup>23</sup> Communication from the Commission to the European Parliament and the Council, Report on the progress made in the fight against trafficking in human beings (2016) as required under Article 20 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, COM(2016) 267 final.

### 3. CONCLUSIONS AND NEXT STEPS

Complete and correct transposition of the Directive, followed by its meaningful implementation, is not only compulsory but also necessary in order to make a substantial progress on national level in addressing trafficking in human beings. The ultimate aim is to make a real difference in the lives of victims and step up the fight against this crime by increasing the number of prosecutions and convictions.

The Commission has proactively monitored the transposition processes of the Directive. This Report, which should be read in conjunction with the Report responding to the obligation of Article 23(2) COM(2016) 719 of the Directive, is part of the process of ensuring its correct application and implementation. This overview shows that substantial efforts have been taken by the Member States to transpose this comprehensive instrument.

Nevertheless, there still remains significant room for improvement in particular as regards: **specific child protection measures, presumption of childhood and child age assessment, the protection before and during criminal proceedings, access to unconditional assistance, compensation, non-punishment, assistance and support to the family member of a child victim as well as prevention.**

The Commission is ready to provide further support to Member States to ensure a satisfactory level of the implementation of the Directive in view of: the European Agenda on Security<sup>24</sup>, which highlights trafficking in human beings as a form of serious and organised crime, the current **EU Strategy towards the eradication of trafficking in human beings 2012-2016**<sup>25</sup>, which calls for ensuring full transposition and implementation of the Directive, and the new post-2016 policy framework. If necessary, guidelines on the practical implementation of the Directive could also be drawn up for specific provisions requiring it.

**The Commission will continue to monitor the implementation of the Directive by Member States in accordance with its powers under the Treaties and may take the appropriate action, including, where necessary, the initiation of infringement procedures.**

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<sup>24</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions The European Agenda on Security, COM(2015) 185 final.

<sup>25</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, COM(2012) 286 final.



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## First Report on the progress made in the fight against trafficking in human beings

### Commission adopted the first Report on progress in the fight against trafficking in human beings.

The European Commission reported on progress in the fight against trafficking in human beings. The report presents trends and challenges in addressing trafficking in human beings, examines progress made and highlights key challenges that the EU and its Member States need to address as a priority. Despite progress made, EU Member States need to step up efforts to fight effectively against trafficking in human beings.

Commissioner for Migration, Home Affairs, and Citizenship, **Dimitris Avramopoulos**, said: *"It is morally and legally unacceptable and inexcusable that in the EU of the 21st century, there are human beings who are bought, sold and exploited like commodities. It is our personal, collective and legal duty to stop this. We have put in place a strong and forward-looking legislative framework to do this. Our main responsibility is to ensure it is now fully implemented so that those responsible are prosecuted and the victims are fully protected and assisted. Today's landmark report will guide us in further developing our policy framework."*

The EU Anti-trafficking coordinator, **Myria Vassiliadou**, said: *"The adoption of the EU Anti-trafficking Directive in 2011 created important momentum in raising awareness on the scale of the phenomenon in the EU and the need to address it with a wide range of tools, from criminal law to prevention measures. The trends and challenges identified in this Report clearly show that it is now high time for Member States to step-up efforts to effectively implement the Directive and comply with its obligations."*

The report finds that in 2013-2014, 15,846 women, men, girls and boys were registered as victims of trafficking in the EU. Given the complexity of reporting on this phenomenon, the actual number of victims is likely to be substantially higher than those registered by national authorities. According to the Report, trafficking for the purpose of sexual exploitation is still the most widespread form (67% of registered victims), followed by trafficking for labour exploitation (21% of registered victims). Over three quarters of the registered victims were women (76%), while at least 15% were children.

One of the most sharply increasing trends has been in the number of children falling victim to human traffickers. Victims with disabilities and victims of Roma ethnic background were also identified as increasing in number.

The report also highlights links between human trafficking and other forms of crime and the exploitation of the most vulnerable in the context of the current migration crisis as well as an increased use of the internet and new technologies to recruit victims.

To address the key challenges in the fight against trafficking in human beings, EU Member States need to fully and correctly implement the EU Anti-trafficking Directive in order to increase the number of investigations and prosecutions of perpetrators, establish appropriate mechanisms for the early identification and protection of victims and enhance measures to prevent the trafficking of human beings.

The Commission will continue working on a coordinated and consistent response to trafficking in human beings. By the end of 2016, the Commission will publish two reports on compliance and criminalisation as well as a post-2016 Strategy on trafficking in human beings. Child protection along the migration route is a top priority and the Commission is also paying particular attention to unaccompanied minors – very vulnerable to traffickers – in its reform of the Common European asylum system.

**Errata Corrige.** The table on page 13 of the report, that refers to DGPJ / MJ as a secondary data source of the OTSH, should read as follows:

**Portugal** has established an Observatory on Trafficking in Human Beings (OTSH) which is to be understood as a monitoring system to collect quantitative and qualitative data from different entities with activities related to trafficking in human beings and to analyse data, and produce knowledge about the phenomenon. These activities include criminal and judicial related actions, as well as activities to support victim's social reintegration. The OTSH has a network of more than 30 governmental and non-governmental bodies as primary data sources, as the DGPJ/Ministry of Justice, which provides the official data related to criminal and judicial actions (investigations, prosecutions and convictions). As secondary data sources, the OTSH contacts national Liaisons Officers, IOM/Lisbon Office, Europol. The Monitoring System is a part of the national referral mechanism on trafficking in human beings in Portugal. The status given to registers (as far as 'Identified' or 'Not a victim of trafficking') is given by the competent authority. The OTSH produces trimestral reports (classified) and an Annual Statistical Report that are validated by all data providers.

## Tags

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[EU Policy \(/anti-trafficking/sections/eu-policy\\_en\)](#), [European Commission \(/anti-trafficking/institutions/european-commission\\_en\)](#), [Report \(/anti-trafficking/document-type/report\\_en\)](#), [Strategy \(/anti-trafficking/policy-area/strategy\\_en\)](#), [Report \(/anti-trafficking/type-publication/report\\_en\)](#), [2016 \(/anti-trafficking/year/2016\\_en\)](#)

## Attachments

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Commission Staff Working Document.pdf ([https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/commission\\_staff\\_working\\_document.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/commission_staff_working_document.pdf))  
Report on the progress made in the Fight against Trafficking in Human Beings\_2016.pdf ([https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report\\_on\\_the\\_progress\\_made\\_in\\_the\\_fight\\_against\\_trafficking\\_in\\_human\\_beings\\_2016.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/report_on_the_progress_made_in_the_fight_against_trafficking_in_human_beings_2016.pdf))  
Factsheet Commission Report\_en.pdf ([https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/factsheet\\_commission\\_report\\_en.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/factsheet_commission_report_en.pdf))  
Press Release\_IP-16-1757\_en.pdf ([https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/press\\_release\\_ip-16-1757\\_en.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/press_release_ip-16-1757_en.pdf))

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## 10th EU Anti-Trafficking Day: Commission calls for intensified efforts to address new challenges

Brussels, 17 October 2016

**The European Commission marks the 10th EU Anti-Trafficking Day today urging a reinvigoration of joint efforts across the Union to eradicate trafficking in human beings.**

Trafficking in human beings is a grave violation of human rights and a serious form of organised crime. Important momentum was created with the adoption of the Anti-Trafficking Directive and the EU Anti-Trafficking Strategy, and Member States have been stepping up their efforts to effectively contribute to the prevention and combatting of this crime as well as providing adequate protection and assistance to the victims. On the occasion of the **10th EU Anti-Trafficking Day**, the European Commission is today presenting a comprehensive policy review of anti-trafficking projects funded by the Commission between 2004 and 2015, while public authorities, civil society and citizens organise and participate in events all across Europe to mobilize social awareness. This review is one of the last remaining of the 40 priority actions enlisted in the EU Anti-Trafficking Strategy, which comes to an end in 2016.

Commissioner for Migration, Home Affairs and Citizenship, Dimitris **Avramopoulos**, said: *"Today, one decade after we instituted the EU Anti-Trafficking Day, we call for renewed attention to this atrocious crime. Trafficking in human beings must be stopped. Today, new trends are calling for intensified efforts from all of us: migrants and refugees, especially vulnerable persons such as women or unaccompanied children, are suffering terrible experiences at the hands of traffickers. The profits from their exploitation go to the very same networks of organised crime that we are fighting daily with our security policies. We will continue to do so, supporting our Member States in this fight, legally, operationally and financially. We owe this to each and every victim."*

EU Anti-Trafficking Coordinator, **Myria Vassiliadou**, added: *"We will now build on the results of this study, which examines anti-trafficking projects funded by the Commission and their contribution towards the objectives of the EU Anti-Trafficking Strategy. Our priorities should be to focus on both the identification of and early and effective support for victims of trafficking, to fight against traffickers and to address the trafficking chains and improve our knowledge and understanding of trafficking through data collection at national and EU level. Whilst we continue to improve EU funding initiatives to better help Member States address trafficking, we expect them to effectively implement our legal and political commitments to tackle trafficking in human beings in the EU and across the globe."*

The policy review examines 321 projects, with activities in over 100 countries worldwide with total funding of €158.5 million, according to their scope and geographic areas of intervention, as well as target beneficiaries, funding level, types of output and policy recommendations. It analyses project deliverables with a view to providing a solid basis for coherent, cost-effective and strategic planning, including for the further development of anti-trafficking policies at EU level. Commission funded projects have focused on child trafficking and trafficking for labour exploitation as well as trafficking for sexual exploitation, forced begging and organ removal, with around half of the projects addressing multiple forms of exploitation. The findings of the study further identified the next steps required to support future policy development identified.

Ahead of tomorrow's EU Anti-Trafficking Day, the EU is participating today in the 8th Conference of Parties of the United Nations Conference on Transnational and Organised Crime (UNTOC) in Vienna.

### Background

Trafficking in human beings is a violation of fundamental rights, and is explicitly prohibited under the Charter of Fundamental Rights of the European Union. It is also listed as a crime in Article 83 of the Treaty on the Functioning of the European Union.

The [EU Anti-Trafficking Directive](#) adopted in 2011 put forward a victim centred approach, including a gender perspective, to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings, prevention and monitoring of the implementation.

In its [EU Strategy on Trafficking in human beings 2012-2016](#), the EU set out 40 concrete and practical measures against trafficking in human beings, putting the protection and rights of the victims at the forefront.

The [EU Anti-Trafficking Coordinator](#) is responsible for improving coordination and coherence among EU institutions, EU agencies, Member States and international actors and developing existing and new EU policies to address trafficking in human beings.

The EU Anti-Trafficking Day was established in 2007 following a recommendation of the European Parliament, and a proposal of the Commission. Ever since, 18 October is marked with events across the EU, bringing together all relevant actors working for eradicating trafficking in human beings.

**For more information**

[Study](#): Comprehensive policy review of anti-trafficking projects

[Eighth session of the Conference of the Parties to the United Nations Convention against Transnational Organised Crime](#)

[EU Anti-Trafficking website](#)

IP/16/3440

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## Commission adopts first Report on progress in the fight against trafficking in human beings

Brussels, 19 May 2016

### Commission adopts first Report on progress in the fight against trafficking in human beings

The European Commission is today reporting on progress in the fight against trafficking in human beings. The report presents trends and challenges in addressing trafficking in human beings, examines progress made and highlights key challenges that the EU and its Member States need to address as a priority. Despite progress made, EU Member States need to step up efforts to fight effectively against trafficking in human beings.

Commissioner for Migration, Home Affairs, and Citizenship, Dimitris **Avramopoulos**, said: *"It is morally and legally unacceptable and inexcusable that in the EU of the 21st century, there are human beings who are bought, sold and exploited like commodities. It is our personal, collective and legal duty to stop this. We have put in place a strong and forward-looking legislative framework to do this. Our main responsibility is to ensure it is now fully implemented so that those responsible are prosecuted and the victims are fully protected and assisted. Today's landmark report will guide us in further developing our policy framework."*

The EU Anti-trafficking coordinator, Myria **Vassiliadou**, said: *"The adoption of the EU Anti-trafficking Directive in 2011 created important momentum in raising awareness on the scale of the phenomenon in the EU and the need to address it with a wide range of tools, from criminal law to prevention measures. The trends and challenges identified in this Report clearly show that it is now high time for Member States to step-up efforts to effectively implement the Directive and comply with its obligations."*

The report finds that in 2013-2014, 15,846 women, men, girls and boys were registered as victims of trafficking in the EU. Given the complexity of reporting on this phenomenon, the actual number of victims is likely to be substantially higher than those registered by national authorities. According to the Report, trafficking for the purpose of sexual exploitation is still the most widespread form (67% of registered victims), followed by trafficking for labour exploitation (21% of registered victims). Over three quarters of the registered victims were women (76%), while at least 15% were children.

One of the most sharply increasing trends has been in the number of children falling victim to human traffickers. Victims with disabilities and victims of Roma ethnic background were also identified as increasing in number. The report also highlights links between human trafficking and other forms of crime and the exploitation of the most vulnerable in the context of the current migration crisis as well as an increased use of the internet and new technologies to recruit victims.

To address the key challenges in the fight against trafficking in human beings, EU Member States need to fully and correctly implement the [EU Anti-trafficking Directive](#) in order to increase the number of investigations and prosecutions of perpetrators, establish appropriate mechanisms for the early identification and protection of victims and enhance measures to prevent the trafficking of human beings.

The Commission will continue working on a coordinated and consistent response to trafficking in human beings. By the end of 2016, the Commission will publish two reports on compliance and criminalisation as well as a post-2016 Strategy on trafficking in human beings. Child protection along the migration route is a top priority and the Commission is also paying particular attention to unaccompanied minors – very vulnerable to traffickers – in its [reform](#) of the Common European asylum system.

### Background

Trafficking in human beings is a violation of fundamental rights, and is explicitly prohibited under the Charter of Fundamental Rights of the European Union. It is also listed as a crime in Article 83 of the Treaty on the Functioning of the European Union.

The [EU Anti-trafficking Directive](#) adopted in 2011 put forward a victim centred approach, including a gender perspective, to cover actions in different areas such as criminal law provisions, prosecution of offenders, victims' support and victims' rights in criminal proceedings, prevention and monitoring of



the implementation.

In its [EU Strategy on Trafficking in human beings 2012-2016](#), the EU set out 40 concrete and practical measures against trafficking in human beings, putting the protection and rights of the victims at the forefront.

The findings of the first Report on progress in the fight against trafficking in human beings will feed into the development of a post-2016 strategy on trafficking in human beings to be published in 2016.

The [EU Anti-Trafficking Coordinator](#) is responsible for improving coordination and coherence among EU institutions, EU agencies, Member States and international actors and developing existing and new EU policies to address trafficking in human beings.

**For more information**

[Factsheet: First Commission Report on the progress made in the fight against trafficking in human beings](#)

[Commission Report on the progress made in the fight against trafficking in human beings \(2016\)](#)

[Commission Staff Working Document](#)

[Commission website: Together against trafficking in human beings](#)

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Brussels, 19.5.2016  
COM(2016) 267 final

**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**Report on the progress made in the fight against trafficking in human beings (2016)**

**as required under Article 20 of Directive 2011/36/EU on preventing and combating  
trafficking in human beings and protecting its victims  
{SWD(2016) 159 final}**

## I. CONTEXT

Trafficking in human beings is the buying, selling and exploitation of adults and children. It is a phenomenon which has a detrimental effect on individuals, society, and the economy. **Traffickers exploit people's vulnerabilities**, which may be exacerbated by factors such as poverty, discrimination, gender inequality, violence against women, lack of access to education, ethnic conflict, and natural disasters.

**Trafficking in human beings is a crime driven by demand and profit.** The profits, in both the legal and illegal economies, result in a complex interplay between supply and demand that must be addressed if the crime is to be eradicated.

**Trafficking in human beings is a gross violation of fundamental rights, and is explicitly prohibited under the Charter of Fundamental Rights of the European Union.** It is also listed as a crime in Article 83 of the Treaty on the Functioning of the European Union. Crimes listed in Article 83 are known as 'Euro crimes'. These are particularly serious crimes with a cross-border dimension.

Cooperation and coordination between Member States is therefore essential, as reflected in **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**<sup>1</sup> ('the anti-trafficking Directive'). Article 20 of the directive provides that, in order to contribute to a coordinated and consolidated EU strategy against trafficking, 'Member States shall transmit to the Anti-Trafficking Coordinator (ATC) the information referred to in Article 19, on the basis of which the ATC shall contribute to reporting carried out by the European Commission every two years on the progress made in the fight against trafficking in human beings'.

To this end, the Commission appointed an EU Anti-Trafficking Coordinator, who is responsible for improving coordination and consistency between EU institutions, EU agencies, the Member States and international actors, and for developing new and improving existing EU policies to tackle trafficking in human beings.<sup>2</sup>

This is **the first Commission report on trafficking in human beings since the adoption of the anti-trafficking Directive.** In accordance with Recital 27 and Article 19 of that directive, the report is divided into three main sections: trends in trafficking in human beings, results of specific anti-trafficking actions, and statistics provided by the Member States. It is accompanied by a staff working document<sup>3</sup> that provides detailed and comprehensive factual information complementing information included in this report. Furthermore, the report examines action taken by the Commission and any other relevant stakeholders under the EU

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<sup>1</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32011L0036>

<sup>2</sup> [https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator\\_en](https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en)

<sup>3</sup> SWD(2016) 159.

**Strategy towards the eradication of trafficking in human beings 2012-2016**<sup>4</sup> (‘the EU Strategy’). The findings of this report are used to highlight the Commission’s policy orientation and will feed into the development of a **post-2016 strategy on trafficking in human beings** to be published in 2016.

In addition, the report examines key EU policies that address trafficking in human beings, including the European Agenda on Migration;<sup>5</sup> the European Agenda on Security;<sup>6</sup> the EU Action Plan against migrant smuggling 2015-2020;<sup>7</sup> the Action Plan on Human Rights and Democracy 2015-2019;<sup>8</sup> the new framework for the EU’s activities on gender equality and women’s empowerment in the EU’s external relations for 2016-2020<sup>9</sup> and the Strategic engagement of the EU for gender equality 2016-2019.<sup>10</sup>

This report focuses on issues that highlight the comprehensive approach of the anti-trafficking Directive and the EU Strategy. In particular, it examines the progress made on the implementation of ‘the three Ps’, **prosecution** (with a focus on financial investigations), **protection** (with a focus on setting up national referral mechanisms) and **prevention** (with a focus on action taken by Member States to prevent the crime as provided by Article 18 of the Anti-Trafficking Directive).

The report is based on information from three main sources: information gathered by the **National Rapporteurs or equivalent mechanisms** (‘NREMs’) and submitted to the EU’s Anti-Trafficking Coordinator by the Member States pursuant to Articles 19 and 20 of the anti-trafficking Directive; contributions submitted by civil society organisations participating in the **EU Civil Society Platform against trafficking in human beings**<sup>11</sup> and the **EU Civil Society e-Platform**; and information from the relevant **EU agencies, international and regional organisations**.

The information submitted by Member States mainly covers the **period 2011-2013**. However, the report also contains more up-to-date information, including **statistical data for the years 2013-2014**.<sup>12</sup>

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<sup>4</sup> <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0286>

<sup>5</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication\\_on\\_the\\_european\\_agenda\\_on\\_migration\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf)

<sup>6</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu\\_agenda\\_on\\_security\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf)

<sup>7</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/eu\\_action\\_plan\\_against\\_migrant\\_smuggling\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/eu_action_plan_against_migrant_smuggling_en.pdf)

<sup>8</sup> [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/joint\\_communication\\_on\\_human\\_rights\\_and\\_democracy\\_en.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/joint_communication_on_human_rights_and_democracy_en.pdf)

<sup>9</sup> [http://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender-2016-2020-20150922\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender-2016-2020-20150922_en.pdf)

<sup>10</sup> [http://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender-2016-2020-20150922\\_en.pdf](http://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender-2016-2020-20150922_en.pdf)

<sup>11</sup> All information about the EU Civil Society Platform is available on the dedicated Commission website: <http://ec.europa.eu/anti-trafficking/>.

<sup>12</sup> A specific request for statistical data for the years 2013 and 2014 was sent to Member States in December 2015.

## II. TRENDS AND CHALLENGES IN ADDRESSING TRAFFICKING IN HUMAN BEINGS IN THE EU

Assessing the exact scale of the complex crime of trafficking in human beings at EU level is difficult because of its links with other criminal activities and the differences in national legislation. In recent years, the Commission, through Eurostat, has been collecting relevant statistics. The latest Eurostat report on trafficking in human beings<sup>13</sup> was published in 2015 and covers the period 2010-2012.

The trends in the statistical data for the **period 2013-2014**<sup>14</sup> provided by the Member States for this report are consistent with the trends in the previous period. It is important to stress that this data refers to ‘registered victims’ (both identified and presumed)<sup>15</sup>. However, given the complexity of the phenomenon, there are solid grounds to expect that the actual numbers of victims of trafficking in the EU are indeed substantially higher.

- In total there were **15 846 ‘registered victims’** (both identified and presumed) of trafficking in the EU.
- Trafficking for the purpose of **sexual exploitation** is still the most widespread form (67 % of registered victims), followed by labour exploitation (21 % of registered victims). The other 12 % were registered as victims of trafficking for other forms of exploitation.
- Over three quarters of the registered victims were women (76 %).
- At least 15 % of the registered victims were children<sup>16</sup>.
- **65 %** of registered victims were **EU citizens**.
- The **top five EU countries of citizenship** for registered victims in 2013-2014 were Romania, Bulgaria, the Netherlands, Hungary, and Poland. These are the same countries as for the years 2010-2012.
- The **top five non-EU countries of citizenship** were Nigeria, China, Albania, Vietnam and Morocco.

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<sup>13</sup> [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat\\_report\\_on\\_trafficking\\_in\\_human\\_beings\\_-\\_2015\\_edition.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf)

<sup>14</sup> Data was collected for this report as part of an interim and simplified exercise carried out after the publication of the two Eurostat working papers on trafficking in human beings and before any other future official data collection. For more information on how the Commission collects trafficking data, please see the Eurostat statistical working paper, ‘Trafficking in human beings’, 2015 edition.

<sup>15</sup> In accordance with the definition in the anti-trafficking Directive, the term ‘identified victim’ refers to a person who has been formally identified by relevant authorities as a victim of trafficking. The term ‘presumed victim’ is used for a victim of trafficking who has met the criteria of the EU Directive but has not formally been identified by the competent authorities as a victim, or has declined to be formally and legally identified as a victim of trafficking. Some Member States have included both categories in their data collection, whereas others only include one of the two categories.

<sup>16</sup> Based on the partial age-disaggregated data provided by the Member States.

- **6 324** people had formal contact with the police or the criminal justice system<sup>17</sup> in connection with the crime of trafficking in human beings.<sup>18</sup>
- In total, **4 079** prosecutions and **3 129** convictions for trafficking in human beings were reported in the EU.

More detailed analysis of the statistical data is available in the staff working document accompanying this report.

Compared on an annual basis, the total number of registered victims in the data for 2013-2014 is lower than that recorded in the Eurostat working paper for 2010-2012 (8 034 in 2013 and 7812 in 2014; as compared to 9 710 in 2010, 9 438 in 2011 and 10 998 in 2012). Although the data collection methods used for both periods were similar, it would not be advisable at this stage to compare the data, either between the two exercises or across individual years, due to possible differences in recording methods and legal definitions. For this reason, the discrepancy in the annual totals, and in particular the reasons why fewer victims of trafficking were registered, are issues that need to be explored and analysed further. Furthermore, the consistency in terms of victims' countries of origin, countries of destination, the forms of exploitation and the age and gender profile of victims over the five-year period (2010-2014) shows that, despite the efforts made, the situation has not changed.<sup>19</sup>

On the basis of this evidence, it is important that **Member States continue efforts to improve the collection of data (age- and gender-disaggregated) on trafficking in human beings to monitor the phenomenon**. Data collection is equally important for measuring the impact of action to address trafficking. The consistency of the statistical trends in the two periods suggests that **Member States should step up efforts to investigate the crime, prosecute perpetrators and identify potential victims**. The Commission is committed to supporting the Member States in their efforts to do this. This will involve issuing better guidance and collecting data on additional indicators to improve the reliability and comparability of data.

### **Trends in forms of exploitation**

Trafficking in human beings is a social phenomenon that takes many forms. It develops over time, often according to demand and the inventiveness of traffickers. The list of different forms of exploitation in the anti-trafficking Directive is non-exhaustive so that new exploitative forms can be included under the definition of trafficking in human beings.

<sup>17</sup> May include persons suspected, arrested or cautioned for a criminal offence at the national level. For definition please see the Eurostat Crime and Criminal Justice Metadata in Euro SDMX Metadata Structure (ESMS) [http://ec.europa.eu/eurostat/cache/metadata/en/crim\\_esms.htm](http://ec.europa.eu/eurostat/cache/metadata/en/crim_esms.htm)

<sup>18</sup> Not all Member States have provided data on the criminal justice process. Furthermore, although the majority of Member States refer to individual people, some Member States refer to cases or offences rather than individual people.

<sup>19</sup> These findings are also mirrored in '[Europol Situation Report: Trafficking in human beings in the EU](#)', February 2016.

**Member States and other actors should allocate anti-trafficking resources proportionately** to tackle effectively all forms of trafficking in human beings, including emerging forms, and ensure that trafficking trends are monitored.

- **Trafficking for the purpose of sexual exploitation**

Trafficking in human beings for the purpose of sexual exploitation is still by far the most prevalent form of trafficking in the EU. According to statistical data for 2013-2014, there were 10 044 registered victims (67 % of total registered victims) of this type of exploitation, which primarily affects women and girls (95 % of registered victims), although a few Member States have reported an increase in the number of male victims. The majority of victims are found in the sex industry. The information available suggests that traffickers are increasingly shifting from visible to less visible forms of trafficking for sexual exploitation and that they are abusing the 'self-employed' status.

According to Europol, 'in countries where prostitution is legal and regulated, it is possible that sex work is affected by the demand for cheap labour' and in those countries 'it is much easier for traffickers who wish to use a legal environment in order to exploit their victims'.<sup>20</sup> Patterns are also changing, with a shift from visible to less visible forms of prostitution.

The data collected for this report suggests that, despite the efforts made so far, trafficking for sexual exploitation has not been tackled effectively and has not decreased. Member States should **continue and even intensify efforts to combat trafficking for sexual exploitation**.

- **Trafficking for the purpose of labour exploitation**

Several Member States have reported that trafficking in human beings for the purpose of labour exploitation is on the rise (21 % of total registered victims). Member States are also reporting an increase in the number of male victims of this type of trafficking, for example in the agricultural sector. Statistical data for 2013-2014 show that 74 % of registered labour exploitation victims were male.<sup>21</sup>

Traffickers exploit loopholes in enforcement or control of legislation on work permits, visas, labour rights and working conditions. Trafficking for labour exploitation is by no means a new phenomenon in the EU and, as a result of the economic crisis, demand for cheap labour has increased<sup>22</sup>, with people trafficked into and within the EU to carry out unpaid or very low-paid work, living and working in conditions that do not respect their human dignity.

Domestic servitude is a form of trafficking for labour exploitation that is particularly difficult to detect. It primarily affects women and girls. As it occurs in private households, victims are often isolated, with limited or no opportunities to report or escape the exploitation.

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<sup>20</sup> *ibid.*

<sup>21</sup> According to Member States, the main sectors in which male victims are exploited are agriculture, construction, hotel and catering services, manufacturing, and domestic work. Female victims are primarily exploited in domestic work.

<sup>22</sup> As reported by Europol in its 'Situation Report – Trafficking in human beings in the EU', February 2016.

While it is important to stress that not all exploitative situations in the EU labour market are a result of trafficking in human beings, some may be. In these cases **all victims of trafficking for labour exploitation must be properly identified and helped.**

- **Trafficking for other forms of exploitation**

According to statistical data for 2013-2014, other forms of exploitation account for 12 % of the total number of victims.

Other forms of exploitation reported by the Member States include trafficking for the purpose of forced begging, criminal activity, forced marriage, sham marriage, or organ removal, trafficking of infants and young children for adoption, trafficking of pregnant women to sell their new-born babies, trafficking for the production of cannabis and trafficking for drug smuggling or the selling of drugs.

Member States are also reporting cases in which people fall victim to **multiple forms of exploitation**, for example where they are trafficked for both labour and sexual exploitation, or trafficked for labour exploitation and also forced to engage in criminal activity.

Reports from the Member States suggest that the **exploitation of people with physical, mental and developmental disabilities is on the rise**. An increase has also been reported in **trafficking** of people with a Roma ethnic background **for the purpose of forced begging**. Victims of trafficking are also being used **as drug mules**, exploited in **cannabis cultivation** or used to commit **benefit fraud**. Member States also report that **pregnant women are being recruited and forced to sell their new-born babies**.

**Forced marriages<sup>23</sup> and sham marriages are increasingly reported in the context of trafficking in human beings by Member States**. Europol indicates that it is possible to expect that the current migration and refugee crisis will result in more forced marriages due to the increased attempts by migrants and asylum-seekers to gain legitimate residency.<sup>24</sup>

### **Trends in child trafficking**

**Child trafficking is reported by Member States as one of the trends that is increasing most sharply in the EU**. The statistical data for 2013-2014 show that out of the 15 846 registered victims of trafficking in the EU, at least 2 375 were children.<sup>25</sup>

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<sup>23</sup> Please note that Member States use the terminologies in different ways but often to indicate similar phenomena, especially as regards sham marriages and marriages of convenience. For definitions used under EU law on free movement of EU citizens, please refer to the Handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens, SWD(2014) 284 [http://ec.europa.eu/justice/citizen/files/swd\\_2014\\_284\\_en.pdf](http://ec.europa.eu/justice/citizen/files/swd_2014_284_en.pdf)

<sup>24</sup> Europol Situation Report: Trafficking in human beings in the EU, February 2016.

<sup>25</sup> Age information was only available for 13841 of the 15846 registered victims. Therefore the actual figure may be higher.



**Trafficking networks target socially and economically disadvantaged families and push families into debt which they cannot repay.** In this context, children are taken away from parents as a form of debt repayment.

Children are one of the most vulnerable groups targeted by traffickers. Organised crime groups choose to traffick children as they are easy to recruit and quick to replace.<sup>26</sup> Although child trafficking is prevalent in situations unrelated to migration, the information received suggests that the phenomenon has been exacerbated by the ongoing migration crisis, during which the number of children arriving in the EU has risen exponentially.<sup>27</sup> A significant proportion of those children are unaccompanied, travelling to and in the EU without a responsible adult, or left unaccompanied after entering the EU.

Identifying children who are victims of trafficking and establishing their true identity is a growing problem, as their vulnerability makes them a preferred target for traffickers.

Child trafficking for forced criminality and sexual exploitation is on the increase. Child victims are at high risk not only of being re-trafficked but also of undergoing **secondary victimisation** – being treated as perpetrators of crime rather than as victims of trafficking.<sup>28</sup>

**The Commission recommends that concerted and coordinated efforts are made to prevent and address child trafficking, reduce the vulnerability of at-risk children, provide adequate support to child victims, and ensure that a child protection dimension is incorporated into all measures targeting children, particularly through strengthening integrated child protection systems and their cross-border cooperation.**<sup>29</sup>

### **Trends in trafficking in human beings and organised crime**

Trafficking in human beings is **usually linked to organised crime**, although there are some cases where a small number of victims are exploited locally and where **individual criminals act with limited organisation**. The criminal organisations involved in trafficking are characterised by loose, flexible networks that adapt quickly and are linked by kinship or ethnicity. Roles are often interchangeable between members and the organisations generally have a presence in a number of countries.<sup>30</sup>

As a serious form of organised crime and a significant security threat, trafficking in human beings requires a **coordinated and targeted policy response at EU level**, as stated in the **European Agenda on Security**. The response should also involve **addressing other interrelated crimes**, such as the falsification of documents, drug trafficking, cybercrime, child pornography, migrant smuggling and benefit fraud. **The presence of these related crimes often means that trafficking in human beings is not investigated or recorded as**

<sup>26</sup> [Europol, Intelligence Notification, Child trafficking for exploitation in forced criminal activities, 2014.](#)

<sup>27</sup> UNHCR, <http://data.unhcr.org/mediterranean/regional.php>, 22/12/2015

<sup>28</sup> *ibid.*

<sup>29</sup> For more information, please see the Commission's the Study on High Risk Groups [http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study\\_on\\_children\\_as\\_high\\_risk\\_groups\\_of\\_trafficking\\_in\\_human\\_beings\\_0.pdf](http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_children_as_high_risk_groups_of_trafficking_in_human_beings_0.pdf)

<sup>30</sup> Europol Situation Report: Trafficking in human beings in the EU, February 2016

**such.**<sup>31</sup> The continuously evolving forms of trafficking in human beings and the ability of traffickers to adapt to new situations make the crime even harder to investigate and prosecute people for.

### **Trafficking trends in the context of migration and asylum**

According to the recent Commission Communication on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration,<sup>32</sup> there is strong evidence that the **migration crisis has been exploited by criminal networks involved in trafficking in human beings to target the most vulnerable, in particular women and children.** Traffickers increasingly abuse asylum systems, which are not always linked to national referral mechanisms. A **worryingly sharp increase in Nigerian women and girls** leaving Libya has been identified (4 371 in January-September 2015 compared to 1 008 in the previous year, 80 % of whom estimated by IOM Italy to be victims of trafficking),<sup>33</sup> and there are general concerns of an increasing risk of trafficking for sexual exploitation.

As one of the tools to address the migration crisis during 2015, the EU has substantially reinforced cooperation with third countries, and trafficking in human beings is one of the main areas of cooperation with African, Western Balkan countries and Turkey.

**Coordination should be ensured on the ground in the framework of the ‘hotspots approach’ between all different actors** involved in the screening, fingerprinting, identification and registration of third country nationals and in other first line reception facilities in order to swiftly identify and refer victims of trafficking and provide appropriate levels of care and protection. This should include providing frontline staff with appropriate training.<sup>34</sup>

### **Trends in the use of the internet and new technologies**

The internet and new technologies enable organised crime groups to access a large pool of potential victims, hide their activities and carry out a wide range of criminal acts in a shorter period of time and on a much larger scale than ever before. Member States report that **many victims of trafficking, especially for sexual and labour exploitation, are recruited online.**

Measures need to be taken in order to **prevent and address the use of new technologies** as a tool for recruiting victims of trafficking in human beings.

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<sup>31</sup> *ibid.*

<sup>32</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing\\_the\\_refugee\\_crisis\\_state\\_of\\_play\\_20160210\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/managing_the_refugee_crisis_state_of_play_20160210_en.pdf)

<sup>33</sup> IOM Italy, [http://www.italy.iom.int/index.php?option=com\\_content&task=view&id=341&Itemid=46](http://www.italy.iom.int/index.php?option=com_content&task=view&id=341&Itemid=46)

<sup>34</sup> See [Guidelines for the identification of victims of trafficking in human beings, Especially for Consular Services and Border Guards](#), European Commission, 2013.

### III. RESULTS OF ACTIONS TO ADDRESS TRAFFICKING IN HUMAN BEINGS

Most Member States have highlighted **the difficulty of measuring the results and impact of anti-trafficking actions**. However, only a few have developed relevant indicators, or have evaluated their national strategies and action plans.

To ensure effective, forward-thinking policies and actions, the Commission considers that **systematic evaluations of Member States' strategies and action plans and the measuring of the results and impact of the action taken** are very important.

This section of the report highlights the main actions undertaken by the Member States in three key thematic areas laid down in the anti-trafficking Directive and the EU Strategy. These areas are discussed further in the staff working document accompanying this report. The staff working document also includes examples from the Member States, and action taken by the Commission in the respective areas.

#### 1. Criminal law, investigations and prosecutions

**Increasing the number of investigations and prosecutions** on trafficking in human beings is one of the key priorities of the EU legal and policy framework.

**The level of prosecutions and convictions remains worryingly low**, especially when compared to the number of victims identified. Although investigations in this field require a substantial body of evidence to secure a conviction, the information gathered for this report indicates that Member States are not using enough effective investigative tools. Financial investigations are mostly conducted on a case-by-case basis, rather than systematically and are often limited to asset recovery investigations.<sup>35</sup> This is contrary to Financial Action Task Force (FATF) standards<sup>36</sup> and Council recommendations.<sup>37</sup>

It is further reported that an excessive burden is placed on victims both before and during criminal proceedings. Some information suggests that **victims are frequently refused assistance at police stations or misidentified as offenders, and subsequently prosecuted and convicted**.

In the information received, there is evidence of efforts to organise **joint investigations and set up joint investigation teams, and of the positive experiences gained from these**, together with an **increase in cross-EU cooperation** in this area.

The information also highlights practical problems making **seizures and confiscations** in cases involving trafficking in human beings, including **problems with detecting criminal**

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<sup>35</sup> This issue is elaborated in the accompanying SWD.

<sup>36</sup> The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions.

<sup>37</sup> All EU MS have been evaluated on financial crime and financial investigation between 2008 and 2011 in the context of the Council of the 5th EU round of mutual evaluations.

**proceeds** and **inefficient international cooperation** when the money has been sent to a country outside the EU. **Financial investigations** are reported to lead to more seizures and therefore more confiscations.

Traffickers frequently **abuse legitimate business structures to conceal their illicit activities**. The anti-trafficking Directive creates legal obligations on businesses, namely the liability and sanctioning of legal persons for trafficking in human beings' offences (Article 5). Although business activity can both perpetuate trafficking in human beings and contribute to its eradication, most companies are unaware of the linkages, and **only a few Member States have prosecuted legal persons as required under Article 5**.

The information gathered by the Commission clearly shows that it is important for Member States to strengthen efforts to **increase the number of investigations and prosecutions**, and to **reduce the burden placed on victims and their testimonies during proceedings for evidence gathering**. They could do this by **developing regular and tailor-made training for investigators, prosecutors and judges and by systematically using financial investigations** (as recommended by the Financial Action Task Force) and other effective intelligence-led investigative tools, which can provide a diversity of evidence to be used in addition to victims' testimonies. They should also dedicate sufficient financial and human resources to properly address this crime.

## **2. Identification, protection and assistance**

A victim-centred approach is at the heart of the EU anti-trafficking legislation and policy. This means establishing appropriate mechanisms for the early identification of victims and provision of assistance and support, in cooperation with the relevant support organisations.

**Providing unconditional access to assistance, support and protection to victims** remains a challenge for most Member States. Trafficking remains an 'invisible crime', as the **number of identified victims remains low**. Indeed **many victims of trafficking are not identified, and so cannot exercise their rights**. Concerns have been expressed on **the treatment of victims during criminal proceedings**, where they may be subject to intimidation and secondary victimisation.

**Gender and age-specific assistance and support are still inadequate**, and there is a lack of services for male victims of trafficking. Shelters and accommodation are not always equipped to cater for the victims' needs, and many children and adults disappear from shelters that do not provide adequate care.

While Member States report on child-sensitive measures, the referral rate for children remains low, and procedures for finding durable solutions are inadequate. Problems persist with the appointment of guardians for child victims, and the wide range of different practices across the EU adds an additional layer of complexity, particularly in cross-border situation.

A specific measure envisaged in the EU Strategy and confirmed by Council Conclusions<sup>38</sup> invites Member States to develop or update **National Referral Mechanisms in order to coordinate the actors involved in identification, assistance, protection and reintegration**. According to the information available to the Commission, **over half of Member States<sup>39</sup> have formalised their National Referral Mechanisms**. While the EU Strategy calls for an approach based on an integrated child protection system, the **involvement of child protection services in referral mechanisms remains limited**. Member States report that the provision of services to victims has increased in quality since the mechanisms were introduced. However, measuring their general impact remains difficult.

**Transnational cooperation**, including **transnational referral mechanisms**, is also essential for victims who are trafficked outside their country of origin. In this regard, the **Schengen Information System** plays a major role in the cross-border exchange of information on victims of trafficking and their exploiters, as this is the main database for registering missing persons throughout Europe. The **future Entry Exit System** will help detect and identify third country nationals who are victims of trafficking by storing data on the entry and the exit of people, both visa exempt and visa holder.

**All victims must be treated equally, and Member States should make an equal effort to identify, protect and assist victims of all forms of exploitation**. Indeed, victims must be at the heart of anti-trafficking policy. No form of exploitation should be neglected, and the needs of victims should be catered to following an individual assessment.

Victims must be considered primarily as **rights holders**, and they must be able to understand and exercise their rights. In this context, the Commission recommends that all appropriate measures are taken at national level to ensure the **early identification of victims of trafficking**, in line with the obligation to provide assistance and support as soon as there are reasonable grounds to believe they are victims. **Formalising or setting up a National Referral Mechanism** is a key step in this direction. Such mechanisms should be regularly and meaningfully **monitored and evaluated, in cooperation with civil society and academia**.

For child victims of trafficking, there should be an **integrated approach to child protection**. It should be based on the standards of the UN Convention on the Rights of the Child, including the child's best interests, and the strengthening of guardianship systems. Finally, **creating a missing child alert in the Schengen Information System** is a crucial step in ensuring the early identification of child victims.

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<sup>38</sup> The Council of the European Union in its conclusions welcoming the EU Strategy called on Member States to 'Develop or update functional national referral mechanisms as agreed in the EU Policy Cycle that describe procedures to better identify, refer, protect and assist victims and include all relevant public authorities and civil society', [http://ec.europa.eu/anti-trafficking/eu-policy/council-conclusions-new-eu-strategy\\_en](http://ec.europa.eu/anti-trafficking/eu-policy/council-conclusions-new-eu-strategy_en).

<sup>39</sup> Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Greece, Hungary, Ireland, Latvia, Malta, Poland, Portugal, Romania, Slovakia, Spain, the UK.

### 3. Prevention

The investigation, prosecution and conviction of traffickers are essential tools to address trafficking in human beings. However, these tools come into play once the crime has already been committed and victims have already suffered a serious violation of their fundamental rights. Eradication of trafficking in human beings can only be achieved **if the crime is prevented from happening in the first place** by using all available tools at EU and national level.

Prevention needs to be placed in the wider context of the crime, which is profit- and -demand-driven. **A human-rights-based approach should ensure that those who profit from the crime and exploit the victims are brought to justice.**

Member States reported **extensive action on prevention measures** in line with Article 18 of the anti-trafficking Directive, such as training and awareness-raising. It is reported that, **following training for frontline staff, there has been an increase in the detection of cases of trafficking in human beings.** However, **little is known about the actual impact of such action** on demand and prevention.

Information received also addresses the **ad-hoc nature of training activities, the lack of specialised training and a gender-specific and child-centred approach.** It is also important to stress the need for tailor-made training activities, in **particular addressing the specificities of different forms of trafficking.**

Furthermore, Member States highlight the **role of the private sector in preventing trafficking in human beings.**

#### *Criminalisation of the use of services of victims*

A dimension that Member States have focused on less is legislative change targeting those who use the services of victims of trafficking, as recommended in **Article 18(4) of the anti-trafficking Directive.** To date, approximately **half of Member States treat the use of services provided by victims of trafficking in the knowledge that they are trafficked as a criminal offence.**<sup>40</sup>

The **Employers' Sanctions Directive**<sup>41</sup>, which has a similar but narrower scope, has already established that Member States must impose criminal sanctions on employers who use the work or services of illegally staying third country nationals in the knowledge that they are victims of trafficking. There is thus a clear need to ensure consistency and bridge any existing legal gaps that may result in impunity.

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<sup>40</sup> This report does not aim to examine the compliance of Member States with their obligations stemming from Article 18 of the Directive, as this will be performed in a separate report, as required under Article 23. The information included in this report is not exhaustive and does not prejudice in any way the findings of the European Commission.

<sup>41</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:168:0024:0032:EN:PDF> .

Often, the criminalisation of users of services of victims of trafficking concerns prostitution. In the case of child prostitution, the **Child Sexual Abuse Directive**<sup>42</sup> also indirectly helps the fight against child trafficking by obliging Member States to ensure that the act of engaging in sexual activity with a child where recourse is made to prostitution is criminalised and subject to a minimum level of imprisonment penalties.

The information received by the Commission indicates a clear **need for strong safeguards ensuring that it is not the victims who are penalised, but those who exploit and use them**. Unless this is addressed, victims will be treated as criminals and punished themselves, while perpetrators and users will profit from this inaction. **Taking measures, including legal measures, to ensure the reduction of demand that fosters trafficking for all forms of exploitation is fundamental to this effect.**

#### **4. Financial support to address trafficking in human beings and implement legal obligations**

One of the most important challenges in addressing trafficking in human beings, identified by both Member States and non-governmental organisations, is the **limited resources available for anti-trafficking measures, victim assistance and prevention measures at national level**. The global economic crisis has also had a negative impact on the allocation of such funds.

In the majority of Member States, practical assistance for victims is not provided by the state or local authorities, but by non-governmental organisations. It is therefore important that funding is secured for these organisations, allowing them to provide efficient and sustainable short- and long-term assistance to victims of trafficking.

**Budgetary allocations need to be sufficient to address trafficking in human beings effectively, and this has to be done in cooperation with civil society. Effective use by Member States of all EU Funds relevant to addressing trafficking in human beings and the implementation of cost-effective national measures can bring tangible results and have a long-term impact.**

## **CONCLUSIONS**

The contributions to this report from Member States and other stakeholders make it possible to highlight a number of **key challenges** that the EU and its Member States need to address as a priority, by devoting appropriate efforts and resources.

In this respect, Member States should **address and prioritise tackling all forms of exploitation**; increase the **number and effectiveness of investigations and prosecutions**; work on **improving data collection** in the field of trafficking in human beings; focus on the **early identification of all victims** including by putting in place the right mechanisms to do

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<sup>42</sup> [Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.](#)

so; ensure all victims are offered **protection and assistance**; take **gender-specific** measures and adopt a **child-centred** approach in all actions; focus on **the most vulnerable** victims including at-risk children; provide **adequate support to child victims**; **prevent** trafficking in human beings by addressing **the demand** that fosters all forms of exploitation; systematically **evaluate national strategies and action plans**; allocate **adequate resources** to address trafficking in human beings; and **cooperate meaningfully with civil society**.

