

Documentation



ASSISTING VICTIMS OF HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION AND MEASURING THE COSTS THEREOF



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Plenary sitting

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 25th anniversary of the UN Convention on the Rights of the Child¹,
- having regard to the Oviedo Convention on Human Rights and Biomedicine,
- having regard to the Hague Adoption Convention,

¹ 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/JHA¹,
- 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/JHA²,
- 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/JHA³,
- 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 nationals⁴,
- 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 nationals⁵,
- 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 authorities⁶,
- 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

¹ OJ L 319, 4.12.2015, p. 1.

² OJ L 315, 14.11.2012, p. 57.

³ OJ L 101, 15.4.2011, p. 1.

⁴ OJ L 168, 30.6.2009, p. 24.

⁵ OJ L 348, 24.12.2008, p. 98.

⁶ 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 Women¹,
 - having regard to its resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality²,
 - having regard to its resolution of 9 June 2015 on the EU Strategy for equality between women and men post 2015³,
 - 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 year⁴, 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

¹ Texts adopted, P7_TA(2014)0126.

² Texts adopted, P7_TA(2014)0162.

³ Texts adopted, P8_TA(2015)0218.

⁴ 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 THB¹, and this can be attributed partly to structural violence and discrimination against women and girls;

¹ 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 %¹ of registered victims of THB, with girls representing to 13 %², 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 Europe³; 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 exploitation⁴; 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

¹ Idem, Eurostat report.

² Idem, Eurostat report.

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

⁴ 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 THB¹, 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 measures²; 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;

¹ 2015 Eurostat report.

² ‘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'¹;
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

¹ 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

Date adopted	7.4.2016
Result of final vote	+: 31 -: 1 0: 18
Members present for the final vote	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
Substitutes present for the final vote	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
Substitutes under Rule 200(2) present for the final vote	Petras Auštrevičius, Herbert Dorfmann, José Inácio Faria, Eugen Freund, David McAllister, Marita Ulvskog

RESULT OF FINAL VOTE IN COMMITTEE RESPONSIBLE

Date adopted	19.4.2016
Result of final vote	+: 26 -: 0 0: 6
Members present for the final vote	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
Substitutes present for the final vote	Rosa Estaràs Ferragut, Kostadinka Kuneva, Constance Le Grip, Evelyn Regner, Marc Tarabella
Substitutes under Rule 200(2) present for the final vote	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.¹

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*".² 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.³ 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

¹ 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.

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

³ 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 full⁴, 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.⁵ 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 redress⁶. 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 justice⁷ 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.

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

⁵ 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.

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

⁷ 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 Affairs⁸ 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.⁹

This Agenda has to be seen in conjunction with the forthcoming European Agenda on Migration,¹⁰ 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

⁸ 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.

⁹ 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).

¹⁰ 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, Japan¹¹) 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.¹² The Commission is also updating the

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

¹² 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.¹³

The **Prüm** framework¹⁴ 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**,¹⁵ 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

¹³ AFIS is run by the European Anti-Fraud Office (OLAF).

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

¹⁵ 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 Directive¹⁶, 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

¹⁶ 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 Council¹⁷, 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.¹⁸

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.¹⁹ 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

¹⁷ See Council Conclusions of 4.12.2014, mentioned above.

¹⁸ 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.

¹⁹ 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 Management²⁰ 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**²¹, 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 Mechanism²², 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,²³ including following up on the Sendai Framework for Disaster Risk Reduction 2015-2030.²⁴ 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.

²⁰ SEC(2010) 1626 final of 21.12.2010.

²¹ Article 222 TFEU.

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

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

²⁴ 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.²⁵ 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 (PCCC)s in border regions bring together on one site the law enforcement authorities of different Member States. The EU supports the growing number of PCCC)s with co-funding and annual conferences to exchange experience and best practices. Although most of the information exchanged in PCCC)s 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.

²⁵ 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.²⁶ 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 innovation²⁷, 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

²⁶ COM(2014) 465 final of 16.7.2014.

²⁷ 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.²⁸ 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.

²⁸ 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.²⁹ 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 cyberterrorism 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

²⁹ 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 Regulation³⁰.

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 2016.³¹ 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

³⁰ Regulation 1889/2005 of 26.10.2005.

³¹ 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.³² 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.³³ 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.

³² 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.

³³ 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 package³⁴ 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.³⁵

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

³⁴ 4th 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.

³⁵ 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 framework³⁶ 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.³⁷ 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

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

³⁷ 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.³⁸ 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 Directive³⁹ 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 Directive⁴⁰ 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 payments⁴¹ 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

³⁸ COM(2013) 48 final of 7.2.2013.

³⁹ Directive 2013/40/EU of 12.8.2013.

⁴⁰ Directive 2011/92/EU of 13.12.2011.