It is important that Member States encourage **governments and independent bodies to routinely participate in the EU Network of National Rapporteurs or equivalent mechanisms** ('NREMs'), so that they are able to work at an **operational, strategic and monitoring** level in an informed and coordinated way.

**The ratification of all relevant international and regional instruments** by the Member States can promote effectiveness and consistency in joint efforts. In this context, **strengthening international cooperation** for the exchange of information, data collection, research, monitoring and evaluation needs to be encouraged in order to maximise the impact of action and avoid duplication of efforts, and to reduce the administrative burden on Member States.

The adoption of the anti-trafficking Directive and the transposition processes at national level<sup>43</sup> have created an important momentum in raising awareness on the scale of the phenomenon in the EU, and the need to address it with a wide range of tools relating to prevention, protection and prosecution. Ultimately, with **the correct and full implementation of the EU Directive, Member States will ensure the prevention of the crime, the prosecution of the perpetrators and most importantly, the protection of victims**.

The Commission will continue working on a coordinated and consistent response to trafficking in human beings. By the end of 2016, the Commission will publish the two further reports required under Article 23 of the anti-trafficking Directive, on compliance and criminalisation, together with a post-2016 Strategy on trafficking in human beings.

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<sup>43</sup> To date, 26 out of 27 Member States to which the Directive applies have notified the Commission of full transposition.





# FIRST ANTI-TRAFFICKING REPORT

## FIRST COMMISSION REPORT ON THE PROGRESS MADE IN THE FIGHT AGAINST TRAFFICKING IN HUMAN BEINGS (2016)

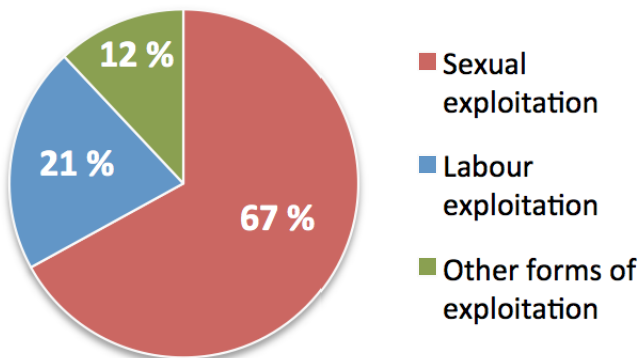
Trafficking in human beings (THB) is a crime driven by demand and profit through the exploitation of people and their vulnerabilities. It is a gross violation of human rights, it is explicitly prohibited under the Charter of Fundamental Rights of the European Union and it is subject of a comprehensive legal and policy framework (Directive 2011/36/EU and EU Strategy towards the Eradication of Trafficking in Human Beings).

Following the adoption of the Anti-trafficking Directive in 2011, the Commission is today setting out the trends and challenges in addressing trafficking in human beings, examining progress made and highlighting key challenges that the EU and its Member States need to address as a priority.

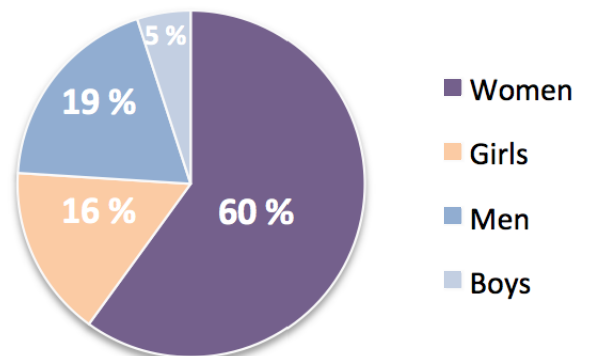
### 15 846 victims registered in the EU in 2013-2014 (Member States data)

Given the complexity of the phenomenon, there are solid grounds to believe that the actual numbers of victims of trafficking in the EU are substantially higher.

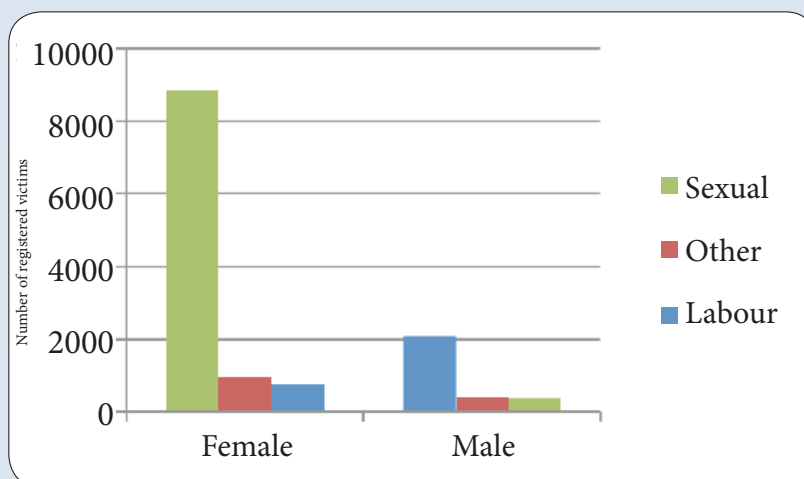
#### REGISTERED VICTIMS BY FORM OF EXPLOITATION



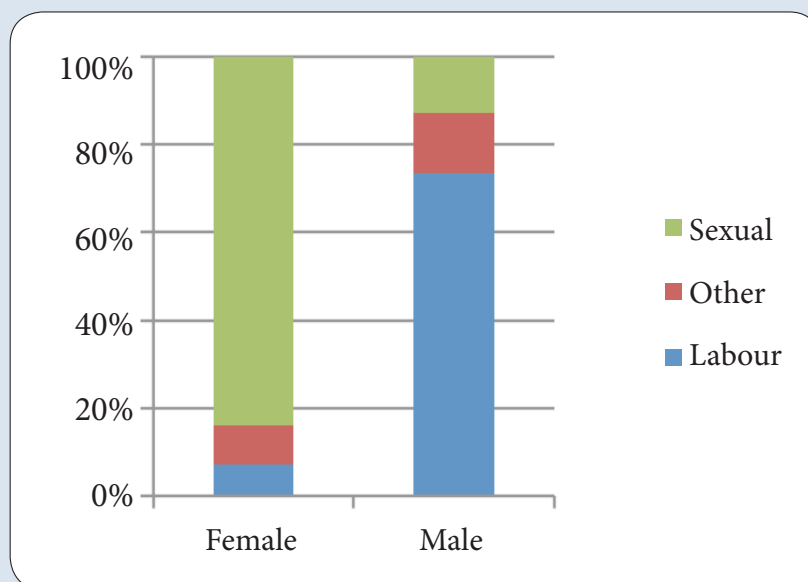
#### REGISTERED VICTIMS BY GENDER AND AGE



# REGISTERED VICTIMS BY GENDER AND FORM OF EXPLOITATION



Source: Member States data 2013-2014

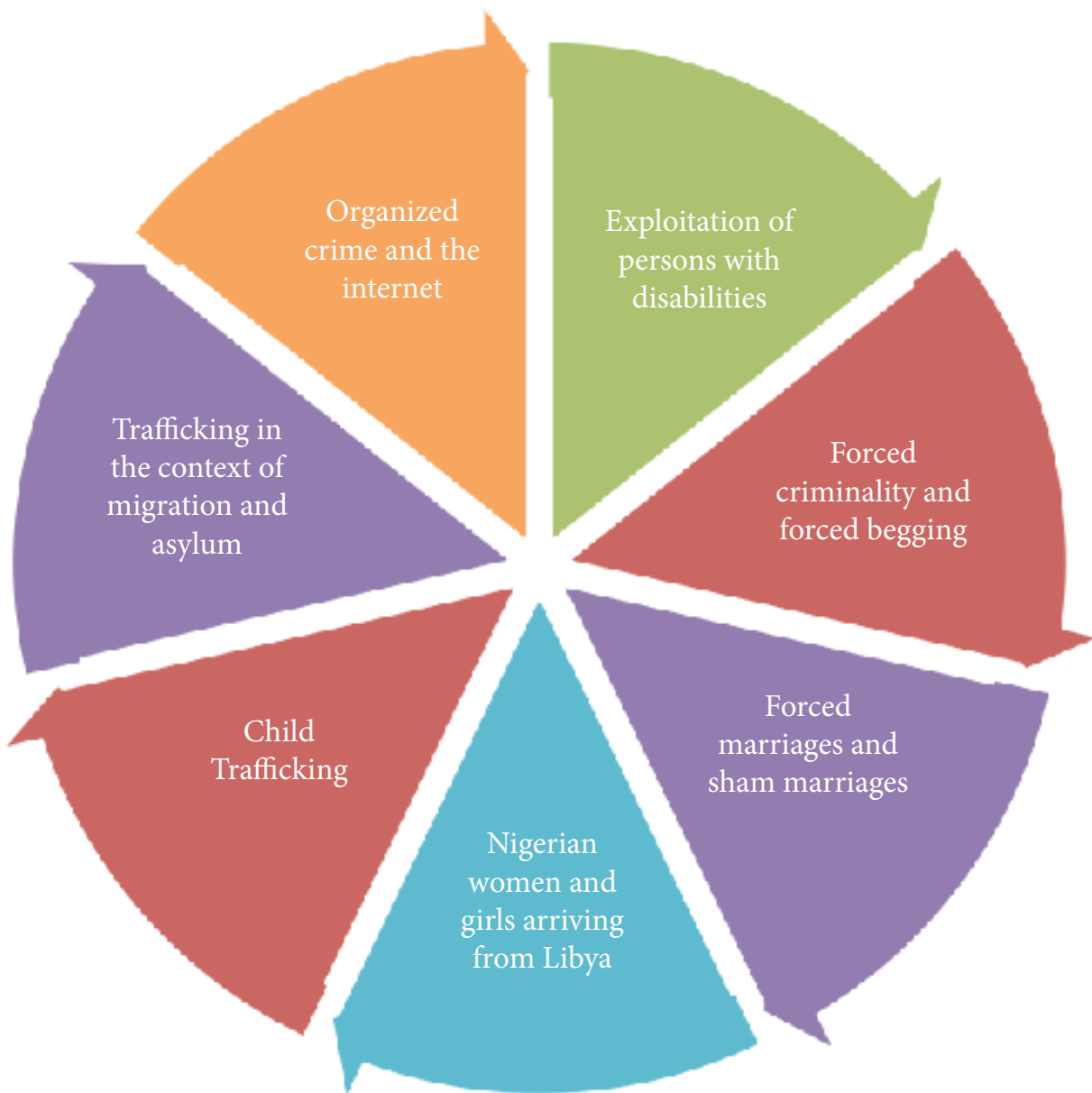


Source: Member States data 2013-2014

Trafficking in human beings for the purpose of sexual exploitation continues by far to be the most prevalent form of trafficking in the EU with over two thirds of the registered victims. 95 % of registered victims for this form of exploitation being women.

Trafficking in human beings for the purpose of labour exploitation is an increasing phenomenon, particularly affecting men. 74 % of the registered victims were men. This form of exploitation is reported to be expanding due to the economic crisis as well as the increased demand for cheap services and goods.

## EMERGING TRENDS IN THE EU



# RESULTS OF ANTI-TRAFFICKING ACTIONS UNDERTAKEN BY MEMBER STATES

NUMBER OF PROSECUTIONS AND CONVICTIONS\*



**Source: Member States data 2013-2014**

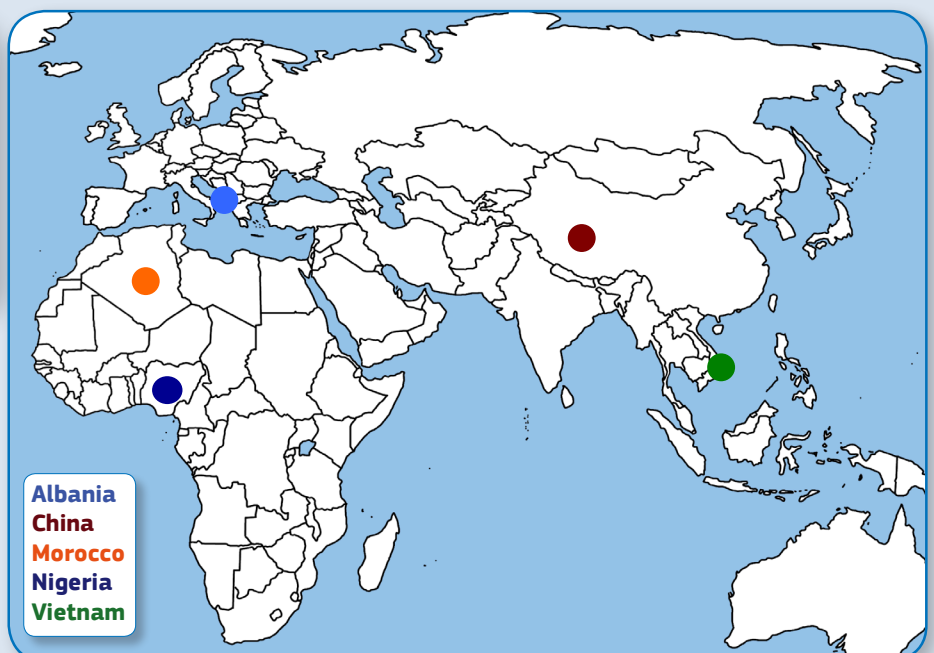
*\*While the majority of Member States refer to the number of individuals, some Member States refer to the number of cases or offenses rather than individuals. Not all Member States provided data on prosecution and convictions for the two year period. No observable trend, although the numbers remain low.*

65 % of registered victims were EU citizens.

The top 5 EU countries of citizenship of registered victims are **Bulgaria, Hungary, Netherlands, Poland and Romania,**



The top 5 non-EU countries of citizenship for registered victims were **Albania, China, Morocco, Nigeria and Vietnam**



## **Actions to address gaps and challenges identified**

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- Address and prioritise **all forms of exploitation**
- Increase the **number and effectiveness of investigations and prosecutions**
- Work on improving **data collection** in the field of trafficking in human beings
- Focus on the **early identification of all victims**
- Ensure **all victims are offered protection and assistance**
- Take **gender-specific measures and a child-centred approach**
- Focus on the **most vulnerable victims**
- Prevent trafficking by **addressing the demand** that fosters all forms of exploitation, **including considering legal measures**
- Systematically **evaluate national anti-trafficking strategies and action plans**
- Allocate **adequate resources to address trafficking in human beings**
- Cooperate meaningfully with civil society
- **Coordination on the ground in the framework of the ‘hotspots approach’** amongst all relevant actors
- **Ratification of relevant international and regional instruments**

**The anti-trafficking Directive has created an important momentum in raising awareness on the scale of the phenomenon in the EU, and the need to address it with a wide range of tools.**

**The meaningful and full implementation of the EU Anti-trafficking Directive will have a real impact in preventing the crime, prosecuting the perpetrators and protecting the victims.**



European  
Commission

# Study on **prevention**

initiatives on trafficking  
in human beings

*Executive summary*



Migration and  
Home Affairs



This study was carried out for the European Commission by **Deloitte**.

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Finally, the study team would like to thank the Commission officials involved for their providing information and feedback during the course of the assignment.

### **Disclaimer**

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## EXECUTIVE SUMMARY

The EU has undertaken numerous efforts to address trafficking in human beings (THB) based on a comprehensive, victim-centred and gendered approach, and by focusing on three **key principles**: (1) the prevention of trafficking activities, (2) the protection and support of victims, and (3) the efficient prosecution of perpetrators.

The **EU directive on trafficking in human beings** <sup>(1)</sup> defines trafficking in human beings as ‘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’ <sup>(2)</sup>.

The **EU directive on trafficking in human beings** has signalled the EU’s focus on a victim-centred approach to addressing trafficking in human beings. Article 18 of the directive notably introduces a provision directly concerned with the prevention of trafficking in human beings. It obliges Member States to take appropriate measures, such as information and awareness-raising campaigns, research and education programmes, and regular training for officials who are likely to come into contact with victims of trafficking (e.g. regarding the identification of victims), in order to discourage and reduce the demand for goods and services provided by victims of trafficking in human beings. It further urges Member States to consider criminalising those who knowingly use the services of victims of trafficking.

In June 2012 the European Commission took an additional step by adopting the EU strategy towards the eradication of trafficking in human beings (2012-2016), with prevention as one of the five objectives of the strategy.

The objective of this study as per the EU strategy is to ‘systematically evaluate the impact of anti-trafficking prevention initiatives, in particular awareness-raising activities (including online activities), as well as educational programmes, measures to reduce demand, measures specifically targeting root causes as these are directly linked to trafficking in human beings’.

Based on desk research and the available information, the study team has selected 43 prevention initiatives targeting prevention actions as per their project description, for which a minimum amount of information (e.g. staff responsible and contact details) was available online with the aim of ensuring a good mix of prevention initiatives in terms of types and geographical coverage in order to be able to analyse as comprehensive a sample as possible. Of the 43 prevention initiatives analysed as part of this study, 17 were — at least partially — concerned with prevention in Romania, Bulgaria and Hungary. This corresponds to a share of 40 % of all prevention initiatives analysed. Of the total of 43 prevention initiatives, the sample also contains 10 projects that were not implemented exclusively in EU Member States but also in non-EU countries. The sample of prevention initiatives covers different types: information and awareness-raising campaigns, capacity-building measures, prevention activities in research and education programmes, as well as initiatives concerning victim assistance and support. The figure shows that 38 prevention initiatives (i.e. close to 85 %) in the given sample deal with information and awareness-raising measures. Capacity-building and prevention activities in research and education programmes are part of 22 and 17 initiatives respectively (50 % and 42 %). Activities concerning victim assistance and support are only part of six initiatives (16 %) within the sample.

This study indicates that more can be done in terms of research and education with regard to the organised crime nexus and the supply/demand dynamics, as well as the training of police officers, judges and prosecutors with regard to capacity-building initiatives. Further research into the nature of this issue would enable better targeting of prevention policies, while additional training of stakeholders who are likely to come into contact with potential victims would enable the identification of more victims. More generally, this study has shown the importance

<sup>(1)</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA; see <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:101:0001:0011:EN:PDF>; Last accessed 23, March 2015

<sup>(2)</sup> Article 2(1), Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

of Member States fully implementing Article 18 <sup>(3)</sup> of Directive 2011/36/EU, by dedicating sufficient resources to implementing prevention initiatives in order to contribute to addressing trafficking in human beings. In this context, the prevention initiatives should promote and support the implementation of the legislation in place in the different Member States that notably targets the reduction of demand and promote a zero-tolerance culture to exploitation of all forms.

One of the key findings of this study is in fact that a comprehensive system needs to be in place to ensure that prevention initiatives complement each other. For instance, an initiative designed to provide assistance to victims might have dimensions related to the prevention of re-trafficking. An initiative is **therefore only successful if integrated within a comprehensive support system covering prevention, protection and prosecution.**

At the level of individual projects, this study has shown that the effectiveness of prevention of trafficking in human beings depends on a variety of **external factors** that need to be defined within the boundaries of each initiative's own playing field, together with the relevant stakeholders. Project promoters are often confronted with a number of issues in the design or implementation of their initiatives, some of which are making efficient use of needs analysis and defining objectives in order to be able to more carefully reflect on the given circumstances and to take better decisions. Additionally, it was assessed that networking between relevant stakeholders could be improved, and that project-specific evaluations mostly fall short in terms of grasping results and impacts as they cannot easily be observed within a narrow time span. **Hence, project promoters apply what they perceive as an evaluation rather as a monitoring and a review of outputs than an analysis of results and impacts.** This said, the lack of evaluation is neither something that can be easily overcome within a short time frame, nor at the level of individual prevention initiatives. It is, however, possible to evaluate the overall impact of prevention from a macro-perspective in complementarity with specific contributions of initiatives.

When taking funding decisions about prevention initiatives, it is **therefore critical to take into consideration the context in which they are being carried out.** Factors such as the socioeconomic environment, the population, demographics, education levels or the types of stakeholders which are targeted, as well as migration policy have a preponderant influence on the results of an initiative. There is **no universal gold standard** for anti-THB initiatives to be implemented in a particular effective and impactful fashion. Initiatives that properly reflect external dimensions and factors as part of their development and implementation process are expected to yield better (that does not necessarily mean more tangible) results than initiatives that have been implemented for the sake of it, without relation to their environment.

The **decision to fund a specific initiative should be taken based on the process which it has followed**, which includes answering questions such as the following.

- Has a comprehensive needs analysis been carried out to ensure that the actions proposed are appropriate?
- Are the expected outputs relevant to effectively reach the targeted audience and generate results? Is there a specific plan on how this will be achieved and monitored?
- Has the initiative reviewed what has been developed by other initiatives, in order to capture lessons learnt and potentially reuse specific approaches or deliverables?
- Has the initiative set out a specific approach to ensure that project outputs and results will be sustainable beyond the project end?
- As from the beginning of the initiative, is an evaluation mechanism planned in order to ensure the initiative is successful over time in the particular context in which it was deployed?

A step-by-step model for prevention initiatives was thus developed within the scope of this study to guide project promoters in the design of their initiatives.

<sup>(3)</sup> Article 18 stipulates that the Member States have to take the necessary actions to prevent trafficking in human beings, including by discouraging demand and taking measures to establish the use of services which are the objects of exploitation as a criminal offence.

This study has shown that funders should remain **flexible** when deciding upon which types of initiatives to fund, as all types of initiatives can potentially generate positive results and contribute to addressing trafficking in human beings, if they are designed adequately and implemented efficiently. Apart from contextualising each initiative, funders should consider that their expectations are proportional to what can be achieved.

At the strategic level, in addition to ensuring that a **comprehensive system** is in place so that initiatives do not operate in a vacuum, but within their given context, the existing database of projects in the horizontal EU anti-trafficking website: <http://ec.europa.eu/anti-trafficking/> could be further developed so as to actively guide project promoters to reuse deliverables, which could be relevant to them. This would ensure that projects do not re-invent the wheel.

Finally, a **central communications strategy around the EU's response to THB** could be designed, as currently many brands and logos are used across the EU. The Commission could sponsor an EU-wide awareness-raising campaign, providing this could be adequately funded, had a clear intervention logic, and could be sustained over a period long enough to make an impact. The tool(s) or channel(s) to be used in this campaign will have to depend on what is appropriate, given the target group, and the local context.









European  
Commission

# Study on **case-law**

relating to trafficking in human  
beings for labour exploitation

*Executive summary*



Migration and  
Home Affairs

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## EXECUTIVE SUMMARY

Trafficking in human beings (THB) is a severe crime and constitutes a gross violation of human rights, and as such it is explicitly prohibited by the EU Charter of Fundamental Rights (Article 5: Prohibition of slavery and forced labour) <sup>(1)</sup>. Addressing trafficking in human beings requires an effective response from criminal justice systems. The EU has developed a comprehensive legal and policy framework to address this phenomenon, in particular Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims (hereafter the directive or Directive 2011/36/EU) and the EU strategy towards the eradication of trafficking in human beings 2012-2016 (hereafter the EU strategy) <sup>(2)</sup>.

One of the forms of trafficking in human beings is trafficking in human beings for the purpose of labour exploitation. According to the Eurostat working paper covering the years 2010-2012, 19 % of registered THB victims were victims of labour exploitation.

In order to increase the number of cases of trafficking in human beings for the purpose of labour exploitation that are investigated and prosecuted and to improve the quality of the investigation and prosecution of such cases in all Member States, Action 4 of Priority E of the EU strategy on *Increased knowledge and effective response to changing trends in trafficking in human beings* called for a Commission funded EU-wide study on the related case-law.

In this context, the overall aim of this study is to identify case-law on trafficking in human beings for the purpose of forced labour (hereafter trafficking in human beings for forced labour or trafficking for forced labour) in EU Member States for the reference period 2009-2013, and to analyse Member State practices with respect to the prosecution of this crime. The case-law analysis also provides an indication of how national legislation transposing Directive 2011/36/EU is applied, without prejudice to the Commission's work on monitoring the transposition of the directive.

The study is based on reports conducted by national experts in the 28 EU Member States, as well as in-depth case studies of cases in the Member States where case law was identified. The study does not attempt to provide an exhaustive overview of the case-law in all Member States. Rather, it is based on the cases that have been identified by national experts based on the methodology developed for the study and the input received from many stakeholders consulted at national level.

The **scope** of the study is on trafficking in human beings for forced labour, including domestic servitude. The term forced labour is used throughout the study to reflect the terminology used in Article 2 of Directive 2011/36/EU. Most Member States refer to forced labour in the respective national offence provisions transposing Article 2 of the directive. Given that some Member States refer to labour exploitation and in practice there is significant overlap between the two terms, the title of the study therefore refers to the broader term labour exploitation to reflect this. Trafficking in human beings for sexual exploitation and other forms of exploitation including for engagement in criminal activities, forced begging or for the purpose of the removal of organs are also excluded from the scope of the study.

This study provides a broad overview of trafficking in human beings in the EU Member States (**section 2**), followed by a mapping of the legal and institutional framework, including the legal definitions of trafficking in human beings for forced labour (**section 3**), availability of data relating to case-law in this field (**section 4**), and an analysis of case-law investigation and prosecution practices and related challenges (**sections 5 and 6**). Key terms and the methodology for the study are outlined in **section 1**.

### EU Member States' legal framework relating to trafficking in human beings for forced labour

The EU Member States' **legal framework** for investigating and prosecuting cases of trafficking in human beings for forced labour is based on the EU and international legislation such as the aforementioned Directive 2011/36/EU,

<sup>(1)</sup> Charter of Fundamental Rights of the European Union (2007/C 303/01), European Parliament, Council, Commission, [http://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/european\\_charter\\_of\\_fundamental\\_rights\\_en\\_1.pdf](http://ec.europa.eu/anti-trafficking/sites/anti-trafficking/files/european_charter_of_fundamental_rights_en_1.pdf).

<sup>(2)</sup> European Commission, EU strategy towards the eradication of trafficking in human beings 2012-2016 (19 June 2012), [http://ec.europa.eu/anti-trafficking/Publications/Ebook\\_Strategy](http://ec.europa.eu/anti-trafficking/Publications/Ebook_Strategy).

the 1930 International Labour Organisation (ILO) Convention No 29 concerning forced or compulsory labour <sup>(3)</sup> and the Palermo Protocol <sup>(4)</sup>.

All EU Member States include an offence provision for trafficking in human beings, and most include a specific reference to labour exploitation or forced labour within the anti-trafficking provisions. In most EU Member States, the relevant offence provisions on trafficking in human beings for forced labour cover the main elements as provided in the definition in Article 2 of Directive 2011/36/EU (**the action, means and purpose of trafficking**). However, there are differences in how the three elements of the offence are reflected in national legislation.

For example, **the act** of trafficking through the exchange or transfer of control is not explicitly stated in the legislation of all Member States. In most Member States, the relevant offence provisions on trafficking in human beings for forced labour cover the main **means** of trafficking as provided in Article 2 of Directive 2011/36/EU.

While most Member States sanction the offence of trafficking in human beings with an **explicit reference to forced labour or labour exploitation**, the concept of forced labour is not explicitly defined in many Member States. The case-law analysis conducted for this study revealed that key elements of the offence used in EU Member States' laws such as conditions contrary to human dignity, lack of freedom or of personal liberty, direct intent to exploit, or other subjective criteria can be difficult to prove.

The limited case-law in this area is furthermore a challenge in itself, as in some EU Member States there is little or no precedent to rely on.

In some Member States, offence provisions closely linked to trafficking in human beings for forced labour, including provisions relating to exploitation of immigrant work, were applied to cases involving elements of trafficking for forced labour. These include cases where several charges were brought (including trafficking in human beings for forced labour) but a conviction was not obtained due to the difficulties in proving the trafficking offence, as well as cases which involved elements of trafficking but charges were brought under alternative offence provisions.

## National institutional framework for investigating and prosecuting trafficking in human beings for forced labour

Based on the evidence gathered for the purpose of this study, the main actor involved in investigating trafficking in human beings for forced labour cases in the Member States is the police. In some EU Member States prosecutors and judges are also involved in the investigation. Public prosecutors are the main actors involved in the prosecution of trafficking in human beings for forced labour. In some EU Member States labour inspectors are also involved in such cases, mainly by providing expert witness testimony or in identifying offences through workplace inspections.

Most of the national experts for this study reported that training on trafficking in human beings for forced labour is provided to the relevant authorities involved in the investigation and prosecution of this offence. However, a lack of understanding or experience among practitioners in the crime of trafficking in human beings specifically for forced labour was reported by many national experts. In some of the case studies analysed, this issue had a direct impact on the prosecution of the offence and often led to cases being prosecuted under alternative offence provisions. Many stakeholders consulted for this study suggested that more regular and specific legal training should be provided to improve the knowledge and skills of the key professionals. This would improve the identification of cases, the assistance provided to victims, as well as the collection of evidence for the successful prosecution and conviction of traffickers.

## Availability of data and identification of national case-law

Reliable and comparable data on this matter is crucial. Given the difficulty of comparing and analysing such data and drawing meaningful conclusions, there is a need to strengthen efforts to ensure reliability of data on trafficking in human beings across EU Member States. The number of cases of trafficking in human beings for forced labour

<sup>(3)</sup> ILO, C029 — Forced Labour Convention, 1930 (No 29), Geneva, 14th ILC session (28 June 1930), available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:P12100\\_ILO\\_CODE:C029](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO:P12100_ILO_CODE:C029)

<sup>(4)</sup> UN Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>

identified in the context of the study during the reference period (2009–2013) across all EU Member States is limited. In several Member States no case-law was identified at all <sup>(5)</sup>. In 11 Member States, fewer than six cases were identified in total.

The findings of the study suggest that these low figures could be attributed either to a low level of prosecution of the offence of trafficking in human beings for forced labour in the particular Member State, or to difficulties in accessing the trafficking in human beings for forced labour judgments. In several Member States, relatively few cases were identified due to issues of accessibility of case-law, including where cases are not recorded in a centralised database or are not publicly available.

The case-law analysed **does not reflect the entirety of Member State efforts in prosecuting cases of trafficking in human beings for forced labour**. Despite extensive steps taken by the national experts during the course of the study to identify relevant case-law, including desk research and stakeholder consultation, as mentioned earlier, the case-law presented in this study is not exhaustive for each Member State. **The cases analysed for this study moreover focus on those adjudicated under the national offence provisions transposing Article 2 of Directive 2011/36/EU, and not those under alternative offence provisions.**

## Case-law analysis

Observations regarding the general characteristics, investigation and prosecution of trafficking for forced labour cases are made on the basis of the case-law analysed for this study. The case-law analysis focused on the characteristics of the trafficking for forced labour (sectors, recruitment, circumstances of the victim, etc.) as well as the investigation, prosecution and delivery of judgments.

### i. General characteristics

Among the cases analysed, the main sectors in which trafficking in human beings for forced labour occurred were in the sectors of domestic work, entertainment and recreation, accommodation and food service activities, agriculture, forestry and fishing, cleaning services, construction, manufacturing, arts, transportation and storage, and information and communication.

The majority of the victims in the analysed cases were EU citizens. Many victims, however, also originated from outside the EU, mainly from Brazil, China, Morocco, Ukraine, Vietnam, India and Bangladesh.

On the basis of the case-law analysed, it was possible to identify the following principle ways of recruitment.

- Traffickers and victims already knew each other.
- Traffickers recruited the victims through intermediaries, including via family members or an agency.
- Traffickers recruited the victims directly, for example, by promising good working conditions.
- Victims responded to work offers directly or via internet recruitment.

In many of the cases analysed, the victims presented particular vulnerabilities, including poverty, low level of education, disabilities, poor health, alcohol dependency, advanced age or minority, irregular migratory status, lack of knowledge of the local language, taking of personal documents and isolation of the victim.

### ii. Investigations

In most cases analysed, trafficking in human beings for forced labour was reported to the law-enforcement authorities by the victims themselves. Cases were also identified following an investigation by the police and, to a lesser extent, labour inspectors and immigration and tax authorities.

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<sup>(5)</sup> This was the case in Estonia, Ireland, Lithuania, Hungary, Malta, Portugal and parts of the UK (Northern Ireland and Scotland).

Many case studies reported that victims of trafficking in human beings for forced labour received protection and support during and after criminal investigations and proceedings, including legal advice, legal representation and psychological help. In some of the cases analysed labour inspectors were involved, including by providing expert witness testimonies and in notifying the police following a workplace inspection.

### iii. Prosecutions

Most court proceedings included **victim and witness testimonies** and police reports. In most of the case studies analysed, victims testified in court. Many national experts highlighted the crucial role victim and witness testimonies played in the prosecution of trafficking in human beings for forced labour cases. In many of the cases analysed the defendant was present in court. In some cases however, measures were taken to reduce the victim's exposure to the defendant.

The **time taken for the national courts to take a decision** varies significantly across the Member States and between the case studies. While the length of proceedings relates to variations in standard legal procedures, it has a significant impact in the context of trafficking cases and long court proceedings were mentioned by many national experts as an obstacle to the prosecution of traffickers, as victims are often vulnerable and do not remember the sequence of events or they might return to the country of origin during the proceedings.

The **analysis of the court judgments** revealed varying interpretations of the scope of the offence, as well as of the key concepts involved in the prosecution of trafficking in human beings for forced labour cases. These concepts, used in EU Member State laws, include the requirement of intent, direct involvement, consent, withholding of wages or excessive wage reductions that violate previously made agreements, restriction of movement and confinement to the workplace or to a limited area. The main reasons for dismissing cases initially brought as trafficking for forced labour arose from a lack of evidence to establish the constitutive elements of this offence. The credibility of victim testimonies was also a factor leading to the acquittal of defendants in certain cases.

As regards **penalties**, while the legislation in most of the Member States provides penalties above the minimum requirement of EU law, the case-law analysis revealed that in practice the penalties imposed were relatively low. A reason identified for low penalties and often suspended sentences is the lack of sufficient evidence to prove the seriousness or the extent of the offence committed due to the often poor quality of the victim and witness testimonies with little additional corroborating evidence.

The case-law analysed for this study provides limited information about **compensation** for damages awarded to victims of trafficking in human beings for forced labour. Compensation is often claimed outside of the criminal proceedings and the case-law rarely provides information on whether and how (e.g. civil or labour law proceedings, through a state compensation scheme) it was obtained. Among the cases analysed, compensation was awarded either in the criminal trial (including by victims constituting themselves as civil claimants in the criminal trial), by courts or the prosecution awarding the compensation ex officio, or by victims directly seeking compensation from a civil court. The case studies revealed that victims do not always claim compensation or claim just part of it, or even waive this right during the proceedings.

The amounts of compensation awarded to victims vary considerably among Member States. From the information on compensation analysed, the compensation ranged from EUR 50 to EUR 252 000 (EUR 126 000 per victim). Differences could be explained by a number of factors, including the individual facts of the case, the income and the living standards in a given Member State as well the differences in traditional levels of compensation schemes to victims of crime in different EU Member States. Moreover, many Member State courts have difficulties in determining compensation due to the lack of benchmarks to assess material and non-material damages caused to victims of trafficking. Different approaches are taken by Member State courts in calculating compensation to victims of human trafficking, including based on unpaid or underpaid wages. Some case studies also revealed that even when decisions on compensation were made, these were difficult to enforce. Based on the findings of the study, the issue of compensation is key to victims, as the difficulties in obtaining compensation can discourage them from engaging in the proceedings.

## Challenges in prosecution

As with other forms of trafficking in human beings, securing **evidence from victims** and corroborating that evidence is a main challenge in investigating and prosecuting trafficking in human beings for forced labour. Likewise, it is absolutely crucial that victims are supported and protected throughout and after their involvement in the criminal proceedings.

A number of factors affect victims' and witnesses' willingness to cooperate and participate in the investigation/prosecution. These include the fears experienced by the victim, including fear of retribution by the suspect or of deportation, lack of trust in the authorities, fear of incurring criminal charges. Victims may also not identify themselves as victims for different reasons. Another issue identified in the course of the study as a serious obstacle to investigation and prosecution of trafficking in human beings for forced labour was the lack of sufficient **protection measures for victims**. A related issue was the obstruction of proceedings and intimidation of witnesses by the defendants.

## Availability and use of resources

The study shows that the lack of **sufficient resources** can have an impact on the investigation and prosecution of trafficking in human beings for forced labour cases in some Member States. This relates to the training of staff, size of staff (especially in the police forces), the technical equipment and other services (such as translating/interpreting) available to law enforcement staff as well as to the victims of crime, or funds allocated for data collection and research on trafficking in human beings for forced labour. Some case studies also pointed to how the lack of adequate means to react to different and exceptional situations such as large number of victims and witnesses, affect the success of prosecution.

Among the cases analysed for this study, most were reported directly by the victims. A lack of resources affects proactive investigations when relevant actors are not sufficiently familiar and trained to apply the anti-trafficking legislation. This leads for example to situations where the necessary evidence is not collected, or where the offence is prosecuted under alternative legislative provisions (such as fraud).

## Cooperation

The study also showed that **national cooperation was reported to be sufficient and effective**. Case studies however revealed that, for instance, labour inspectors who may discover forced labour situations from workplace inspections, e.g. abusive practices of wage payment, unfair deductions, fraudulent contracts and abusive recruitment practices, were in some instances not sufficiently involved in the identification or investigation of trafficking cases.

Within the EU, there are many opportunities to cooperate on cross-border cases with the support of Justice and Home Affairs agencies such as the European agency for the enhancement of judicial cooperation (Eurojust), the European Police Office (Europol) and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). To strengthen even further the approach in addressing trafficking in human beings offences, many Member States have intensified cooperation with embassies and high commissions of key source countries. While EU Member States have signed mutual (bilateral) agreements with non-EU countries to enhance cooperation, stakeholders from some Member States stated that cooperation with non-EU countries is often difficult. Challenges raised include difficulties in obtaining and verifying evidence from non-EU countries, or lengthy reaction times following a request for information.

Despite noteworthy initiatives towards increasing the effectiveness of investigation and prosecution of the offence of trafficking in human beings for forced labour in many EU Member States, challenges were identified in addressing these offences and in obtaining redress for victims. In particular, a wide-ranging understanding of what constitutes trafficking for forced labour as well as variations in police effectiveness, judicial responses and sentencing (including compensation) between EU Member States result in an inconsistent application of these provisions across the EU. Increased efforts in collecting data and further guidance, including on the interpretation and application of the offence provisions, would be a step towards an improved and better-coordinated response to address this phenomenon.





EUROPEAN  
COMMISSION

Brussels, 17.10.2014  
SWD(2014) 318 final

**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**.<sup>2</sup> 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,<sup>3</sup> 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

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<sup>2</sup> Communication on *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016* (COM(2012) 286 final).

<sup>3</sup> 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<sup>4</sup> 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<sup>5</sup> 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.**<sup>6</sup> 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**<sup>7</sup> 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**<sup>8</sup>.

### ***3.2. EU policy on THB***

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<sup>4</sup> OJ L 101, 15.4.2011, p. 1.

<sup>5</sup> All Member States except Denmark participate in the implementation of the Directive.

<sup>6</sup> 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).

<sup>7</sup> L 315/57, 14.11.2012

<sup>8</sup> 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,<sup>9</sup> 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.<sup>10</sup> The EU ATC ensures policy coherence and cooperation among diverse actors and this mandate should be extended.<sup>11</sup>

### ***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**<sup>12</sup> 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.

<sup>9</sup> Communication on *The Global Approach to Migration and Mobility* (COM(2011) 743 final).

<sup>10</sup> 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.

<sup>11</sup> Communication on *An open and secure Europe: making it happen* (COM(2014) 154 final).

<sup>12</sup> <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.<sup>13</sup>

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**,<sup>14</sup> 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

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<sup>13</sup> [http://ec.europa.eu/anti-trafficking/EU+Policy/Guidelines\\_identification\\_victims](http://ec.europa.eu/anti-trafficking/EU+Policy/Guidelines_identification_victims).

<sup>14</sup> [http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb\\_victims\\_rights/thb\\_victims\\_rights\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/docs/thb_victims_rights/thb_victims_rights_en.pdf).

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.

#### **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.<sup>15</sup> 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<sup>16</sup> 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.

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<sup>15</sup> <http://www.eurofound.europa.eu/research/projects.htm>.

<sup>16</sup> 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*.<sup>17</sup> 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.<sup>18</sup>

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

<sup>17</sup> [http://ec.europa.eu/anti-trafficking/EU+Policy/Guardianship\\_for\\_children\\_deprived\\_of\\_parental\\_care](http://ec.europa.eu/anti-trafficking/EU+Policy/Guardianship_for_children_deprived_of_parental_care).

<sup>18</sup> Details of all funded projects are available on the EU anti-trafficking website: <http://ec.europa.eu/anti-trafficking/EU+Projects/;jsessionid=GQDmT0TWJhd5nvK7VnlqkCC8vLPf8wlvngBJx8QVYrlygfykGlvN!-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,<sup>19</sup> 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.

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<sup>19</sup> 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<sup>20</sup>. 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<sup>21</sup> 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<sup>22</sup> 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.

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<sup>20</sup> 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).

<sup>21</sup> 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<sup>23</sup> 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.

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<sup>22</sup> 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).

<sup>23</sup> [http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/jha/137401.pdf](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.<sup>24</sup> 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.

<sup>24</sup> [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/jha/108312.pdf](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<sup>25</sup> 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.

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<sup>25</sup> [http://ec.europa.eu/anti-trafficking/EU+Policy/EU\\_s\\_fifth\\_Anti\\_Trafficking\\_day](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)<sup>26</sup> 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,<sup>27</sup> includes a list of priority countries and regions<sup>28</sup> 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,

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<sup>26</sup> [http://ec.europa.eu/anti-trafficking/EU+Policy/Action\\_Oriented\\_Paper\\_on\\_strengthening\\_the\\_EU\\_external\\_dimension\\_on\\_action\\_against\\_THB](http://ec.europa.eu/anti-trafficking/EU+Policy/Action_Oriented_Paper_on_strengthening_the_EU_external_dimension_on_action_against_THB).

<sup>27</sup> [http://ec.europa.eu/anti-trafficking/EU+Policy/Second\\_report\\_AOP](http://ec.europa.eu/anti-trafficking/EU+Policy/Second_report_AOP).

<sup>28</sup> 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<sup>29</sup> and supported action in the areas of migration, integration, asylum, external borders and return.

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<sup>29</sup> 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).<sup>30</sup>

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.

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<sup>30</sup> 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.<sup>31</sup>

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<sup>31</sup> 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<sup>1</sup> signed a joint statement undertaking to align their planning on THB and to take action together.<sup>2</sup>

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.<sup>3</sup> 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

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<sup>1</sup> 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).

<sup>2</sup> <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>

<sup>3</sup> <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 **Eurojust** 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**<sup>4</sup> analysed the difficulties encountered in identifying THB victims and Member States' action to ensure that they

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<sup>4</sup> [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](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).

are assisted and protected. The main findings and recommendations were presented to the Standing Committee on Operational Cooperation on Internal Security (COSI)<sup>5</sup> 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)<sup>6</sup> 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*,<sup>7</sup> 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*,<sup>8</sup> 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;

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<sup>5</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/internal-security/cosi/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/internal-security/cosi/index_en.htm).

<sup>6</sup> <http://fra.europa.eu/en/publication/2014/vaw-survey-main-results>.

<sup>7</sup> <http://easo.europa.eu/wp-content/uploads/AA.png>.

<sup>8</sup> <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<sup>9</sup> 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.<sup>10</sup> 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<sup>11</sup> 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.<sup>12</sup> 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

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<sup>9</sup> <https://www.europol.europa.eu/content/increased-focus-link-between-internet-and-human-trafficking>.

<sup>10</sup> 2013: 29 participants from 19 Member States (70%); 2014: 27 participants from 24 Member States (86%).

<sup>11</sup> A webinar is an online seminar.

<sup>12</sup> 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,<sup>13</sup> 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<sup>14</sup> 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.<sup>15</sup> 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<sup>16</sup> under the first (2011-13) and subsequent (2013-17) policy cycles,<sup>17</sup> 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

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<sup>13</sup> 48 attendees.

<sup>14</sup> <https://www.cepol.europa.eu/education-training/trainers/common-curricula/money-laundering>.

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[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](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).

<sup>16</sup> 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.

<sup>17</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/pdf/4\\_council\\_conclusions\\_on\\_the\\_policy\\_cycle\\_en.pdf](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 its work to a wider law enforcement audience by means of an annual webinar;<sup>18</sup>
- **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<sup>19</sup> 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<sup>20</sup> 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**.<sup>21</sup> **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

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<sup>18</sup> See point 2.5.

<sup>19</sup> Prevention of and fight against crime.

<sup>20</sup> [https://enet.cepol.europa.eu/index.php?id=courses-elearning&no\\_cache=1](https://enet.cepol.europa.eu/index.php?id=courses-elearning&no_cache=1).

<sup>21</sup> 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*.<sup>22</sup>

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<sup>22</sup> [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](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**

**MEMO**

Brussels, 19 June 2012

## **An EU Strategy towards the eradication of trafficking in Human beings**

### **What is trafficking in Human beings?**

Trafficking in Human beings is the slavery of our times. June 2012 estimates from the International Labour Organisation put the number of victims of forced labour, including forced sexual exploitation, at 20.9 million at a global level<sup>1</sup>. 5.5 million of these are children. Such global estimates are even considered to be conservative.

Victims are often recruited, transported or harboured by force, coercion or fraud in abusive conditions, including sexual exploitation, forced labour or services, begging, criminal activities, or the removal of organs.

Trafficking in human beings is a severe crime that takes many different forms, but whether they were sold for sex, hard labour in agriculture, construction, or the textile industry, or forced into domestic labour, victims share similarly gruesome stories.

Having to provide services seven days a week to pay back ridiculous amounts of money to their traffickers, victims are often deprived of their passports, and in many cases locked in and only allowed out for 'work'. Barred from contacting their families, they are threatened by their traffickers and live in fear of retaliation. With virtually no money, and having been made fearful of the local authorities by their traffickers, the idea of escaping remains elusive - as is their prospect of returning to a 'normal' life.

### **What are the root causes?**

Trafficking in human beings evolves with changing socio-economic circumstances. It affects women and men, girls and boys in vulnerable conditions.

It is 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. Other causes of trafficking in human beings include a booming sex industry and the consequent demand for sexual services. At the same time demand for cheap labour and products can also be considered as factors.

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<sup>1</sup> International Labour Organisation, 'ILO 2012 Global estimates of forced labour', June 2012 (covering the period 2002-2011).

## **What is the situation in the EU?**

Estimates put the number of victims across the European Union at hundreds of thousands.

Trafficking does not necessarily involve the crossing of a border, but it is predominantly a transnational type of crime, extending beyond individual Member States. While many victims come from non-EU countries, internal trafficking (i.e. EU citizens trafficked within the EU) appears to be the rise. Most traffickers work within well-established networks which allow them to move victims across borders or from one place to another within a country.

Preliminary data collected by the Commission shows that most of the registered victims in Member States are used for sexual exploitation (an increase from 70% in 2008 to 76% in 2010). The remaining is forced into labour (a decrease from 24% in 2008 to 14% in 2010), begging (3%) and domestic servitude (1%). This data appears consistent with those provided by international organisations, such as UNODC.

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 which 3% were boys) of victims between 2008 and 2010.

Comparable and reliable data is key in addressing trafficking in human beings. That is why the strategy foresees specific actions on data collection, including on the gender dimensions of human trafficking. In the autumn of 2012, the Commission, in cooperation with Eurostat, will already publish more detailed results.

## **What is already being done at EU level?**

A major step forward was taken in form of the adoption of EU legislation ([Directive 2011/36/EU](#)) which focuses on preventing the crime, protecting the victims, prosecuting the traffickers and establishing partnerships, in particular with civil society ([IP/11/332](#)).

If the Directive is fully transposed by April 2013 as required, it has the potential to have a real and concrete impact on the lives of the victims and to prevent others from falling victim to such a devastating crime.

The Directive established the post of EU Anti-Trafficking Coordinator with the task of ensuring policy coherence, improving the coordination of efforts in addressing trafficking in human beings within Union institutions and agencies and beyond and to contribute to the development of existing and new policies. Myria Vassiliadou was appointed as EU Anti-Trafficking Coordinator on behalf of the Commission in December 2010 and took up her mandate in March 2011.

EU financial support already is and will continue to be one of the main tools in preventing trafficking in human beings and protecting its victims (information on projects can be found on the EU [Anti-trafficking website](#)).

We are on the right track, but a lot remains to be done to eradicate human trafficking.

## **Why an EU strategy?**

As a next step to the Directive, the Commission proposed concrete measures that complement legislation and the efforts undertaken by governments, international organisations and civil society in the EU and third countries.

It is a practical instrument addressing the main needs and challenges in the EU for the next five years from a human rights and gender-specific perspective.

The aim is to involve and ensure better coordination between all possible actors working towards the eradication of trafficking, such as police officers, border guards, immigration and asylum officials, public prosecutors, lawyers, housing, labour, health, social and safety inspectors, social and youth workers, consumer organisations, trade unions, employers organisations, temporary job agencies, recruitment agencies, etc.

Concrete actions will include the funding of research studies and projects, the establishment of platforms, coalitions and partnerships, the development of guidelines and best practices, awareness-raising campaigns and trainings, etc.

## **Which are the priorities identified by the strategy?**

The strategy identifies five priorities and outlines a series of initiatives for each of them, such as:

### **1. Strengthening the identification, protection and assistance to victims, with a special emphasis on children.**

- Developing a model for an EU Transnational Referral Mechanism which links national referral mechanisms (cooperative frameworks through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons) to better identify, refer, protect and assist trafficked victims (2015).
- Providing and disseminating clear user-friendly information on the labour, social, migrant and compensation rights individuals are entitled to as victims of trafficking in human beings under EU law (2013).

### **2. Stepping up the prevention of trafficking in human beings, including by reducing demand**

- Funding research on the reduction of demand for and supply of services by victims of trafficking, including for the purpose of sexual exploitation (up to € 2.5 million under the 7th Framework Programme in 2013).
- Facilitating the establishment a European Business Coalition against trafficking in Human Beings to improve cooperation between companies and stakeholders (2014).

### **3. Increasing prosecution of traffickers**

- Supporting the establishment of national law enforcement units specialised in human trafficking. These dedicated teams should become the contact points for EU agencies, in particular Europol, and focus on all forms of trafficking (Ongoing).
- Developing proactive financial investigations and cooperation with EU agencies on trafficking cases through the sharing of best practices. Gathering more evidence from money trails might provide the necessary additional proof, particularly in high risk sectors, thus relieving victims of the burden of testifying in Court (2013).

#### **4. Enhancing coordination, cooperation and coherence within the EU, with international organisations, and with third countries, including civil society and the private sector**

- Establishing an EU platform of civil society organisations and service providers working on victim protection and assistance in Member States and third countries (2013).
- Designing more uniform and consistent trainings for those who work in the field, targeting in particular judiciary and cross border law enforcement officials (2012).

#### **5. Increasing knowledge of, and effective response to, emerging trends in human trafficking**

- Developing an EU wide system for the collection and publication of reliable and comparable data, which will notably help better understanding on new flows and trends, such as internal trafficking, and the gender dimension of trafficking (2014).
- Supporting research projects targeting the Internet and social networks which have become increasingly popular recruitment tools for traffickers (2014).

#### **How will it improve the situation for victims?**

Working towards the elimination of trafficking in human beings cannot be achieved without placing the victim at the centre of any actions and initiatives.

This victim-centred approach is present throughout the whole strategy.

One priority is to better identify, protect and assist victims. The identification of trafficking cases remains difficult, even though many people could potentially come in contact with a victim. The Commission proposes, for instance, to develop guidelines to help practitioners as well as consular officials and border guards better identify victims of trafficking.

In order to better assist victims in a cross-border situation the strategy also suggests to develop a model for an EU Transnational Referral Mechanism which will link different national referral mechanisms to better identify, refer, protect and assist victims. These national referral mechanisms formalise cooperation among government agencies and non-governmental groups dealing with trafficked persons. Such a mechanism can, for example, establish contact points in the countries involved and clearly assign responsibilities to the relevant actors so that the victim is assisted and protected at all times. This is particularly important in order to ensure that victims who decide to return to their country of origin continue to be supported in that country so that they can fully recover and re-integrate into society.

The strategy also aims to provide clear information to victims on their rights under EU law and national legislation, in particular 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.

## **How is the particular situation of children addressed?**

Children are trafficked for various reasons including sexual and labour exploitation. 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 Strategy, just as the Directive, recognises the importance of addressing trafficking in children who are particularly vulnerable to victimisation and re-trafficking, including during their adult lives. It proposes developing a best practice model for the role of the guardians and/or legal representation of the child victims and guidelines on child protection systems. The Strategy also calls on Member States to strengthen such child protection systems.

## **What is proposed to step-up prevention?**

A better understanding about how to reduce the demand and supply for services of trafficking in human beings victims could be reached through launching a study, raising awareness in cooperation with the private sector via a European Business Coalition (to be established in 2014) and promoting trafficking free supply chains in and outside the EU.

In 2014 the Commission will launch EU-wide awareness-raising activities targeting specific vulnerable groups, such as women and children at risk, domestic workers, Roma communities, undocumented workers and situations such as major sporting events.

The Commission will also assist Member States in strengthening measures to prevent human trafficking via temporary work agencies and intermediaries, such as job, marriage and adoption agencies.

## **What can be done to increase prosecution of traffickers?**

The total number of cases prosecuted in the EU remains low. In fact, preliminary results of recent data shows that the number of convictions on trafficking in human beings has decreased from around 1 500 in 2008 to around 1 250 in 2010.

The strategy promotes multidisciplinary cooperation at the local, national and transnational level, encouraging Member States to set up, for example, a dedicated national police intelligence unit and to stimulate cooperation between administrative and law enforcement authorities.

Developing pro-active financial investigations is key when dealing with trafficking cases. Evidence gathered from money trails might provide the necessary additional proof, particularly in high-risk sectors (agriculture, construction, the textile industry, healthcare, domestic service and the sex industry)<sup>2</sup>, which will also relieve victims of the burden of testifying in court.

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<sup>2</sup> Europol, 'EU Organised Crime Threat Assessment 2011'.

### **What emerging concerns should also be taken into account?**

The trends, patterns and working methods of traffickers are changing in all the different forms of trafficking in human beings, adapting to demand and supply and to legal and policy loopholes. It is necessary to understand such trends quickly and ensure an effective response.

For instance, internal trafficking, in which the victims are EU citizens who are trafficked within their own or another Member State, is on the rise. Understanding the flows and trends of internal trafficking will be an important part of the data collection initiative at EU level. Research on the gender dimension of trafficking and the vulnerability of high risks groups is also foreseen.

The internet offers numerous possibilities to recruit victims. It is anticipated that this trend will increase, as will the number of women sexually exploited in less visible, online environments. The Commission will fund projects enhancing knowledge of online recruitment that takes place via simple search engines and online advertisements, chat rooms, spam mail, or social networking tools.





**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.

## **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](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](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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**PROTOCOL TO PREVENT, SUPPRESS AND PUNISH  
TRAFFICKING IN PERSONS, ESPECIALLY WOMEN  
AND CHILDREN, SUPPLEMENTING THE UNITED  
NATIONS CONVENTION AGAINST  
TRANSNATIONAL ORGANIZED CRIME**

Advance copy of the authentic text. The copy certified  
by the Secretary-General will be issued at a later time.



**UNITED NATIONS  
2000**

**PROTOCOL TO PREVENT, SUPPRESS AND PUNISH  
TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND  
CHILDREN, SUPPLEMENTING THE UNITED NATIONS  
CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME**

**Preamble**

*The States Parties to this Protocol,*

*Declaring* that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

*Taking into account* the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

*Concerned* that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

*Recalling* General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

*Convinced* that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

*Have agreed as follows:*

**I. General provisions**

*Article 1*

*Relation with the United Nations Convention  
against Transnational Organized Crime*

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.

2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

*Article 2*  
*Statement of purpose*

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

*Article 3*  
*Use of terms*

For the purposes of this Protocol:

(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;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

*Article 4*  
*Scope of application*

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

*Article 5*  
*Criminalization*

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

**II. Protection of victims of trafficking in persons**

*Article 6*  
*Assistance to and protection of victims of*  
*trafficking in persons*

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

(a) Information on relevant court and administrative proceedings;

(b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of

trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

- (a) Appropriate housing;
- (b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
- (c) Medical, psychological and material assistance; and
- (d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

*Article 7*  
*Status of victims of trafficking in persons*  
*in receiving States*

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

*Article 8*  
*Repatriation of victims of trafficking in persons*

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of



that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

### **III. Prevention, cooperation and other measures**

#### *Article 9*

#### *Prevention of trafficking in persons*

1. States Parties shall establish comprehensive policies, programmes and other measures:

- (a) To prevent and combat trafficking in persons; and
- (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

#### *Article 10*

##### *Information exchange and training*

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

(c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

#### *Article 11*

##### *Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent

possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

#### *Article 12*

##### *Security and control of documents*

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

#### *Article 13*

##### *Legitimacy and validity of documents*

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported

to have been issued in its name and suspected of being used for trafficking in persons.

#### **IV. Final provisions**

##### *Article 14* *Saving clause*

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

##### *Article 15* *Settlement of disputes*

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

*Article 16*  
*Signature, ratification, acceptance,*  
*approval and accession*

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

*Article 17*  
*Entry into force*

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of

the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

*Article 18*  
*Amendment*

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

*Article 19*  
*Denunciation*

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

*Article 20*  
*Depositary and languages*

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.



Council  
of Europe  
Convention  
on Action  
against  
**Trafficking  
in Human  
Beings**



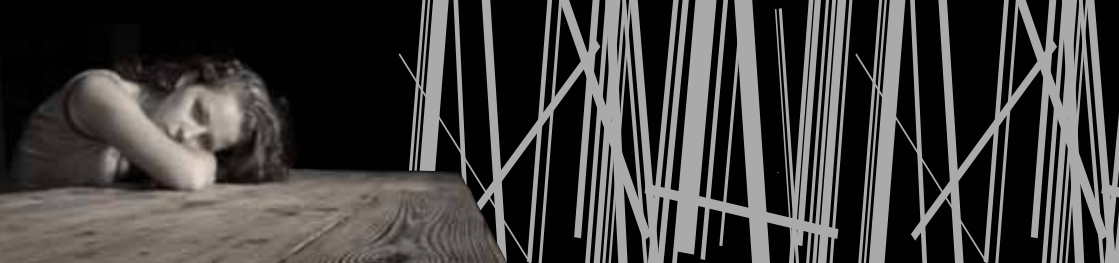
Victims'  
**rights**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE





**Trafficking in human beings violates the rights and affects the lives of countless people in Europe and beyond. An increasing number of women, men and children are being traded as a commodity, across borders or in their own countries, and trapped into exploitation and abuse.**

■ The Council of Europe Convention on Action against Trafficking in Human Beings, which entered into force on 1 February 2008, aims to:

- ▶ prevent trafficking in human beings,
- ▶ protect victims of trafficking,
- ▶ prosecute traffickers, and
- ▶ promote co-ordination of national actions and international co-operation.

■ The convention applies to:

- ▶ all forms of trafficking, whether national or transnational, whether linked to organised crime or not,
- ▶ all victims of trafficking (women, men and children),
- ▶ all forms of exploitation (sexual, forced labour or services, slavery, servitude, removal of organs, etc.).

■ The main added value of the convention is its focus on human rights and the protection of victims. The convention defines trafficking as a violation of human rights and an offence to the dignity and integrity of the human being. This means that the national authorities are held responsible if they do not take action to prevent human trafficking, protect victims and effectively investigate trafficking cases.

■ Trafficking in human beings is a worldwide phenomenon which knows no borders, which is why the convention is relevant for countries throughout the world and is open to all of them.




## WHAT IS TRAFFICKING IN HUMAN BEINGS?

— The convention defines trafficking in human beings as a combination of three elements:

- ▶ an **action**: recruitment, transportation, transfer, harbouring or receipt of persons;
- ▶ with the use of certain **means**: threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability, or giving or receiving payments or benefits to achieve the consent of a person having control of another person;
- ▶ for the **purpose of exploitation**: 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.

## WHAT IS THE DIFFERENCE BETWEEN HUMAN TRAFFICKING AND PEOPLE SMUGGLING?

— While the aim of people smuggling is the unlawful cross-border transport in order to obtain, directly or indirectly, a financial or other material benefit, the purpose of trafficking in human beings is exploitation. Furthermore, trafficking in human beings does not necessarily involve crossing a border; it can take place within a country.





## WHO ARE THE VICTIMS OF HUMAN TRAFFICKING?

— Anyone can become a victim of trafficking – women, men and children, people of all ages and social status. People who fall victim to human trafficking are, for example, forced to provide sexual services, work for little or no payment, or undergo organ removal. The exploitation is often accompanied by physical and emotional violence and threats to the victims and their relatives.

— According to the convention a victim of human trafficking is a person who has been recruited, transported, transferred, harboured or received within a country or across borders, by the use of threat, force, fraud, coercion or other illegal means, for the purpose of being exploited.

— A child is considered to be a victim of human trafficking regardless of whether any **means** have been used to recruit, transport, transfer, harbour or receive him/her for the purpose of exploitation.

— The person's "consent" to the exploitation is irrelevant when any of the **means** (coercion, fraud, abuse of position of vulnerability, etc.) have been used. Furthermore, a person will be considered to be a victim even if the exploitation has not yet taken place, when he/she has been subjected to one of the **actions** with the use of one of the **means**.

# WHAT RIGHTS DO VICTIMS OF TRAFFICKING HAVE UNDER THE CONVENTION?

## Identification

— Victims of trafficking must be formally identified as such in order to prevent them from being treated as irregular migrants or criminals. Identification is performed by specially trained professionals (police officers, social workers, labour inspectors, medical doctors, support providers, etc.) who follow agreed procedures and identification criteria.

## Recovery and reflection period

— Even before victims are formally identified as such they are entitled to a minimum of 30 days to recover, escape from the influence of the traffickers and consider co-operating with the authorities in the investigation of the trafficking offence. During this period, they cannot be expelled from the country and are entitled to assistance even if their stay is irregular.

## Assistance

— Regardless of whether victims are prepared to co-operate with the criminal investigation or act as a witness, they are entitled to:

- ▶ appropriate and secure accommodation,
- ▶ psychological assistance,
- ▶ material assistance,
- ▶ access to emergency medical treatment,
- ▶ translation and interpretation services,
- ▶ counselling and information,
- ▶ assistance during criminal proceedings,
- ▶ access to the labour market, vocational training and education, if lawfully resident in the country.

## Legal assistance

Victims of trafficking are entitled to information regarding their rights and all relevant procedures, in a language which they can understand. They also have the right to legal assistance and to free legal aid under specific conditions.

## Residence permit

Victims may be issued a renewable residence permit if their personal situation so requires or if they need to stay in the country in order to co-operate with the authorities in the investigation of the trafficking offence. The delivery of a residence permit does not interfere with their right to seek asylum.

## Protection of private life and identity

Victims' personal data cannot be made public and can only be stored for specific lawful purposes. It cannot be used in any way which could allow them to be identified.

## Protection during investigations and court proceedings

Victims and their family members will, when necessary, be provided with protection from potential retaliation or intimidation by the traffickers. This can include physical protection, relocation, identity change and assistance in obtaining employment.

## Compensation

Victims of trafficking have the right to financial compensation for the damages suffered at the hands of the traffickers. This compensation can be awarded either by a court, following the confiscation of the traffickers' assets, or provided by the state in which the exploitation took place.

## Repatriation and return

Victims' return to their country of origin has to take place with due regard for their rights, safety and dignity and taking into consideration the status of any related legal proceedings. Upon return, they must be offered reintegration assistance, such as education and help to find employment.

## WHAT ARE THE SPECIAL RIGHTS OF CHILD VICTIMS OF TRAFFICKING?

— In addition to the above-mentioned rights, which apply to all victims of trafficking, children benefit from the following special rights:

- ▶ unaccompanied children are assigned a legal guardian to represent them and act in their best interests;
- ▶ steps are taken to establish the identity and nationality of children and, if it is in their best interests, to locate their families;
- ▶ when the age of a victim is uncertain, but there are reasonable grounds to believe that the victim is under 18 years old, he/she is presumed to be a child and given special protection measures pending age verification;
- ▶ children are entitled to education and assistance measures which take into account their needs;
- ▶ a risk and security assessment is carried out before repatriation, which will only take place if it is in the best interests of the child;
- ▶ children benefit from special protection measures during investigation and court proceedings.





## MONITORING THE IMPLEMENTATION OF THE CONVENTION

— All the countries which have signed up to the Council of Europe convention are regularly monitored by the Group of Experts on Action against Trafficking in Human Beings (GRETA). GRETA's role is to ensure that the convention's provisions are effectively implemented and victims' rights respected.

— GRETA analyses the situation on a country-by-country basis, drawing up reports which identify good practices and gaps, and makes recommendations on how to improve the implementation of the convention in each country. The reports and recommendations are made public and are published on the Council of Europe's anti-trafficking website.

### For contacts and further information

Secretariat of the Council of Europe Convention on Action against Trafficking  
in Human Beings (GRETA and Committee of the Parties)

Council of Europe

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France

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[www.coe.int/trafficking](http://www.coe.int/trafficking)



## **Council of Europe Convention on Action against Trafficking in Human Beings <sup>\*</sup>**

Warsaw, 16.V.2005

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### **Preamble**

The member States of the Council of Europe and the other Signatories hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Considering that trafficking in human beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being;

Considering that trafficking in human beings may result in slavery for victims;

Considering that respect for victims' rights, protection of victims and action to combat trafficking in human beings must be the paramount objectives;

Considering that all actions or initiatives against trafficking in human beings must be non-discriminatory, take gender equality into account as well as a child-rights approach;

Recalling the declarations by the Ministers for Foreign Affairs of the Member States at the 112th (14-15 May 2003) and the 114th (12-13 May 2004) Sessions of the Committee of Ministers calling for reinforced action by the Council of Europe on trafficking in human beings;

Bearing in mind the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) and its protocols;

Bearing in mind the following recommendations of the Committee of Ministers to member states of the Council of Europe: Recommendation No. R (91) 11 on sexual exploitation, pornography and prostitution of, and trafficking in, children and young adults; Recommendation No. R (97) 13 concerning intimidation of witnesses and the rights of the defence; Recommendation No. R (2000) 11 on action against trafficking in human beings for the purpose of sexual exploitation and Recommendation Rec (2001) 16 on the protection of children against sexual exploitation; Recommendation Rec (2002) 5 on the protection of women against violence;

(\*) The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community entered into force on 1 December 2009. As a consequence, as from that date, any reference to the European Economic Community shall be read as the European Union.



Bearing in mind the following recommendations of the Parliamentary Assembly of the Council of Europe: Recommendation 1325 (1997) on traffic in women and forced prostitution in Council of Europe member states; Recommendation 1450 (2000) on violence against women in Europe; Recommendation 1545 (2002) on a campaign against trafficking in women; Recommendation 1610 (2003) on migration connected with trafficking in women and prostitution; Recommendation 1611 (2003) on trafficking in organs in Europe; Recommendation 1663 (2004) Domestic slavery: servitude, au pairs and mail-order brides;

Bearing in mind the European Union Council Framework Decision of 19 July 2002 on combating trafficking in human beings the European Union Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings and the European Union Council Directive 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;

Taking due account of the United Nations Convention against Transnational Organized Crime and the Protocol thereto to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children with a view to improving the protection which they afford and developing the standards established by them;

Taking due account of the other international legal instruments relevant in the field of action against trafficking in human beings;

Taking into account the need to prepare a comprehensive international legal instrument focusing on the human rights of victims of trafficking and setting up a specific monitoring mechanism,

Have agreed as follows:

## **Chapter I – Purposes, scope, non-discrimination principle and definitions**

### **Article 1 – Purposes of the Convention**

- 1 The purposes of this Convention are:
  - a to prevent and combat trafficking in human beings, while guaranteeing gender equality
  - b to protect the human rights 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;
  - c to promote international cooperation on action against trafficking in human beings.
- 2 In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

### **Article 2 – Scope**

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organised crime.

### **Article 3 – Non-discrimination principle**

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, 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.

### **Article 4 – Definitions**

For the purposes of this Convention:

- a "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;
- b The consent of a victim of "trafficking in human beings" to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in human beings" even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d "Child" shall mean any person under eighteen years of age;
- e "Victim" shall mean any natural person who is subject to trafficking in human beings as defined in this article.

## **Chapter II – Prevention, co-operation and other measures**

### **Article 5 – Prevention of trafficking in human beings**

- 1 Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.
- 2 Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
- 3 Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
- 4 Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
- 5 Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.

- 6 Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

#### **Article 6 – Measures to discourage the demand**

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- a research on best practices, methods and strategies;
- b raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
- c target information campaigns involving, as appropriate, *inter alia*, public authorities and policy makers;
- d preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

#### **Article 7 – Border measures**

- 1 Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.
- 2 Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.
- 3 Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
- 4 Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
- 5 Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.
- 6 Parties shall strengthen co-operation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication.

#### **Article 8 – Security and control of documents**

Each Party shall adopt such measures as may be necessary:

- a To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

- b To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation and issuance.

#### **Article 9 – Legitimacy and validity of documents**

At the request of another Party, a Party shall, in accordance with its internal law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings.

### **Chapter III – Measures to protect and promote the rights of victims, guaranteeing gender equality**

#### **Article 10 – Identification of the victims**

- 1 Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.
- 2 Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.
- 3 When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.
- 4 As soon as an unaccompanied child is identified as a victim, each Party shall:
  - a provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;
  - b take the necessary steps to establish his/her identity and nationality;
  - c make every effort to locate his/her family when this is in the best interests of the child.

#### **Article 11 – Protection of private life**

- 1 Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).
- 2 Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.

- 3 Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.

**Article 12 – Assistance to victims**

- 1 Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:
  - a standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;
  - b access to emergency medical treatment;
  - c translation and interpretation services, when appropriate;
  - d counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;
  - e assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
  - f access to education for children.
- 2 Each Party shall take due account of the victim's safety and protection needs.
- 3 In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.
- 4 Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.
- 5 Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.
- 6 Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.
- 7 For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

**Article 13 – Recovery and reflection period**

- 1 Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.
- 2 During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.
- 3 The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

**Article 14 – Residence permit**

- 1 Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:
  - a the competent authority considers that their stay is necessary owing to their personal situation;
  - b the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.
- 2 The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.
- 3 The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.
- 4 If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
- 5 Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

**Article 15 – Compensation and legal redress**

- 1 Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.
- 2 Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.
- 3 Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

- 4 Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

#### **Article 16 – Repatriation and return of victims**

- 1 The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.
- 2 When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.
- 3 At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.
- 4 In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.
- 5 Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.
- 6 Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.
- 7 Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such return would not be in the best interests of the child.

#### **Article 17 – Gender equality**

Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

## **Chapter IV – Substantive criminal law**

### **Article 18 – Criminalisation of trafficking in human beings**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.

### **Article 19 – Criminalisation of the use of services of a victim**

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

### **Article 20 – Criminalisation of acts relating to travel or identity documents**

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

- a forging a travel or identity document;
- b procuring or providing such a document;
- c retaining, removing, concealing, damaging or destroying a travel or identity document of another person.

### **Article 21 – Attempt and aiding or abetting**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.
- 2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in accordance with Articles 18 and 20, paragraph a, of this Convention.

### **Article 22 – Corporate liability**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural 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;
  - c an authority to exercise control within the legal person.
- 2 Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.



- 3 Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
- 4 Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

#### **Article 23 – Sanctions and measures**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.
- 2 Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.
- 3 Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of bona fide third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

#### **Article 24 – Aggravating circumstances**

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- a the offence deliberately or by gross negligence endangered the life of the victim;
- b the offence was committed against a child;
- c the offence was committed by a public official in the performance of her/his duties;
- d the offence was committed within the framework of a criminal organisation.

#### **Article 25 – Previous convictions**

Each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty.

#### **Article 26 – Non-punishment provision**

Each Party shall, in accordance with the basic principles of its legal system, 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.

## Chapter V – Investigation, prosecution and procedural law

### Article 27 – *Ex parte* and *ex officio* applications

- 1 Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.
- 2 Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.
- 3 Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or non-governmental organisations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.

### Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities

- 1 Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:
  - a Victims;
  - b As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;
  - c witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;
  - d when necessary, members of the family of persons referred to in subparagraphs a and c.
- 2 Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.
- 3 A child victim shall be afforded special protection measures taking into account the best interests of the child.
- 4 Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations which carry out the activities set out in Article 27, paragraph 3.
- 5 Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

**Article 29 – Specialised authorities and co-ordinating bodies**

- 1 Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.
- 2 Each Party shall adopt such 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.
- 3 Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.
- 4 Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.

**Article 30 – Court proceedings**

In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

- a the protection of victims' private life and, where appropriate, identity;
- b victims' safety and protection from intimidation,

in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children's needs and ensuring their right to special protection measures.

**Article 31 – Jurisdiction**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:
  - a in its territory; or
  - b on board a ship flying the flag of that Party; or
  - c on board an aircraft registered under the laws of that Party; or
  - d by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;
  - e against one of its nationals.

- 2 Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 (d) and (e) of this article or any part thereof.
- 3 Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.
- 4 When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.
- 5 Without prejudice to the general norms of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with internal law.

## **Chapter VI – International co-operation and co-operation with civil society**

### **Article 32 – General principles and measures for international co-operation**

The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

- preventing and combating trafficking in human beings;
- protecting and providing assistance to victims;
- investigations or proceedings concerning criminal offences established in accordance with this Convention.

### **Article 33 – Measures relating to endangered or missing persons**

- 1 When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.
- 2 The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that she/he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other.

### **Article 34 – Information**

- 1 The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

- 2 A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.
- 3 Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.
- 4 All information requested concerning Articles 13, 14 and 16, necessary to provide the rights conferred by these articles, shall be transmitted at the request of the Party concerned without delay with due respect to Article 11 of the present Convention.

#### **Article 35 – Co-operation with civil society**

Each Party shall encourage state authorities and public officials, to co-operate with non-governmental organisations, other relevant organisations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

### **Chapter VII – Monitoring mechanism**

#### **Article 36 – Group of experts on action against trafficking in human beings**

- 1 The Group of experts on action against trafficking in human beings (hereinafter referred to as "GRETA"), shall monitor the implementation of this Convention by the Parties.
- 2 GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.
- 3 The election of the members of GRETA shall be based on the following principles:
  - a they shall be chosen from among persons of high moral character, known for their recognised competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas covered by this Convention;
  - b they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;
  - c no two members of GRETA may be nationals of the same State;
  - d they should represent the main legal systems.
- 4 The election procedure of the members of GRETA shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties to the Convention, within a period of one year following the entry into force of this Convention. GRETA shall adopt its own rules of procedure.

### **Article 37 – Committee of the Parties**

- 1 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.
- 2 The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GRETA. It shall subsequently meet whenever one-third of the Parties, the President of GRETA or the Secretary General so requests.
- 3 The Committee of the Parties shall adopt its own rules of procedure.

### **Article 38 – Procedure**

- 1 The evaluation procedure shall concern the Parties to the Convention and be divided in rounds, the length of which is determined by GRETA. At the beginning of each round GRETA shall select the specific provisions on which the evaluation procedure shall be based.
- 2 GRETA shall define the most appropriate means to carry out this evaluation. GRETA may in particular adopt a questionnaire for each evaluation round, which may serve as a basis for the evaluation of the implementation by the Parties of the present Convention. Such a questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GRETA.
- 3 GRETA may request information from civil society.
- 4 GRETA may subsidiarily organise, in co-operation with the national authorities and the “contact person” appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.
- 5 GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.
- 6 On this basis, GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.
- 7 Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRETA, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GRETA, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of the present Convention.

## **Chapter VIII – Relationship with other international instruments**

**Article 39 – Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime**

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organised crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

**Article 40 – Relationship with other international instruments**

- 1 This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for victims of trafficking.
- 2 The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.
- 3 Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.<sup>(1)</sup>
- 4 Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

**(1) Note by the Secretariat:**

See the Declaration formulated by the European Community and the Member States of the European Union upon the adoption of the Convention by the Committee of Ministers of the Council of Europe, on 3 May 2005:

“The European Community/European Union and its Member States reaffirm that their objective in requesting the inclusion of a “disconnection clause” is to take account of the institutional structure of the Union when acceding to international conventions, in particular in case of transfer of sovereign powers from the Member States to the Community.

This clause is not aimed at reducing the rights or increasing the obligations of a non-European Union Party vis-à-vis the European Community/European Union and its Member States, inasmuch as the latter are also parties to this Convention.

The disconnection clause is necessary for those parts of the Convention which fall within the competence of the Community/Union, in order to indicate that European Union Member States cannot invoke and apply the rights and obligations deriving from the Convention directly among themselves (or between themselves and the European Community/Union). This does not detract from the fact that the Convention applies fully between the European Community/European Union and its Member States on the one hand, and the other Parties to the Convention, on the other; the Community and the European Union Members States will be bound by the Convention and will apply it like any Party to the Convention, if necessary, through Community/Union legislation. They will thus guarantee the full respect of the Convention’s provisions vis-à-vis non-European Union Parties.”

## **Chapter IX – Amendments to the Convention**

### **Article 41 – Amendments**

- 1 Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43.
- 2 Any amendment proposed by a Party shall be communicated to GRETA, which shall submit to the Committee of Ministers its opinion on that proposed amendment.
- 3 The Committee of Ministers shall consider the proposed amendment and the opinion submitted by GRETA and, following consultation of the Parties to this Convention and after obtaining their unanimous consent, may adopt the amendment.
- 4 The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.
- 5 Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.

## **Chapter X – Final clauses**

### **Article 42 – Signature and entry into force**

- 1 This Convention shall be open for signature by the member States of the Council of Europe, the non member States which have participated in its elaboration and the European Community.
- 2 This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
- 3 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 Signatories, including at least 8 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
- 4 In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

### **Article 43 – Accession to the Convention**

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 d. of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.



- 2 In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

#### **Article 44 – Territorial application**

- 1 Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
- 2 Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

#### **Article 45 – Reservations**

No reservation may be made in respect of any provision of this Convention, with the exception of the reservation of Article 31, paragraph 2.

#### **Article 46 – Denunciation**

- 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

#### **Article 47 – Notification**

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43 of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 42 and 43;
- d any amendment adopted in accordance with Article 41 and the date on which such an amendment enters into force;
- e any denunciation made in pursuance of the provisions of Article 46;
- f any other act, notification or communication relating to this Convention,

g any reservation made under Article 45.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.



## **Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings**

### **Recommendation CP(2015)1 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Finland**

*adopted at the 16th meeting of the Committee of the Parties  
on 15 June 2015*

The Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings (hereinafter referred to as 'the Convention'), acting under the terms of Article 38(7) of the Convention;

Having regard to the purposes of the Convention to prevent and combat trafficking in human beings, while guaranteeing gender equality, protect the human rights of victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, ensure the effective investigation and prosecution of the offences related to trafficking in human beings, and promote international co-operation;

Bearing in mind the provisions of Article 36(1) of the Convention concerning the monitoring role of the Group of Experts on Action against Trafficking in Human Beings (GRETA) in the implementation of the Convention;

Having regard to the Rules of Procedure of the Committee of the Parties;

Having regard to the instrument of ratification deposited by Finland on 30 May 2012;

Having examined the Report concerning the implementation of the Convention by Finland, adopted by GRETA at its 22nd meeting (16 - 20 March 2015) in the framework of the first evaluation round;

Having examined the comments of the Finnish Government on GRETA's report, submitted on 11 May 2015;

Welcoming the measures to combat trafficking in human beings taken by the Finnish authorities, and in particular:

- the adoption and periodic amendment of legislation criminalising trafficking in human beings and regulating the identification of and assistance to victims of trafficking;
- the introduction of an independent National Rapporteur on Trafficking in Human Beings in 2009 and the recent appointment of a National Anti-Trafficking Co-ordinator;
- the setting up of a national assistance system for victims of human trafficking;
- the provision in Finnish law of a recovery and reflection period longer than the minimum of 30 days envisaged in the Convention;
- the efforts made to identify cases of trafficking for the purpose of labour exploitation and to secure convictions in such cases.

Taking note of the areas where further action is required in order to improve the implementation of the Convention by Finland, in particular:

- adopting a new or updated national action plan and/or a strategy against human trafficking and a mechanism for monitoring its implementation;
- further improving the identification of victims of trafficking, in particular by introducing a clear national identification and referral mechanism and promoting multi-agency involvement in identification;
- ensuring that the assistance provided to victims of trafficking is adapted to their specific needs and paying particular attention to child victims of trafficking, including unaccompanied minors;
- making sure that all possible victims of trafficking are offered a reflection and recovery period with access to the protection and assistances measures foreseen by the Convention;
- adopting additional measures to facilitate and guarantee access to compensation for victims of trafficking;
- strengthening the effectiveness of investigations and prosecutions of human trafficking offences for all forms of exploitation with a view to securing proportionate and dissuasive sanctions, by building the capacity and specialisation of police officers, prosecutors and judges.

1. Recommends that the Government of Finland implement the proposals of GRETA listed in Appendix I to the Report concerning the implementation of the Convention by Finland (see addendum);

2. Requests the Government of Finland to inform the Committee of the Parties of the measures taken to comply with this recommendation by 15 June 2017;

3. Invites the Government of Finland to continue the ongoing dialogue and co-operation with GRETA and to keep GRETA informed of the measures taken in response to its proposals.

## Addendum

### **List of GRETA's proposals concerning the implementation of the Convention by Finland**

#### **Definition of "trafficking in human beings"**

1. GRETA considers that stating explicitly in legislation the irrelevance of the consent of a victim of trafficking to the intended exploitation can improve the implementation of the anti-trafficking provisions.
2. GRETA welcomes the adoption of amendments to the Criminal Code aimed at making the distinction between THB and pimping clearer and stresses that it would similarly be useful to make clearer the distinction between THB for the purpose of labour exploitation and extortionate work discrimination.

#### **Comprehensive approach and co-ordination**

3. GRETA urges the Finnish authorities to adopt as a matter of priority a new or updated action plan and/or strategy against THB, in which priorities, objectives, concrete activities and stakeholders responsible for their implementation are clearly defined and budgetary resources allocated. The action plan/strategy should be accompanied by a mechanism for monitoring its implementation.
4. GRETA also considers that the Finnish authorities should take additional steps to ensure that national action to combat THB is comprehensive, and in particular to:
  - further involve NGOs and other members of civil society in the development and implementation of anti-trafficking measures, including the elaboration of a future national action plan or strategy as well as the evaluation of anti-trafficking efforts; the conclusion of formal Memoranda of Understanding between public bodies and competent NGOs should be encouraged;
  - strengthen co-ordination between the national and municipal authorities and NGOs active in the field of action against THB, as well as co-ordination between relevant stakeholders at municipal level;
  - formalise co-ordination among different actors in the anti-trafficking area in the identification and referral of victims for assistance;
  - pay increased attention to prevention and protection measures addressing the particular vulnerability of children to trafficking and ensuring that the best interests of the child are fully taken into account;
  - strengthen action to combat THB for the purpose of sexual exploitation including identification;
  - pay increased attention to emerging forms of trafficking in Finland (such as forced begging and forced criminality) and internal trafficking.
5. Further, GRETA invites the Finnish authorities to provide for an independent evaluation of the implementation of the National Action Plan as a tool for assessing the impact of the activities and for planning future policies and measures to combat human trafficking.

## **Training of relevant professionals**

6. GRETA notes the efforts made in Finland to train different professionals on issues related to human trafficking and considers that the Finnish authorities should take further steps to provide specialised and continuous training to professionals who may come into contact with victims of THB, in particular police officers, prosecutors, judges, labour inspectors, municipal officials, health professionals, social workers and teachers, to enable them to identify victims of trafficking, assist and protect victims including as regards the facilitation of compensation, and secure convictions of traffickers.

## **Data collection and research**

7. For the purpose of preparing, monitoring and evaluating anti-trafficking policies, GRETA urges the Finnish authorities to develop and maintain a comprehensive and coherent data collection system on trafficking in human beings by compiling reliable statistical information from all main actors and allowing disaggregation (concerning sex, age, type of exploitation, country of origin and/or destination). The existence of a comprehensive data collection system can assist the preparation, monitoring and evaluating of anti-trafficking policies and would also facilitate the work of the National Rapporteur. Data collection should be accompanied by all the necessary measures to respect the right of data subjects to personal data protection, including when NGOs working with victims of trafficking are asked to provide information for the national database.

8. GRETA welcomes the attention given to research into issues related to THB and invites the Finnish authorities to continue conducting and supporting research on THB-related issues as an important source of information on the impact of current policies as well as a basis for future measures. Areas where further research is needed, in order to shed more light on the extent of the problem of THB in Finland, include internal trafficking and emerging forms of trafficking, such as for the purpose of forced begging and forced criminality.

## **International co-operation**

9. GRETA welcomes the efforts made by the Finnish authorities in the area of international co-operation to combat THB and invites the authorities to continue developing international co-operation with a view to preventing THB, assisting victims of trafficking and prosecuting offenders, including through exploring further possibilities for co-operation with governmental and non-governmental actors in countries of origin.

## **Measures to raise awareness**

10. GRETA considers that there is need for more awareness-raising measures in Finland about the risks of THB and the rights of victims, especially among migrants. GRETA considers that future actions in the area of awareness raising should be designed in the light of the assessment of previous measures and be focused on the needs identified. The success of the efforts is linked to efficient data collection, adequate funding and regular evaluation.

## **Measures to discourage demand**

11. GRETA considers that the Finnish authorities should make more efforts to discourage demand for the services of trafficked persons for the purpose of labour exploitation, in partnership with the private sector and civil society. In this context, GRETA invites the Finnish authorities to consider establishing as a criminal offence the use of services which are the object of labour exploitation, with the knowledge that the person is a victim of trafficking in human beings.

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## **Economic, social and other initiatives for groups vulnerable to THB**

12. GRETA notes the measures taken by the Finnish authorities vis-à-vis groups vulnerable to THB and considers that the authorities should continue to develop the aspect of prevention through social and economic empowerment measures, including by integration of the prevention of human trafficking in the policies for unaccompanied children, asylum seekers and migrant workers.

## **Border measures to prevent THB and measures to enable legal migration**

13. GRETA considers that the Finnish authorities should continue their efforts to:

- detect and prevent THB through border control measures;
- introduce a checklist to identify potential THB-related risks during the visa application system.

## **Identification of victims of trafficking in human beings**

14. GRETA urges the Finnish authorities to improve identification procedures in order to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures provided for by the Convention, in particular by:

- introducing a clear national identification and referral mechanism which defines the roles and responsibilities of different stakeholders and promotes a multi-agency approach to victim identification by involving NGOs, labour inspectors, social workers, health-care staff, municipal staff and other relevant actors;
- providing frontline staff with operational indicators, guidance, training and toolkits to be used in the identification process; these indicators should be harmonised and shared between the various stakeholders concerned and be regularly updated in order to reflect the changing nature of human trafficking;
- guaranteeing that in practice identification is dissociated from the victim's co-operation in the investigation;
- improving the proactive detection of victims of THB, the gathering of intelligence and the sharing of information between relevant actors, in particular as regards sexual exploitation and new forms of trafficking, such as forced begging;
- setting up a specific identification mechanism which takes into account the special circumstances and needs of child victims of trafficking, involves child specialists, ensures that the best interests of the child are the primary considerations and strengthens the detection of victims of THB among unaccompanied minors.

## **Assistance to victims**

15. GRETA urges the Finnish authorities to ensure that the assistance provided to victims of THB is adapted to their specific needs and that minimum standards are guaranteed across the country, regardless of the service provider. When specialised assistance is delegated to NGOs, the State has an obligation to provide adequate funding. Particular attention should be paid to providing appropriate assistance to child victims of THB, including unaccompanied minors.

16. Further, GRETA considers that the Finnish authorities should provide regular specialised training to all professionals responsible for the provision of assistance and protection measures to victims of trafficking.

## **Recovery and reflection period**

17. GRETA urges the Finnish authorities to ensure, in compliance with the obligations under Article 13 of the Convention, that all possible victims of trafficking are offered a reflection and recovery period and all the measures of protection and assistance envisaged in Article 12, paragraphs 1 and 2, of the Convention during this period. Police and border guard officers should be issued with clear instructions stressing the need to offer the recovery and reflection period as defined in the Convention, i.e. not making it conditional on the victim's co-operation and offering it to victims before formal statements are made to investigators.

## **Residence permits**

18. GRETA considers that the Finnish authorities should ensure that victims of trafficking can fully benefit from the right to obtain a renewable residence permit, including when they are unable to co-operate with the authorities.

## **Compensation and legal redress**

19. GRETA urges the Finnish authorities to adopt additional measures to facilitate and guarantee access to compensation for victims of trafficking, and in particular to:

- ensure that victims of trafficking are systematically informed in a language that they can understand of the right to seek compensation and the procedures to be followed;
- enable victims of trafficking to exercise their right to compensation, by building the capacity of legal practitioners to support victims to claim compensation and by adding compensation issues into existing training programmes for law enforcement officials and the judiciary;
- include all victims of trafficking in the scope of the Act on Compensation for Crime Damage, irrespective of residence status;
- enable victims of trafficking who have left Finland to benefit from the possibilities to claim compensation;

20. Further, GRETA invites the Finnish authorities to develop the system for recording compensation claims of and awards to victims of trafficking.

## **Repatriation and return of victims**

21. GRETA considers that the Finnish authorities should take further steps to:

- ensure that the return of victims of trafficking is conducted with due regard for the rights, safety and dignity of the person and the status of legal proceedings; this implies protection from retaliation and re-trafficking;
- make efforts to develop co-operation with countries of origin of victims of trafficking in order to ensure proper risk assessment and safe return of victims, as well as their effective reintegration.

## **Non-punishment of victims of trafficking in human beings**

22. GRETA considers that, in order to ensure compliance with Article 26 of the Convention, the Finnish authorities should adopt a provision on the non-punishment of victims of trafficking for their involvement in unlawful activities, to the extent that they were compelled to do so. Public prosecutors should be issued guidance and encouraged to be proactive in establishing if an accused is a potential victim of trafficking. While the identification procedure is on-going, potential victims of trafficking should not be punished for unlawful acts related to public order or immigration legislation.



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**Investigation, prosecution and procedural law**

23. GRETA urges the Finnish authorities to ensure that THB offences for all types of exploitation are proactively investigated and prosecuted promptly, leading to proportionate and dissuasive sanctions, by building further the capacity and specialisation of police officers, prosecutors and judges.

**Protection of victims and witnesses**

24. GRETA welcomes the adoption by Parliament of legislation on a witness protection programme and considers that the Finnish authorities should take complementary practical measures to ensure the effective protection of victims of THB during the investigation and to prevent their intimidation during and after court proceedings.

# EUROPOL SUPPORTS JOINT INVESTIGATION INTO INTERNATIONAL HUMAN TRAFFICKING

15 February 2017

As a result of coordinated and joint operational activities, authorities from Slovakia and the United Kingdom, supported by Europol and Eurojust, have dismantled an organised criminal group involved in trafficking Slovak victims for the purposes of sham marriages and sexual exploitation.

Last week, house searches were performed in Glasgow by Police Scotland. Europol specialists were deployed on the spot to support the national authorities. As a result, five suspects were arrested and detained in police custody. Sixteen women - potential victims of trafficking - were also identified and were offered care and assistance by a specialised NGO.

A significant amount of evidence (numerous travel documents, computer equipment, mobile phones and cash) was seized during the operation, and will be used for further investigation.

This joint action was preceded by extensive and complex investigations supported by Europol and Eurojust.

Two days ago, the second phase of this coordinated operation took place in Trebisov, Slovakia, where four search warrants and four arrests were executed.

The modus operandi of this organised criminal group was to recruit vulnerable women from challenging socio-economic backgrounds by deception, promising them attractive and well-paid jobs abroad, and then forcing them into sham marriages and prostitution.

Europol actively supported this human trafficking operation and provided operational and analytical support to Slovakia and the United Kingdom throughout the investigation. Europol specialists in trafficking human beings delivered real-time cross-checks of the data gathered using a mobile office and data extraction device during the actions.

Europol and Eurojust facilitated police and judicial cooperation under a [joint investigation team \(JIT\)](https://www.europol.europa.eu/activities-services/services-support/joint-investigation-teams) (<https://www.europol.europa.eu/activities-services/services-support/joint-investigation-teams>), bringing together efforts from both Member States. Several operational and coordination meetings were held at Europol and Eurojust's headquarters in The Hague.

## CRIME AREAS

[Trafficking in Human Beings \(/crime-areas-and-trends/crime-areas/trafficking-in-human-beings\)](/crime-areas-and-trends/crime-areas/trafficking-in-human-beings)

## TARGET GROUPS

[General Public \(/target-groups/general-public\)](/target-groups/general-public) • [Law Enforcement \(/target-groups/law-enforcement\)](/target-groups/law-enforcement) • [Academia \(/target-groups/academia\)](/target-groups/academia) • [Professor \(/target-groups/professor\)](/target-groups/professor) • [Students \(/target-groups/students\)](/target-groups/students) • [Researcher \(/target-groups/researcher\)](/target-groups/researcher) • [Press/Journalists \(/target-groups/press-journalists\)](/target-groups/press-journalists) • [Other \(/target-groups/other\)](/target-groups/other)

## SUPPORT & SERVICES

[Information exchange \(/support-services/information-exchange\)](/support-services/information-exchange) • [Forensics \(/support-services/forensics\)](/support-services/forensics) • [Analysis \(/support-services/analysis\)](/support-services/analysis) • [Operational \(/support-services/operational\)](/support-services/operational) • [Intelligence \(/support-services/intelligence\)](/support-services/intelligence) • [Mobile office \(/support-services/mobile-office\)](/support-services/mobile-office)

# EUROPEAN UNION SERIOUS AND ORGANISED CRIME THREAT ASSESSMENT

Crime in the age of technology

**The European Union (EU) Serious and Organised Crime Threat Assessment (SOCTA) 2017** is a detailed analysis of the threat of serious and organised crime facing the EU providing information for practitioners, decision-makers and the wider public. Europol is the EU's law enforcement agency and assists the 28 EU Member States in their fight against serious international crime and terrorism. For the SOCTA 2017, Europol has undertaken the largest-ever data collection on serious and organised crime in the EU. Europol relied on thousands of contributions by Member States, Europol's operational and strategic partners outside the EU and our institutional partners as well as operational intelligence held in Europol's databases to produce the most detailed assessment of the nature and scale of criminal threats facing the EU and its Member States.

Serious and organised crime in the EU features a great variety of criminal activities, which are increasing in complexity and scale. Criminals quickly adopt and integrate new technologies into their *modi operandi* or build brand-new business models around them. The use of new technologies by organised crime groups (OCGs) has an impact on criminal activities across the spectrum of serious and organised crime. This includes developments online, such as the expansion of online trade and widespread availability of encrypted communication channels.

The SOCTA 2017 can be accessed on the Europol website [www.europol.europa.eu](http://www.europol.europa.eu)

# CRIME MARKETS



**CURRENCY COUNTERFEITING**



**CYBERCRIME**  
Child sexual exploitation  
Payment card fraud  
Cyber-dependent crimes



**DRUG PRODUCTION TRAFFICKING AND DISTRIBUTION**



**ILLICIT WASTE TRAFFICKING**



**TRAFFICKING OF ENDANGERED SPECIES**



**FRAUD**  
Excise fraud  
Investment fraud  
Mass marketing fraud  
Payment order fraud  
Value Added Tax fraud



**INTELLECTUAL PROPERTY CRIME**



**MIGRANT SMUGGLING**



**ORGANISED PROPERTY CRIME**



**SPORTS CORRUPTION**



**TRAFFICKING OF FIREARMS**



**TRAFFICKING IN HUMAN BEINGS**

## ORGANISED CRIME GROUPS



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

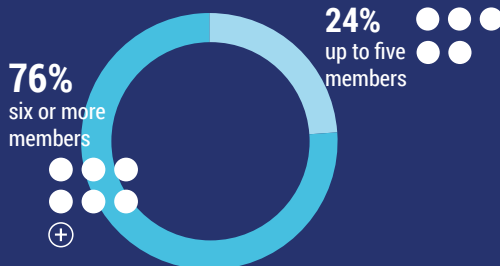


**>180**  
nationalities involved

## STRUCTURE



## COMPOSITION



## INTERNATIONAL DIMENSION AND MOBILITY

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



## TRENDS

### ▲ Poly-criminality

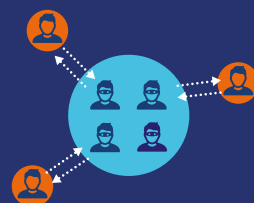
**45%** of the OCGs reported for the SOCTA 2017 are involved in more than one criminal activity

Many OCGs have expanded their crime portfolio in response to the sustained high level of demand for smuggling services during the migration crisis.



### ▲ Sharing Economy

An increasing number of individual criminal entrepreneurs come together on an ad hoc basis for specific criminal ventures or to deliver crime-as-a-service.



▲ = increasing

# ENGINES OF ORGANISED CRIME

Document fraud, money laundering and the online trade in illicit goods and services are the engines of organised crime. These cross-cutting criminal threats enable and facilitate most, if not all, other types of serious and organised crime.



# ONLINE TRADE IN ILLICIT GOODS AND SERVICES

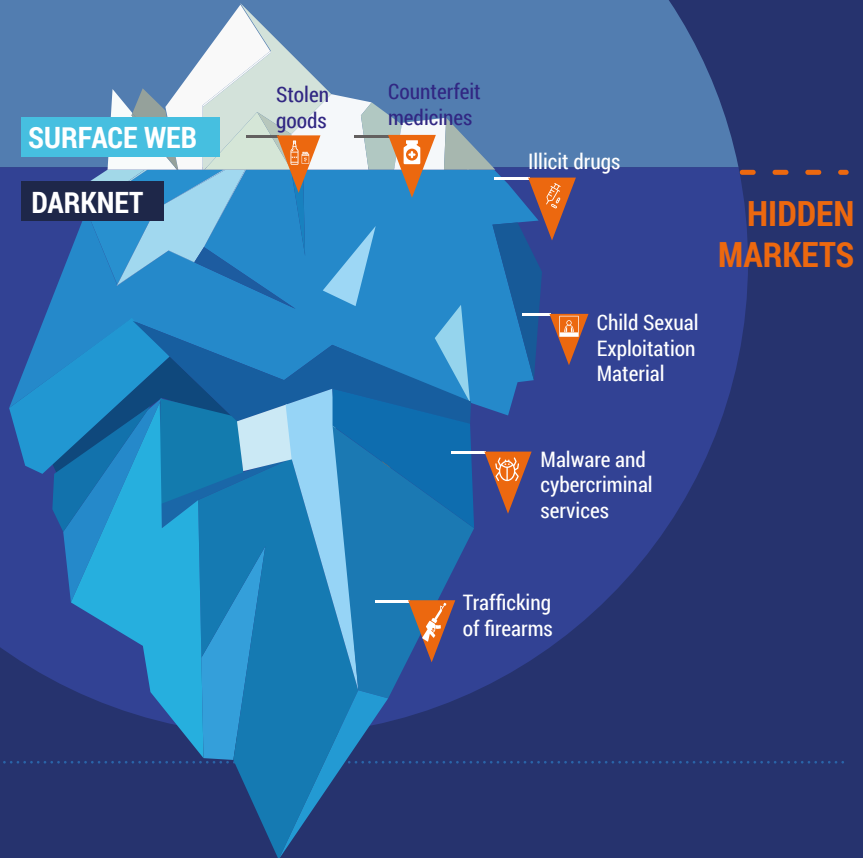


**85%** of internet users feel at risk of becoming a victim of cybercrime



## CRIME-AS-A-SERVICE (CaaS)

The CaaS model provides easy access to tools and services across the entire spectrum of cyber-criminality, from entry-level to top-tier players, including those with other motivations such as hackers or even terrorists. This allows even entry-level cybercriminals to carry out attacks of a scale disproportionate to their technical capability. Criminal forums and marketplaces within the deep web or Darknet remain a crucial environment for cybercriminals to communicate and are a key component for CaaS.



## CYBERCRIME

Cybercrime continues to grow as society becomes increasingly digitised.



### Malware and ID theft

Malware typically steals user data such as credit card numbers, login credentials and personal information from infected machines for subsequent use by criminals in fraud.



### Cryptoware

Cryptoware (ransomware using encryption) has become the leading malware in terms of threat and impact. It encrypts victims' user generated files, denying them access unless the victim pays a fee to have their files decrypted.



### Network attacks

Network intrusions that result in unlawful access to or disclosure of private data (data breaches) or intellectual property are growing in frequency and scale, with hundreds of millions of records compromised globally each year.



### Payment order fraud

Criminals use fraudulent transfer orders to defraud private and public sector organisations. Fraudsters heavily rely on social engineering techniques and malware to carry out this type of fraud.



### Payment card fraud

Compromised card data is readily available and easy to obtain on forums, marketplaces and automated card shops in the deep web and Darknet.



### Online sexual exploitation

Child Sexual Exploitation Material is increasingly produced for financial gain and distributed through the Darknet. Coercion and sexual extortion are increasingly being used to victimise children.

# DRUG TRAFFICKING



## THE LARGEST CRIMINAL MARKET IN THE EU

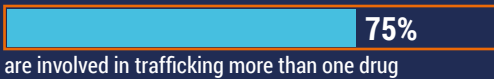


Drug market generates  
**~24 EUR** billion/year  
in profits

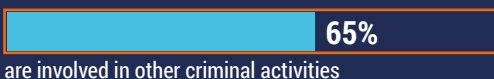


**>35%**  
of the criminal groups active in  
the EU are involved in the drug  
market

OCGs linked to drugs



are involved in trafficking more than one drug



are involved in other criminal activities



**419**  
previously undetected New  
Psychoactive Substances reported in  
the EU for the first time over the past  
five years.

## TRENDS

▲ **SYNTHETIC DRUGS**  
The market for synthetic drugs  
continues to be the most  
dynamic of the drug markets in  
the EU.



▲ **ONLINE TRADE**  
Online marketplaces on the  
Darknet are now a key  
platform used to advertise  
and sell all types of drugs.



▲ **CUTTING - EDGE TECHNOLOGY**  
Technical innovation and  
sophisticated equipment  
allow OCGs to maximise the  
production output.



▲ **TOXIC WASTE**  
The production of synthetic  
drugs generates large quantities  
of highly toxic and dangerous  
waste. Dump sites often remain  
contaminated for a significant  
period of time and their  
recovery is costly.



▲ **LIBYA**  
Libya is emerging as a new  
distribution hub for cannabis  
resin trafficked to the EU across  
the Mediterranean Sea.



# MIGRANT SMUGGLING

## ▲ The demand for smuggling services has grown significantly since 2014.

More than 510,000 illegal border crossings between border-crossing points at the external border of the EU were registered in 2016. Nearly all of the irregular migrants arriving in the EU along these routes use the services offered by criminal networks at some point during their journeys.

Armed conflicts, economic and population pressures in Africa and the Middle East will continue to act as the main push factors for irregular migrants travelling to the EU.

## ▲ Migrant smuggling to and within the EU will remain a key criminal threat.



### FACILITATION SERVICES

Migrant smuggling networks offer their services including **transportation**, **accommodation**, the **provision of fraudulent documents** and **information** on contact points in other countries. This crime does not require access to significant resources and OCGs can rely on their existing knowledge of routes and infrastructure used to smuggle goods across borders.



#### TRANSPORTATION & ACCOMMODATION

Migrant smugglers pass irregular migrants from one network to another along the route of the migrants' journey.

EU suspects typically work as drivers transporting irregular migrants within the EU to destination countries.



#### COMMUNICATION VIA SOCIAL MEDIA

Migrant smugglers widely rely on **social media** and use online platforms such as **ride-sharing websites**, or Peer to Peer (P2P) accommodation platforms, to arrange facilitation services.



#### DOCUMENT FRAUD

Document fraud has emerged as a key criminal activity linked to the migration crisis.

The abuse of genuine passports by look-alikes continues to be the main modus operandi used by document fraudsters.

### LINKS BETWEEN MIGRANT SMUGGLING AND TRAFFICKING IN HUMAN BEINGS (THB)

OCGs involved in the trafficking of human beings (THB) often exploit existing migratory routes to traffic victims within the EU. While the migration crisis has not yet had a widespread impact on THB for labour exploitation in the EU, some investigations show that traffickers are increasingly targeting irregular migrants and asylum seekers in the EU for exploitation. Irregular migrants in the EU represent a large pool of potential victims susceptible to promises of work even if this entails exploitation.

#### LABOUR EXPLOITATION



#### SEXUAL EXPLOITATION



#### CHILD TRAFFICKING





# TRAFFICKING IN HUMAN BEINGS

The trafficking of victims within the EU remains a key threat. The traditional trafficking flow from Eastern Europe to Western Europe has been replaced by multiple and diverse flows of victims all over the EU.

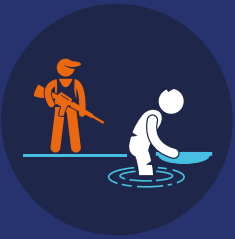


- ▲ The migration crisis has resulted in an increase in the number of potential victims of THB.
- ▲ A growing number of **vulnerable adults and unaccompanied minors** in the EU are likely to be targeted by traffickers.

Traffickers continue to rely on the use of social media, Voice-over-IP (VoIP) and instant messaging applications at all stages of the trafficking cycle.



## LABOUR EXPLOITATION



- ▲ **THB for labour exploitation** is increasing in the EU.

Traffickers continue to target less regulated industries as well as those featuring seasonal demand for workers.

Vulnerable sectors include agriculture, catering, cleaning, construction, entertainment, fishing, hospitality, retail and transportation.



## SEXUAL EXPLOITATION



Sexual exploitation no longer relies mainly on the use of violence and coercion.

- ▲ OCGs have further increased the **use of legal businesses** that can conceal exploitations such as hotels, nightclubs and massage parlours.



## CHILD TRAFFICKING



Traffickers often specifically target underage victims, both male and female, to sexually exploit them.

In some cases, underage victims are trafficked for the purpose of producing Child Sexual Exploitation Material (CSEM), which is traded on online platforms.



# ORGANISED PROPERTY CRIME

Organised property crime encompasses a range of different criminal activities carried out predominantly by mobile OCGs operating across the EU. Organised burglaries, thefts and robberies as well as motor vehicle crime and the trafficking of cultural goods all fall into this broad category of criminal activity.



Online marketplaces have made it easier to sell stolen goods. These marketplaces are now used extensively to sell stolen goods, particularly phones, tablets and other electronic equipment.

## ORGANISED BURGLARIES AND THEFTS



▲ OCGs make use of various online services to facilitate their burglaries. This includes checking on social media platforms whether individuals are away from targeted residences and scouting targeted neighbourhoods using free online navigation tools.



The scale and level of organisation of pickpocketing raids across many Member States suggests that mobile OCGs are heavily involved in many pickpocketing cases.

## MOTOR VEHICLE CRIME



▲ OCGs increasingly rely on technical tools and expertise to overcome new vehicle security measures. Some OCGs steal specific vehicles to order for clients based in destination countries.

## CULTURAL GOODS TRAFFICKING



▲ The conflicts in Libya, Syria and Iraq are thought to have resulted in the intensified trafficking of cultural goods from this region to the EU.

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# CRIME MARKETS



**CURRENCY COUNTERFEITING**



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Child sexual exploitation  
Payment card fraud  
Cyber-dependent crimes



**DRUG PRODUCTION TRAFFICKING AND DISTRIBUTION**



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**INTELLECTUAL PROPERTY CRIME**



**MIGRANT SMUGGLING**



**ORGANISED PROPERTY CRIME**



**SPORTS CORRUPTION**



**TRAFFICKING OF FIREARMS**



**TRAFFICKING IN HUMAN BEINGS**

## ORGANISED CRIME GROUPS



**5,000**  
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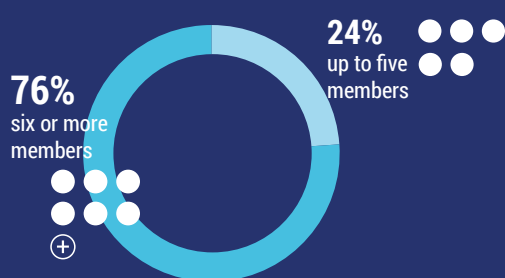


**>180**  
nationalities involved

## STRUCTURE



## COMPOSITION



## INTERNATIONAL DIMENSION AND MOBILITY



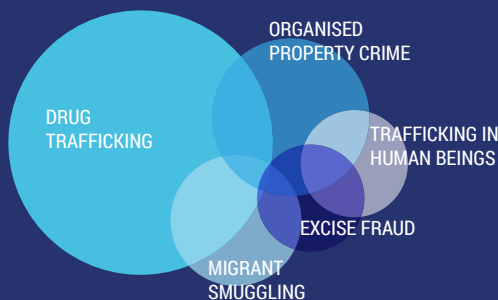
## TRENDS

### ▲ Poly-criminality

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### ▲ Sharing Economy

An increasing number of individual criminal entrepreneurs come together on an ad hoc basis for specific criminal ventures or to deliver crime-as-a-service.



▲ = increasing

# ENGINES OF ORGANISED CRIME

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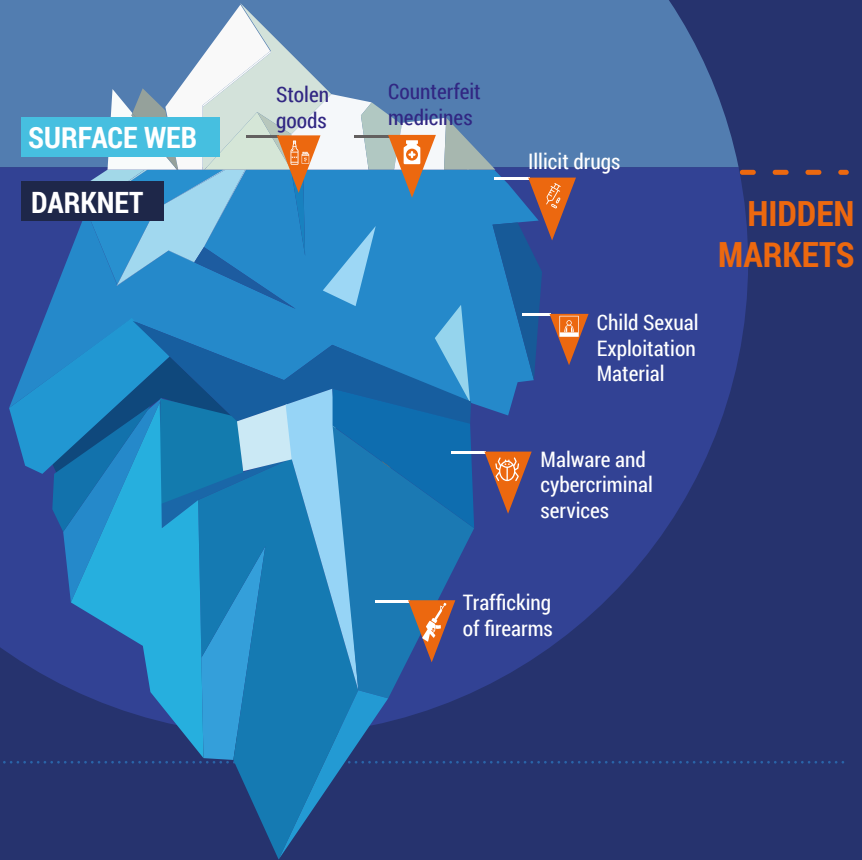


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## CYBERCRIME

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# DRUG TRAFFICKING



## THE LARGEST CRIMINAL MARKET IN THE EU



Drug market generates  
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in profits



**>35%**  
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OCGs linked to drugs



are involved in trafficking more than one drug



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Psychoactive Substances reported in  
the EU for the first time over the past  
five years.

## TRENDS

- ▲ **SYNTHETIC DRUGS**  
The market for synthetic drugs continues to be the most dynamic of the drug markets in the EU.



- ▲ **ONLINE TRADE**  
Online marketplaces on the Darknet are now a key platform used to advertise and sell all types of drugs.



- ▲ **CUTTING - EDGE TECHNOLOGY**  
Technical innovation and sophisticated equipment allow OCGs to maximise the production output.



- ▲ **TOXIC WASTE**  
The production of synthetic drugs generates large quantities of highly toxic and dangerous waste. Dump sites often remain contaminated for a significant period of time and their recovery is costly.



- ▲ **LIBYA**  
Libya is emerging as a new distribution hub for cannabis resin trafficked to the EU across the Mediterranean Sea.



# MIGRANT SMUGGLING

## ▲ The demand for smuggling services has grown significantly since 2014.

More than 510,000 illegal border crossings between border-crossing points at the external border of the EU were registered in 2016. Nearly all of the irregular migrants arriving in the EU along these routes use the services offered by criminal networks at some point during their journeys.

Armed conflicts, economic and population pressures in Africa and the Middle East will continue to act as the main push factors for irregular migrants travelling to the EU.

## ▲ Migrant smuggling to and within the EU will remain a key criminal threat.



### FACILITATION SERVICES

Migrant smuggling networks offer their services including **transportation**, **accommodation**, the **provision of fraudulent documents** and **information** on contact points in other countries. This crime does not require access to significant resources and OCGs can rely on their existing knowledge of routes and infrastructure used to smuggle goods across borders.



#### TRANSPORTATION & ACCOMMODATION

Migrant smugglers pass irregular migrants from one network to another along the route of the migrants' journey.

EU suspects typically work as drivers transporting irregular migrants within the EU to destination countries.



#### COMMUNICATION VIA SOCIAL MEDIA

Migrant smugglers widely rely on **social media** and use online platforms such as **ride-sharing websites**, or Peer to Peer (P2P) accommodation platforms, to arrange facilitation services.



#### DOCUMENT FRAUD

Document fraud has emerged as a key criminal activity linked to the migration crisis.

The abuse of genuine passports by look-alikes continues to be the main modus operandi used by document fraudsters.

### LINKS BETWEEN MIGRANT SMUGGLING AND TRAFFICKING IN HUMAN BEINGS (THB)

OCGs involved in the trafficking of human beings (THB) often exploit existing migratory routes to traffic victims within the EU. While the migration crisis has not yet had a widespread impact on THB for labour exploitation in the EU, some investigations show that traffickers are increasingly targeting irregular migrants and asylum seekers in the EU for exploitation. Irregular migrants in the EU represent a large pool of potential victims susceptible to promises of work even if this entails exploitation.

#### LABOUR EXPLOITATION



#### SEXUAL EXPLOITATION



#### CHILD TRAFFICKING





# TRAFFICKING IN HUMAN BEINGS

The trafficking of victims within the EU remains a key threat. The traditional trafficking flow from Eastern Europe to Western Europe has been replaced by multiple and diverse flows of victims all over the EU.

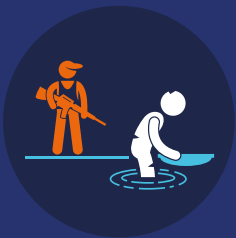


- ▲ The migration crisis has resulted in an increase in the number of potential victims of THB.
- ▲ A growing number of **vulnerable adults and unaccompanied minors** in the EU are likely to be targeted by traffickers.

Traffickers continue to rely on the use of social media, Voice-over-IP (VoIP) and instant messaging applications at all stages of the trafficking cycle.



## LABOUR EXPLOITATION



- ▲ THB for **labour exploitation** is increasing in the EU.

Traffickers continue to target less regulated industries as well as those featuring seasonal demand for workers.

Vulnerable sectors include agriculture, catering, cleaning, construction, entertainment, fishing, hospitality, retail and transportation.



## SEXUAL EXPLOITATION



Sexual exploitation no longer relies mainly on the use of violence and coercion.

- ▲ OCGs have further increased the **use of legal businesses** that can conceal exploitations such as hotels, nightclubs and massage parlours.



## CHILD TRAFFICKING



Traffickers often specifically target underage victims, both male and female, to sexually exploit them.

In some cases, underage victims are trafficked for the purpose of producing Child Sexual Exploitation Material (CSEM), which is traded on online platforms.



# ORGANISED PROPERTY CRIME

Organised property crime encompasses a range of different criminal activities carried out predominantly by mobile OCGs operating across the EU. Organised burglaries, thefts and robberies as well as motor vehicle crime and the trafficking of cultural goods all fall into this broad category of criminal activity.



Online marketplaces have made it easier to sell stolen goods. These marketplaces are now used extensively to sell stolen goods, particularly phones, tablets and other electronic equipment.

## ORGANISED BURGLARIES AND THEFTS



▲ OCGs make use of various online services to facilitate their burglaries. This includes checking on social media platforms whether individuals are away from targeted residences and scouting targeted neighbourhoods using free online navigation tools.



The scale and level of organisation of pickpocketing raids across many Member States suggests that mobile OCGs are heavily involved in many pickpocketing cases.

## MOTOR VEHICLE CRIME



▲ OCGs increasingly rely on technical tools and expertise to overcome new vehicle security measures. Some OCGs steal specific vehicles to order for clients based in destination countries.

## CULTURAL GOODS TRAFFICKING



▲ The conflicts in Libya, Syria and Iraq are thought to have resulted in the intensified trafficking of cultural goods from this region to the EU.

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EUROPOL

# EUROPOL COORDINATES EU-WIDE HIT ON TRAFFICKING IN HUMAN BEINGS FOR SEXUAL EXPLOITATION

20 October 2016

An impressive number of 28 countries teamed up with Europol to deliver a major blow to organised crime groups involved in trafficking in human beings across the European Union and beyond. During the operational activities of the EU-wide Joint Action Day (JAD) named [Ciconia Alba](https://www.europol.europa.eu/content/global-operation-ciconia-alba-delivers-major-blow-organised-crime) (<https://www.europol.europa.eu/content/global-operation-ciconia-alba-delivers-major-blow-organised-crime>), one part of the intelligence-led police actions and controls focussed explicitly on sexual exploitation and child trafficking.

During the span of the action week co-ordinated by Europol and under the lead of Austria, **11 161 locations** (red-light district areas, brothels, private flats, massage parlours, airports and reception centres) were controlled, alongside **43 405 persons** were checked, and **549 victims/potential victims**<sup>1</sup> identified. In addition, police controls checked **5 126 vehicles** and **35 848 ID documents**. Data gathered during the operations led to the launch of 102 new investigations in order to identify further suspects and victims linked to human trafficking cases across the EU. The JAD took place between 10 and 16 October.

“

**Trafficking in human beings is a global problem and a thriving criminal industry that affects the lives of millions of children, women and men around the world who are trapped in a type of modern day slavery. The outstanding collaboration between 28 countries during the Joint Action Day delivered major results. By working together, leveraging our power and increasing the operational priority given to investigating human trafficking, the police community and civil society can succeed in eradicating modern slavery.**

— *Europol Director Rob Wainwright*

”

The nationality of the victims of human trafficking identified, and the suspects arrested during the JAD Ciconia Alba, confirm the prominence of trafficking network originating from Nigeria, Asia and Eastern-Europe as being the most active in the EU. Fourteen underage victims were reported.

Overall fifty-two countries and four international organisations were involved in the JAD Ciconia Alba, and joined Europol in its fight to disrupt the most dangerous criminal networks currently active. During the JAD investigators put an emphasis on cases related to facilitated illegal immigration, trafficking in human beings, [drug trafficking](https://www.europol.europa.eu/content/ciconia-alba-actions-cocaine-trafficking-sea-and-air-result-18-arrests-and-238-tonnes-cocain) (<https://www.europol.europa.eu/content/ciconia-alba-actions-cocaine-trafficking-sea-and-air-result-18-arrests-and-238-tonnes-cocain>) (cocaine, heroin and synthetic drugs) and cybercrime (payment card fraud – [Global Airport Action Day](https://www.europol.europa.eu/content/global-action-against-airline-fraudsters-193-detained) (<https://www.europol.europa.eu/content/global-action-against-airline-fraudsters-193-detained>)).

Law enforcement officers in the field were supported 24/7 from an operational coordination centre located at Europol's headquarters in The Hague. Here, Europol officers, liaison officers and national experts from the participating countries, working with specialists from other international partners, offered fast and smooth information exchange using Europol's secure channels, and constantly analysed intelligence gathered.

In the crime area of trafficking in human beings, in addition to the national delegates present at Europol's operation coordination centre, an exchange of law enforcement officers from the countries of origin and the countries of destination of the trafficked human beings was paramount for the success of the operation.

<sup>1</sup> Victim identification is a very complex procedure, which can differ significantly from country to country. In some occasions victims are flagged by police, but afterwards deny being under exploitation. However this does not mean that further investigations will not take place.

**CRIME AREAS**

- [Trafficking in Human Beings \(/crime-areas-and-trends/crime-areas/trafficking-in-human-beings\)](#) •
- [Drug Trafficking \(/crime-areas-and-trends/crime-areas/drug-trafficking\)](#) •
- [Synthetic Drugs \(/crime-areas-and-trends/crime-areas/drug-trafficking/synthetic-drugs\)](#) •
- [Cocaine and heroin \(/crime-areas-and-trends/crime-areas/drug-trafficking/cocaine-and-heroin\)](#) •
- [Cybercrime \(/crime-areas-and-trends/crime-areas/cybercrime\)](#) •
- [Child Sexual Exploitation \(/crime-areas-and-trends/crime-areas/child-sexual-exploitation\)](#) •
- [Payment Fraud \(/crime-areas-and-trends/crime-areas/forgery-of-money-and-means-of-payment/payment-fraud\)](#)

**TARGET GROUPS**

- [General Public \(/target-groups/general-public\)](#) • [Law Enforcement \(/target-groups/law-enforcement\)](#) •
- [Academia \(/target-groups/academia\)](#) • [Professor \(/target-groups/professor\)](#) • [Students \(/target-groups/students\)](#) •
- [Researcher \(/target-groups/researcher\)](#) • [Press/Journalists \(/target-groups/press-journalists\)](#) •
- [Other \(/target-groups/other\)](#)

**GENERAL TERMS**

- [Law Enforcement \(/keywords/law-enforcement\)](#)

**OPERATIONS**

- [Other \(/operations/other\)](#)

## Intelligence Notification

### Trafficking in human beings and the internet

Rapid innovations in information and communication technologies facilitate the trafficking in human beings (THB) by exposing a growing number of victims to traffickers. These traffickers use social networks and online classified sites to market, recruit, sell and exploit their victims.

The internet has shifted the recruitment, advertising and selling process from the street to the digital domain. Online interaction creates both risks and opportunities for criminals, victims and law enforcement. Criminals and victims leave permanent traces, which facilitates identification, but not necessarily intervention. This gap between identification and intervention is becoming more difficult to overcome for law enforcement. This issue is also covered in Europol's Serious and Organised Crime Threat Assessment (SOCTA) 2013.

This Intelligence Notification provides an overview of Europol's knowledge on the role of the internet as a facilitator for THB.

1

#### Key trends

- A shift to the virtual space affects many activities related to THB. Certain types of sexual exploitation take place online entirely such as live videos or sex chats. In other cases, exploitation is heavily facilitated by websites that aid setting up encounters with customers.
- New *modi operandi* have emerged in the context of exploitation such as the digital surveillance or blackmailing of victims. These activities on their own may constitute crimes.
- Traffickers use both specialised exclusive online platforms (escort websites) and general advertising platforms to attract customers.
- The use of internet platforms allows OCGs to exploit victims of sex trafficking on a much larger scale. Traffickers advertise their victims in extensive online catalogues. OCGs are able to manage dozens of victims at the same time. The OCGs involved are highly organised and mobile, operating across numerous countries and jurisdictions. They operate both independently and in collaboration with other crime groups. Collaboration with other groups is typically based on the need to procure specialised services offered by other OCGs.
- In the context of child sexual exploitation, social media outlets allow perpetrators easier access to potential victims and greatly facilitate their recruitment. The internet enables perpetrators to anonymously share child abusive material and exchange information on specialised forums such as experience and recommendations regarding favourite destinations for child abuse and ways to handle encounters with local police.

#### The internet as a facilitator for trafficking in human beings

The internet is a key facilitator for THB with an impact on the entire trafficking chain from recruitment and transportation to the harbouring of the victims and their actual exploitation.<sup>1</sup>

The recruitment of victims increasingly takes place online. Traffickers lure victims with promising advertisements for jobs or travel placed on general advertisement sites or distributed through au pair agencies, international marriage agencies or dating sites. In addition to adverts, traffickers also directly approach victims in chat rooms or on mainstream social media.

# Intelligence Notification

The adverts placed to recruit victims of sexual exploitation typically offer work in administration, cleaning or child care. Victims targeted for labour exploitation are attracted by online advertisements promising employment in agriculture, collecting and delivering charity bags, construction, the cleaning or transportation sectors.

The internet also facilitates the transportation of victims. Traffickers often purchase tickets online using compromised credit card data in order to hide their identities. By using stolen credit card information, neither the tickets nor the victims can be easily linked back to the facilitators/exploiters.

Online technologies also enable traffickers to more easily harbour and control victims. OCGs maintain close surveillance of their victims, by imposing daily e-mail exchanges or chat sessions to prove their presence. Victims can also be monitored using live cameras, which are often justified as security measures for their safety.

OCGs use the internet to threaten or coerce victims of THB. The internet is used to blackmail victims, by threatening to send compromising pictures to their family or friends or to expose them online. OCGs can also easily blackmail the clients of the sexual services they organise. In many cases, clients make bookings and pay online directly to the organisers, making their contact details available to OCGs.

The internet facilitates direct exploitation and creates new forms of exploitation. Whole catalogues of exploited women are placed online containing pictures and contact details. Clients can order these women directly online and are also able to pay online in some cases. Clients and victims meet at a specific location or the victim is sent to the client's location. Some victims are exploited on specialised websites offering webcams or sex chats. Victims forced to offer services on these websites are also often exploited financially by being coerced to pay additional fees to have their advertisements displayed online.

Forced activities involving webcams or sex chats fully take place online. Websites for escort services are used as a legitimate façade to offer services associated with sexual exploitation. In some cases, traffickers transport victims to the country of exploitation on orders placed through these websites.

## **The internet as a provider of opportunities for expansion - links to online fraud**

The internet provides traffickers with opportunities to reach a broader and more diverse pool of victims and customers. The online exploitation of victims provides various revenue streams to OCGs. In addition to payments from clients, OCGs also charge their victims for advertisement costs. Some OCGs use commercial online advertising and pay using compromised payment card data obtained online.

OCGs use the internet to expand their activities internationally. OCGs often recycle the material used for specific "national" websites to develop new ones aimed at reaching customers in other targeted countries. The same materials are uploaded to different domains. Clients can either choose to visit the girls in the countries of origin or have them brought to their countries. Victims travel between different countries on demand and OCGs easily shift the location of their activities to other countries in order to avoid law enforcement attention.

The use of online services can anonymise activities, but also entails the risk of leaving traces. OCGs use various tools and techniques such as dynamic IPs, multihoming<sup>2</sup>, pseudonyms and registering websites abroad to obscure their identities.

The internet, internet-enabled mobile devices and applications facilitate communication among OCG members as well as the transfer of money.

## **Opportunities for law enforcement**

The internet facilitates the activities of OCGs engaging in THB. However, the internet, online technologies and large amounts of openly available data can also enhance the work of law enforcement agencies (LEAs). A combination of advanced computer-assisted data gathering and analysis techniques can detect online trafficking.

LEAs can also use the internet to raise public awareness for THB. Social media platforms are very effective tools to execute information campaigns.

Crowd-sourcing of information also has the potential to be an effective law enforcement tool. Engaging the public in the fight against THB may encourage citizens to share useful information with the police.

# Intelligence Notification

## Challenges for law enforcement

While online classified advertising sites remain an important focus for law enforcement, a variety of other social, informational, and mobile networking sites also play an increasingly important role in the recruitment of minors for sex trafficking. These websites act as hubs for communication between trafficker-pimps and trafficked minors.

Internet-facilitated trafficking takes place on a global scale, which complicates investigations. Effective information-sharing across multiple jurisdictions is of utmost importance for law enforcement agencies. Europol can provide vital services in facilitating the exchange of information and performing operational analysis on data gathered online, which is crucial in identifying victims and suspected traffickers.

LEAs will need to increasingly engage with partners in the private sector in order to improve investigative outcomes and preventative measures. The private sector is a crucial partner as traffickers rely on technologies and service offerings by companies to facilitate their activities. Contacts with social media companies or domain hosts will make investigations more effective. Cooperation with companies in the financial services industry open up new opportunities for law enforcement to gather evidence and intelligence on financial transactions linked to THB. Software solutions provided by the private sector in data mining, mapping or computational linguistics could be invaluable tools in detecting cases of THB online.

The shift to internet-facilitated THB requires effective legislative and investigative responses to the use of online technologies. Currently, LEAs are limited by narrow legal frameworks in their ability to carry out investigations online.

Data found online and on mobile devices can be obtained using forensic examination and used as evidence in cases. Law enforcement specialists require continuous technical training in order to keep up with OCGs' increasing use of countermeasures such as encrypted mail and encrypted mobile devices.

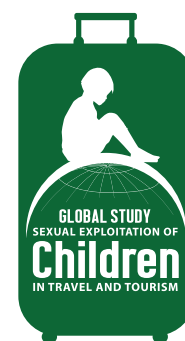
## Conclusion

The shift of activities to the virtual realm in the contemporary world has severely affected the crime area of trafficking in human beings. OCGs have adopted new modi operandi to integrate the internet in their trafficking activities. Law enforcement authorities have been challenged to adapt to these developments. The internet provides both opportunities and threats to the criminals involved in trafficking activities, their victims and the law enforcement authorities fighting human trafficking.

<sup>1</sup> In accordance with the definition of trafficking in human beings as stipulated in Article 2 Directive 2011/36/EU of the European Parliament of the Council: "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"

<sup>2</sup> The configuration of multiple network interfaces or IP addresses on a single computer. This concept is an easy solution of migration between different types of networks when travelling

EXPERT PAPER



# GOVERNMENTS' RESPONSIBILITIES AS COUNTRIES OF DEMAND, SUPPLY AND/OR VICTIMISATION

SUZANNE KRAGTEN-HEERDINK, LAURA MENENTI AND CORINNE DETTMEIJER-VERMEULEN

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## INTRODUCTION

The responsibility of governments to protect children from sexual violence does not end at the national borders. In this paper, we place the fight against sexual exploitation of children in travel and tourism in the broader context of combating sexual violence against children in general. We propose new terminology to emphasize this integration of the two phenomena, and delineate the responsibilities of governments, both within and outside their borders, when it comes to protecting children from sexual violence. Although the cross-border element often makes it more difficult for governments to meet those responsibilities, it does not make them any less important.



National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children

### **Sexual exploitation of children in travel and tourism: what is it?**

We define sexual exploitation of children in travel and tourism (hereafter SECTT) as acts of sexual violence against children where the offender has crossed a border.<sup>1</sup> It is important to stress that the question of whether the offender has given or promised money or goods to the child or any other person is irrelevant. Accordingly, in contrast to some other interpretations or definitions that are adopted internationally, this definition does not require commercial



sexual exploitation.<sup>2</sup> Furthermore, our interpretation of ‘travel’ also includes (semi-)permanent settlement of offenders in other countries than their countries of origin (migration). However, our definition leaves aside sexual exploitation of children by domestic travellers and tourists; at least two different countries must be involved.

A common explanation given for SECTT is the assumption that the threshold for committing sexual violence against children is lower in less developed countries.<sup>3</sup> An offender may find it easier to justify sexual violence against a child to himself<sup>4</sup> if the child is living in poverty (neutralization techniques). For example, because he is giving the child or the victim's family money or goods (denial of injury: ‘the child is actually grateful’), because the child engages in prostitution in order to survive (denial of the victim: ‘it’s what the child wants’) or because the child is being prostituted (denial of responsibility: ‘sex with children is accepted here’). An offender might also feel that the benefits outweigh the risk of being punished, due to anonymity, the low priority given to tackling sexual violence against children locally, corruption, the possibility of offering bribes to the victims or their families, etc. (rational choice theory). Moreover, opportunities to commit sexual violence against children may be easier to find abroad, for instance in countries with a flourishing child prostitution industry (routine activity theory). The increasing ease with which visits to these countries can be arranged is also a factor, due to the availability of cheap flights and relaxed of visa restrictions.

### **A new terminology**

In literature, countries the offenders come from are referred to as countries of origin (or source countries, exit countries or

sending countries) and countries where children become victims as countries of destination.<sup>5</sup> These terms are derived from the perspective of the offender, the person who moves between countries. But this labelling of countries causes confusion. As in the case of cross-border sex trafficking, the immediate association made with SECTT is usually one of the offenders from countries with a relatively high standard of living and victims from less developed countries. However, in the case of cross-border sex trafficking the person who moves is not the person seeking sexual services, in other words, the demand side (the offender), but the person who is compelled to provide those services, in other words, the supply side (the victim). Accordingly, traditional countries of origin in the case of SECTT are in fact traditional countries of destination in the case of cross-border sex trafficking and vice versa. To emphasize the relationship between SECTT and other forms of (cross-border) sexual violence against children such as child sex trafficking, we propose the following terminology.

*Country of demand:* the offender’s country of origin. This is the same in the case of both SECTT and cross-border sex trafficking. Note: in cases of sex trafficking, the term ‘offender’ does not refer to the sex trafficker, but to the offender of child prostitution (the client of the trafficked child/minor exploited in prostitution).

*Country of supply:* the victim’s country of origin. This is the same in the case of both SECTT and cross-border sex trafficking.

*Country of victimization:* the country where the child actually becomes a victim of sexual violence/exploitation, which is the country of supply in the case of SECTT, and the country of demand in the case of cross-border sex trafficking.

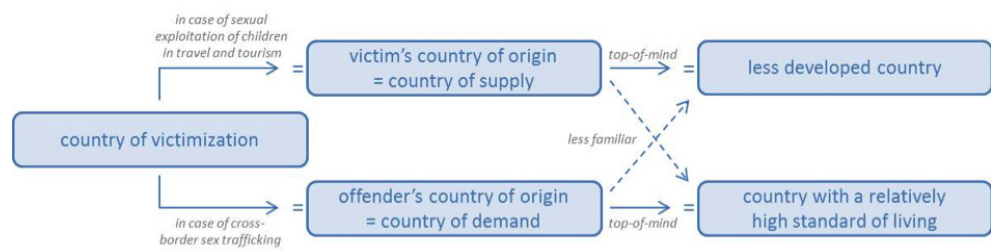


Figure 1: Sexual exploitation of children in travel and tourism versus cross-border sex trafficking: a different country of victimisation

The suggested terminology also provides a solution for the phenomenon of livestreaming of child sexual exploitation material. This online form of SECTT does not involve either offender or victim crossing a border, and thus has no country of destination, but does have a country of victimisation.

Figure 1 further shows that the obvious associations do not fully cover the extent of the two phenomena. For example, children in countries with a relatively high standard of living are also abused by foreign offenders, just as victims of sex trafficking are also recruited in those countries (less familiar). Classifying countries as exclusively a country of demand or exclusively a country of supply, therefore, fails to reflect the actual reality. Furthermore, such a classification creates the risk of tunnel vision and the consequent failure to recognize SECTT or sex trafficking in situations that do not correspond with the top-of-mind associations. After all, the principle that if you don't look, you won't find applies to both phenomena.

### Sexual exploitation of children in travel and tourism: who should address it?

Children are entitled to protection against sexual violence. Governments are responsible for preventing and combating sexual violence against children in every situation in which they function as the country of victimisation, the country of demand or the country of supply. In other words, whenever sexual violence against

children occurs in their own territory or occurs in another country but involves their own citizens – whether as an offender or a victim. A government's responsibility does not end at the national borders.<sup>6</sup>

Figure 2 illustrates the relationship between cases of domestic sexual violence against children and cases with a cross-border component. Cross-border cases, such as SECTT, must therefore not be seen in isolation, but in the wider perspective of protecting the sexual integrity of children, always and everywhere. Figure 2 is an Identification Tool for (Inter)national situations of Sexual violence against children (hereafter IT-IS). Governments can use IT-IS as an instrument to identify every situation in which their country is involved – and for which they are therefore responsible.

IT-IS shows that there are seven conceivable situations where a country bears responsibility. Four of them (situations 2, 3, 6 and 7) occur in the country itself (the country itself is the country of victimisation), and three (situations 1, 4 and 5) in another country. Only situation 2 does not involve any crossing of a border by the offender and/or the victim, the other six do. Four of these six cross-border situations constitute SECTT (situations 1, 4, 6 and 7), for in these situations the offender has crossed a border (the country of demand differs from the country of victimisation). The seven situations do not all occur to the same extent, while those that are most common, and, therefore, deserve more attention, differ from one country to another.

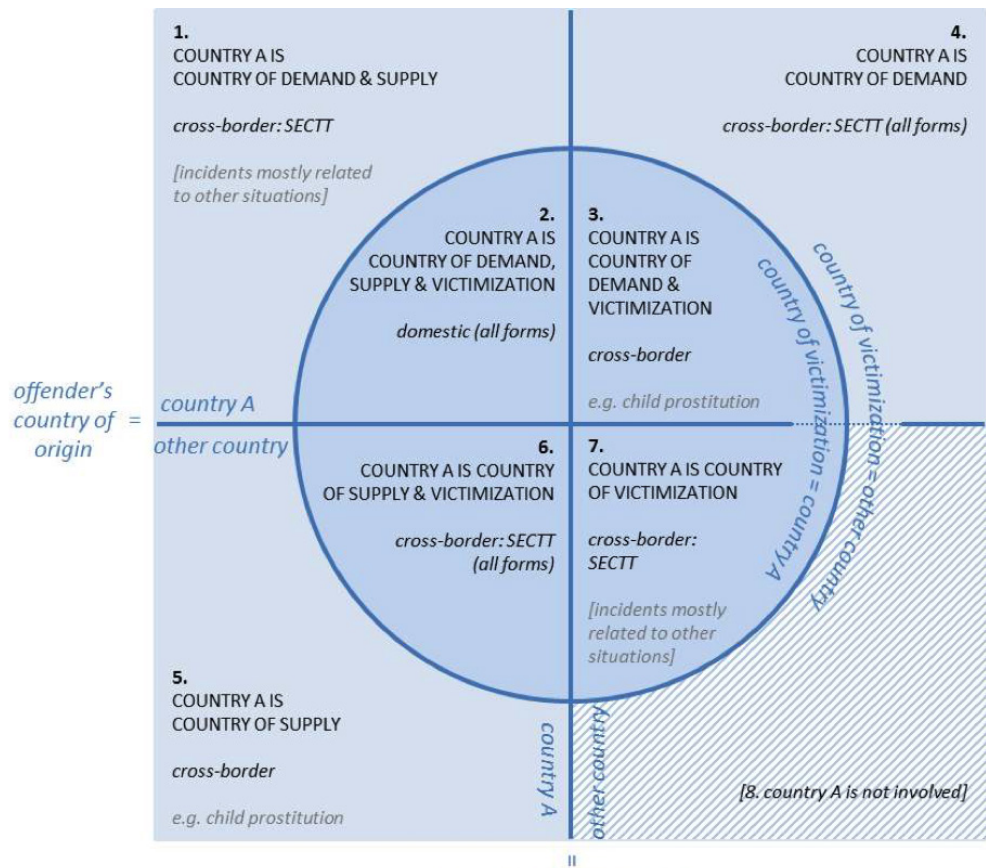


Figure 2: Identification Tool for (Inter)national situations of Sexual violence against children (IT-IS)<sup>7</sup> [Country A can be any country. The circle in the diagram is that country's own territory (the blue line marked 'country of victimization' therefore represents the country's actual borders), and the four segments outside the circle represent the rest of the world (every other country except country A)].

Naturally, IT-IS situation 2 that is a priority for every country: all forms of domestic sexual violence against children. For example, a father who abuses his own child at home or an offender from country A, guilty of child prostitution in that country that involves a minor exploited in prostitution from that same country (often a victim of domestic sex trafficking).

In cross-border situations (situations 1, 3, 4, 5, 6 and 7), however, there are differences between countries. In these situations, countries that function more as a country of demand than as a country of supply (usually associated with countries with a relatively high standard of living) should focus mainly on situations 3 and 4. Examples would include – situation 3 – an offender from country A, guilty of child prostitution in that country that involves a minor exploited in prostitution from another country (often a

victim of cross-border sex trafficking). Or – situation 4 – a self-styled benefactor from country A, volunteers in an orphanage in another country and abuses children there. In contrast, in countries that are more often the country of supply in cross-border situations (usually associated with less developed countries), the emphasis should be more on situation 5. For example an offender from another country, guilty of child prostitution in that other country that involves a minor from country A (often a victim of cross-border sex trafficking), and situation 6, for example an immigrant who abuses children as an employee of a day care centre in country A. This is not to say that situations 5 and 6 do not occur in the former countries or situations 3 and 4 in the latter countries, so it is important to ensure that the focus on particular situations does not divert attention from cases that fall outside those situations (the risk of tunnel vision).

Situations 1 and 7 are not a priority since instances of them usually follow on from the other situations. For example, situation 1 occurs when the father in the example given for situation 2 also abuses his child during a holiday abroad.

Governments are responsible for combating sexual violence against children, not only within but also beyond their own borders. IT-IS illustrates the situations in which that responsibility arises and how close the relationship is between situations of cross-border sexual violence against children, such as SECTT, and cases of domestic sexual violence against children.

### **Sexual exploitation of children in travel and tourism: how do you address it?**

Governments are responsible for combating all forms of sexual violence against children in which they are involved as the country of demand, supply or victimization. But what does that responsibility involve? It follows from the relationship highlighted in the previous section that measures to address cross-border sexual violence against children should be part of, and should be the same as, the measures taken to combat domestic sexual violence against children. Broadly speaking, measures to combat domestic sexual violence against children (IT-IS situation 2, Figure 2) have three objectives:<sup>8</sup>

- Preventing sexual violence against children, with measures targeted at both potential victims and potential offenders.
- Identifying and punishing offenders of sexual violence against children, including measures to prevent recidivism.
- Identifying victims of sexual violence against children and mitigating the harm they suffer, including measures to prevent re-victimisation.

Accordingly, efforts to combat cross-border sexual violence against children (IT-IS situation 1, 3, 4, 5, 6 or 7, Figure 2) should be designed to achieve those same three objectives. The difference, however, is that this calls for coordination and the exchange of information with other countries and with private actors, and there are obstacles to that in practice. Those obstacles do not, however, relieve a government of its responsibility. Governments should therefore devote specific attention to establishing international and public-private cooperation in their efforts to address cross-border sexual violence against children, including SECTT.<sup>9</sup>

The combination of the seven conceivable situations of sexual violence against children in which a country is involved according to IT-IS (Figure 2) and the three objectives of measures to combat sexual violence against children provides a framework that governments can use to shape their policies against SECTT. By way of an example, we conclude this paper with a brief analysis of Dutch policies to combat SECTT in relation to the three aforementioned objectives.

### **The Dutch approach to combating sexual exploitation of children in travel and tourism**

With respect to SECTT, for the Netherlands IT-IS situation 4 is the main priority, although situation 6 also occasionally occurs. One of the biggest cases of sexual violence against children in the Netherlands is an example of the latter. The case involved a Latvian man who, after a previous conviction relating to child sexual exploitation material in Germany, moved to the Netherlands and found work at a day care centre where he abused more than 80 children.

Although the Netherlands has made significant progress in addressing SECTT in recent years, its strategy, as in many other countries, is still in its infancy. Some

measures to prevent Dutch nationals from committing sexual violence against children in other countries have already been adopted or are being developed (see objective 1). They include the imposition of restrictions on the liberty of child sex offenders convicted in the Netherlands with a high risk of recidivism. The restrictions prevent them from travelling abroad after serving their sentence.<sup>10</sup> But also, for example, the exchange of information and the transfer of supervision within the European Union for a select group of mobile high risk child sex offenders (see the Serious Offending by Mobile European Criminals (SOMECE) project).<sup>11</sup> Another measure falling under objective 1 is the sharing of information with other countries about the criminal records of persons who wish to work with children abroad.<sup>12</sup>

Dutch authorities have also taken measures to achieve objective 2: identifying, reporting, investigating, prosecuting, trying and punishing Dutch nationals who have been guilty of sexual violence against children in another country. In 2016 and 2017, for example, the Netherlands will coordinate the European campaign entitled 'Don't look away', the aim of which is to create a broad international structure for the identification and subsequent reporting of SECTT.<sup>13</sup> The basic principle of the policy towards the investigation and prosecution of offenders is that it should take place in the country of victimisation.<sup>14</sup> In situation 4, this is a country other than the Netherlands. The Netherlands has intensified its efforts to share information and provide legal assistance, for example by appointing liaison officers, by cooperating with non-governmental organizations and by making formal arrangements (in multilateral or bilateral treaties or Memoranda of Understanding).<sup>15</sup>

A notable omission, however, is the absence of measures designed to mitigate the harm suffered by victims (objective 3) in cases of SECTT in situation 4 (a Dutch national who commits sexual violence against a non-Dutch child in another country). For that other country, IT-IS situation 6 (a foreign national, a Dutch citizen, who commits sexual violence against a child from that country in the country concerned). In some cases, that country will take responsibility for these victims who are its own citizens (as the Netherlands will do in situation 6). However, that leaves the question of what responsibility the Netherlands has in those cases where the other nation fails to do so.

## CONCLUSION

Children are entitled to protection against sexual violence. The responsibility of governments to provide this protection is generally clear when sexual violence occurs within the borders of their country, but it does not end there. Governments have a duty to fulfil whenever they are involved as the country of origin of offenders (country of demand), the country of origin of victims (country of supply), or the country of victimisation. Broadly speaking, these duties are 1) to prevent sexual violence against children from occurring, 2) to find and sentence offenders and prevent them from reoffending, and 3) to find victims and minimize the damage done to them. Governments should strive to extend the application of the national measures they have in place for achieving these three goals beyond their borders whenever they are involved.



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## ENDNOTES

1. Sexual violence against children covers all sexual acts that are offences under the Dutch Criminal Code and of which children are the victims, and includes both hands-on (sexual abuse of a child, child prostitution) and hands-off (child sexual exploitation material, for example) offences. These encompass all behaviour that constitutes sexual exploitation and sexual abuse of children as referred to in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (2007) (Lanzarote Convention).
2. The synonym 'child sex tourism' is often defined as a specific form of commercial sexual exploitation of children, for example by the Special Rapporteur on the sale of children, child prostitution and child pornography (UN Special Procedures, "Report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Najat Maalla M'jid", UN Doc. A/HRC/22/54, (2012), para. 17).
3. B.J. Long, "It's not easy being a child lover: applying techniques of neutralization theory to case studies of intergenerational intimacy in the Philippines", *International Journal of Psychosocial Rehabilitation* 15, no. 2 (2011): 79-84; W.J. Newman, et al., "Child sex tourism: extending the borders of sexual offender legislation", *International Journal of Law and Psychiatry* 34 (2011): 116-121; J. Walters and P.H. Davis, "Human trafficking, sex tourism, and child exploitation on the southern border", *Journal of applied research on children: informing policy for children at risk* 2, no. 1 (2011): article 6; M. Colby, "Partnerships to End Child Sex Tourism", posted 22 July 2011, <http://blog.usaid.gov/2011/07/partnerships-to-end-child-sex-tourism/>; A.R. Tanielian, "Illicit supply and demand: child sex exploitation in South East Asia", *National Taiwan University Law Review* 8, no. 1 (2013): 97-140; Defence for Children-ECPAT the Netherlands, Protection of children against sexual exploitation in tourism (Leiden: Defence for Children-ECPAT the Netherlands, 2013), 7; C.R. Zafft and S. Tidball, "A survey of child sex tourism in the Philippines", (paper 22 presented at the Second Annual Interdisciplinary Conference on Human Trafficking, Lincoln, 30 September-2 October 2010).
4. Or 'herself'. In this paper, the use of the masculine pronoun in relation to offenders always refers also to female offenders.
5. For example in the Declaration and Agenda for Action (1996) of the First World Congress against Commercial Sexual Exploitation of Children.
6. See also article 4, Optional Protocol to the UN Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (2000).
7. NB: the offender in this case is the offender for whom committing sexual violence against children is the sole purpose of his actions (as with the offender of child prostitution for instance). It is expressly not the sex trafficker, whose objective is (also) profit.
8. See also article 19, UN Convention on the Rights of the Child (1989).
9. See also art. 10, Optional Protocol to the CRC and art. 38, Lanzarote Convention.
10. Dutch Ministry of Security and Justice, "Voortgangsrapportage Kinderpornografie en Kindersekstoerisme (Progress report on Child Pornography and Child Sex Tourism)", *Parliamentary Documents II 2014/15*, 31 015, nr. 112 (The Hague, April 2015).
11. H. Kemshall, G. Kelly, B. Wilkinson and S. Hilder, *Offender Management User Guidance, Assessment and Management of Serious Mobile European Criminals (SOMECE)*, (2015), 45.
12. Dutch Ministry of Security and Justice, "Plan van Aanpak Kindersekstoerisme (Action Plan against Child Sex Tourism)", supplement 1 *Parliamentary Documents II 2013/14*, 31 015, nr. 93 (The Hague, October 2013), 6-7; Dutch Ministry of Security and Justice, "Voortgangsrapportage (Progress report)".
13. Dutch Ministry of Security and Justice, "Coördinatie Europese campagne kindersekstoerisme "Don't Look Away" (Coordination European campaign child sex tourism "Don't Look Away")", *Parliamentary Documents II 2014/15*, 31 015, nr. 113 (The Hague, June 2015).
14. Dutch Ministry of Security and Justice, "Plan van Aanpak (Action Plan)", 9.
15. Dutch Ministry of Security and Justice, "Voortgangsrapportage (Progress report)".

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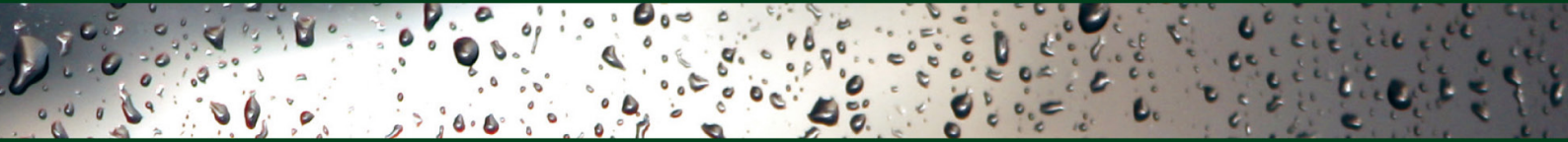
Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, who is also a member of the High Level Taskforce to end Sexual Exploitation of Children in Travel & Tourism. The Dutch Rapporteur's remit is to report on the nature and scale of trafficking in human beings and sexual violence against children, to conduct research into policy and the effects of policy in these areas and to make recommendations to the Dutch government on improvements that can be made in efforts to address the problems. In 2013 the Dutch Rapporteur published a report concerned specifically with measures aimed at Dutch nationals who commit sex offences against children abroad. A summary of the report is available in English: Dutch Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, "Barriers against child sex tourism, Summary report" (The Hague: Dutch Rapporteur, 2013). Accessed from <http://www.dutchrappporteur.nl/reports/child-sex-tourism/>





National Rapporteur on Trafficking in  
Human Beings and Sexual Violence  
against Children

# Barriers against child sex tourism



*Summary report*

# Barriers against child sex tourism

## *Summary report*

### Colophon

Reference: National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children (2013).  
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The National Rapporteur's remit includes reporting on the nature and scale of sexual violence against children, conducting research into policy and the effects of policy in this area and making recommendations to the Dutch government on improvements that can be made in efforts to address the problem. The report 'Barriers against child sex tourism' is concerned specifically with measures aimed at Dutch nationals who commit sex offences against children abroad.

### Child sex tourism

The National Rapporteur defines child sex tourism as the commission of or any form of complicity in acts of sexual violence against children abroad, whether or not the victim has received or been promised money or goods in return. Child sex tourism encompasses three forms of sexual violence against children: sexual abuse of children, child pornography and child prostitution. These forms of sexual violence are criminal offences in the Netherlands by virtue of the chapter of the Dutch Criminal Code devoted to offences against public morals. Child sex tourism is an offence that can be committed by an individual who visits another country on holiday or who lives permanently or semi-permanently in another country. The production of child pornography is a fairly common element in the context of child sex tourism. Coercing children in another country to perform webcam sex is also regarded as a form of child sex tourism.

In her report 'Barriers against child sex tourism', the National Rapporteur analyses the possibilities for combating child sex tourism engaged in by Dutch nationals. The National Rapporteur found that there are actions that the government can take, particularly in terms of prevention. The key message of the report is therefore as follows:

Children have the right to protection against sexual violence. The government must endeavour to prevent Dutch nationals from committing sexual violence against children in other countries. Measures restricting the liberty of convicted paedosexuals, international cooperation and the sharing of information are important instruments for preventing, investigating and prosecuting child sex tourism.

The Netherlands has an obligation to endeavour to prevent Dutch nationals from committing sex crimes against children. That obligation extends not only to Dutch territory, but also with regard to Dutch nationals or inhabitants beyond the national borders. This obligation is formulated as follows in Article 4 of the Lanzarote Convention:

Each Party shall take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children.

### Dutch child sex tourists and their countries of destination

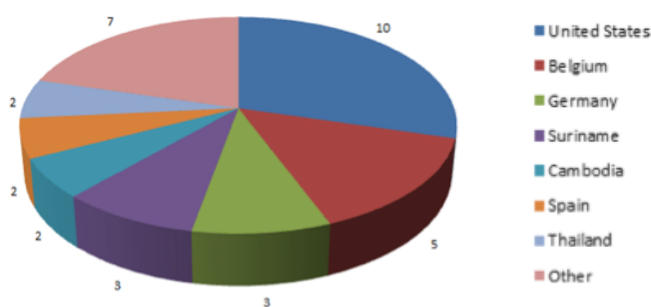
Although a recent survey has shown that little research has been conducted into the countries of destination of Dutch child sex tourists, on the basis of the information that is available, the National Rapporteur has identified 69 such countries in Europe, Asia, Africa, North America, Latin America and Oceania. If child sex tourism is to be tackled effectively, first and foremost it is necessary to compile a comprehensive list of countries where Dutch nationals have committed sexual violence against children. This is particularly important with a view to improving international cooperation in the areas of prevention, investigation and prosecution. The Department of Consular Affairs and Migration Policy of the Ministry of Foreign Affairs keeps records of Dutch nationals in other countries who are being held on remand, have been released on bail or are serving a term of imprisonment. In June 2013, 34 of the 2,340 Dutch nationals on that list were registered for a sex crime involving a minor (see Figure 1).

#### Recommendation LIST OF DUTCH CHILD SEX TOURISTS IN COUNTRIES OF DESTINATION

It is recommended that the Minister of Foreign Affairs produce a list every month of Dutch nationals who are in custody or have been released on bail in another country in a case involving sexual violence against children. This list should be made available to the Dutch police.

In addition to the scale of the problem, it is also important to gain an insight into the categories of Dutch child sex tourists visiting each country of destination. In that context, the first question to be asked is whether child sex tourists are preferential or situational offenders. The preferential offender has a preferential or exclusive sexual preference for children. The situational offender commits an offence because the opportunity arises or because of other contextual factors. A second question that needs to be answered is to what extent child sex tourists travel temporarily to a country of destination and to what extent they settle permanently in a country for the purpose of committing sexual violence against children. The Dutch police make a distinction between four different (and overlapping) categories of offenders: the ‘tourist’ who travels to another country for a short period; the ‘emigrant’ who lives permanently in the country of destination (with or without also having a permanent address in the Netherlands); the ‘purported benefactor’ who offers help in establishing children’s homes, schools or similar institutions in the country of destination and in that way gains access to children; and the ‘webcam child sex tourist’ who orders and pays for sexual abuse of children in another country online from the Netherlands in order to participate in it as an observer.

**Figure 1 Dutch nationals who are being prosecuted or have been convicted of sex offences with minors abroad, by country**



## Prevention

The Netherlands must not look on helplessly as convicted paedosexuals who are subject to supervision in the Netherlands leave the country and create victims abroad. Under Dutch law, it is possible to prevent convicted paedosexuals with a high risk of recidivism from committing sexual violence against children in another country.

### *Prevention: restrictions on liberty*

The Dutch Criminal Code contains a number of provisions that allow for restrictions on the freedom of movement of convicted paedosexuals with a high risk of recidivism. The court can impose restrictions on an individual’s liberty as part of a suspended sentence, a sentence or a conditional discharge. These restrictions on their movements can include a duty to report to the police, a ban on visiting a particular location and an order to remain in a particular location. It may be possible in future to impose a travel ban, since the State Secretary for Security and Justice has included a travel ban as one of the measures in a bill providing for long-term supervision of convicted criminals. In the context of these restrictions on liberty, the National Rapporteur stresses the importance of effective supervision by the probation service.

### **Recommendation EFFECTIVE SUPERVISION OF COMPLIANCE WITH RESTRICTIONS ON LIBERTY**

It is recommended that the Minister of Security and Justice investigate how compliance with orders restricting an individual’s liberty can be effectively supervised in order to prevent convicted paedosexuals from travelling abroad.

### *Prevention: refusal or cancellation of the passport*

On the basis of the Dutch Passport Act, it is already possible to refuse a passport to a person convicted as a paedosexual within the previous ten years or to cancel his or her passport by entering that person’s name in the register of persons who can be denied a passport or whose passport can be cancelled (*Register paspoortsignalering*). This can be done if there is a valid reason to suspect that he or she will be guilty of sexual violence

against children. However, this is a decision to be made by the minister and not by a court. In contrast to the passport, a person may not be denied an identity card or have his or her identity card cancelled. This measure is therefore only effective for countries outside the European Union. If a Dutch national who has been refused a passport or whose passport has been cancelled is nevertheless living abroad, the Netherlands should notify the country concerned.

**Recommendation REFUSAL OR CANCELLATION OF A PASSPORT**

It is recommended that in appropriate cases the Minister of Security and Justice request the refusal or cancellation of the passports of convicted paedosexuals with a high risk of recidivism.

The Dutch government should also be able to ensure that convicted paedosexuals with a high risk of recidivism do not violate the conditions imposed on them while they are abroad. Since the Netherlands has no jurisdiction in other countries, cooperation with local authorities and organisations is essential. Various ways in which information can be shared to prevent child sex tourism are set out below.

*Prevention: Certificate of Good Conduct available in English*

In the Netherlands, to prevent convicted paedosexuals from occupying functions that bring them into close contact with children, people working in certain professions – such as employees of a day-care centre – are required to submit a Certificate of Good Conduct (*Verklaring Omtrent het Gedrag*). It is the view of the National Rapporteur that the Dutch government should endeavour to prevent Dutch paedosexuals with a high risk of recidivism from moving abroad to take up a position that brings them into intensive contact with children. It should therefore be made easier for organisations in other countries to discover whether a prospective employee or volunteer ought to be prevented from working with children. However, a Certificate of Good Conduct is currently only available in the Dutch language. The application form, part of which has to be completed by the foreign employer, is also currently available only in Dutch. This represents a serious obstacle for foreign employers and organisations if they ask the prospective employee or volunteer to apply for a Certificate of Good Conduct.

**Recommendation CERTIFICATE OF GOOD CONDUCT AVAILABLE IN ENGLISH**

It is recommended that the State Secretary for Security and Justice also make the application form and the Certificate of Good Conduct available in English so that foreign organisations can screen future employees when they apply for jobs in which they will be working with children.

*Prevention: spontaneous sharing of information by police*

Spontaneous sharing of information is the sharing of information without being requested to do so by the authorities or organisations in another country. Sharing information plays an important role in preventing child sex tourism. If Dutch authorities suspect that convicted paedosexuals are in a country or plan to visit that country for the purposes of child sex tourism, they should be able to share that information with the local authorities. Under certain conditions, the Dutch police may share police intelligence – i.e. non-judicial information – with foreign police authorities, for example if it relates to an investigation of a serious crime or to prevent a serious threat to public order. Requests for other information, for which coercive powers must be applied, when special investigative powers are required or when the information is required as evidence in the other country, must be forwarded to the Public Prosecution Service.

Under certain conditions, Dutch police authorities can also share information received from the police in other EU member states with individuals or agencies with a specific task. Accordingly, there seems to be a basis for sharing information received from other EU member states with local NGOs. It does not seem illogical that this would also apply by analogy to the sharing of domestic police information, although that is not explicitly stated in the Police Data Decree (*Besluit politiegegevens*).

*Prevention: spontaneous sharing of information about refusal/denial of a passport*

If a Dutch national has been refused a passport or his or her passport has been cancelled on the grounds of the Passport Act, the country where that person is staying should be informed by the Netherlands. If the Dutch government feels that a person should not be living outside the Netherlands, it also has a responsibility to notify the country that might face the consequences. This is all the more important since the fact that an individual is flagged in the register of persons who can be refused a passport or whose passport can be

cancelled does not directly lead to that person's passport actually being confiscated. Because there are no systematic checks at the Dutch borders of whether a person is flagged in the passport register, it is still possible for such a person to leave the Netherlands.

In theory, sharing information could be equated with veiled extradition. If a person, at the time the information is provided, is not formally suspected of a crime in the Netherlands or is not being prosecuted, however, there can be no question of veiled extradition. In that case, the Netherlands should be able to share this information with the authorities in other countries. The question of whether it constitutes veiled extradition if, at the time the information is shared, a person in the Netherlands is suspected of a crime or is being prosecuted for it is for the court to answer.

#### *Prevention: spontaneous sharing of judicial information*

The EU Convention on Mutual Legal Assistance in Criminal Matters (2000) gives judicial authorities the possibility to provide information spontaneously to authorities in other EU member states. This means that judicial authorities can share information with countries of destination in Europe. Judicial information provided spontaneously may only be used in a criminal trial after a request for mutual legal assistance has been acceded to.

## **Investigation and prosecution of Dutch child sex tourists**

As described above, the Netherlands has the obligation and possesses the legal instruments to erect barriers to prevent Dutch nationals from engaging in child sex tourism in other countries. If, despite these efforts, Dutch nationals commit acts of sexual violence against children in another country, the Netherlands still has a responsibility. The Netherlands has the obligation to help in the investigation and prosecution of Dutch child sex tourists, both in the country concerned and in the Netherlands.

#### *Investigation in countries of destination: Dutch liaison officers*

The Netherlands cannot carry out investigations in other countries on its own initiative, but it can offer help to the local authorities in the investigation of Dutch child sex tourists. Western countries collaborate with countries of destination for child sex tourism to investigate their nationals who are suspected of sexual violence against children in those countries. To promote cooperation with the investigative services of other countries, the Netherlands stations liaison officers from the police or the Royal Marechaussee in those countries. They maintain contact with the foreign investigative and immigration services, exchange operational information between the Dutch investigative services and their counterparts in the other country in order to tackle serious, organised cross-border crime, and advise the Dutch government on the cooperation. The presence of liaison officers in countries of destination for child sex tourism can help to increase the effectiveness of the investigation and prosecution of Dutch nationals suspected of sexual violence against children in other countries. Liaison officers from the police or the Royal Marechaussee are stationed in 43 of the 69 countries identified as destinations for child sex tourism. The National Rapporteur feels it is very important for the presence of liaison officers in countries of destination of Dutch child sex tourists to be permanently maintained.

#### **Recommendation ASSIGNMENT OF LIAISON OFFICERS TO COUNTRIES OF DESTINATION**

To provide all possible assistance in the investigation of Dutch child tourists in other countries, it is recommended that the Minister of Security and Justice arrange for liaison officers to be assigned to countries of destination for child sex tourism.

#### *Investigation and prosecution in countries of destination: mutual legal assistance*

The Netherlands can provide the authorities in another country with 'legal assistance' for an investigation involving a Dutch national in that country. Dutch law defines requests for mutual legal assistance as 'requests to perform, jointly or otherwise, acts of investigation or to provide cooperation in them, to transmit information, files or articles to be produced in evidence or to provide information or serve or hand over documents or to make commitments or statements to third parties.' In certain cases, a request for mutual legal assistance can only be acceded to if there is a treaty with the country making the request. If there is no treaty on mutual legal assistance, the Dutch authorities are prevented from providing assistance to the authorities of another country for the investigation and prosecution of Dutch child sex tourists. In the absence of a treaty on mutual legal assistance, for example, it is not possible to search a house and gather evidence. In the

preamble to the EU Directive on combatting the sexual abuse and sexual exploitation of children and child pornography, the EU member states are encouraged to intensify their cooperation with countries of destination, for example by concluding treaties on mutual legal assistance. The Netherlands is party to the Convention on mutual legal assistance in criminal matters between the member states of the EU (2000). Outside the EU, however, the Netherlands has only concluded treaties with a few countries of destination for child sex tourism and has no treaty with three-quarters of the countries of destination for child sex tourism identified by the National Rapporteur.

**Recommendation BILATERAL TREATIES FOR MUTUAL LEGAL ASSISTANCE WITH COUNTRIES OF DESTINATION**

It is recommended that the Minister of Security and Justice conclude bilateral treaties for mutual legal assistance with the countries of destination where Dutch nationals commit acts of sexual violence against children.

*Prosecution in countries of destination: refusal of passports to Dutch nationals who have been prosecuted*

Primary responsibility for the prosecution of persons who are suspected of sexual violence against children in other countries rests with the country where the offence is committed. That applies even when the suspects are not nationals of that country. However, the Netherlands also has a responsibility for Dutch nationals who commit these offences abroad. From that perspective, the Netherlands can be expected to offer assistance in the prosecution of Dutch nationals suspected of child sex tourism.

In addition to providing legal assistance, the Netherlands could assist in the prosecution of child sex tourists in other countries by guaranteeing that the Dutch suspect will not leave the country of destination during the trial. Since 2010, it has been possible for the Netherlands to refuse to issue a passport to Dutch nationals who are living in another country and who are being prosecuted or have been convicted there. On the basis of the Passport Act, the competent minister can refuse or cancel a passport as soon as he or she learns through official channels that a Dutch national suspected of a sex crime is trying to flee the country where the crime was committed. If the suspect whose passport has been confiscated is released on bail and succeeds in leaving the country, however, he or she can apply to a Dutch embassy in another country for an emergency passport. The Passport Act provides that, in that case, the suspect may not be refused an emergency passport.

When Dutch suspects are being prosecuted abroad but are living in the Netherlands, the country concerned can make a request for their extradition. However, the Netherlands only extradites Dutch nationals under strict conditions. The Constitution provides that a person can only be extradited on the basis of an extradition treaty.

*Investigation in the Netherlands*

Dutch investigative services (the police, the Royal Marechaussee and customs) use investigative methods in the Netherlands to identify child sex tourists. There is also a reporting centre for child sex tourism. The centre passes on the reports it receives to the police, who study every report and if there are sufficient leads, the Dutch police can start an investigation. Information about the prosecution of a Dutch suspect in another country can also prompt an investigation into related offences in the Netherlands. Finally, investigations into sexual violence against children can also produce evidence of child sex tourism, for example evidence (such as stamps and visas in the suspect's passport and photos of him or her with foreign children) that the suspect has repeatedly visited countries of destination for child sex tourism. During an investigation of child pornography, images that portray children who appear to be from other countries could be evidence of child sex tourism.

*Prosecution in the Netherlands: extraterritorial legislation*

Sexual violence against children in other countries is punishable on the basis of so-called extraterritorial legislation. If a Dutch national has been tracked down, but not prosecuted, in another country, if a Dutch national flees the country in which he or she has been convicted or if a Dutch national is tracked down in the Netherlands, he or she can also be prosecuted in this country. The number of Dutch nationals prosecuted for child sex tourism in the Netherlands is very small, however. If the suspect has already returned to the Netherlands, prosecution in the Netherlands is often the only option, since the Netherlands does not have extradition treaties with the majority of countries of destination for child sex tourism.

## Key message and recommendations

Children have the right to protection against sexual violence. The government must endeavour to prevent Dutch nationals from committing sexual violence against children in other countries. Measures restricting the liberty of convicted paedosexuals, international cooperation and the sharing of information are important instruments for preventing, investigating and prosecuting child sex tourism. To that end, the National Rapporteur makes the six following recommendations:

<p><b>OVERVIEW OF DUTCH CHILD SEX TOURISTS IN COUNTRIES OF DESTINATION</b></p> <p>It is recommended that the Minister of Foreign Affairs produce a list every month of Dutch nationals who are in custody or have been released on bail in another country in a case involving sexual violence against children. This list should be made available to the Dutch police.</p>
<p><b>EFFECTIVE SUPERVISION OF COMPLIANCE WITH RESTRICTIONS ON LIBERTY</b></p> <p>It is recommended that the Minister of Security and Justice investigate how compliance with orders restricting an individual's liberty can be effectively supervised in order to prevent convicted paedosexuals from travelling abroad.</p>
<p><b>REFUSAL OR CANCELLATION OF A PASSPORT</b></p> <p>It is recommended that in appropriate cases the Minister of Security and Justice request the refusal or cancellation of the passports of convicted paedosexuals with a high risk of recidivism.</p>
<p><b>CERTIFICATE OF GOOD CONDUCT AVAILABLE IN ENGLISH</b></p> <p>It is recommended that the State Secretary for Security and Justice also make the application form and the Certificate of Good Conduct available in English so that foreign organisations can screen future employees when they apply for jobs in which they will be working with children.</p>
<p><b>ASSIGNMENT OF LIAISON OFFICERS TO COUNTRIES OF DESTINATION</b></p> <p>To provide all possible assistance in the investigation of Dutch child tourists in other countries, it is recommended that the Minister of Security and Justice arrange for liaison officers to be assigned to countries of destination for child sex tourism.</p>
<p><b>BILATERAL TREATIES FOR MUTUAL LEGAL ASSISTANCE WITH COUNTRIES OF DESTINATION</b></p> <p>It is recommended that the Minister of Security and Justice conclude bilateral treaties for mutual legal assistance with the countries of destination where Dutch nationals commit acts of sexual violence against children.</p>





## Does legalised prostitution generate more human trafficking?

There is growing concern about the effects of prostitution policy on the overall scale of human trafficking in the sense of sexual exploitation. However, it is not known how many women are forced to work in the prostitution sector in relation to the number who do so voluntarily. In Amsterdam alone, an estimated 8,000 prostitutes work in the sex industry.<sup>1</sup> According to the National Threat Assessment on Organised Crime, an estimated 20,000 people in the Netherlands were working in prostitution in 2012. While a similar estimate has been repeatedly cited,<sup>2</sup> it seems to come from a study carried out in 1999, before the abolition of the ban on brothels.<sup>3</sup> At the moment, there are no reliable figures available for the total number of prostitutes in the Netherlands.<sup>4</sup> Evidently, some prostitutes are exploited, but because of the hidden nature of both human trafficking and prostitution, it is difficult to say how large this proportion is. In that context, the National Threat Assessment said: ‘We do find that the figure of 800 victims in 2010<sup>5</sup> is a minimum because of a limited<sup>6</sup> willingness among victims to report offences.<sup>7</sup> Victims are afraid that their family will be subjected to violence if they report to the police. It is not known how much higher the actual number of victims is, because of the

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<sup>1</sup> Centre de Recherches Internationales et de Documentation sur l’Exploitation Sexuelle (CRIDES) de la Fondation Scelles 2012; see also Beke 2010, p. 32.

<sup>2</sup> In the evaluation of the lifting of the ban on brothels by the Ministry of Security and Justice’s Research and Documentation Centre (WODC) in 2007, this estimate was mentioned but with the proviso that the precise composition of the total population of prostitutes was not known, since part of the population of prostitutes is fairly invisible (WODC 2007, p. 32); Soa Aids also refers to 20,000 prostitutes in the Netherlands (‘Frequently asked questions’ Soa Aids n.d., [www.prostitutie.nl/index.php?id=174#c250](http://www.prostitutie.nl/index.php?id=174#c250) (consulted on 21 June 2013)); see also Centre de Recherches Internationales et de Documentation sur l’Exploitation Sexuelle (CRIDES) de la Fondation Scelles 2012.

<sup>3</sup> Mens & Van der Helm 1999.

<sup>4</sup> Because of the hidden character of prostitution, like human trafficking, it is also difficult to estimate the total number of prostitutes.

<sup>5</sup> This is a reference to the 749 persons who, according to CoMensha’s records, were sexually exploited in 2010; see also NRM 2012f, Table B3.1.14.

<sup>6</sup> There probably is a significant dark number with respect to the number of victims. At the same time, there are possibly a number of false positives in CoMensha’s records, meaning that a case registered as human trafficking is in reality not, since possible victims are reported to CoMensha and there is no formal assessment; see also NRM 2012f, p. 20.

<sup>7</sup> As already mentioned, the human trafficking that is registered also depends on a number of factors that are not necessarily related to the total scale of human trafficking; see NRM 2012f, pp. 51, 73, 165-166.

significant disparity in the views about the size of the dark number in relation to victims of human trafficking.<sup>8</sup>

### *The total scale of human trafficking*

The total scale of human trafficking is the aggregate of what is visible and invisible.<sup>9, 10</sup> The ideal situation would be for every instance of human trafficking to be known, in which case there would be no 'dark number' (the number of human trafficking situations that are not known to any agency: the 'invisible' human trafficking). However, because of the hidden nature of human trafficking, in reality there will always be a dark number, which can only be estimated. The problem, however, is not that there are no estimates but that the estimates that have been made are inaccurate or unreliable.<sup>11</sup> The report 'Trafficking in Human Beings. Visible and Invisible' contained a critical analysis of three estimates that have been made of the total number of victims,<sup>12</sup> with the aim of prompting further discussion of national and international estimates and promoting efforts to improve methods for making a reasonably reliable estimate on which consensus could be reached.<sup>13, 14</sup>

Figures are used to reinforce viewpoints and can form the basis for intensive policy measures. However, positions are sometimes taken on the basis of unverifiable, unreliable or inaccurate data. For example, estimates are sometimes taken from earlier studies to demonstrate the alarming scale of prostitution or human trafficking without any enquiry into how the original researchers arrived at their estimates.<sup>15</sup> But 'bad data are worse than no data'.<sup>16</sup> As regards the use of statistics for the development of 'evidence-based policy making', it is essential to be certain of the reliability and validity of the data in order to avoid reaching 'evidence-thin' conclusions.<sup>17</sup>

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<sup>8</sup> Nationaal Dreigingsbeeld Georganiseerde Criminaliteit (National Threat Assessment on Organised Crime) 2012, pp. 65-66.

<sup>9</sup> 'The total scale of human trafficking is equal to the human trafficking that is registered (the known human trafficking) minus the false positives (the human trafficking that is registered as such but in reality is not) plus the dark number (the unregistered/unknown human trafficking, including the false negatives (the human trafficking that is known /visible, but has not yet been recognised as such). In short, it is the aggregate of the 'visible human trafficking' and the 'invisible human trafficking'. (NRM 2012f, p. 26).

<sup>10</sup> The visible component of human trafficking (the registered human trafficking) depends to a large extent on developments related to factors such as the attention devoted to human trafficking in society, the priorities that are set and the capacity that is made available within investigative agencies and the Public Prosecution Service (PPS) ('the more you look, the more you will find' principle), the method of registration by the relevant agencies and changes in legislation; see also NRM 2012f, pp. 51, 73, 165-166.

<sup>11</sup> For the specific reservations regarding the estimates, see NRM 2012f, §2.4.1; §2.4.2.

<sup>12</sup> A national estimate of victims of sexual exploitation in the Crime Projection Analysis (CBA), a national estimate of victims of other forms of exploitation by FairWork and an international estimate of forced labour by the ILO; see also NRM 2012f, Chapter 2.

<sup>13</sup> The National Rapporteur has made the following recommendation for improvement: 'The government should endeavour to produce adequate estimates of the scale of human trafficking. In addition to complete and reliable data collection, this calls for statistical expertise.' (NRM 2012f, recommendation 1).

<sup>14</sup> See NRM 2012f, §2.1.

<sup>15</sup> See also Weitzer 2012, pp. 1344-1345.

<sup>16</sup> Weitzer 2012, p. 1350.

<sup>17</sup> See also Weitzer 2012.

### *Investigations of the effects of legalised prostitution*

The effect of legalised prostitution in preventing cross-border human trafficking for the purpose of sexual exploitation has been investigated in a number of academic articles. Two recent examples are ‘Does legalised prostitution increase human trafficking?’ by Seo Young Cho, Axel Dreher and Eric Neumayer (2012)<sup>18</sup> and ‘The law and economics of international sex slavery: prostitution laws and trafficking for sexual exploitation’ by Niklas Jakobsson and Andreas Kotsadam (2013).<sup>19</sup> The authors of both articles reach the same conclusion: there are more human trafficking situations in countries where prostitution has been legalised. This section describes how such academic studies are still in their infancy because the data and the research methods are not (yet) complete and are insufficiently reliable to support the conclusions drawn or to provide a basis for policy.

First and foremost, the articles are based on cross-sectional quantitative research, which cannot be used to draw the conclusion that the legalisation of prostitution results in more human trafficking.<sup>20</sup> Cho, Dreher and Neumayer used the report ‘Global Patterns’ (2006) by the United Nations Office on Drugs and Crime (UNODC)<sup>21</sup> to investigate the degree of correlation between prostitution legislation in a particular country and the reported stream of human trafficking to that country.<sup>22</sup> To verify whether the authors’ conclusions also held true for other data sets, in addition to the data from the UNODC report, Jakobsson and Kotsadam also used data from ‘Globalization and the illicit market for human trafficking: an empirical analysis of supply and demand’, a report produced by the International Labour Organization (ILO).<sup>23</sup> That report referred to a data set that the ILO compiled for its first estimate in 2005, which was based on a large number of reports containing information about human trafficking in the period 1995-2004.<sup>24</sup> Because cross-sectional research provides no indication of the impact of changes in prostitution legislation in a particular period on the total scale of human trafficking, a second method was adopted. Cho, Dreher and Neumayer carried out three case studies on the situation in Sweden, Denmark and Germany, countries in which prostitution legislation was amended during the period covered by their study (1996-2003).<sup>25</sup> To assess the effect of changes in prostitution legislation, they used existing estimates of the total number of victims.<sup>26</sup> Jakobsson and Kotsadam also stated that there were no reliable longitudinal data for human trafficking. To support the argument that there is a causal relationship between prostitution legislation and

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<sup>18</sup> Cho, Dreher & Neumayer 2012.

<sup>19</sup> Jakobsson & Kotsadam 2013.

<sup>20</sup> Cross-sectional research is research that looks at a single moment in time: in other words, a snapshot. The opposite is longitudinal research, where the study is conducted over a certain period in order to document the process. For longitudinal research, however, there must be a baseline measurement: how much human trafficking was there before the policy change? Such baseline measurements are not always feasible for policy changes that were introduced several years earlier.

<sup>21</sup> UNODC 2006. There is now a more recent report on human trafficking by the UNODC, which takes into account some of the reservations discussed here; see also NRM9, §2.2.1.

<sup>22</sup> The UNODC report provides information about the human trafficking reported to and in 161 countries (UNODC 2006). The analysis by Cho, Dreher and Neumayer encompassed 150 countries (Cho, Dreher & Neumayer 2012).

<sup>23</sup> Danailova-Trainor & Belser 2006.

<sup>24</sup> This information yielded an ILO database that was used for an earlier report by the ILO, which gave an estimate of the minimum scale of forced labour: ‘ILO minimum estimate of forced labour in the world’; see NRM 2012f, §2.4 for more information about the ILO’s estimates (in 2005 and in 2012).

<sup>25</sup> Cho, Dreher and Neumayer 2012, p. 22.

<sup>26</sup> The estimates are based on different sources for each case study, including an estimate mentioned by Ekberg 2004; Nicola et al. 2005.

human trafficking, they carried out two case studies for Sweden and Norway,<sup>27</sup> countries where buying sex was made a criminal offence in 1999 and 2009, respectively.

Although the authors of both articles employed a refined method for the cross-sectional study, there are a number of reservations to be expressed about their conclusions, relating mainly to the quantity and quality of the available data. The most important reservation is that there was very little analysis of the proportion of visible victims of human trafficking in relation to the proportion that is invisible. The authors relied on data concerning human trafficking situations that were known, using the datasets of the UNODC and ILO, which greatly depend on the human trafficking that has been registered in individual countries. What is visible can be influenced by factors such as the attention devoted to human trafficking in society, the priorities that are set and the capacity that is made available within, for example, the investigative services. Accordingly, the surveys in the UNODC report are based, among other things, on the number of times that a country is mentioned in various sources as the country of destination of victims.<sup>28</sup> The prominence given to a country in the report is to a large extent determined by the attention devoted to human trafficking in that country.<sup>29,30</sup> It is also conceivable that legalisation of prostitution has an impact in making human trafficking visible. Invisible human trafficking can only be estimated, but, as already mentioned, at the moment there are no reliable estimates of the total scale of human trafficking.<sup>31</sup> Jakobsson and Kotsadam do refer – but only briefly – to the distinction between visible and invisible prostitution. They reportedly found no evidence that hidden prostitution had increased in Sweden and Norway, but added that they could not rule out the possibility that it was so deeply hidden that it had not been identified by any agency at all, investigative or otherwise.<sup>32</sup>

A second reservation relates to the case studies that the researchers conducted. Two and three case studies are too few to allow for judgements at an international level about the effect of specific prostitution policies. More reliable data are needed from a larger number of case studies. Furthermore, making accurate and reliable comparisons of the total number of victims before and after amendment of prostitution legislation in a particular country seems impossible in these countries because there is little or no information available about the human trafficking registered before the changes in the policy towards prostitution were made, never mind the total number of victims of human trafficking (registered and unregistered).

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<sup>27</sup> For this the researchers used information from other published sources.

<sup>28</sup> UNODC 2006.

<sup>29</sup> See also GAO 2006; NRM5, pp. 9-10.

<sup>30</sup> In the Fifth Report, the National Rapporteur said the following about the UNODC report in 2006: ‘The overviews in the UNODC report are based on the number of times a particular country is mentioned as a country of origin, transit or destination for victims in a range of sources. This means that the part played by a country in the report is determined to a significant extent by the amount of attention paid to trafficking in human beings in that country. [...] Many countries voiced fierce criticism of a draft version of the report at the end of 2005. Apart from the points mentioned above, the National Rapporteur also pointed out the geographical bias (it is, for example, highly incredible that not a single African country is classified as ‘very high’ among destination countries) as well as problems of methodology, such as the absence of information concerning the validity and reliability of the base material (NRM5, pp. 9-10); see NRM9, §2.2.1 for more information about the more recent report by UNODC (2012).

<sup>31</sup> See NRM 2012f, Chapter 2.

<sup>32</sup> Jakobsson & Kotsadam 2013, p. 103.

## Conclusion

It is not (yet) possible to give an answer, on the basis of statistics, to the question of the extent to which legalisation of prostitution leads to more human trafficking. The answer would require an analysis of the human trafficking that is visible compared with the invisible human trafficking and this calls for the collection of more reliable data – both quantitative and qualitative – concerning visible and invisible human trafficking.<sup>33,34</sup> Research into the effect of the legalisation of prostitution is also complicated by the fact that the total scale of human trafficking in the sense of sexual exploitation is not solely dependent on policies towards prostitution. Such research would also have to encompass all other push-and-pull factors that could have an impact on the prevalence of human trafficking in a particular country, and which can differ greatly from one country to another. Nevertheless, one component of an effective approach to combating human trafficking is to make human trafficking visible.<sup>35</sup> First and foremost, that calls for a clearer picture of the nature and scale of the prostitution sector.

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<sup>33</sup> The researchers themselves mention the limitations of their article: ‘The problem here lies in the clandestine nature of both the prostitution and trafficking markets, making it difficult, perhaps impossible, to find hard evidence establishing this relationship’ (Cho, Dreher & Neumayer, 2012, p. 76). ‘Although the data do not allow us to infer robust causal inference, the results suggest that criminalizing procuring, or going further and criminalizing buying and/or selling sex, may reduce the amount of trafficking to a country.’... ‘It should be noted once again that the data quality on international human trafficking is far from perfect and we strongly recommend more data collection.’ (Jakobsson & Kotsadam, 2013, abstract).

<sup>34</sup> The National Rapporteur has already made a recommendation on how to produce adequate estimates (NRM 2012f, recommendation 1).

<sup>35</sup> See NRM 2012f, Chapter 1 and Chapter 8: ‘To tackle human trafficking effectively, it must be made visible. Human trafficking that is hidden must be revealed – and once revealed, it must be better registered.’

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Korvinus, A.G. e.a. (2006). Mensenhandel: de achtergronden en omtrekken van het begrip uitbuiting in art. 273a Sr. *Trema*, 29(7), 286-290.

## **Trafficking in Human Beings: The concept of exploitation in the Dutch trafficking provision<sup>1</sup>**

Dien Korvinus, Dagmar Koster and Heleen de Jonge van Ellemeet<sup>2</sup>

*Trafficking in human beings (THB) is regarded both in the Netherlands and internationally as a serious crime and a violation of the victim's human rights. Combating THB must be given the highest priority. However, which activities exactly should be combated then? The new provision on THB in the Dutch Criminal Code which entered into force on 1 January 2005<sup>3</sup> has led to a considerable broadening of the behaviour that can be regarded as THB. Yet, the legislator has not defined precisely enough the legal terms that appear in the broadened article of the Criminal Code, leaving it to those who implement the provision in practice to draw the line. As a result, the new provision on THB cannot automatically stand the test of the 'lex certa' criterion. For the area of exploitation in other sectors than the sex industry, it contains undesirable loose ends. This article by the Bureau of the Dutch Rapporteur on THB sets out markers for a more precise definition.<sup>4</sup>*

### *Introduction*

On 1 January 2005, the new criminal provision on trafficking in human beings (THB) entered into force. It encompasses legislation for the implementation of international regulations and to a large extent it follows the wording of the Palermo Protocol<sup>5</sup> and the EU Council Framework Decision on combating trafficking in human beings.<sup>6</sup> It is also partly modelled after the old Article 250a of the Criminal Code.<sup>7</sup> In addition to conduct already criminalised as an offence under Article 250a, exploitation in other work or services (hereinafter referred to as 'other forms of exploitation') and the forced removal of human organs come within the reach of the new trafficking provision. The result is a broad and complex provision that needs to be translated into practice in more concrete terms.

This particularly applies to the central term of exploitation. Exploitation is the ultimate aim of the acts which, in relation to adults in combination with certain means of coercion,<sup>8</sup> are a

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<sup>1</sup> This is a translation (of 8 January 2007) of 'Mensenhandel: het begrip uitbuiting in art. 273a Sr.', published in a magazine for the Dutch judiciary in September 2006, *Trema – Nr. 7*, pp. 286-290.

<sup>2</sup> Dien Korvinus is the former Dutch Rapporteur on Trafficking in Human Beings. Dagmar Koster is the legal staff member and Heleen de Jonge van Ellemeet is researcher at the Bureau of the Dutch Rapporteur on THB.

<sup>3</sup> The provision was introduced as section 273a, but renumbered as section 273f of the Criminal Code as of 1 September 2006. As regards the content of the provision, no changes were introduced. The text of the provision as it reads today is annexed to this paper.

<sup>4</sup> This paper is an elaboration of the results of an expert meeting on the scope of the Dutch THB provision, which the Bureau of the Dutch Rapporteur on THB organised on 1 December 2005.

<sup>5</sup> Protocol to prevent, suppress and punish trafficking in persons, especially women and children (New York, 15 November 2000). This protocol supplements the United Nations Convention against transnational organized crime, also signed on this date.

<sup>6</sup> Council Framework Decision of the European Union on combating trafficking in human beings, 19 July 2002, OJ L203 (01.08.2002).

<sup>7</sup> According to article 250a of the Criminal Code, sexual exploitation and prohibited forms of running a prostitution business were criminal offences.

<sup>8</sup> Means of coercion summarised in article 273f paragraph 1 sub 1 of the Criminal Code: coercion, force or other act of violence or through the threat of force or other act of violence, extortion, fraud, deception or through the abuse of authority arising from actual circumstances, the abuse of a vulnerable position or by giving or receiving payments or benefits in order to obtain the consent of a person who has power over another person.



Korvinus, A.G. e.a. (2006). Mensenhandel: de achtergronden en omtrekken van het begrip uitbuiting in art. 273a Sr. *Trema*, 29(7), 286-290.

criminal offence under Article 273f paragraph 1 sub 1.<sup>9</sup> In the Explanatory Memorandum to the provision,<sup>10</sup> the legislator has left it to the courts to further define 'other forms of exploitation'. Hence, it is not sufficiently clear in advance what abuses in labour situations can be qualified as exploitation within the meaning of THB. The aim of this paper is to contribute to a further clarification of the term exploitation.

### *Serious offence*

Trafficking in human beings is a serious offence. The Explanatory Memorandum states that Article 273f deals with excesses and forms of modern slavery. The fact that the provision is not intended for less serious offences can be deduced from its inclusion under Title XVIII of the Criminal Code: Offences against personal freedom, immediately preceding the provision on slave trade, as well as from the heavy penalty of up to maximum six years imprisonment for 'plain' trafficking in human beings, rising to fifteen years under aggravating circumstances.

The wording in various subsections of Article 273f paragraph 1, however, gives a potentially considerable range to the article. As a result, from a purely linguistic point of view, behaviour of various grades of severity can be brought within the scope of the provision. Subsections 4 and 6 in particular expand the scope. For example, according to paragraph 1 sub 4, THB could already be said to occur when a person 'induces' another person, by means of 'deception', to make himself available for performing work or services. Subsection 6 places the bar even lower: for example, the informed consumer buying a product produced elsewhere in the world under exploitative conditions, may be guilty of the offence of THB. An informed buyer of a cheap, hand-knotted Persian rug or a delicious chocolate bar manufactured from cocoa harvested by children may be a profiteer and a trafficker within the meaning of this subsection.

### *Teleological approach*

Although the bar for applying Article 273f of the Criminal Code is thus set very low if a literal interpretation is taken, in view of the underlying convention and the context of organised crime in which THB is placed nationally and internationally, the provision and the penalty that the offence carries should only be used for excesses. Not every abuse in relation to work or services should be categorised as THB. Limiting the scope of application is justified from a teleological approach in combination with the human rights perspective. In terms of legislative history, the importance of protecting fundamental human rights is paramount to the interpretation of Article 273f. For the non-exhaustive account of exploitation in paragraph 2 is largely<sup>11</sup> based on Article 3(a) of the Palermo Protocol and Article 1 paragraph 1 sub c of the EU Framework Decision, which in turn derive terms from *inter alia* Article 4 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) of 4 November 1950. The latter article obliges Contracting States to provide effective protection against slavery, servitude and forced or compulsory labour and refers to the prohibition on slave trade, slavery and bondage in Article 4 of the Universal Declaration of Human Rights (10 December 1948). Furthermore, both the international documents which underlie the amendment of the Dutch trafficking provision state that the protection of human rights is central in combating THB. A teleological

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<sup>9</sup> Contrary to the text of the Palermo Protocol, Article 273f of the Dutch Criminal Code qualifies the forced removal of organs not as exploitation, but as a separate aim of THB.

<sup>10</sup> Lower House 2003-2004, 29 291 no. 3.

<sup>11</sup> It does not, however, correspond exactly with the definition in the Palermo Protocol or the Framework Decision which also differ on some details.

Korvinus, A.G. e.a. (2006). Mensenhandel: de achtergronden en omtrekken van het begrip uitbuiting in art. 273a Sr. *Trema*, 29(7), 286-290.

interpretation (true to source) therefore leads to the conclusion that the protection of the human rights of individual victims must play a crucial role in combating THB. It is in fact the human rights approach that sets the limits to the scope of the definition of THB; labour situations deemed socially undesirable only then constitute exploitation within the meaning of the trafficking provision if they cause a violation of fundamental rights, such as human dignity, physical integrity or personal freedom of the individual concerned. Against reprehensible circumstances that do not constitute exploitation in this sense other sanctions under criminal labour or administrative labour must be used. In that case, the protection of the interests harmed does not justify the application of the severe THB article.

*The concept of exploitation in Article 273f of the Dutch criminal code*

Exploitation is the central element in the crime of THB. After all, according to the Explanatory Memorandum, 'trafficking in human beings is (aimed at) exploitation.' Yet, other than a non-exhaustive summary of practices that exploitation at least comprises (paragraph 2), neither Article 273f nor the Explanatory Memorandum contains a description of what exploitation should be taken to mean in concrete terms. Because of the potentially broad applicability of the provision on the one hand and **the (international) context in which THB is discussed** on the other hand, further specification of this term is needed.

Exploitation is commonly<sup>12</sup> described as 'the attempt to obtain as much gain as possible', 'to abuse' and, specifically in relation to a person, 'to put [a person] to work under unfavourable conditions in order to gain as much profit as possible'. This can be summarised as excessively taking advantage of another person.

Within the meaning of the THB article, exploitation must be related to a situation of work or services. As argued, there must also be an excess (i.e. a violation of fundamental human rights). Article 273f paragraph 2 gives a non-exhaustive summary of what such exploitation can be taken to mean: exploitation of another in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery and practices comparable to slavery or servitude. As stated, this is listing situations that the legislator typifies as exploitation, rather than providing a clearly defined, substantial criterion.

In relation to the sex industry, the legislator and the Supreme Court identify a situation of exploitation when the person involved is in a situation inferior to the circumstances in which an articulate prostitute would normally operate in the Netherlands.<sup>13</sup> Due to the nature of the work, forced work in the sex industry quickly becomes exploitation, since the physical integrity is by definition at stake. The same applies to the forced removal of organs. For exploitation in other sectors than the sex industry, a similar criterion (the situation in which an articulate worker normally operates) may be useful as a starting or reference point, but a more stringent standard is nevertheless more appropriate. In these cases it is usually not the nature of the work that is decisive in relation to the key question whether fundamental human rights are being violated when the (labour) conditions deviate from the normal situation. The seriousness of the deviating circumstances, the route leading towards them and the effect on the person concerned are then above all the factors determining whether or not exploitation is involved. After all, not every circumstance that is unacceptable to an articulate Dutch worker will immediately constitute a violation of human rights.

What precisely the lower limit should be for other forms of exploitation is unclear. An unambiguous description of an excess in the area of work or services cannot be given.

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<sup>12</sup> Definitions from the Van Dale Dictionary of the Dutch Language, *Van Dale groot woordenboek der Nederlandse taal* (Utrecht/Antwerp, 1999).

<sup>13</sup> e.g. Supreme Court 5 February 2002, which refers to the Explanatory Memorandum to the (old) Article 250ter of the Criminal Code.

Korvinus, A.G. e.a. (2006). Mensenhandel: de achtergronden en omtrekken van het begrip uitbuiting in art. 273a Sr. *Trema*, 29(7), 286-290.

Whether or not a situation is excessive must be assessed on a case by case basis. **The determining factor at any rate** is the (inherent) violation of fundamental human rights. In order for a situation to be categorised as excessive, either at least one obvious excess must be evident, such as living in the workplace under extremely poor conditions (e.g. the obligation to rent only a chair that one can sleep on in shifts), debt bondage or multiple dependency tying the victim to the person putting him/her to work, or an accumulation of less serious abuses.<sup>14</sup> In the latter case, where elements are ‘stacked up’,<sup>15</sup> each of the individual abuses could perhaps be dealt with under employment law, but the excess lies in the combination and accumulation of such elements. Factors such as the seriousness, the duration, the extent and the economic benefit gained by the perpetrator also play a role here.

The single or composite excess must in principle be viewed objectively; circumstances are excessive if they are unacceptable in Dutch society and legal order, i.e. according to the prevailing standards in the Netherlands. In objectifying this, fundamental human rights once again play a central role. To qualify a situation as exploitation, it is therefore not crucial whether the victim considers himself or herself to be exploited. However, the subjective perception of the victim can play a role when answering the question to what extent he or she could have escaped from the exploitative situation (see below).

#### *Exploitation within the meaning of THB*

When (the purpose of) exploitation is coupled with the use of a means of coercion, this constitutes trafficking in human beings within the meaning of Article 273a of the Criminal Code. The concept of exploitation must therefore be **interpreted/understood** separately from the demonstration of coercion. This follows *inter alia* from the fact that in the case of trafficking in minors no coercion is required, while (the purpose of) exploitation is (paragraph 1 sub 2). If the use of coercion were to constitute an element of exploitation, it would still implicitly be a requirement for trafficking in minors. With regard to adults, even a double requirement of coercion would then be introduced, as subsection 1 contains the condition of both (the purpose of) exploitation and the use of coercion. **This cannot be the objective.**

Exploitation does, however, imply a certain degree of involuntariness on the part of the person being exploited.<sup>16</sup> This involuntariness lies in the inability to escape from the exploitative situation.<sup>17</sup> In the case of measures that directly restrict a victim’s physical freedom (e.g. confinement or being kept under guard), escape is actually impossible. If, however, the victim is kept within the grasp of his or her exploiter by other means, escape may be possible practically speaking, but the subjective judgement of the victim that he/she cannot escape can form an obstacle after all. The facts and circumstances do however have to demonstrate that the victim could reasonably believe that he or she was not able to escape from the situation on his or her own. This could be due, for instance, to the (perceived) consequences of an escape or the actual living or working conditions of the victim. For example, the lack of freedom could result from a relationship of debt towards the person

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<sup>14</sup> One could think of underpayment, irregular payment, long working hours, obligation to work under a different identity, confiscation of one’s passport, the threat of dismissal if the activities demanded are not carried out, etc.

<sup>15</sup> In police circles this term is used to describe the method of linking up signals that together, though not necessarily each individually, (may) indicate the existence of an exploitative situation.

<sup>16</sup> It may be conceivable that a person voluntarily allows himself or herself to be exploited, but this cannot be considered the normal pattern. This is probably what the Explanatory Memorandum means with the comment “Typical of exploitation is the existence of coercion in the broadest sense, or abuse.”

<sup>17</sup> In addition, there is the use of one of the means of coercion, as a result of which a person finds himself/herself in an exploitative situation. That use of coercion can also prevent the exploited person from escaping from the situation.

Korvinus, A.G. e.a. (2006). Mensenhandel: de achtergronden en omtrekken van het begrip uitbuiting in art. 273a Sr. *Trema*, 29(7), 286-290.

providing the employment or a third party, the cultural context, the person being a minor or a combination of such factors. For this assessment, it is important to examine the body of facts in their totality.

Exploitation within the meaning of THB is therefore about gross abuses, whereby the victim's fundamental human rights are violated and he/she is or reasonably believes himself/herself to be seriously restricted in his/her freedom to escape from this situation.

#### *ECHR and the Siliadin case*

Whereas the wording of the trafficking provision and the Explanatory Memorandum provide few reference points for the interpretation of the term 'exploitation' or 'other forms of exploitation', the Dutch courts may, in their law-forming task to arrive at a clearly defined, distinguishing criterion, take note of the ruling of the European Court of Human Rights of 26 July 2005 in the case *Siliadin versus France*.<sup>18</sup> This is an interesting ruling because in it the Court observes for the first time a violation of Article 4 of the ECHR, in a case that is indisputably about 'another form of exploitation' within the meaning of THB, namely domestic slavery.

The ruling is unequivocal in that Contracting States have a positive obligation to protect their citizens concretely and effectively against violations of Article 4 of the ECHR, also in the relationships between citizens themselves (horizontal enforcement). The state is liable if it offers insufficient safeguards against such a violation, either in legislation or in its implementation. This positive obligation demands that each act that serves to hold a person in one of the situations referred to in Article 4 of the ECHR be punishable and – *de facto* – effectively repressed. France had not fulfilled this obligation in the case of the Togolese minor *Siliadin*, who was living and working illegally in France. The conditions and circumstances under which she lived with family B and was required to carry out household work led, in the Court's view, to a state of servitude, against which France had offered insufficient protection by failing to pursue an effective prosecution of the couple B.<sup>19</sup>

In relation to a better understanding of Article 273f of the Dutch Criminal Code, this ruling is particularly important because the European Court of Human Rights makes explicit the order among the practices prohibited under Article 4 of the ECHR, and in doing so weighs the particular circumstances of the case. As far as the interpretation of compulsory labour is concerned, for example, the Court follows the definition contained in Article 2 of the ILO Convention concerning Forced Labour.<sup>20</sup> In this convention, forced or compulsory labour or services is understood to mean all work or services exacted from any person under the menace of any penalty and for which the said person has not offered himself/herself available voluntarily. In *Siliadin versus France*, the Court holds that the menace of any penalty already exists when employers stimulated the fear of a minor, unaccompanied, illegal worker of being caught by the police. Thus, the menace of a penalty does not need to exist in a literal sense (ground 118).

The Court subsequently compares forced or compulsory labour or service with servitude. The latter presupposes a more severe denial of personal freedom. Although it does not constitute

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<sup>18</sup> Case of *Siliadin V. France*, ECHR 26 July 2005, application no. 73316/01. A note to this ruling by R.A. Lawson was published in *JV* 2005/425 (FORUM).

<sup>19</sup> At the time of the offences (1994-1998) France did not have a provision in its Criminal Code that made THB as such a punishable offence. The couple B was prosecuted for the violation of two criminal provisions about obtaining unpaid work from a person, by abusing his/her vulnerability and dependence, and subjecting a person, by abusing his/her vulnerability and dependence, to working and living conditions in violation of human dignity.

<sup>20</sup> ILO 1930, Convention (no. 29) Concerning Forced Labour. Ratified on 28 July 1930, entering into force on 1 May 1932.

Korvinus, A.G. e.a. (2006). Mensenhandel: de achtergronden en omtrekken van het begrip uitbuiting in art. 273a Sr. *Trema*, 29(7), 286-290.

any claim of ownership, servitude is equivalent to slavery in terms of its gravity. It refers, according to the Court in the Siliadin case, to the situation in which a person not only has to carry out work or provide services, but is also forced to live in the house or on the property of his/her 'holder' and is unable to change the situation. As is evident from the Court's judgement, this is also the case when a person in a vulnerable position is required to work seven days a week without pay, lives in poor accommodation at the workplace and has little freedom of movement.

Due to the detailed examination of the particulars of a concrete case in relation to the various elements of Article 4 of the ECHR, the Siliadin ruling can serve as a guideline for the Dutch courts which will undoubtedly have to deal with gross abuses in other sectors than the sex industry within the foreseeable future, and will therefore mark out further the boundaries of the unknown territory of 'other exploitation'.<sup>21</sup>

### *Conclusion*

The 'lex certa' principle states that the law must be formulated in such accurate terms that one can establish beforehand what judicial consequences certain acts will have. The question arises whether the new THB provision in the Criminal Code can indeed stand up to the test of the 'lex certa' criterion. Based on case law, the area of THB within the meaning of exploitation in the sex industry has been further clarified over the years. However, the penalty provision for the new category of 'other exploitation' does pose considerable questions for those applying the law. The Explanatory Memorandum explicitly states that the government prefers to wait and see how the trafficking provision will be applied in practice, therefore leaving it to the courts on this point. This is risky, also in the light of the European Court of Human Rights' ruling in the Siliadin case, since it can mean that the criminal code and its implementation do not *de facto* provide a victim with the protection prescribed in the ECHR.

We have argued that in relation to other sectors than the sex industry, the bar must not be set too low when defining THB within the meaning of Article 273f of the Criminal Code. The fact that only excessive (employment) situations should be qualified as exploitation, however, does not alter the fact that the police and judicial authorities, but also other partners involved in identifying and combating THB, are required to respond to even small indications of potential exploitation. After all, there may well be more to a particular situation than first meets the eye. A proper way of dealing with the problem therefore demands on the one hand a clear penalization that is workable in practice, and on the other hand that every relevant lead be examined and lead to prosecution if possible.<sup>22</sup> Only in this way can we realise the ideal that in combating THB, the main thing is the protection of (possible) victims.

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<sup>21</sup> Since publication of the original version of this article, the first verdict in a case of THB for other forms of exploitation in the Netherlands was given on 21 November 2006. Five suspects were convicted for forming a criminal organisation to illegally produce hemp, but they were acquitted on the charge of THB. Although the court found that they had, by misuse of a position of vulnerability, put to work undocumented Bulgarian migrants in a criminal setting, it ruled that the labour situation did not constitute exploitation. Important factors for the court were the absence of multiple dependency of the workers on the suspects, the fact that the work was occasional and the underpayment not excessive.

<sup>22</sup> In this sense too, the Instructions for THB of the Board of Procurators General dated 6 March 2006 entered into force on 1 April 2006.

Korvinus, A.G. e.a. (2006). Mensenhandel: de achtergronden en omtrekken van het begrip uitbuiting in art. 273a Sr. *Trema*, 29(7), 286-290.

### **Section 273f of the Dutch criminal code**

1. Any person who:

- (a) by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
  - (b) recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
  - (c) recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
  - (d) forces or induces another person by the means referred to under (a) to make himself/herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
  - (e) induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
  - (f) wilfully profits from the exploitation of another person;
  - (g) wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);
  - (h) wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;
  - (i) forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;
- shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years and a fifth category fine\*, or either of these penalties:

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.

3. The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine\*, or either of these penalties:

- (a) offences as described in the first paragraph if they are committed by two or more persons acting in concert;
- (b) offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.

4. The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under (b), shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine\*, or either of these penalties.

Korvinus, A.G. e.a. (2006). Mensenhandel: de achtergronden en omtrekken van het begrip uitbuiting in art. 273a Sr. *Trema*, 29(7), 286-290.

5. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine, or either of these penalties.

6. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine\*, or either of these penalties.

7. Article 251 is applicable mutatis mutandis.

## How are the war in Syria and the refugee crisis affecting human trafficking?

By Claire Healy

### *Executive Summary*

Violence in Syria has been driving children, women and men from their homes for almost five years. ICMPD's new research study looks at the vulnerability of displaced Syrian people to trafficking in persons. The research found that people are often trafficked or exploited because they are not able to meet their basic needs. This is exacerbated by complications in relation to legal residence status in host countries and legal authorisation to work. While some trafficking is committed by highly organised criminal networks, the most common type of exploitation is at a lower level, involving fathers, mothers, husbands, extended family, acquaintances and neighbours. The context of general vulnerability means that there are often factors that leave families with no viable alternative for survival other than situations that could be defined as exploitation and trafficking in national and international law.

We therefore need a paradigm shift in how trafficking, refugee, migration and child protection policy are viewed in terms of access to protection. While policy-makers and practitioners might see themselves as working in distinct fields, on specific topics, the human beings in need of protection do not always fall under one single, clear-cut category. We must concentrate efforts to provide access to basic needs and safety for people displaced from and within Syria.

### *Current Context*

The study *Targeting Vulnerabilities* assesses the effects of the Syrian war and refugee crisis on trafficking in persons (TIP) in Syria and the surrounding region. The study applies an interdisciplinary methodology, combining primary research in the field with secondary desk research and remote consultations, as well as analysing qualitative and quantitative sources. The country research findings, together with regional desk research, were compiled and analysed for the study.

Four of Syria's neighbouring states, Turkey, Lebanon, Jordan and Iraq, are the most important hosting countries worldwide for refugees from the war-torn country. Together they host 86.7% of Syria's refugees abroad. According to UNHCR data, an additional 441,246 Syrians sought asylum in Europe from April 2011 to August 2015, with 159,147 in Egypt and other North African countries, giving an overall total of 4,529,572 Syrian refugees.

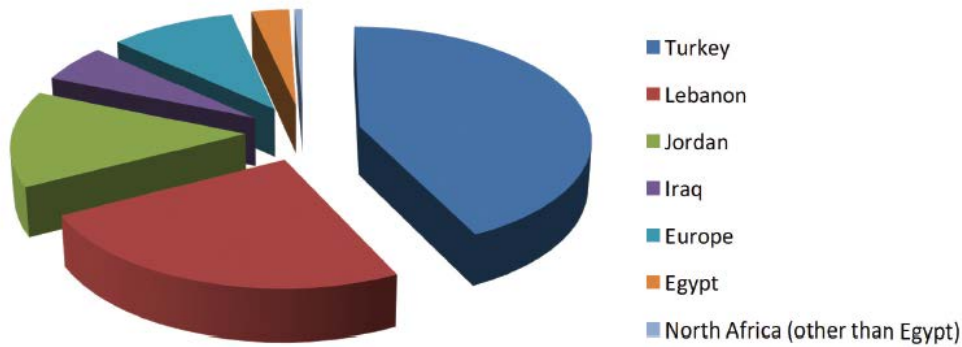
None of the four hosting countries apply the 1951 UN Convention definition of a refugee to those fleeing the war in Syria. This means that people fleeing Syria are subject to specific *ad hoc* regulations issued prior to and since the outbreak of the war and the beginning of the forced migration movement. On the other hand, Syria, Turkey, Lebanon, Jordan and Iraq have all ratified the 2000 UN Trafficking Protocol and passed legislation criminalising human trafficking.

January  
2016

*Often people are trafficked or exploited because they are not able to meet their basic needs*

*New study, Targeting Vulnerabilities, examines the war's impact on trafficking in Syria, Turkey, Lebanon, Jordan and Iraq*





Registered Syrian Refugees

In Syria, just 17% of internally displaced people (IDPs) are in camps. Similarly, in all of the four hosting countries, the majority of Syrians are living outside of official refugee camps, among host communities. Lebanon has not authorised the setting up of any official refugee camps for Syrians, while in Iraq the proportion is 39%, in Jordan 19% and in Turkey 15% of all registered refugees. This affects refugees' and IDPs' access to essential humanitarian aid and other services like education, accommodation, vocational training and healthcare. Host communities have also been affected by the war and displacement, particularly the areas within each of the countries that have received higher proportions of IDPs and refugees.

*The majority of displaced Syrians are not living in camps*

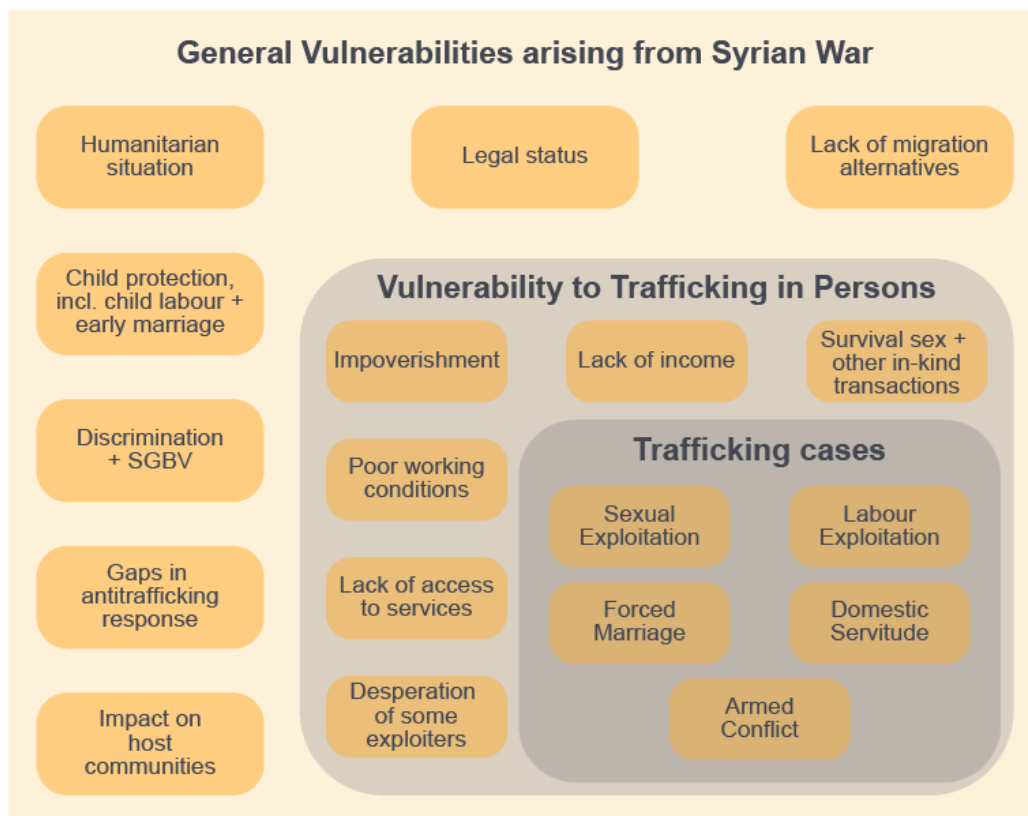


Areas of high population density of displaced Syrians

The violence that has characterised many parts of Syria since 2011, and certain areas within Iraq since mid-2014, has affected people in those territories and those who have fled abroad in a myriad of ways. The complexity of their situations is influenced by the war and violence itself, but also by the legal and institutional systems that they must navigate within Syria and in the four hosting countries in order to maintain a legal status, seek employment and generate income, access humanitarian aid and public services, and seek legal redress if they are victims of abuse.

The desperation of some of these people, who cannot provide for sustenance, accommodation and essential services for themselves and their families, can lead to them exploiting members of their own families. Nevertheless, not all exploiters and traffickers in this context are themselves in a situation of vulnerability, as others exploit and traffic vulnerable people as a form of war profiteering. In addition, a multitude of child protection issues arise in the context of the conflict and the refugee crisis, particularly children remaining out of school and not having birth registration, placing them more at risk of being trafficked.

**People are vulnerable because of the war and violence itself, but also because of the legal and institutional systems that they must navigate**



General Vulnerability, Vulnerability to Trafficking and Trafficking Cases  
 Note: SGBV = sexual and gender-based violence.

The war and displacement have also caused added vulnerability for migrants and refugees whose situation was already precarious prior to 2011 and who were in Syria when the war broke out, including:

- Palestinian refugees from Syria;
- Iraqi refugees;
- Stateless people;
- Refugees of other origins, particularly from Afghanistan, Sudan and Somalia;
- Migrant domestic workers from South and Southeast Asia and East Africa.

Some refugees and displaced people have started to move on to countries outside the region, particularly EU Member States. While they are still within the five countries, the need to pay substantial sums of money - and possibly become indebted - to facilitators of internal movement and migrant smugglers is causing people to resort to risky methods of obtaining that money, rendering them vulnerable to trafficking. One major risk is that a situation of internal movement facilitation or migrant smuggling can develop into one of trafficking in persons.

**A risk is that internal movement facilitation or migrant smuggling can develop into trafficking in persons**

## *Main Research Findings*

The effects of the war and refugee crisis, placing people in a situation of increased vulnerability to trafficking in persons, have in some cases resulted in actual trafficking cases. This has not, however, manifested itself in a significant increase in the identification by the authorities of trafficking related to the war and refugee crisis.

People officially identified as trafficked in the countries under study since 2011 are mainly from Syria, North Africa, South and Southeast Asia and Eastern Europe. Also, in Syria, Lebanon, Jordan and Iraq, national citizens were identified as trafficked internally. Most of the trafficking routes originating outside of the region continued largely unaffected by the Syrian war.

The research shows that the five countries under study have made significant efforts to respond to the displacement of IDPs and refugees. However, the incidence of trafficking in persons, and the nature and extent of vulnerabilities to trafficking, have been affected in a number of ways. These effects are partly related to the sheer magnitude of the displacement and partly to the legal, policy, infrastructural, security and socio-economic contexts in the five countries.

The classic organised crime paradigm commonly used for understanding trafficking does not fit neatly onto the actual situation of people trafficked or vulnerable to trafficking in the context of the Syrian conflict. Very severe forms of exploitation and trafficking are indeed taking place, committed by highly organised criminal networks, but the most common type of exploitation is at a lower level, involving fathers, mothers, husbands, extended family, acquaintances and neighbours.

Worst forms of child labour, child trafficking for labour exploitation, exploitation through begging and trafficking for sexual exploitation affected people in the countries under study before the war, but have now increased among Syrians. Particularly in the case of sexual exploitation, a certain replacement effect is in evidence, with Syrian women and girls exploited in prostitution, where before people trafficked for this purpose were of other nationalities. Child labour and child begging have been affected in the sense that conditions have become more severe, with more serious abuses of child rights. The incidence of these phenomena has also increased overall.

In most of the cases revealed through this research, trafficking is not a cross-border phenomenon related to the migratory movement itself, though cross-border trafficking is present in some cases. In general, the forms of trafficking in evidence target the vulnerabilities caused by displacement *post facto*, with the trafficking process beginning when IDPs and refugees are already among host communities.

Some forms of trafficking have emerged that are directly related to the war. This is the case for trafficking by Da'ish (ISIS) for sexual slavery, forced marriage and exploitation in armed conflict; and forced marriage and exploitation in armed conflict by other parties in the Syrian war. Nevertheless, not all forms of human trafficking have been influenced by the Syrian crisis. Indeed, the trafficking of migrants - most of them women - for exploitation in domestic servitude continues, and was only marginally affected by the refugee crisis in the host countries. Even within Syria, since the start of the conflict in 2011, some migrant domestic workers continue to be exploited in domestic servitude.

***There is no significant increase in the identification of trafficked people by the authorities***

***The most common type of exploitation involves family members, acquaintances and neighbours***

## *Policy Recommendations*

Because anti-trafficking capacities are significantly affected by the ongoing war and related conflicts in Syria and Iraq, and because the hosting countries are overwhelmed with the arrival of large groups of people fleeing Syria, these recommendations primarily address vulnerabilities to trafficking. The primary focus is therefore prevention of trafficking. However, the protection of trafficked people and the prosecution of perpetrators is also a central concern, and recommendations in this sense are also included.

***Anti-trafficking capacities are significantly affected by the ongoing war and related conflicts in Syria and Iraq***

1. Address low-level **trafficking by family members and acquaintances**, as well as by organised criminal groups.
2. Identify **trafficking among refugees** and provide protection to refugees who are trafficked.
3. Provide access to **regular employment and regularisation of legal status**.
4. Guarantee **sufficient funding and fair distribution of aid**, including for non-camp refugees and IDPs.
5. Ensure **birth registration and schooling** for children.
6. Address forms of **trafficking directly related to the war**.
7. Incorporate **internal trafficking** into anti-trafficking policy and initiatives.
8. Enforce sanctions to **combat abusive practices**.
9. Identify and respond to **labour exploitation**.
10. Combat gender-based discrimination and reduce the risk of **sexual and gender-based violence**.
11. Address the **vulnerabilities of host communities**.
12. **Reform kafala systems** for the immigration and employment of migrant domestic workers.
13. Significantly expand **legal channels for settlement** outside the region.

By implementing these recommendations, we can contribute to reducing people's vulnerability and increasing their resilience. We need to offer them alternatives that are not merely the 'least bad option', and provide them with what they need in order to better cope with the ravages of violence and displacement.

### *Related Publication and References*

The study 'Targeting Vulnerabilities: The Impact of the Syrian War and Refugee Situation on Trafficking in Persons – A Study of Syria, Turkey, Lebanon, Jordan and Iraq' can be downloaded in full, including all references to field research at: [www.icmpd.org/our-work/capacity-building/trafficking-in-human-beings/publications/](http://www.icmpd.org/our-work/capacity-building/trafficking-in-human-beings/publications/)

The Study is the result of a research project to assess the impact of the Syrian war and refugee crisis on trafficking in persons in Syria and the surrounding region. The project 'Assessment of the Impact of the Syrian War and Refugee Crisis on Trafficking in Persons (AIS-TIP)' is funded by the US Department of State Office to Monitor and Combat Trafficking in Persons (J/TIP) and implemented by ICMPD.

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## Tip of the Iceberg? Improving the Interpretation and Presentation of Trafficking Data\*

### *Executive Summary*

Current anti-trafficking debates are driven by emotionally expressed concerns and answered with rational argumentations about policy impacts in an environment of limited data availability and quality. Claims of a huge and increasing size of the phenomenon often remain undisputed in such debates. This is exemplified with a scene from the German election campaign.

In such a situation, data presentation policies are of high importance. Two policies can be observed: a disclaimer policy, focusing on the deficiencies of the data, and an exaggeration policy, overstating trafficking data.

The presentation of Eurostat trafficking data exemplifies this observation. While the report presents detailed data and includes a disclaimer indicating data limitations, the press release creates an impression of urgency. It refers to the omnipresence of trafficking, alarming trends and a predominance of women and children among the victims. These notions cannot be supported by the presented data. The combination of a disclaimer and exaggeration presentation policy is problematic, as it may encourage calls for simplistic policies that leave many victims of extreme exploitation and trafficking without support.

This policy brief recommends a data presentation policy that makes the best possible statements on the basis of available data and qualitative knowledge, using comparative observations within data sets and beyond. Such a data presentation strategy increases the chances that policymakers learn from the past and implement policies for the benefit of victims of extreme forms of exploitation.

### *Current Context*

*9 September 2013. Chancellor Angela Merkel is answering questions from citizens at a TV event organised in the run-up to Germany's parliamentary elections on 22 September 2013 (ARD 2013). She listens attentively to many questions concerning problems in Germany, for example, concerning labour conditions in long-term care, service and contract labour work, and labour leasing. Then, a citizen speaks about media reports that state that Germany has become the brothel of Europe. She asks Merkel what she will do to abolish trafficking and forced prostitution.*

*In her response, Merkel sketches out the history of the relevant legislation. The red-green government introduced legislation that made prostitution a legal occupation. This did not bring about the intended positive consequences. After long and controversial discussions, the Christian-liberal government is now proposing a more restrictive law on the registration of brothels.*

**March 2014**

***Overstating trafficking data should be avoided. The best possible comparative interpretations could better inform policies to reduce the suffering of victims of extreme exploitation.***

***A scene from the German election campaign of 2013***

\*The contents of this publication reflect the views of the author and do not necessarily reflect the views of ICMPD. The author is Dr Dita Vogel, University of Bremen, a partner in the ICMPD-led project "Addressing Demand in Anti-Trafficking Policies and Efforts".

*The citizen insists on unspecified changes of law in a trembling voice, claiming that it should be Merkel's main task to prevent such harm. She supports her appeal with an emotional statement: "As a young mother, my heart is filled with outrage, this cannot be!" [translation by the author]*

*Merkel says that it is not so easy to know what helps – legalisation or stricter regulations, but she agrees that she will have to look into this burning issue again.*

In a nutshell, this scene contains all the elements that make the public discourse on trafficking in Germany problematic. First of all, it deals nearly exclusively with trafficking for the purpose of sexual exploitation. In spite of the frequent use of the term 'modern slavery' with regard to extremely exploitative work conditions, the situation of persons forced or tricked into exploitative work is discussed in different contexts.

With regard to prostitution, there are two lines of discussion. On the one hand, there is the emotionally expressed concern, linked to imagining how it would feel if one's own children were forced into prostitution – as indicated by the citizen's emphasis that she is a 'young mother'. She speaks from the heart, alerted by media reports on the alleged huge size of trafficking. This moral outrage stems from the belief that the legislation is not appropriate and politicians are neglecting the issue.

On the other hand, the anti-trafficking debate contains rational argumentation about policy impacts. People ask which actions would really help to reduce the suffering. The chancellor refers to the controversy about the effects of more open or more restrictive legislation in Germany. Similar debates are taking place in many EU countries.

The size of the phenomenon and the urgency of the issue are undisputed in this scene. The impression of a *huge and increasing* phenomenon underlies the debate. Yet this may be a result of presentation policies rather than real developments.

## **Policy Options**

It frequently happens that NGOs willingly cooperate in the creation and distribution of shocking numbers, although rarely as explicitly stated as in the media relations guidelines of a German project for advocacy in favour of victims of labour exploitation. The guidelines encourage the use of vague and unsubstantiated numbers, as journalists rarely look more closely into the basis of estimates. "There is no reason to abstain from quoting numbers because of the concern that they may be false." (Liebert 2012:2, translation by the author). In contrast, Jordan (2011:2) observed that exaggerated claims mislead the public and support calls for hard-line or simplistic actions. Overstating may prevent serious investigation into how men and women can be protected from exploitation.

In the following paragraphs, this policy brief will compare the data report on human trafficking released by the EU Commission in April 2013 (Eurostat 2013) with the press release accompanying this data report (European Commission 2013). The Eurostat report is presented as an example of the "disclaimer presentation policy", while the press release is presented as an example of the "exaggeration presentation policy". Simultaneously, it seeks a third way to make the best possible statement on the basis of the published data. It does not claim to be entirely successful in this endeavour, which is a by-product of a summer school discussion and a workshop presentation on related issues.<sup>1</sup> Three issues are highlighted: the scale of the phenomenon, its growth and the share of women.

## **Scale of the Phenomenon**

The press release acknowledges the weakness of the data, indicating that "*figures should*

***Emotionally expressed concern meets rational argumentation***

***Data presentation policies: disclaimers versus exaggerations – in search of a third way***

*be interpreted with caution, as it only represents the tip of the iceberg*". Using the iceberg metaphor is a common way of referring to the existence of a large dark figure of unreported cases. It is certainly not only legitimate, but also necessary to refer to a dark figure of unreported cases. All crime and counselling statistics reflect realities only partially.

However, the unknown part below the surface is certainly not the only reason why the trafficking data presented should be interpreted with caution. The Eurostat data report indicates a different reason: we cannot trust what we see above the surface:

"It is hereby acknowledged that the current state of the results does not entirely comply with the stringent requirements of the European Statistics Code of Practice and further development is planned to improve data quality in future collections. Nevertheless the political demand for this information is such that it seems opportune to make it available at this stage in the form of a Eurostat Working Paper." (Eurostat 2013:9).

The press release indicates that trafficking in human beings is *"all around us, closer than we think"*. It refers to a study by the ILO, indicating that 880,000 people in the EU are victims of forced labour, including sexual exploitation. This estimate is based on a complex methodology. The sub-estimate for the European Union is not explained in detail.<sup>2</sup> It is a rough estimate referring to a broader definition. Thus, when the press release suggests that the ILO estimate indicates the size of the iceberg under the surface, it is referring to a different iceberg. The Eurostat data report itself does not present any evidence supporting the notion that victim data represents only such a small share of the actual victims.

Anyhow, the iceberg imagery is misleading. With icebergs being physical facts, there is no debate that there is an identifiable and measurable part below the surface called 'ice' which can be identified as part of the phenomenon 'iceberg'. With regard to trafficking in human beings, this is not the case.

The actual data in the report refers to 5,535 victims for 2010 formally identified, usually by the police. In addition, there are 3,933 'presumed' victims, mostly according to Italian data, who are identified in ways that are not specified in the report itself (Eurostat 2013:30). Many of these cases will never lead to court convictions of traffickers. This may be because the crime has taken place but cannot be proved. However, it could also be because the close assessment by judges leads to the identification and prosecution of different crimes such as rape or fraud, or it may show that in spite of indications in the police investigation, no trafficking had taken place. There is not only under-reporting of undetected cases, but also over-reporting of presumed cases. The number of convicted traffickers amounted to 1,339 persons in 2010 (Eurostat 2013:83).

The Eurostat report shows that there are nearly 2 identified victims per 100,000 inhabitants (Eurostat 2013:31). A comparison is needed to assess whether this is a large or small scale. Taking the German case as an example, police data on human trafficking is low compared to police data on comparable crimes. The German police registered 15 781 victims of different crimes against sexual self-determination with the use of force, or exploitation of dependency, compared to 761 victims of trafficking for sexual exploitation (BKA 2011: 635, 657). Thus, a single country registered more offences for a related criminal category than all EU countries combined for the crime of 'human trafficking'. The intricacies of police criminal statistics have not been analysed in detail for the purpose of this paper. However, they should be studied to get a clearer perspective on the extent of trafficking in view of crimes with comparably traumatising effects on victims.

In the current situation, we cannot be sure whether trafficking data represents the tip of an iceberg. Concentrating on trafficking carries the risk that the real icebergs may be overlooked – extreme forms of exploitation that do not easily fit within the trafficking definition.

***Infringements of human rights may be all around us, but trafficking in human beings?***

***Indication of a relatively small size of the phenomenon***



## Trends

Cecilia Malmström, EU Commissioner for Home Affairs, speaks of “*alarming trends*”. The press release supports this notion with the following phrase:

*“The total number of identified and presumed victims was 6,309 in 2008; 7,795 in 2009 and 9,528 in 2010, with an increase of 18% over the 3 reference years.”*

While the 18% increase is quoted correctly from the report, the quoted absolute figures suggest a much higher increase of 51%. This is due to the fact that the quoted time series includes more countries in 2010 than in 2008. But how can the 18% increase be interpreted? This is what the report says:

**“More reported cases do not necessarily mean an increase in the actual number of victims. This may indicate an improvement in the reporting rate of the phenomenon or a change in the recording system (although the latter should be indicated in the metadata). Similarly, a decrease, especially in the last reference year, may be due to a delay in the recording. In this case the figures may be revised during the next collection. [Bold in original]”** (Eurostat 2013:30).

The period covered is a period in which many countries made efforts to increase awareness of human trafficking and improve reporting.<sup>3</sup> Therefore, we would expect to see an increase in reported numbers even if there is no change in the underlying phenomenon. In view of this context, it is logical to conclude that the increase of 18% in reported victims is a maximum increase with regard to actual victims. The notion of a 51% increase suggested by the absolute numbers is clearly misleading.

Conviction data indicates a decrease. The number of convicted traffickers (p.83) declined from 1,534 to 1,339 (minus 13%). Thus, the Eurostat data contains no evidence that supports the claim of ‘alarming trends’. Interpreted with care, it indicates that there may be a moderate increase or decrease.

## Share of Females

The press release indicates that the Eurostat report allows for a disaggregation of victims by gender and age.

*The profile of victims by gender and age in the three reference years was 68% women, 17% men, 12% girls and 3% boys.*

As men are considered to be less vulnerable than women, and adults less vulnerable than children, the share of women (68%) and of children (12% girls and 3% boys) supports the impression that these more vulnerable groups are more likely to become victims. However, this claim is not convincingly substantiated. First of all, in 30% of the cases, the data indicates ‘gender unknown’. Most of this data consists of presumed victims from Italy. A different age-gender profile in Italy than in other states would result in a big difference in the total rates, and age-gender profiles do differ between the states that present data – for example 99% females in France and 50% in Romania in 2008 (Eurostat 2013:35).

Even if we assume that the real gender distribution of unknown gender cases would not result in much different proportions, another factor would certainly change the gender distribution. Regarding trafficking for labour exploitation, 10 EU countries have not delivered any data, while for sexual exploitation all countries report at least something. Therefore, under-reporting is much higher for male-dominated forms of exploitation. We

***Unclear trend: moderate increase below 18% or decrease of up to 13% from 2008 to 2010***

***Male share under-reported***

can safely assume that the share of women among reported victims would be lower if all countries also reported about trafficking for labour exploitation, as men constitute 77% of victims in this form of exploitation but only 4% of victims of sexual exploitation in 2010 (Eurostat 2013:42).

## Conclusion

The case of the EU data report on trafficking in human beings has been used to demonstrate the difference between presentation strategies. While the 86-page data report presents a lot of details and disclaimers, the press release intentionally exaggerates the scale, trend and share of females in order to create an impression of urgency, certainly with the good intention of increasing awareness for victims of an atrocious crime and increasing pressure on governments to implement the EU anti-trafficking directive and its victim-protecting provisions.

As exemplified in the scene from the German election, the impression of a huge extent of trafficking reaches individual citizens, who alert politicians about the issue in an emotional way and demand that they concentrate on the fight against trafficking. However, this sole focus on trafficking may be counterproductive. Embedding support to trafficking victims in advice and support services for all forms of exploitation may be more fruitful, as Cyrus und Gatzke (2011) recommend, drawing on a study about trafficking for labour exploitation in Germany commissioned by the Ministry of Labour and Social Affairs. Victims of trafficking and other extreme forms of exploitation may be otherwise overlooked.

## Policy Recommendations

This policy brief argues in favour of a data presentation policy that makes concrete statements, drawing logical conclusions from existing data and providing the best possible comparative interpretations. Such a presentation policy would require a different attitude by statisticians and researchers, on the one hand, and by data users, such as NGOs and policymakers, on the other hand.

*Statisticians and researchers* should certainly continue to improve data quality and deliver detailed descriptions of how data has been gathered. Statistical reports delivering detailed information on data gathering and data limitations are a sensible first step for meaningful analysis. In that sense, Eurostat's first report on trafficking in human beings is certainly an asset. However, *before publication* a second step should be carried out. Resources should be devoted to data interpretation, taking into account what is known about political developments and data gathering, making comparisons within the data set and beyond with other data. Often, it should be possible to use the data bias productively to make minimum or maximum assessments, and to suggest meaningful comparative data from other sources to get an idea of the size of a phenomenon. It is not enough to know *that* data limitations exist. We also need to learn *how* they are likely to impact on shares and trends. The indication of data limitations as a mere disclaimer invites unintended or intended misinterpretation.

*NGOs and policymakers* should avoid an exaggerating presentation. The intentional overstating of the scale of trafficking and trends is certainly mostly done in good faith with the intention of serving the interests of victims, as media attention is potentially higher with exaggerated statements. However, this strategy should be avoided, as it fuels a heated public debate and deprives policymakers of learning opportunities. Under pressure to react to emotionally expressed public concern, they may turn to simplistic action which does not serve the interest of victims of trafficking and other forms of exploitation that deserve equal concern.

The challenge to provide the best possible evidence in a context of limited and contentious

**Public exaggeration may hinder the search for adequate policies**

**Beyond disclaimers and exaggerations: a search for the best available comparative interpretations**

data is also taken up by the EU-funded research project “Addressing Demand in Anti-Trafficking Efforts and Policies (DemandAT)”, launched in January 2014. Drawing on qualitative and quantitative evidence, the study uses comparative interpretations to arrive at evaluations of actual and potential demand side-measures and, thereby, improve the situation of people suffering from extreme exploitation.

## Notes

<sup>1</sup> This policy brief is a consolidated version of presentations given at the summer school “Unfree Labour Revisited – Practices and Public Controversies from Ancient to Present Times” in Frankfurt/Oder, September 2013 and the workshop “Translating Welfare and Migration Policies in Canada and Germany – Transatlantic and Transnational Perspectives in Social Work” in Frankfurt/Main, October 2013. I am grateful for the critical comments of the participants.

<sup>2</sup> In the study, there is an estimate of 1.5 million for developed economies and the European Union (ILO 2012a:16). The figure of 880,000 is from a regional factsheet (ILO 2012b).

<sup>3</sup> Many efforts to increase awareness of trafficking are described on the website of the EU Anti-Trafficking Coordinator: [ec.europa.eu/anti-trafficking](http://ec.europa.eu/anti-trafficking).

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This paper is authored by Dr Dita Vogel, University of Bremen, a partner in the ICMPD-led project "Addressing Demand in Anti-Trafficking Policies and Efforts (DemandAT)", which will investigate demand-side measures against THB. More information on the project can be found at <http://research.icmpd.org/2491.html>.

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# EUROPEAN POLICY BRIEF



## Addressing the demand-side of trafficking in the domestic work sector: main findings at European level

In Europe, the employment of domestic workers is a widespread phenomenon. Despite different national policies and regulations, domestic workers, in majority migrant women, still face vulnerability to exploitation – including cases of human trafficking. Trafficking in this sector is an area neglected by policy makers and law enforcement and this situation is exacerbated by the challenges of monitoring activities occurring within private households. This policy brief examines the demand-side of trafficking in the domestic work sector in Europe based on seven country studies. It calls for a comprehensive approach in addressing demand in anti-trafficking efforts—at the intersection of trafficking, labour, and migration frameworks.

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## Introduction

In recent years, EU countries have adopted important common policies to combat trafficking in all its forms, and more efforts are being mobilised to tackle trafficking for labour exploitation specifically. Domestic work is identified as one of the labour sectors more vulnerable to exploitation and trafficking (FRA 2011). This Policy Brief is based on seven country studies examining the demand-side of trafficking in domestic work in Belgium, Cyprus, France, Greece, Italy, the Netherlands and the UK.

Trafficking in human beings (THB) in domestic work takes place within a broader context of widespread ‘employment’ of domestic workers in Europe. Private household’s growing demand for outsourcing domestic and care work is driven by multiple factors including: increased female labour market participation, changing demographics, limited availability of public care services, changing care needs, matched by the availability of a large and flexible migrant labour force. The majority of domestic workers are women and migrants from central and eastern Europe as well as Asia, Latin America, and Africa. Despite its economic and social importance, domestic work remains undervalued and is at times not regarded a formal labour sector. Many domestic workers face sub-standard working conditions: they are underpaid, overworked, and face protection gaps compared with other labour sectors.

The studies’ findings suggest that addressing demand can hardly be separated from simultaneously tackling the supply side, notably the vulnerabilities faced by domestic workers.

Policy interventions seen as potentially impacting on the inappropriate demand for cheap and flexible workers cover a wide spectrum of actions. It includes changing mentalities and discriminatory attitudes that shape behaviour towards domestic workers (mostly migrants), and addressing loopholes in policies and regulations such as policies that create conditions for exploiting migrant workers' vulnerabilities or the lack of accountability on the part of employers (sanctions).

## Evidence and Analysis

### 1. Trafficking in domestic work: definition and scope

The EU Anti-Trafficking Directive 2011/36/EU establishes a tripartite definition of human trafficking that encompasses: the act (e.g. recruitment, transport, harbouring a person), the means (e.g. threat or use of force, other forms of coercion, abduction, fraud, deception, abuse of power or of a position of authority) and the purpose (exploitation) (Article 2, 1). Despite a common EU definition, national legislative approaches differ, particularly in regard to trafficking for forced labour or labour exploitation. Trafficking in domestic work may fall under the following forms of exploitation: forced labour, slavery or slavery-like practice or servitude.

Trafficking in domestic work might include either employment-based arrangements or family-based arrangements (including child fostering and arranged marriage).

#### *Lack of empirical data*

The available official data do not provide a comparative baseline to assess the scope of THB in domestic work across the countries researched. The countries rely on different data collection systems, which reflects how countries engage with the problem. This leads to disparities in the official data that may not accurately reflect differences on the ground. For example, in the UK, where a National Referral Mechanism exists, there were referrals for 305 cases of domestic servitude in 2014 alone; in Greece, only a single case has been reported since 2002.

Furthermore, disaggregated data by labour sector (e.g. domestic work) or form of trafficking (forced labour, servitude, sexual exploitation) is not available in all countries. Where there is data for THB in domestic work, its share with regards to cases of THB for labour exploitation ranges between 10 and 14 per cent (10-13 per cent in the UK for 2012-14, 11 per cent in Italy for 2013-2014, 14.3 per cent in 2014 in the Netherlands). Also, country studies show discrepancies between official data and data compiled by non-governmental organisations, which suggest underreporting.

### 2. Key features of trafficking in domestic work

Trafficking in domestic work occurs in diverse settings and arrangements: private household, diplomatic personnel, au pair programme, as well as family-based arrangements such as child fostering and 'forced/arranged' marriages.

Domestic work takes place mostly within informal and undeclared arrangements and often involves migrants without work or residence permit/permission to stay. Yet, situations of trafficking in domestic work are not limited to circumstances of irregular migration. Trafficking can also occur within legal frames of migration, such as the tied-visa regimes for migrant domestic workers in the UK and Cyprus. Furthermore, there is a growing number of EU citizens, mostly from central and eastern Europe (e.g. Romania), among domestic workers. **Also, case law involving nationals** was reported in two countries, one in the UK and two in the Netherlands. In these cases, other factors of vulnerability such as mental illness, or homelessness and drug addiction were exploited by the trafficker.

#### **Situations in which trafficking has been reported**

- 1) Domestic worker employed directly or indirectly, under declared or undeclared contract by private households
- 2) Domestic worker hired by diplomatic personnel
- 3) Misuse of the au pair programme (using this programme for a full-time care 'worker')
- 4) Family-based arrangements, without employment contract of any form including arranged/forced marriage, child fostering



Nearly all cases of trafficking in domestic work concern **situations of live-in domestic workers** that is, situations in which the worker lives in the employer’s home. Workers in live-in situations face higher vulnerability to exploitation than live-out workers. The work may involve childcare, care for elderly or disabled family members, as well as different cleaning and domestic chores.

**Three main processes of recruitment** were reported in the study. Domestic workers may be:

- Hired directly by the family (no intermediaries). This scenario also includes:
  - o A situation where the worker already worked for the household and migrates with them to the new country
  - o A situation of family arrangement, child fostering, arranged marriage
- Recruited with the help of intermediaries who may include family members or family acquaintances
- Recruited through intermediaries such as employment agencies

The victim and the traffickers may know each other already.

The findings suggest that recruitment is largely **based on deception** rather than coercion. This includes deception regarding working conditions, salary or false promises to access regularised immigration status or education.

Abusive practices by **placement and employment agencies** are reported. High agency fees (for visa/travel arrangement, accommodation) further push migrant workers into accepting exploitative work and living conditions. Frequent involvement of recruitment agencies in trafficking cases was reported in Cyprus and Greece. In Cyprus, trafficking cases that implicate agencies occur mostly under the legal visa regime for migrant domestic workers.

The study identifies common features and means of coercion that contribute to keeping the persons in exploitative situations (See Box). Psychological means of coercion are more frequently reported. A recurrent element is the abuse of a position of authority or vulnerability, defined by the EU Directive as ‘a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.’ (*Art. 2.2*).

**Common features of exploitation and means of coercion**

- No payment of wage or payment of very low wage (manipulation based on giving or not giving the salary or promising to send money to the family abroad)
- Excessively long work hours, often without a weekly day off (being at the employer’s constant disposal)
- Physical and verbal abuse and threats of dismissal
- Withholding identity and/or travel documents
- Confinement in the house
- Restricting freedom of movement
- Restriction to contact their family
- Sexual harassment and/or abuse
- Humiliating treatment
- Inadequate accommodation and access to food (e.g. sleeping on the floor in the basement, no privacy)
- Situations of unattended health problems or injuries

Furthermore, the study suggests that the exploitation process relates primarily to the complex **relationship**

**between the employer and the domestic worker.** Domestic work—especially in live-in situations—involves intimate relationships and at times family ties. This can impede the recognition of exploitation, including trafficking, hampered by a sense of gratitude toward the exploiter for having facilitated migration, provided shelter, or promised access to education.

### 3. Legal, political, and regulatory frameworks: some loopholes

The countries included in this study are drawn from southern, central and northern Europe and have very different schemes for regulating the domestic work sector and visa procedures for the migration of workers in this sector.

**Domestic work regulation framework**

Specific regulations (and collective agreements)	Belgium France Italy
Restricted specific regulations ( <i>only for part-time</i> )	Netherlands
General labour law	Cyprus Greece UK

Three key models in regulating domestic work are represented: general labour law (Greece, Cyprus, and the UK); specific regulation for domestic work (Belgium, France, and Italy); and specific regulations limited to part-time domestic work (the Netherlands). Thus, this study includes models with more or less regulation, as well as models with more or less flexibility.

Also, there are two distinct approaches for regulating the **migration** of domestic workers. The UK and Cyprus have a specific work-visa scheme for migrant domestic workers, while general immigration laws for migrant workers apply in the other five countries included in the study.

Despite the different policy approaches, the study found common loopholes that leave many domestic workers unprotected.

**First, current restrictive migration policies** limit legal channels for migrant workers and foster irregular migration as well as informal labour markets. Irregular migrants mostly find work within the undeclared labour market where they are more at risk of exploitation. **Second**, irregular migrants are left unprotected by domestic work regulations. The regulations in place concern workers who have a regular stay permit and many situations of trafficking still involve undocumented migrants. Trafficking may also occur outside of an employment framework.

The voucher system in **Belgium** and the *chèque à l'emploi* in **France** are seen as contributing to **decrease undeclared work in the domestic work sector**. Both systems set positive incentives for employers to register the employment of a domestic worker: an easy-to-use hiring/registration process, tax deductions, and government contributions. However the impact of these on preventing trafficking has to be considered against the backdrop that most of trafficking cases continue to occur outside formal arrangements. Furthermore, most situations of trafficking take place in live-in arrangements, while these measures are confined to part-time live-out services.

Despite differences across countries, in general, live-in arrangements are unregulated or inadequately regulated (meaning that the regulations are incomplete and insufficient and/or do not properly set fair work conditions).

Third, some **policies maintain the dependency** and precariousness of the worker that are at the root of exploitation, including trafficking. One example is the visa scheme for migrant domestic workers that exist in the UK and Cyprus. The two visa systems differ in many regards, but both are temporary, apply to live-in arrangements, and are tied to one specific employer. While providing a legal channel for live-in care workers—who respond to a demand—this type of visa scheme perpetuates the domestic worker's dependence on a specific employer. The work permit (and right of stay in the country) is contingent on the employer's needs and will. Domestic workers employed by diplomatic personnel offer another example where the domestic worker's visa is strictly bound to their employer's status and stay in the country. In addition, the employer's diplomatic immunity significantly restricts the worker's access to protection and remedies.

## **4. Addressing demand in the context of trafficking in domestic work**

### **4.1 Vulnerabilities and demand-side factors: two sides of the same coin**

Domestic workers face vulnerabilities exposing them to the risk of exploitation—some of which are specific to domestic work. Tackling the demand-side can hardly be separated from addressing these vulnerabilities. The employers' demand for cheap and flexible labour is rendered possible or maintained over time by the presence of large groups of migrant workers in disadvantaged positions which may accept low-standard work conditions and exploitative arrangements (supply).

Vulnerabilities that emanate from the **worker's situation include:**

- Dependence on employer (irregular migration status, limited options for employment)
- Scant knowledge of the language in the country of destination
- Social isolation given the particular workplace (private home)
- Lack of knowledge about their rights or the mechanisms to access them
- Children in position of great dependence and vulnerability



It also stems from the **particular workplace and employment relations**:

- Informal work arrangements
- Live-in (being at constant disposal of employer)
- Intimate relationships (employer/employee/receiver of care)
- Private household, that is, isolated work settings
- Difficult enforcement of regulations

(see FRA 2015)

The seven country studies identified **three categories of factors influencing demand** in the context of trafficking in domestic work: economic and material factors; social norms and discrimination (linked to the relational dimension); and, the **political and legal framework**.

Compared to other sectors where trafficking occurs, domestic work is not an activity meant to generate profits. Thus, profit-making is not the main demand-driver (except for agencies profiting from high fees charged to migrant workers). However, savings from paying less (low salary) or nothing and the material benefits derived from domestic work are a clear motivator. The economic aspects (salary and social benefits/capacity to pay) are influenced by welfare policies and labour regulations in place. However, economic considerations are only one piece of the puzzle.

Another set of factors relates to discriminatory attitudes and social norms that maintain a devalued perception of domestic work. This influences the relationship and power imbalances and creates the ground that allows for abusive practices. Furthermore, demand is often gendered (women's work) and racialised (preference for certain ethnic groups perceived as best-suited for this type of work). This creates a triple discrimination based on work value, gender, and migrant or ethnic status.

Finally, through intervention or inaction, **policies and regulations** play a role in setting the conditions of demand. Policies can generate or exacerbate precariousness, as illustrated above (e.g. tied-visa, criminalisation of irregular status). The lack or failure to implement relevant criminal and labour law including adequate sanctions may fuel the sense of impunity on the part of employers. Another key gap concerns the contradictory aims of policies tackling trafficking (including the protection of victims) and those combatting irregular migration. **Undocumented migrant workers** are at the crossroads of these conflicting policies: as victims of trafficking they are considered in need of protection, but unless recognised as such, they are viewed as irregular workers/citizens. This prevents disclosure of the exploitation by those in fear of being reported to the authorities and at risk of being deported.

#### **4.2 Measures and tools to tackle the demand: opportunities and loopholes**

The **notion of demand** in the context of trafficking is still **poorly understood** and little used by the stakeholder participants in this study. Demand-side measures in this sector are still limited. Policy interventions seen as potentially impacting demand cover a wide spectrum of measures. Three key lines of action are identified in the country studies: raising awareness, strengthening the protection of workers' rights and sanctioning employers by enforcing labour and criminal laws.

##### ***Raising awareness and improving detection***

Awareness-raising campaigns or activities targeting exploitation in domestic work are scarce. Activities related to awareness-raising are included in the latest anti-trafficking national action plans in some countries, with domestic work highlighted as an area of concern. It is important to raise awareness among the general public regarding domestic workers' rights and the value of their labour (and thus the same right to fair work conditions as any other labour) and to inform employers of their obligations and responsibilities. It is also crucial to tackle, more broadly, social tolerance of the labour exploitation of migrant workers perceived as voluntarily accepting exploitative conditions (FRA 2015).

Another facet of awareness-raising concerns the under-detection of THB in domestic work. All country studies emphasise law enforcement actors' insufficient knowledge of this specific form of trafficking. The fact that domestic work is performed in private settings and that trafficking mostly takes place within informal and, at times, familial arrangements further conceals the presence of exploitation. Targeted training for police officers and prosecutors is identified as important to increase knowledge of trafficking for labour exploitation in general, but also of the specifics of domestic servitude. Improved detection does not concern law enforcement solely, but all other

actors in contact with potential victims. A good practice worth mentioning is the use of **cultural mediators** by the NGO FairWork in the Netherlands as an outreach tool providing workers with information and support, and which also facilitate the detection of trafficking cases.

### ***Protection of domestic workers' rights: better regulations and empowerment of workers***

Promoting labour rights for **all** workers, migrants and nationals, and ensuring that regulations set fair working conditions is seen as a first step towards enhancing the position of domestic workers. However, the study suggests that establishing specific and stronger regulations is not sufficient without simultaneously seeking ways of empowering domestic workers and **fostering change in social norms** and employers behaviour, beliefs, and attitudes that tend to undervalue domestic work.

Enhancing workers' empowerment includes providing them with information about their rights and the ways to access them. Outreach to domestic workers is important and can involve government actions (providing information, conducting awareness campaigns) as well as partnerships with organisations working with migrant workers' communities. Empowerment involves enhancing the **worker's position in negotiating** work conditions and eliminating policies and regulations that maintain dependence (e.g. tied visa) on employers.

Diplomatic households employing domestic workers are a special case, but recently adopted measures to address the risk of exploitation and trafficking are important to highlight. Measures aimed at prevention—and thus in a sense at tackling demand—adopted in Belgium and the Netherlands (as well as France, although less comprehensively), include means to inform both worker and employer about their rights and obligations, mechanisms to enhance monitoring (compulsory visit by the worker to the Department of the Protocol for visa renewal), and, finally, mechanisms of mediation in case of conflict or abuse. However, a core impediment to an effective protection system in respect of diplomatic households remains unresolved—that of waiving the immunity protection of the diplomatic personnel.

An area requiring further regulatory adjustment and better monitoring is the *au pair* programme, which is currently being misused as a channel for full-time domestic workers at little pay.

### ***Implementing the law: from monitoring to sanctions***

It can be argued that implementing the law—criminal and labour—and imposing sanctions on traffickers and employers has a deterrent effect. In the particular case of domestic work, penalties can also be seen as a tool for fostering greater **accountability**, and thus **responsibility**, on the part of private households hiring domestic workers.

The country studies show that the criminal **offence of trafficking is little used** and the number of prosecutions relating to trafficking in domestic work is low. There are no convictions on this ground in Cyprus, Greece, and Italy. As for other forms of trafficking, situations of exploitation can also be prosecuted under other criminal offences. The study's case law analysis suggests that the private nature of the work environment and the intimate nature of the relationship between employer and employee bring specific challenges to applying the offence of trafficking.

Importantly, the study shows that implementation of anti-trafficking legislation requires an **effective access to protection and assistance** for victims, including access to residence permits. Under the current systems of protection, in most countries, assistance is conditional on the victim's cooperation in criminal investigations or prosecutions, temporary permits are short and assistance insufficient. Thus, victims of trafficking will most likely opt not to disclose information or collaborate with the authorities.

Another set of measures concerns **access to remedies for migrant workers** whose labour rights are violated (e.g. through an Employment Tribunal). According to the country studies, employment and labour law remedies (e.g. claiming unpaid salaries or other forms of compensation) are rarely used and thus seen as ineffective: the procedures are lengthy and migrants may have had to return to their country before settlement is reached. Furthermore, while undocumented migrants are entitled—according to the law in most countries—as other workers to claim remedies, in practice, it is challenging given their precarious situation.

Stronger monitoring mechanisms for labour law is seen as part of the measures that could potentially address the demand-side of trafficking. The **labour inspector's** role was identified as key in overseeing compliance with labour law and detecting cases of abuse, as well as acting as

mediator. However, the nature of domestic work taking place in a private household, either prevents labour inspections entirely or considerably limits their jurisdiction. Labour inspectors are progressively included in anti-trafficking efforts to address human trafficking for labour exploitation (Belgium, the Netherlands, France), and monitoring in private homes should be integrated in their mandates.

## Policy Implications and Recommendations

This Policy Brief calls for the adoption of a comprehensive approach to tackling the demand-side of trafficking in the domestic work sector that addresses its multiple dimensions through a combination of multi-level actions. Preventing trafficking from occurring and discouraging inappropriate demand includes the reduction of vulnerability to abuse on the side of workers and the limitation of the opportunities for exploitation on the side of employers. Four spheres of action are proposed below.

### **Enhancing detection: breaking the cycle of invisibility**

Under-detection of situations of THB in domestic work is a crucial impediment to anti-trafficking efforts. Measures to facilitate detection should include:

- Targeted training for police officers, prosecutors, and labour inspectors to increase their knowledge and understanding of trafficking and labour exploitation in the domestic work sector
- Increased support for trade unions and other organisations working with domestic workers and migrant workers who are in a position to identify cases of trafficking
- Support for self-organised groups of domestic workers undertaking advocacy and empowerment work.

### **Raising awareness: ensuring better knowledge on all sides**

- Implementation of awareness-raising activities by government and trade unions as well as organisations and associations working with domestic workers. Awareness-raising campaigns should target:
  - The wider public - on issues of labour exploitation and trafficking in domestic work promoting a zero tolerance approach and improving public attitudes on the status of domestic work in general
  - Potential employers and private households - on employers obligations (information about national laws)
  - Domestic workers – by providing information about their rights and the means for seeking redress. This can include the distribution of information through information sessions, pamphlets, or brochures.
- Awareness-raising should contain an element of public information campaign but needs to be complemented by increased support for organisations working with the groups directly affected to make contact with hard-to-reach groups

### **Strengthening domestic workers' rights and empowerment of workers**

Some key aspects that need to be addressed are:

- Better regulations setting fair work conditions for domestic workers. To be effective in reducing undeclared work, regulations must include incentives to comply for both employers and workers. Rather than just providing a flexible and easy-to-use system for employers, regulations must also enhance the worker's position (eliminate schemes that maintain or create dependence and/or precariousness).
- Appropriate regulations responding to the demand for full-time care workers, including intensive, 24/7 care.
- Reform tied-visa regimes and remove live-in requirements and facilitate change of employer as these conditions exacerbate the risk of exploitation for domestic
- Ratification of ILO Convention No. 189 on Domestic Workers by all EU member-states

At the European level, the EU parliament's adoption on 28 April 2016 of the resolution on women domestic workers and carers in the EU (2015/2094 (INI)) should be a stepping stone to foster member-states' obligations regarding the respect and protection of domestic workers' rights.

### **Enforcement of the law and monitoring**

A widespread sense of impunity should be challenged by effective enforcement of the law and greater sanctioning of employers and agencies involved in exploitation and trafficking in the domestic work sector. This can include:

- Expansion of the mandate of labour inspectors:
  - Rethink the role of the labour inspectorate within private homes. Improving measures can draw on innovative practices that provide alternatives to house visit (e.g. in Ireland, a meeting between the employer and employee is organised in the event that the employer refuses an on-site visit)
- Establishment of a firewall between labour inspection, immigration control, and law enforcement (OHCHR, 2014)). The firewall principle would waive the obligation to report irregular migrants to migration authorities for all other institutions.
- Establishment and strict enforcement of regulations on recruitment and placement agencies, with clear and stringent requirements, monitoring of their practices, and penalties for non-compliance.

Finally, despite increased attention for labour exploitation within the **anti-trafficking efforts**, **targeted government actions on domestic work remain negligible** and often non-existent. More tailored attention is needed to better understand trafficking in domestic work as well as to increase the knowledge of all practitioners and to inform policymakers.

## **Research Parameters**

### ***Scope and methodology***

This study is part of the DemandAT case study on trafficking in human beings (THB) in the domestic work sector conducted in seven European countries: Belgium, France, Greece, Cyprus, Italy, the Netherlands, and the UK.

The key research objectives were to i) investigate types of situations in domestic work that may involve extreme forms of exploitation and trafficking; ii) examine the motivations and factors driving and shaping demand; and, iii) examine gaps in legislation and policies.

The research was conducted at the national level in seven countries. Country studies were based on desk research and qualitative interviews. Desk research comprised of review and analysis of multiple sources of data: academic research, grey literature, legal and political texts. It also included case law analysis of past and current cases of THB in domestic work. For each country study, ten to fifteen interviews were conducted with key stakeholders working in different sectors—judicial authorities, lawyers, policy makers and/or representatives of government institutions, NGOs, including direct service providers to trafficked persons, trade unions, labour inspectors (or labour inspection agency, law enforcement, experts. In total, 104 interviews have been conducted, between March and August 2015. The sampling procedure and the interview guide were common for all the countries.

## Key readings

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## FURTHER READING

### Country reports

Angeli, D. (2016a) *Demand in the Context of Trafficking in Human Beings in the Domestic Work Sector in Cyprus*, DemandAT Country Study No. 2, Vienna: ICMPD.

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# EUROPEAN POLICY BRIEF



## Trafficking in domestic work in Greece: a demand-side approach

Domestic work is in great demand among Greek households. Migrant workers, in particular migrant women, have filled this need for several decades, often under very exploitative terms. Little is known, however, about the extent to which human traffickers have also profited from this widespread need.

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### Introduction

Domestic work, both live-in and live-out, is prevalent within Greece's migrant population, in particular migrant women. It is estimated that one in two migrant women in Greece currently works in care and domestic services and that Greece has among the highest shares of migrants working in the domestic services sector in Europe. The entry of Greek women into the formal labour market, the lack of adequate welfare policies, gender stereotypes, and the preference for higher status employment are only some of the converging factors behind this widespread need for external household assistance.

Despite the existence of a flexible regulatory framework, the provision of domestic services in Greece in recent years has developed primarily as a hidden economy. A 2015 study by the GSEE Labour Institute classified domestic work as one of those sectors where undeclared work is 'overwhelming'. In their majority, domestic workers live and work in the country on an irregular status and provide their services in an informal context that often lies beyond the protective scope of the law. Live-in domestic workers are a particularly vulnerable group as they work out of the public eye and are therefore more susceptible to abuse.

Within this broader context, trafficking of human beings (THB) for exploitation in the domestic work sector is a rather marginalised topic even as a policy concern. Official police data suggests that THB is an extremely rare phenomenon, with only one case documented since 2002 when THB was first penalised in Greece. For a country considered one of Europe's four main trafficking hubs, the official figures come as a surprise. At the same time, even though labour trafficking has become of growing public concern, our research findings suggest that contrary to other groups of migrant workers that are in an abusive situation, exploitation and THB in the domestic services sector does not seem to be a policy priority. To date, government initiatives to curb demand for the household and care work provided in the context of trafficking are very limited.



Challenges, however, in identifying the victims and addressing deep-rooted social norms do not exonerate the government from its obligations to protect and raise awareness of this vulnerable group of workers.

## Evidence and Analysis

Evidence about trafficking of domestic workers in Greece, or labour trafficking in general, is scant. Official police data suggests that over the past 15 years, only one case of THB in domestic work has been formally identified. It involved the rather atypical situation of the trafficking of an African woman to work as a domestic servant in a diplomatic household, where she was subjected to abusive living and working conditions.

In the context of our research, some of the national stakeholders interviewed, albeit not all, were able to refer to sporadic cases in which they had encountered or heard what in their view entailed elements of THB. One such suspected case concerned the trafficking of a Balkan woman who worked as a live-in domestic worker in a private household, where she was exposed to exploitative conditions until she ran away. Two other cases described to us involved elements of trans-national trafficking of African women who had been previously exploited as domestic workers in a Middle Eastern country; they had travelled to Greece under obscure circumstances, but there was little information about the kind of exploitation the suspected victims might be facing now. Notably, even though the number of definite cases identified was very small, there was a shared suspicion among most stakeholders that THB in domestic work in the country was most likely of a much larger scale than is currently known.

THB in domestic work in Greece is also under-explored in terms of human rights research. While the situation and experience of migrant women working in the domestic services sector has attracted some scholarly attention, there have been hardly any reports on the topic of trafficking itself. One of the first studies focusing on the issue of labour trafficking was carried out in 2011 by the CCME Re-integration Centre for Migrant Workers. In their analysis, the researchers identified three suspected cases of THB in domestic work: an Ethiopian girl exploited by a Pakistani family for whom she had been working prior to her travel to Greece; a Chechen woman exploited in a private household; and, an Ethiopian girl recruited by a hotel keeper on a Greek island.

Accounts of THB crime are also sporadically reported by the media. An example is the dismantling in 2009 of a Moldovan network transferring women from Moldova to work as domestic workers in Greece and the exposure in 2013 of a seven-member Bulgarian criminal gang systematically transferring Bulgarian women to work as personal caretakers of elderly people. Little is known, however, about the outcome of these cases.

The actual experience of migrant domestic workers in Greece, as shared by the Filipino association KASAPI and African women's associations interviewed for this study, however, describes a very different and informative picture that suggests trafficking of migrant domestic workers in Greece is happening at a larger scale.

Women from Africa—in particular Uganda, Sierra Leone, Ghana, South Africa, Ethiopia, and Kenya—but also women, and to a lesser extent men, from the Philippines have been recruited as domestic workers in Greece for at least three decades. In their majority, they end up in middle- and upper-class family households where they work as live-in domestic workers.

The forms of recruitment vary but typically involve private employment agencies based both in the country of origin and destination. Migrant women from Africa typically enter the country irregularly where they are instructed to contact a local agent and apply for asylum. A common form of deception concerns their promised income: in practice, this amounts to around fifty euros per month. Filipino nationals, on the other hand, most commonly enter the country legally on valid

visas, albeit unrelated to the actual work they will perform. A common form of recruitment is as high-ranking staff of offshore companies. African women most often end up in middle-class family households, while Filipinos in middle- and upper-class homes.

Exploitation is not uncommon and can take various forms: undeclared work, in particular among African women, long working hours, low wages or no payment, lack of rest days or holidays, lack of social insurance, as well as verbal abuse and confiscation of travel documents by the employer. Over the past few years, the ongoing economic crisis appears to have further aggravated working conditions by exacerbating undeclared work and lowering remuneration despite heavier workloads.

In most cases, the victims plan their escape by themselves, without reporting their abuse to the authorities. Often, victims end up in a similar situation, thus leading to a cycle of re-trafficking.

When it comes to disentangling the factors that have contributed to the exploitation of migrant women, including potential victims of THB as domestic workers in Greek households, our findings point to two key elements: first, existing gaps in the labour rights regime regulating migrant domestic work in Greece which, in practice, have impaired their protection; and second, a broader social context of unawareness or ignorance and discrimination that has sustained, if not reinforced, the exploitation of migrant labour in the country.

In particular, domestic workers are currently subject to a regulatory framework that grants them **little protection in terms of labour rights**. Contrary to other occupations, there is no collective agreement on domestic work in Greece. Instead, domestic work is subject to the general principle of contractual freedom governing salaried employment. Because of these specific circumstances under which domestic work—and in particular live-in domestic work—is provided, many of the fundamental rules framing this freedom in other occupations (e.g. upper working limits, minimum wages, rest days) are not applicable by exception. In practice, this flexible framework has placed migrant domestic workers in particularly disadvantageous bargaining positions. Also, by leaving critical matters unregulated, many of the abusive situations to which migrant domestic workers are exposed, such as low wages or working excessively long hours, lack a firm footing within the law.

Additionally, the labour inspectorates do not have authority to conduct on-site visits in private homes. Seen in its entirety, the overall arrangement has essentially left migrant domestic workers at the periphery of labour rights protection.

Greece's rather ineffective migration scheme is linked to the above. Although Greece's migration scheme offers legal channels for migrant domestic workers to enter the country and assume employment lawfully, in practice the existing mechanism is cumbersome and inefficient. To begin with, the existing procedure to recruit migrant domestic workers from abroad is highly bureaucratic and deters potential employers from registering their demand with the competent authorities. By way of illustration, in 2014, only eight work permits for domestic workers were approved for the whole of Greece. Conditions for maintaining a valid work permit are also quite stringent and, controversially, require a minimum number of social insurance days to have been paid by the employer. Domestic workers are negatively affected by this requirement given the informal manner in which they normally provide their services. In practice, in their overwhelming majority, migrant domestic workers live and work in Greece on an **undocumented status**. The absence of legal residence is in turn associated with inferior working conditions; the employee's expectations are lower, while fear of deportation discourages victims from reporting situations of abuse, thus cultivating a sense of impunity among employers.

**Discriminatory attitudes and practices** towards migrant domestic workers also play a major role in their susceptibility to exploitative working conditions. Studies on migrant women in Greece have documented how social prejudices and stereotypes often limit the job opportunities of specific nationalities to specific occupational sectors such as domestic work, independent of their actual skills, and shape work relations of patronage. Our research findings further suggest that stereotyping and negative attitudes towards migrant domestic workers have arguably further blurred the line between morally acceptable and unacceptable practices. Several interviewees criticised how it has become almost socially acceptable in Greece to hire a migrant domestic

worker, not insure her, pay her very little, ask her to work very hard, not inform her of her rights, and even talk with ease about it to one's social circles.

Linked to this is also a **general lack of awareness and sensitisation** about the situation of migrant domestic workers and the criminal side thereof that appears to affect all involved actors. Our research suggests that migrant domestic workers are themselves often unaware of their rights and are therefore particularly vulnerable to exploitation. The lack of adequate training also seems to influence the vigilance displayed by judges, labour inspectorates, and law enforcement officials. Several interviewees pointed out that even widely-known situations of labour exploitation, for instance in agriculture, lack careful monitoring in Greece. What does seem to be of value, however, is early and adequate education of society at large, from the school level, to combat discriminatory behaviours and shape positive social attitudes. For many interviewees, sensitising the public that there is a continuum of exploitation, including situation of THB, could achieve faster and better results compared to criminal prosecution and permeate even the most inviolable contexts, like private households.

## Policy Implications and Recommendations

Giving migrant domestic workers a voice and empowering those in a situation of exploitation while punishing the offenders is central for ensuring protection of THB victims. An effective policy to combat THB in domestic work, however, also requires a more comprehensive and nuanced approach aimed at discouraging the use of services that are a product of trafficking and countering demand for the cheap and exploitable services that potential victims offer. This requires structural changes in Greece's policy approach towards migrant workers in order to safeguard their labour rights as well as addressing prevalent social perceptions about domestic work as low-pay and low-status labour.

### Recommendations

#### A. Migration policies

Despite a series of recent reforms, Greece's migration system remains stringent and bureaucratically strenuous. In practice, demand for domestic services is filled in an informal manner while the legal channels currently in place are under used.

##### *Short-term objectives*

- ✓ Greece should simplify the entry procedure for migrant domestic workers and regularise their stay in Greece as the risk of exploitation and trafficking grows as the numbers of migrant domestic workers living in the country rises.

##### *Long-term objectives:*

- ✓ Greece should consider the adoption of **bilateral agreements** with main countries of origin of domestic workers to facilitate their exit from an abusive situation. Filipino domestic workers, for instance, reported that they were unable to retire even after many years of work due to the absence of bilateral social security agreements.

#### B. Labour rights protection

The law on domestic labour in Greece, in particular live-in domestic work, is currently applied in a manner that disproportionately disadvantages migrant domestic workers and renders them vulnerable to exploitation by both employers and criminal elements.

##### *Short Term Objectives*

- ✓ In view of the particular circumstances under which domestic work is provided and the inability to conduct on-site visits in private homes, the **Labour Inspectorate** should display more vigilance, especially when receiving complaints by domestic migrant workers.

### *Long Term Objectives*

- ✓ The existing **regulatory framework on domestic work** leaves critical issues unregulated. The authorities should consider revising the regulations and set some minimum requirements, including minimum wage requirements and rest days.
- ✓ Greece should offer **financial incentives** to potential employers to hire domestic workers on a legal basis and render their employment more attractive compared to unregistered labour. Reducing the black economy will increase State revenues (e.g. taxes, social contributions).

### **C. Trafficking Responses**

Greece's trafficking framework is current with the letter of international developments, but implementation remains limited. To date, only one case involving labour trafficking has been identified in the domestic work sector and no conviction has ever been made.

### *Short Term objectives*

- ✓ Greece should invest further in education initiatives, information **and awareness-raising campaigns on labour exploitation** and in particular in the domestic services sector in order to discourage situations of exploitation. It should implement measures aimed at alerting the public to both signs of human trafficking and the criminal dimension using the services provided by potential victims. TV spots, social media, and online distribution of the material cost little and can reach a large audience.

### *Long Term Objectives*

- ✓ There are currently wide disparities among the different stakeholders concerning the identification of victims of labour trafficking. Greece should consider **organising joint trainings** between non-governmental and governmental actors or issue guidelines to that purpose.
- ✓ Greece should invest further in the **training of front-line officials** to better recognise possible potential cases. Early detection can stop the channelling of victims into the Greek (informal) labour market.
- ✓ To effectively address demand, one needs to give the victim sufficient reasons to come forward. Offering the necessary social support is thus crucial. Greece should invest in the protection and reintegration of victims of labour trafficking. State-run shelters with specialised counselling and support are lacking from Greece's anti-trafficking policy approach, and relevant non-governmental initiatives are very limited.

## Research Parameters

This national study is part of the DemandAT country studies on trafficking in human beings (THB) in the domestic work sector conducted in seven European countries: Belgium, France, Greece, Cyprus, Italy, Netherlands, and UK.

The key objectives of the research were to i) investigate types of situations in domestic work that may involve extreme forms of exploitation and trafficking, ii) examine the motivations and factors driving and shaping the demand as well as iii) examine the gaps in legislations and policies.

The case study has been based on both a desk research and interviews. The desk research consisted first of an analysis of existing literature (reports, case-law analysis and academic articles) on THB in labour exploitation and domestic work. Secondly, national legislation and related policies have been examined. In addition, the relevant case law, on labour exploitation in general as well as specifically on THB for domestic work, has been studied. The desk study has been complemented with 16 qualitative interviews with important stakeholders. The interviewees are representatives of the government authorities, private stakeholders and NGOs, international

organisations and independent experts as well as migrant associations

Our research focused on the period 2002-2015, when labour trafficking in Greece, including domestic work, became a self-standing crime.

**Key reference**

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## Project Identity

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<b>FUNDING SCHEME</b>	Collaborative project (small and medium-scale focused research project)
<b>DURATION</b>	January 2014 – June 2017 (42 months).
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<b>FURTHER READING</b>	Angeli, D. (2016a) Policy Brief: Trafficking and exploitation in domestic work in Cyprus. DemandAT Policy Brief, Vienna: ICMPD. Angeli, D. (2016b) Policy Brief: Trafficking in domestic work in Greece: a demand-side approach. DemandAT Policy Brief, Vienna: ICMPD. de Volder (2016) Policy Brief: Trafficking in human beings in the domestic work sector in the Netherlands: a hidden phenomenon. DemandAT Policy Brief, Vienna: ICMPD. Levy, F. (2016) Policy Brief: La traite des êtres humains dans le travail domestique

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# Addressing Demand in Anti-Trafficking Efforts and Policies

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## Introduction

Trafficking in human beings covers various forms of coercion and exploitation of women, men and children. While responses to trafficking have traditionally focused on combating the criminal networks involved in trafficking or protecting the human rights of victims, European countries are increasingly exploring ways of influencing demand for the services or products involving the use of trafficked persons as well as the demand for trafficked persons as such. Demand-side measures have the potential to address some of the root causes of trafficking, and thus to contribute to its prevention. Analytically, a demand-side analysis has the potential to re-centre attention to those benefitting, and therefore bearing a degree of responsibility for, trafficking.

This major interdisciplinary project analyses efforts to reduce demand in a range of scenarios and draws on insights on regulating demand from related areas in order to feed into EU and national policy making to prevent trafficking.

## Methodology

The DemandAT project brings together a multi-disciplinary team of researchers with expertise across fields including migration, labour and regulatory studies to undertake research on demand in the context of trafficking in human beings. Running over 42 months, the research takes a comprehensive approach to investigating demand and demand-side policies by examining demand for different forms of trafficking. The research includes a strong theoretical and conceptual component through an examination of the concept of demand in trafficking from a historical and economic perspective. Regulatory approaches in policy areas that address demand in illicit markets are studied to develop

a better understanding of the impact that different regulatory approaches can have on demand. Debates on demand in different forms of trafficking as well as countries' policies are examined to provide a better understanding of policy options and policy impacts. Finally, the research also involves in-depth cases on particular fields in which trafficking occurs (domestic work, prostitution, globalised production of goods) and case studies of particular policy approaches (law enforcement and campaigns). Developing a better understanding of demand for trafficking in all its forms and the ways in which policy interventions may structure that demand will enable a better informed assessment of the potential for demand-side policies and efforts to assist in task of tackling trafficking in human beings.

The research is structured in three phases:

- **Phase 1:**  
Analysis of theoretical and empirical literature on demand for trafficking and regulating demand in different disciplines, fields and countries.  
Runs from January 2014 – June 2015
- **Phase 2:**  
Three in-depth empirical case studies on different fields on trafficking: domestic work, prostitution, imported goods. Two on different policy approaches: law enforcement actors and campaigns.  
Runs from September 2014 – December 2016
- **Phase 3:**  
Integrating project insights into a coherent framework with a focus on dissemination.  
January 2017 – June 2017

The DemandAT project is informed by continuous stakeholder interaction throughout.

## Objectives

DemandAT aims to **understand the role of demand** in trafficking in human beings and **assess the impact and potential of demand-side measures to reduce trafficking**.

We examine:

- The concept of demand in trafficking: what it is and how demand is seen in different forms of trafficking.
- The policy measures that steer demand for trafficking: what demand-side measures are available, how they impact on demand and what other options for steering demand may be available.
- The value of a demand/supply analysis of trafficking: whether demand is an adequate framework for understanding trafficking and what alternative or complementary framings could be useful.

## STAKEHOLDER ADVISORY BOARD

- **Bandana Pattanaik**  
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## Addressing Demand in Anti-Trafficking Efforts and Policies

# DemandAT

### Background

The DemandAT project investigates different approaches to addressing and reducing demand through anti-trafficking efforts and policies. The project addresses the challenge of **understanding what demand is in the context of trafficking in human beings (THB) conceptually, theoretically and empirically**. It draws on related policy areas to investigate the scope of demand-side measures to reduce demand for THB. While much of the literature to date analyses the vulnerability of (potential) ‘victims’ of THB, a demand-side analysis has the potential to re-centre attention onto those benefitting from THB, and therefore presumably bearing a degree of responsibility for it. In theory, the research will enable questioning of how the structure and regulation of particular markets allows for high levels of exploitation and, at the extreme, trafficking in human beings.

**Conceptually**, there is **considerable controversy about the meaning of demand in the context of THB** and whether a demand/supply model provides an adequate conceptual framework to better understand THB and other forms of severe exploitation. There are questions whether it is reasonable and analytically fruitful to speak of a specific demand for services, goods or labour provided by victims of THB. Or does the demand for specific services, labour and goods need to be looked at more broadly with the overall factors that contribute to exploitative situations (and possible policies to address these) that need to be the actual focus of policy measures on the demand side of THB. **From a theoretical perspective**, there are questions whether the occurrence of severe forms of exploitation can be fully understood within an analytical framework focusing on the economics of THB. If so, what policy tools are available to steer demand?

**Empirically**, the available studies within trafficking research typically cover only a limited number of fields, focusing mostly on prostitution, and to a lesser extent, labour exploitation. Little has been said about other areas in which THB occurs. In addition, there is only **limited empirical research on the impact of policy measures addressing demand**, such as: the impact of specific regulatory schemes aiming at regulating labour market sectors with a high risk of THB and other forms of severe exploitation; the impact of campaigns targeting demand side actors or the role of law enforcement in addressing demand, and specifically, across different fields in which THB occurs. Research on THB in prostitution suffers from an ideological divide between proponents of prohibition of prostitution and those who oppose such an approach, with relatively little attention paid to the views and behaviour of clients themselves.

### Approach

Addressing the challenge to conduct research on the demand side of THB thus requires a **comprehensive approach across different forms of THB**. A solid understanding is needed of the basic concepts involved, of the relationship between these and related concepts, as well as a sound theoretical understanding of factors contributing to THB and other forms of severe (labour) exploitation. Also an adequate understanding of the different policy tools that can be used to steer demand involving production of goods or provision of services under exploitative conditions is required.

Against this background, the project combines conceptual, theoretical and empirical elements and **investigates demand in THB** and related policies **from a multi- and interdisciplinary perspective** across a large range of fields in which THB occurs, involving approaches from sociology, anthropology, political science, economics, human geography, law. It draws on interdisciplinary fields such as migration, development or labour studies. In addition, the project combines a broad mapping of conceptual and theoretical issues, and evidence in specific ‘fields’ of THB and policies of selected countries (**Phase 1**) with an empirical in-depth analysis of case studies of demand in THB and related policies in three policy areas (domestic work, prostitution, globalised production of goods), on the role of specific actors in addressing demand (law enforcement actors) and on specific instruments to steer demand (campaigns) (**Phase 2**). Strategically, we consider the evidence from other policy areas from which research on THB could learn.

The combination of a broad “state of the art” approach covering a wide range forms of THB, countries, and policy instruments to steer demand, underpinned by theoretical and conceptual reflection (phase 1) with selected in-depth case studies will provide a basis for a comprehensive understanding of the potential and limits of a demand-side approach in THB. In addition, we will also **investigate alternative and complementary framings** used to explain and address severe forms of exploitation, including THB, thus not limiting ourselves to showing the limits and potentials of demand-side approaches, but also advancing the field in general. In this way, we will be able to provide practitioners and policy makers with a sound evidence base to formulate coherent and effective policies and practical measures addressing THB, **while advancing the state of the art in research on THB in general**.

### Project Facts

**Coordinator:** International Centre for Migration Policy Development (ICMPD);

**Partners:** University of Bremen (UBr); University of Edinburgh (UEDIN), International La Strada Association (LSI), University of Lund (ULu), University of Durham (UDUR), European University Institute (EUI); Geneva Centre for the Democratic Control of Armed Forces (DCAF); La Strada Czech Republic (LS Cz)

**Duration:** 1<sup>st</sup> of January 2014 to 30<sup>th</sup> of June 2017 (42 months)

**Funding:** 7<sup>th</sup> Framework Programme, European Commission (DG Research), total volume 3.2 million. EC contribution: 2.5 million.

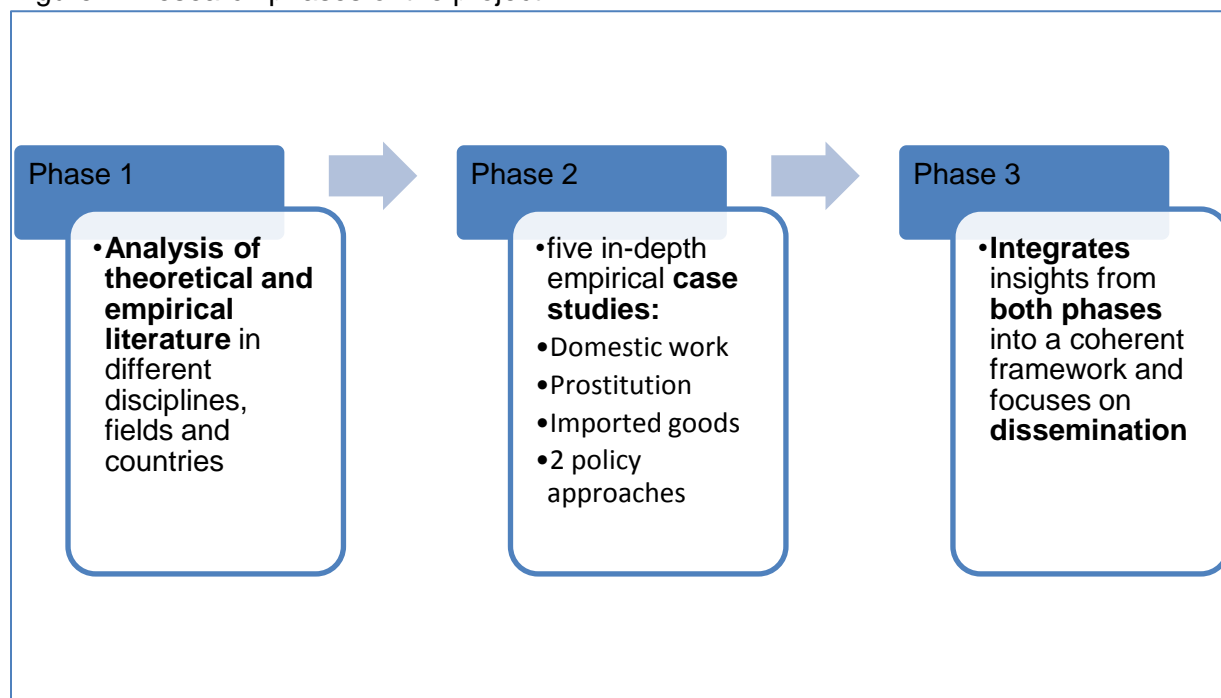
## Project Design

### Research phases

The project is structured into three, interlocking, research phases and 12 work packages.

- **Phase 1: Reviewing Concepts and Evidence from Different Perspectives.** Involves: comprehensive analysis of theoretical and empirical literature in different disciplines, fields and countries, divided into four work packages examining specific aspects of demand in THB and related issues. January 2014-June 2015
- **Phase 2: In-depth Case Studies on Policies and Practices.** Involves: implementation of five in-depth empirical case studies. Three will address specific fields with systematic differences with regard to the type of demand linked to trafficking: domestic work, prostitution and imported goods which are provided through global supply chains. Two further case studies investigate specifically relevant policy approaches. September 2014-December 2016
- **Phase 3 Integrating Results.** Involves: integrating insights from previous phases into a coherent framework and intensifies dissemination which is informed by continuous, systematic stakeholder communication throughout the project. January 2017-June 2017

Figure 1: Research phases of the project



### Work Packages

The project is organised into distinct Work Packages (WPs). The WPs implemented during Phase 1 progress from a basic theoretical and conceptual focus in WP4 (The Concept of Demand), to a combination of theoretical and empirical questions in WPs 5 and 6 ('Policy Instruments in Steering Demand' and 'Demand in Different Forms of THB') to an empirical focus in WP7 (Government Responses). Phase 2 of the project involves in-depth case studies on policies and practices: Domestic work in WP8, Globalised production of goods in WP9, Prostitution in WP10, Law Enforcement Actors in WP11 and Smart Campaigns in WP12. The final phase will serve to integrate the findings of the project, based on the conceptual framework developed during Phase 1 and to develop overall policy recommendations.

Table 1: Overview of work packages, their coordination and timing

<b>WP Nr.</b>	<b>WP Title</b>	<b>Coordinated by</b>	<b>Starts</b>	<b>Ends</b>
WP 1	Coordination and management	International Centre for Migration Policy Development (ICMPD)	1/2014	6/2017
WP 2	Dissemination and stakeholder interaction	University of Edinburgh (UEDIN)	1/2014	6/2017
WP 3	An integrated approach	ICMPD	1/2014	6/2017
WP 4	The concept of demand	University of Bremen (UniHB)	1/2014	6/2015
WP 5	Policy instruments in steering demand	UEDIN	1/2014	6/2015
WP 6	Demand in different forms of THB	The La Strada International Association (LSI)	1/2014	6/2015
WP 7	Government responses: comparative country analysis	ICMPD	1/2014	6/2015
WP 8	Domestic work	European University Institute (EUI)	9/2014	12/2016
WP 9	Globalised Production of goods	University of Durham (UDUR)	9/2014	12/2016
WP 10	Prostitution	Lund University (ULu)	1/2014	12/2016
WP 11	Law enforcement actors	Geneva Centre for the Democratic Control of Armed Forces (DCAF)	9/ 2014	12/2016
WP 12	Addressing demand with smart campaigns	UniHB	9/2014	12/2016

### *Phase 1, 2 and 3*

#### **Work package 1: Project Coordination and Management (Lead: ICMPD)**

This “technical” work package serves the overall coordination and management of the project.

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#### **Work package 2 :Dissemination and Stakeholder Interaction (Lead: UEDIN)**

WP2 runs throughout the project, ensuring the effective dissemination of project information and results, and the involvement of relevant stakeholders. This includes the elaboration of an overall dissemination strategy, and production of dissemination tools, including information materials, the project website and stakeholder meetings. It also covers the review and publication of all executive summaries and final policy briefs.

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#### **Work package 3: An Integrated Approach (Lead: ICMPD)**

WP3 has the twin aims of carrying out a comprehensive analysis of the role of demand in THB, and providing sound evidence in support of policies aimed at preventing trafficking. The conceptual, theoretical, methodological and disciplinary diversity characterising the different work packages of phase 1 is considered to be fruitful and best suited to capturing all relevant aspects of demand in THB. This work package will ensure the coherence and consistency of research conducted under the auspices of the project, by developing an integrated approach and providing an overall framework to describe the relationship between concepts, impacting factors and policy interventions. It will complement the framing of trafficking-related phenomena in a language of supply and demand through a variety of alternative and complementary conceptualisations used in research on THB and closely related issues, such as a political opportunity structure approach, a civic stratification framework, a vulnerability framework or an empowerment framework.

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### *Phase 1*

#### **Work package 4: The Concept of Demand (Lead: UniHB)**

WP4 seeks to undertake an analysis of the meaning and implications of demand from a genealogical and economic point of view, exploring the conceptual foundations of the debate on demand in trafficking. A literature review on the historical and contemporary meaning of the

concept will be elaborated, together with a review of relevant literature in economics and a comparison and evaluation of the relative merits of different approaches. On the basis of these activities, a common conceptual understanding will be developed to apply to the framework of the project.

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### **Work package 5: Policy Instruments in Steering Demand (Lead: UEDIN)**

WP5 will provide a conceptual analysis of the regulatory tools available to steer demand and how these may work in practice. The WP will focus on regulatory responses, both as set out in relevant political science literature and as applied in other policy sectors. In order to grasp the specific challenges posed by human trafficking, the analysis will focus on two distinct forms of demand:

- Consumer/employer preferences for lower cost goods/services, where demand for the goods is not harmful or negative per se, but their production/supply at low cost involves some form of harm or exploitation, e.g. to those employed to produce them.
  - Consumer preferences for illicit goods/services, whose very provision implies harm or abuse of producers or service providers. In these cases, demand for goods or services produces direct harm or abuse. In many cases, the production, supply or consumption of such goods is illegal. Examples of how policymakers have intervened to steer demand will be examined in areas other than trafficking in human beings, but still relevant to it. Case studies will be conducted on regulatory responses to irregular employment, illegal drugs and tobacco use.
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### **Work package 6: Demand in Different Forms of THB (Lead: LSI)**

WP6 assesses demand-related debates through a systematic review of the relevant literature, investigating how the notion of demand has been articulated in relation to different types of trafficking, both in terms of demand being used as a general explanatory reference within a supply/demand model and in terms of specific demand side explanations and policy options put forward in relation to selected forms of THB. In so doing, it will review both evidence on THB in the narrow sense and other forms of exploitation short of the legal definition of THB. The types of human trafficking addressed within the work package will include THB in the context of the commercial sex market, for labour exploitation, in the context of begging, in the context of forced/servile marriages, in relation to forced criminal activities and in the context of illegal organ removal.

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**Work package 7: Government Responses: Comparative Country Analysis (Lead: ICMPD)**

WP7 aims to provide a comparative overview of the development and implementation of policies targeting demand in selected EU and non-EU countries with diverging approaches, as well as conducting a comparative analysis of debates about expected and actual outcomes of demand-related policies by stakeholders in government, civil society and the media. The country level analysis will enable a better understanding of the policy dynamics that led to the adoption of certain policies and not of others; and of the coherence of policies addressing factors influencing demand. It will also examine the relationship of demand-related measures to the wider policy framework for different types of THB, such as labour protection policies or prostitution policies, and interaction between different sets of policies.

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*Phase 2***Work package 8: Domestic Work (Lead: EUI)**

A major feature of domestic work in many countries is that it is an informal working arrangement, often involving migrants in an irregular status, making them particularly vulnerable to exploitation. WP8 has three main objectives. First of all, the types of domestic work that may involve extreme forms of exploitation and abuse will be investigated, including forced labour and trafficking in human beings. Secondly, the dynamics between demand for trafficking and supply, i.e. people vulnerable to trafficking, will be examined. Finally, a set of measures will be proposed for national and international policy-makers, with a view to stepping up actions to combat trafficking in human beings for exploitation in domestic work and other severe forms of exploitation of domestic workers. On the basis of research in seven different countries: Belgium, UK, France, Greece, Italy, Cyprus and the Netherlands, the research will examine what kind of work is involved in trafficking in human beings in the domestic work sector, what are the motivations and the profits behind it and the circumstances that allow it to take place.

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**Work package 9: Globalised Production of Goods (Lead: UDUR)**

WP9 aims to evaluate the impact of existing initiatives to address trafficking and forced labour within supply chains and develop industry-specific strategies to address these issues. The incidence of human trafficking in the context of production and supply chains operating under intense price pressures has received increasing attention, both in global and European debates



on THB. By analysing demand for trafficking in globalised production, including field research in non-EU countries and consultations with relevant stakeholders, this work package will draw out the links between businesses and consumers in the EU and trafficking which may occur outside EU borders. Sector and industry-specific evaluation of existing initiatives to address trafficking and forced labour within supply chains will create the foundation for the supply-chain case studies.

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### **Work package 10: Prostitution (Lead: ULu)**

WP10 focuses on prostitution, arguably the sector that has received most attention in terms of combating demand for services provided by trafficked people. While there is no scarcity of studies of prostitution policies, few studies have examined and compared how different models influence “the demand side”, making it difficult to draw conclusions from existing research in regard to the effects of different prostitution policies on the demand side of prostitution in general, and on trafficking in human beings in the context of prostitution in particular. This work package sets out to address this gap in existing research. Three different policy models with this aim, each considered exemplary of its type, will be examined and comparatively analysed, on the basis of both desk and field research. The three models under study are the Swedish, German and New Zealand models, representing policies of criminalisation, regulation and decriminalization, respectively. They have all recently changed their policy as a result of public and political pressure; and all offer existing research, documentation and evaluation that can be analysed and compared.

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### **Work package 11: Law Enforcement Actors (Lead: DCAF)**

WP11 places the focus on the role of a specific group of stakeholders in addressing demand for trafficking, namely law enforcement actors, defined as public authorities enforcing relevant criminal and public law. Law enforcement has the potential to combat demand by prosecuting traffickers and putting them out of business in the short term, and to act as a deterrent in the long-term, as well as more broadly having an impact on the moral beliefs, values and behaviour of the general public. Research on law enforcement in regards to THB has often suffered from a narrow focus on THB in the legal definition of the term, i.e. a narrow focus on situations where the key elements of THB (migration, coercion, the use of force or deception and exploitation) coincide. From an empirical perspective however, it is more useful to think of a continuum between exploitative situations clearly constituting THB in the legal sense of the term and situations where key elements of the legal definition (such as force or deception) might be absent or weak. A narrow focus on addressing demand through specific anti-THB legislation may also be misleading from a perspective of law in practice, as law enforcement agencies may not necessarily rely on specific provisions on countering THB, but rather prosecute cases on other, related grounds. In addressing the role of law enforcement actors,

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this work package focuses on two main stakeholder groups (1) security sector actors charged - in particular the police, border guards, judges and prosecutors and (2) labour inspectors and comparable agencies.

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### **Work package 12: Addressing Demand with Smart Campaigns (Lead: UniHB)**

WP12 will involve the development of a theoretically and methodologically appropriate instrument to evaluate anti-trafficking campaigns and assess their impact, which will then be applied on a comparative basis to twelve selected campaigns in order to suggest policy-relevant conclusions for planning, carrying out and evaluating such campaigns. This aspect of demand in relation to trafficking concerns those last links of the chain that attract traffickers by providing the money that makes it profitable, either through buying goods or services or donating to people being exploited through begging. The assessment will cover both project evaluation and impact assessment of anti-trafficking campaigns, which will be carefully selected through phone interviews and on the basis of pre-defined criteria. For the majority of the campaigns, desk research will be conducted, based on campaign material, evaluation material and literature, supplemented by discussions in workshops. For three selected ongoing campaigns, an empirical analysis of specific factors influencing the campaign and its impact will be carried out.

**Figure 2: Visualisation of work packages and research phases**

<b>WP 1</b>  <b>Co-ordination and Management</b>  <i>Albert Kraler (ICMPD)</i>	<b>WP2</b>  <b>Dis-semination and Stakeholder interaction</b>  <i>Christina Boswell (University of Edinburgh)</i>	<b>WP3</b>  <b>An In-tegrated Approach</b>  <i>Albert Kraler (ICMPD)</i>	<i>Reviewing concepts and evidence from different perspectives</i>				<b>Phase 1</b>
			<b>WP4:</b>  <b>The Concept of demand</b>  <i>Dita Vogel (University of Bremen)</i>	<b>WP5</b>  <b>Policy Instruments in Steering Demand</b>  <i>Christina Boswell (University of Edinburgh)</i>	<b>WP6</b>  <b>Demand in different forms of THB</b>  <i>Susanne Hoff (La Strada International)</i>	<b>WP7: Government responses: comparative country analysis</b>  <i>Albert Kraler (ICMPD)</i>	
			<i>In- depth case studies on policies and practices</i>				<b>Phase 2</b>
<b>WP 8 Domestic Work</b>  <i>Anna Triandafyllidou (European University Institute)</i>	<b>WP 9 Globalised production of goods</b>  <i>Siobhan McGrath (University of Durham)</i>	<b>WP 10 Prostitution</b>  <i>Petra Östergren, (Lund University)</i>	<b>WP11 Law enforcement actors</b>  <i>Giji Gya (Geneva Centre for the Democratic Control of Arms)</i>	<b>WP 12 Addressing Demand with Smart Campaigns</b>  <i>Dita Vogel (University of Bremen)</i>			
					<b>Phase 3</b>		



**Government Offices of Sweden**

# New Swedish ambassador to combat trafficking in human beings

The Government has decided to create a new position for an ambassador to combat trafficking in human beings. This decision will strengthen Sweden's international role as a leading human rights defender. Per-Anders Sunesson, currently head of department at the Ministry of Health and Social Affairs, will assume this new position on 16 May.

Through contact with other governments, the Swedish ambassador will be a driving force in efforts to combat trafficking in human beings, strengthen the EU's work and identify future partners.

"Sweden is a strong voice on the international stage for gender equality and human rights. Women and men must have the same power to shape society and their own lives. Creating a new position for an ambassador to combat human trafficking is a step in this direction," says Minister for Foreign Affairs Margot Wallström.

The ambassador will contribute to the achievement of Global Goal 16, target 2: "End abuse, exploitation, trafficking and all forms of violence against and torture of children".

"Through the ambassador's work, Sweden will help to ensure that the vulnerable situation of girls and women will be given particular attention in international efforts to combat human trafficking. The ambassador will also have the important task of ensuring that our knowledge about human trafficking is continually updated so that the

vulnerable receive the protection and support they need from the Swedish authorities," says Åsa Regnér, Minister for Children, the Elderly and Gender Equality.

## Sunesson has coordinated action against human trafficking

The new Ambassador, Per-Anders Sunesson, has a legal background and in recent years has held various positions at the Ministry of Health and Social Affairs, including head of social services, disability issues and child rights. Sunesson has also previously worked at the Ministry of Justice, where his area was the standing of victims in criminal proceedings, and at the National Board of Health and Welfare, where he was responsible for supervision of health and medical care, and social services.

Per-Anders Sunesson has also been the Government Offices coordinator for issues related to vulnerable EU citizens and human trafficking. Until today he has led the work on developing the Government's new action plan to combat human trafficking. Sunesson has extensive experience of collaboration with a wide range of parties and organisations.

## Human trafficking affects millions of people every year

Trafficking in human beings is one of the most serious forms of organised crime and a modern form of slavery. It is estimated that more than two million people are trafficked into slavery each year. Almost four fifths of the victims – mostly women and underage girls – are sold into the sex industry. Between 2012 and 2015, several hundred unaccompanied children who came to Sweden may have been victims of trafficking, according to data from the Stockholm County Administrative Board, which is responsible for coordinating national efforts.

### Contact

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## This page is tagged with the following categories:

A Feminist Government    Åsa Regnér    Democracy and human rights  
EU    Feminist foreign policy    Foreign and security policy  
Gender equality    International    Margot Wallström  
Ministry for Foreign Affairs    Ministry of Health and Social Affairs  
Press release







# Summary

## **The Inquiry's remit and work (Chapter 1)**

On 1 January 1999, Sweden became the first country in the world to introduce legislation criminalising the purchase, but not the sale, of sexual services. The penal provision – the prohibition of the purchase of sexual services – is currently found in Chapter 6, Section 11 of the Penal Code.

The ban on the purchase of sexual services was introduced since it was deemed that fighting prostitution was of pressing social interest. Unlike previous measures and initiatives, criminalisation targeted the demand for sexual services, i.e. purchasers of sex and prospective purchasers of sex. The ban was intended to help fight prostitution and its harmful consequences in a more effective manner than was possible using the previous measures against prostitution. The legislative proposal stated that it is shameful and unacceptable that, in a gender equal society, men obtain casual sexual relations with women in return for payment and that Sweden, by introducing a ban on purchasing sexual services, also sent an important signal to other countries highlighting our outlook on purchasing sexual services and prostitution. It pointed out that prostitution entails serious harm to both individuals and to society. It was expected that criminalisation would have a deterrent effect on prospective purchasers of sex and serve to reduce the interest of various groups or individuals abroad in establishing more extensive organised prostitution activities in Sweden, which would have an inhibitory effect on the prevalence of prostitution here.

The ban on the purchase of sexual services has now been in force for over ten years. Different views have been presented on what consequences criminalisation has had. The issue of an evaluation of the ban has been raised in the Riksdag on several

occasions. The legislation prohibiting the purchase of sexual services has also received international attention, and there is great interest in learning what effect the ban has had. For example, the growing problem with trafficking in human beings for sexual purposes and prostitution has meant that many countries have found reason to consider new methods of fighting the purchase of sexual services and trafficking.

Our remit has been to evaluate the application of the ban on the purchase of sexual services and the effects that prohibition has had. We have investigated how the provision has worked in practice and what effects the ban has had on the prevalence of prostitution and human trafficking for sexual purposes in Sweden. One starting point of our work has been that the purchase of sexual services is to remain criminalised.

## **Some general starting points (Chapter 2)**

The proposal to criminalise the purchase of sexual services was part of Government Bill Violence against Women (Kvinnofrid, 1997/98:55). The Bill proposed a large number of different measures in different social sectors to combat violence against women, prostitution and sexual harassment in working life. According to the Bill, one issue that was closely related to that of violence against women and a lack of gender equality was the issue of men who purchase sexual services, usually from women; i.e. the issue of prostitution.

The most important insight regarding the issue of prostitution, presented through the Bill, was that attention must be directed to the purchasers. It was a matter of a shift in perspective, which can be summarised by stating the obvious: if there was no demand there would be no prostitution.

On 10 July 2008 the Government presented Government Communication 2007/08:167, which was an action plan against prostitution and human trafficking for sexual purposes. Through the action plan, the Government once again emphasised that prostitution and human trafficking are not acceptable in our society and that far-reaching measures are needed to combat them. The action plan notes that the underlying reasons for people to be involved in prostitution vary, but the primary factor that perpetuates both human trafficking and prostitution is demand, i.e.

that people, mainly men, purchase sex. Human trafficking for sexual purposes mainly affects young women and girls. The exact scale of human trafficking around the world is not known since many cases are unreported, but it is generally accepted that human trafficking represents one of the most profitable forms of international organised crime.

There is thus a clear link between the existence of prostitution and human trafficking for sexual purposes.

Since it was introduced, the ban on the purchase of sexual services has caused debate in Sweden and internationally. Despite the official position, there is still a debate in Sweden regarding attitudes to prostitution. Those who defend prostitution argue that it is possible to differentiate between voluntary and non-voluntary prostitution, that adults should have the right to freely sell and freely purchase sex, and that the ban on the purchase of sexual services represents an outdated position, based on sexual moralism. However, based on a gender equality and human rights perspective, and shifting focus away from what is being offered, i.e. those who are exploited in prostitution, to demand, i.e. traffickers, procurers and sex purchasers, the distinction between voluntary and non-voluntary prostitution is not relevant.

### **Background and current law, etc. (Chapter 3)**

The issue of criminalising prostitution was raised in Sweden in the 1970s. This was linked to social changes and an altered view of sexuality.

The Prostitution Inquiry of 1977 produced the most extensive survey of prostitution available to date. To highlight the fact that prostitution is not a women's issue but rather a human problem, the Inquiry chose to try to expand the concept and defined prostitution in the following manner. Prostitution occurs when at least two parties purchase and sell sexual services in return for (usually) financial compensation, which represents a condition for the sexual service. The Inquiry considered that prostitution was incompatible with the ideas on freedom of the individual and gender equality which have long been prevalent in Sweden. In its report *Prostitution in Sweden, background and measures* (SOU 1981:71), the Inquiry proposed that prostitution should remain exempt from

punishment, but highlighted other social and legal solutions to reduce prostitution.

The Prostitution Inquiry of 1993 used the term 'sex trade' to describe an activity in which at least two parties purchase or sell sexual services and which is intended to satisfy the purchaser's sexual drive. In its report *Sex Trade* (SOU 1995:15) the Inquiry proposed that prostitution should be criminalised by introducing a ban on both purchasing and selling sexual services. The Inquiry considered that criminalisation of prostitution was a necessary step to make it completely clear that prostitution as a phenomenon is not accepted by society. The Inquiry's proposal, particularly the idea of also criminalising the person exploited by prostitution, was met by extensive criticism and was not implemented.

The proposal that eventually led to the introduction of the Act prohibiting the Purchase of Sexual Services (1998:408) formed part of the Government Bill *Violence Against Women*, as described above. The proposal was based on the report of the Prostitution Inquiry from 1993 and on the final report of the Commission on Violence against Women, *Violence against Women* (SOU 1995:60).

A person who obtains a casual sexual relation in return for payment commits the crime of purchase of sexual service, which is currently found in Chapter 6, Section 11 of the Penal Code. Purchasing a sexual service on one single occasion is sufficient for criminal liability. Compensation can be in the form of money, but payment can also be made through such means as alcohol or drugs. Promising compensation so that payment is a condition for the service is sufficient to establish liability. A crime is committed even if someone other than the person who avails him or herself of the sexual service has provided or promised the compensation. An attempted offence is also punishable. The scale of penalties for the purchase of sexual services is a fine or imprisonment for at most six months.

As is the case with the crime of human trafficking, the ban on the purchase of sexual services is an important instrument to prevent and combat trafficking in human beings and to protect those people who are, or who risk becoming, involved in prostitution and other forms of sexual exploitation. Since human trafficking is a cross-border crime, combating it requires international cooperation. There are a number of international conventions in the area. Several instruments dealing with prostitution

and human trafficking have been adopted by the United Nations, the Council of Europe and the EU.

Work to combat prostitution has long been oriented around social initiatives, and both of the previous prostitution inquiries have emphasised the value of such initiatives. Unlike in many other countries where efforts focus on harm reduction, the initiatives targeting prostitution in Sweden are mainly aimed at fighting prostitution by helping people out of prostitution or to stop purchasing sex.

Extensive work is being carried out in Stockholm, Gothenburg and Malmö aimed directly at people who are exploited in prostitution. People with experience of prostitution have complex help needs, and special knowledge and skills are required when implementing initiatives targeting these people. Work in the prostitution groups involves a number of different components. It includes outreach activities, motivational interviews, different forms of therapy and psychosocial support. Less is known about the extent to which people in prostitution and victims of human trafficking are detected and helped in other areas. Knowledge about the most effective methods of helping those affected is also limited.

In its action plan against prostitution and human trafficking for sexual purposes, the Government emphasises that initiatives to combat demand for sexual services are crucial for dealing with the problem. For ten or so years, social services in Stockholm, Gothenburg and Malmö have been operating what are known as KAST groups (purchasers of sexual services) to motivate potential and active sex purchasers to change their behaviour.

Different preventive measures are needed to help prevent people from ending up in prostitution. Of particular importance are initiatives aimed at those who are particularly affected, i.e. children and young people. Professional groups that have contact with young people at risk of falling into prostitution must develop the ability to see signals and improve their skills to be able to work with these issues in the best possible manner.

## **Prostitution in Sweden 1999–2008 and a comparison with the situation in some other countries (Chapters 4 and 5)**

Evaluating the effects of the ban on the purchase of sexual services has proven to be a difficult task. Prostitution and human trafficking for sexual purposes are complex and multifaceted social phenomena which partly occur in secret. Increased internationalisation and the Internet as a new arena for prostitution also make it difficult to assess its prevalence. Even though there are many reports, articles and essays that address these phenomena, knowledge on the scale of prostitution and human trafficking for sexual purposes is consequently limited. This particularly applies to knowledge of people who are active as prostitutes in arenas other than street settings and on the Internet, and knowledge of the prevalence of prostitution outside metropolitan areas.

On the whole, 'prostitution' has traditionally referred to heterosexual prostitution, with women providing the sexual service and men purchasing it. The measures that are implemented and the knowledge available are also largely based on this customary view. Accordingly, we do not know very much about men who provide sexual services and about young people who are exploited in prostitution. Purchasers of sexual services are still fairly invisible despite the political will expressed to shift the focus.

The empirical surveys that have been carried out have, in some cases, had limited scope, and different working procedures, methods and purposes have been used. In light of these and other factors, there can at times be reason to interpret the results with caution.

However, despite these reservations, we still consider that it is possible to draw conclusions based on the material to which we had access, and the results we are presenting based on this data give, in our view, as clear a picture as is currently possible to produce.

### **Street prostitution halved**

It is considered that the data available on the scale and prevalence of street prostitution describes the actual conditions. Since the introduction of the ban on the purchase of sexual services, street prostitution in Sweden has been halved. This reduction may be

considered to be a direct result of the criminalisation of sex purchases.

In a comparison, we have noted that the prevalence of street prostitution was about the same in the three capital cities of Norway, Denmark and Sweden before the ban on the purchase of sexual services was introduced here, but the number of women in street prostitution in both Norway and Denmark subsequently increased dramatically. In 2008, the number of people in street prostitution in both Norway and Denmark was estimated to be three times higher than in Sweden. In light of the great similarities that in many respects exist between these three countries, economically and socially, it is reasonable to assume that the reduction in street prostitution in Sweden is a direct result of criminalisation. This assumption is supported by the fact that, according to a study by Bergen Municipality, an immediate, dramatic reduction of street prostitution occurred there when, on 1 January 2009, Norway became the second country after Sweden to introduce a general prohibition of the purchase of sexual services.

The number of foreign women in street prostitution has increased in all the Nordic countries, including Sweden. However, by comparison it can be noted that the dramatic increase in the number of foreign women in street prostitution reported from both Denmark and Norway has no parallel in Sweden.

### **Internet – a new arena**

Prostitution where the initial contact is made over the Internet is an important and growing arena for prostitution that has received increasing attention in recent years. Compared to street prostitution, the scale of Internet prostitution is more difficult to verify and assess, but knowledge of this form of prostitution is gradually growing.

In the last five years, Internet prostitution has increased in Sweden, Denmark and Norway. However, the scale of this form of prostitution is more extensive in our neighbouring countries, and there is nothing to indicate that a greater increase in prostitution over the Internet has occurred in Sweden than in these comparable countries. This indicates that the ban has not led to street prostitution in Sweden shifting arenas to the Internet. In light of this it should be possible to conclude that the halving of street

prostitution that took place in Sweden represents a real reduction in prostitution here, and that this reduction is also mainly a result of the criminalisation of sex purchases.

The Internet plays an important role particularly with regard to young people in prostitution. The National Board for Youth Affairs concludes that most young people who are exploited sexually in return for payment came into contact with the purchaser via the Internet. The results of other questionnaire surveys that examined young people's experiences of selling sexual services support this conclusion. The ban on the purchase of sexual services has not had an effect on the exposure of young people on the Internet. However, the risks of sexual exploitation and abuse that this exposure entails increase the need to protect young people from falling into prostitution.

### **No overall increase in prostitution in Sweden**

There is nothing to indicate that the prevalence of indoor prostitution that is not marketed through advertisements in magazines and on the Internet, e.g. prostitution in massage parlours, sex clubs and hotels, and in restaurant and nightclub settings, has increased in recent years. Nor is there any information that suggests that prostitutes formerly exploited on the streets are now involved in indoor prostitution.

People working in the field do not consider that there has been an increase in prostitution since the ban was introduced. Since those involved in prostitution activities typically need to promote themselves in order to come into contact with clients, it is unlikely that prostitution could exist on any great scale and remain entirely unknown.

The overall picture we have obtained is that, while there has been an increase in prostitution in our neighbouring Nordic countries in the last decade, as far as we can see, prostitution has at least not increased in Sweden. There may be several explanations for this but, given the major similarities in all other respects between the Nordic countries, it is reasonable to assume that prostitution would also have increased in Sweden if we had not had a ban on the purchase of sexual services. Criminalisation has therefore helped to combat prostitution.



## **Ban on the purchase of sexual services has counteracted the establishment of organised crime**

Trafficking in human beings for sexual purposes is a growing form of serious economic crime in large parts of the world. Although it is hard to assess the exact scale of human trafficking for sexual purposes, in Sweden the establishment of this kind of crime is considered to be substantially smaller in scale than in other comparable countries. According to the National Criminal Police, it is clear that the ban on the purchase of sexual services acts as a barrier to human traffickers and procurers considering establishing themselves in Sweden.

## **Increased public support for the ban**

The ban on the purchase of sexual services was intended as a statement of society's view that prostitution is an undesirable phenomenon. To gauge Swedish public opinion concerning sex purchases, surveys were conducted before and after criminalisation was introduced. Judging by the results of four population-based opinion polls, there has been a change of attitude with regard to the purchase of sexual services that coincides with the criminalisation of the purchase of such services. The marked shift in attitude that has occurred here – without an equivalent shift in Norway and Denmark – must be interpreted as meaning that the ban itself has had a significant normative effect which, given that support for criminalisation is greatest among young people, can be expected to last. In all three surveys conducted since the ban was introduced, more than 70 per cent of those asked took a positive view of the ban.

## **How the ban has affected those involved in prostitution**

When the ban on the purchase of sexual services was introduced, various misgivings were voiced. These included fears that criminalisation would risk driving prostitution underground, making it harder to reach out to the vulnerable people involved through social measures, and that the ban would bring an increased risk of physical abuse and generally worsen living conditions for prostitutes. As far as we can judge from the written material and

the contacts we have had with public officials and people involved in prostitution, these fears have not been realised.

Police officers and social workers report that purchasers of sexual services have become more cautious and that the ban has led to a decrease in demand, at least for street prostitution, as a result of criminalisation. According to the police, purchasers are afraid to be caught, but are more concerned about the offence of which they are suspected becoming known to family and acquaintances than about the penalties they risk. The impression that purchasers have become more cautious is shared by some of the current and former prostitutes who responded to the Inquiry's questions, while others have reported that criminalisation has not affected purchasers because so few are caught and the penalties are so lenient.

According to surveys conducted in Sweden in the period following criminalisation, the proportion of men reporting that they have, on some occasion, purchased sexual services has decreased, and it would seem that fewer men purchase sexual services in Sweden than in the other Nordic countries. In a survey conducted in 2008, a number of those asked also reported that the ban had affected their actions to the extent that they no longer purchased sexual services. All in all, the above must be interpreted as meaning that the ban has a deterrent effect on prospective purchasers of sexual services.

It is clear, and it seems logical, that those who have extricated themselves from prostitution take a positive view of criminalisation, while those who are still exploited in prostitution are critical of the ban. This pattern is reflected in many different reports and is also confirmed by the contacts that the inquiry has had with women with experience of prostitution.

### **Application of the ban 1999–2008 (Chapter 6)**

Since the ban was introduced, the police have directed special operations against prostitution on many occasions. The majority of the investigations and operations against prostitution-related crime have been, and continue to be, carried out by the various special groups that have been established during this period in Stockholm, Gothenburg and Malmö, and in the National Criminal Police. Operations have mainly targeted street prostitution and more organised forms of prostitution that are linked to procuring or

human trafficking. The police have not ordinarily prioritised, or had the resources for, interventions against the purchase of sexual services via other forms of prostitution.

Street prostitution is seen by police to have great symbolic value in the eyes of the public, and the street setting is also used to market other forms of prostitution. The police officers with whom the Inquiry has had contact consider that operations against street prostitution have an immediate effect in terms of deterring prospective purchasers of sexual services, but also believe that such operations have a more long-term effect in terms of deterring and limiting the numbers of other promoters and organisers of prostitution.

The majority of prosecutions for infringements of the ban are cases where the purchaser of sexual services made the initial contact in a street setting. A new penal provision, trafficking in human beings for sexual purposes, came into force on 1 July 2002, and from 2003 onwards there has been a dramatic increase in the number of prosecutions for infringements of the ban on the purchase of sexual services that originate from procuring and human trafficking cases. The prevalence of these cases varies widely from year to year, depending on the resources invested and the priorities that the police, in particular, have set.

It is clear that monitoring compliance with the ban depends largely on the priorities set by the police and the resources they have available. According to both police officers and prosecutors with whom the Inquiry has spoken, considerably larger numbers of purchasers of sexual services could be prosecuted if priority had been given to this type of crime in day-to-day activities. One reason why priority is not given to sexual purchase offences is the low penal value of this type of offence.

Eight out of ten cases in which purchasers of sexual services are prosecuted involve situations in which the offence has been admitted to. This applies to both street prostitution and other forms of prostitution. When suspects admit to an offence, the prosecutor does not generally bring legal proceedings; instead a summary fine is imposed on the suspected purchaser of sexual services. The majority of the offences that have been prosecuted were committed in the three metropolitan areas. All of those prosecuted between 1999 and 2008 were men, with a median age of 43. They most commonly paid for sexual services in cash.

Our review of the judgments and summary fines imposed during the period studied shows a great deal of uniformity in terms of assessment of penal value and choice of penalty. Since the Supreme Court examined the question of culpability in a case of the purchase of sexual services in 2001 (NJA 2001, p. 527), more than 85 per cent of all prosecutions for individual instances of such purchases have resulted in a penalty of 50 'day fines'. The offence is generally reported rather summarily, and judgments seldom refer to any extenuating or aggravating circumstances associated with the offence.

When the ban was introduced, some feared that it would be difficult to monitor compliance with the ban and to define and prove the criminal act. However, our investigation of the application of the ban shows that, following an initial period of some uncertainty, police officers and prosecutors now consider that in general the provision works well. The prosecutors with whom the Inquiry has spoken have stated that they do not currently see any application problems directly linked to the penal provision. Sexual purchase offences are usually considered to be easy to investigate and relatively uncomplicated to process. There can be evidentiary problems, but almost half of the offences reported have been linked to an individual, meaning that a decision has been taken either to bring charges, impose a summary fine or grant a waiver of prosecution. This is double the number compared to other reported sexual offences.

The uncertainties that remain when it comes to applying the provision concern whether those who have been exploited should be considered witnesses or injured parties in court proceedings, and the point in time at which an attempted offence has been committed. It is considered difficult to prove attempted crimes, with the result that, in connection with street prostitution, the police deliberately wait until the sexual act has begun before intervening, and the offence has thus been committed in full.

## **Deliberations and proposals (Chapter 7)**

Our assessment shows that the ban on the purchase of sexual services has had the intended effect and is an important instrument in preventing and combating prostitution.

### **Continued and sustained social work is necessary**

Criminalisation can never be anything other than a supplement to other efforts to combat prostitution. It is therefore necessary to ensure continued and sustained social work to prevent and combat prostitution and trafficking in human beings for sexual purposes. It is important to increase the measures directed at purchasers of sexual services. Further research is needed here on who purchases sexual services, and suitable treatment methods. It is also important to give support to children and young people at risk of ending up in prostitution and to continue information initiatives to influence public opinion in this area. The professional groups working with these issues must be assured access to greater knowledge in order to be able to offer vulnerable people adequate help and support. The Inquiry does not present any specific proposals in this area, but it does call attention to – and particularly emphasises – the value and necessity of continued and sustained social measures.

### **A national centre against prostitution and human trafficking for sexual purposes should be set up**

In the course of our work, we have established that there is an almost improbably large quantity of information available in the form of reports, articles and essays produced by both government agencies and researchers and containing facts and discussions linked to prostitution and human trafficking. One important conclusion we have drawn is that, despite the great interest in this issue, there is a lack of both continuous follow-up and systematic knowledge of these phenomena. The knowledge available is difficult to grasp and, in part, difficult to assess, and is shaped by the operational focus and perspective of the agencies and organisations concerned.

This makes it impossible to draw entirely reliable assessments and comparisons using the available knowledge. This hampers efforts to establish the training, methods development and support initiatives needed in order to combat prostitution and human trafficking for sexual purposes as effectively as possible. It is necessary to create better conditions for coordination, follow-up and knowledge production for the future, in order to both utilise

existing knowledge and also make new knowledge available to everyone who works in some capacity with these issues.

We therefore propose the establishment of a national centre against prostitution a human trafficking for sexual purposes.

### **Maximum penalty for the purchase of sexual services should be raised**

In our view, variations between different sexual purchase offences are far too seldom taken into account when deciding on a penalty. From the review of current practice undertaken by the Inquiry, it is clear that in some cases there is reason to take a more serious view of the offence than has been the case in practice. Examples of such cases include exploitation of a person with a psychiatric disability, contact being made through a third party or an ordering service, exploitation of one person for several hours by several sex purchasers or exploitation of a young person or a person under the influence of drugs. In our view, the current level of penalties for certain sexual purchase offences is not proportionate to the seriousness of the crime. There is a need to be able to make a more nuanced assessment in more serious cases of the purchase of sexual services than is possible within the current penalty scale for the offence. We therefore propose that the maximum penalty for the purchase of sexual services be raised from imprisonment for six months to imprisonment for one year.

### **The person exploited in prostitution may normally be considered the injured party**

Neither legislation nor legal doctrine offer a clear answer to the question of who is to be considered an injured party. In our assessment, there is nothing to prevent a person who has been exploited in prostitution from having the status of injured party in proceedings concerning the purchase of sexual services. An examination should be undertaken in each case to determine whether the person providing the sexual service is so directly affected by the offence that she or he should be entrusted with exercising the public function implied by a penal claim.

**The question of where to draw the line in attempted crimes should be resolved through the application of the law**

The question of the point in time at which the offence of the purchase of sexual services begins has been discussed, and it engenders certain problems with regard to its application in practice. In our view, the problems described by police officers and prosecutors with regard to the application of the offence of the purchase of sexual services do not fundamentally differ from those encountered with other types of offence. It would hardly have been possible, let alone appropriate, to attempt to pin down in legislation the point at which an attempted offence has been committed. The problems encountered should therefore be viewed as an matter for interpretation and application, not for legislation. Nor are the evidentiary problems such as to warrant any proposed legislative amendments or other measures.

**There is a need to expand the scope of application of the ban with regard to offences committed abroad, but without deviating from the dual criminality requirement**

We consider that there is a need to expand the possibilities to prosecute in Sweden sexual purchase offences committed abroad, particularly with a view to the fact that it should be possible to apply the Swedish ban in cases where a person representing Swedish public interests purchases sexual services abroad. The question of the ban's applicability for offences committed abroad was not referred to in any detail in the preparatory work on which the ban was based. Now that the offence is contained in Section 6 of the Swedish Penal Code, it is reasonable to regard it as universally applicable and not limited to offences committed in Sweden. Since the ban on the purchase of sexual services is universally applicable, there are no national or territorial limits on its applicability. However, this conclusion does not mean that the Swedish courts have the competence to pass judgment on the offence. The competence to pass judgment on offences committed outside Sweden is normally conditional on dual criminality.

The majority of countries do not have a ban on the purchase of sexual services equivalent to that in force in Sweden, nor is there international consensus on what methods should be used to

combat prostitution. Allowing the purchase of sexual services to be an exception to the dual criminality requirement for Swedish penal jurisdiction would therefore involve a clear deviation from the principles behind the introduction of a general requirement for dual criminality to prosecute a crime committed in another country. An exception of this kind could not be based on international consensus on the nature of the crime or a general perception of the crime as particularly serious. Nor could it be justified on the grounds of protecting any private or public Swedish interest. In light of this, we have deemed it impossible to propose that the dual criminality requirement be removed with regard to the crime of the purchase of sexual services.