⁴¹ 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.

REGULATION (EU) No 606/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 12 June 2013
on mutual recognition of protection measures in civil matters

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (a), (e) and (f) of Article 81(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice in which the free movement of persons is ensured and access to justice is facilitated, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters. For the gradual establishment of such an area, the Union is to adopt measures relating to judicial cooperation in civil matters having cross-border implications, particularly when necessary for the proper functioning of the internal market.

(2) Article 81(1) of the Treaty on the Functioning of the European Union (TFEU) provides that judicial cooperation in civil matters having cross-border implications is to be based on the principle of mutual recognition of judgments and of decisions in extrajudicial cases.

(3) In a common area of justice without internal borders, provisions to ensure rapid and simple recognition and, where applicable, enforcement in another Member State of protection measures ordered in a Member State are essential to ensure that the protection afforded to a natural person in one Member State is maintained and continued in any other Member State to which that person travels or moves. It is necessary to ensure that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union (TEU) and Article 21 TFEU, does not result in a loss of that protection.

(4) Mutual trust in the administration of justice in the Union and the aim of ensuring quicker and less costly circulation of protection measures within the Union justify the principle according to which protection measures ordered in one Member State are recognised in all other Member States without any special procedure being required. As a result, a protection measure ordered in one Member State ('Member State of origin') should be treated as if it had been ordered in the Member State where its recognition is sought ('Member State addressed').

(5) In order to attain the objective of free movement of protection measures, it is necessary and appropriate that the rules governing the recognition and, where applicable, enforcement of protection measures be governed by a legal instrument of the Union which is binding and directly applicable.

(6) This Regulation should apply to protection measures ordered with a view to protecting a person where there exist serious grounds for considering that that person's life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk, for example so as to prevent any form of gender-based violence or violence in close relationships such as physical violence, harassment, sexual aggression, stalking, intimidation or other forms of indirect coercion. It is important to underline that this Regulation applies to all victims, regardless of whether they are victims of gender-based violence.

(7) Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime ⁽³⁾ ensures that victims of crime receive appropriate information and support.

⁽¹⁾ OJ C 113, 18.4.2012, p. 56.

⁽²⁾ Position of the European Parliament of 22 May 2013 (not yet published in the Official Journal) and decision of the Council of 6 June 2013.

⁽³⁾ OJ L 315, 14.11.2012, p. 57.

- (8) This Regulation complements Directive 2012/29/EU. The fact that a person is the object of a protection measure ordered in civil matters does not necessarily preclude that person from being defined as a 'victim' under that Directive.
- (9) The scope of this Regulation is within the field of judicial cooperation in civil matters within the meaning of Article 81 TFEU. This Regulation applies only to protection measures ordered in civil matters. Protection measures adopted in criminal matters are covered by Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European Protection Order⁽¹⁾.
- (10) The notion of civil matters should be interpreted autonomously, in accordance with the principles of Union law. The civil, administrative or criminal nature of the authority ordering a protection measure should not be determinative for the purpose of assessing the civil character of a protection measure.
- (11) This Regulation should not interfere with the functioning of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility⁽²⁾ ('Brussels IIa Regulation'). Decisions taken under the Brussels IIa Regulation should continue to be recognised and enforced under that Regulation.
- (12) This Regulation takes account of the different legal traditions of the Member States and does not interfere with the national systems for ordering protection measures. This Regulation does not oblige the Member States to modify their national systems so as to enable protection measures to be ordered in civil matters, or to introduce protection measures in civil matters for the application of this Regulation.
- (13) In order to take account of the various types of authorities which order protection measures in civil matters in the Member States, and unlike in other areas of judicial cooperation, this Regulation should apply to decisions of both judicial authorities and administrative authorities provided that the latter offer guarantees with regard, in particular, to their impartiality and to the right of the parties to judicial review. In no event should police authorities be considered as issuing authorities within the meaning of this Regulation.
- (14) Based on the principle of mutual recognition, protection measures ordered in civil matters in the Member State of origin should be recognised in the Member State addressed as protection measures in civil matters in accordance with this Regulation.
- (15) According to the principle of mutual recognition, the recognition corresponds to the duration of the protection measure. However, taking into account the diversity of protection measures under the laws of the Member States, in particular in terms of their duration, and the fact that this Regulation will typically apply in urgent situations, the effects of recognition under this Regulation should, by way of exception, be limited to a period of 12 months from the issuing of the certificate provided for by this Regulation, irrespective of whether the protection measure itself (be it provisional, time-limited or indefinite in nature) has a longer duration.
- (16) In cases where the duration of a protection measure is greater than 12 months, the limitation of the effects of recognition under this Regulation should be without prejudice to the right of the protected person to invoke that protection measure under any other available legal act of the Union providing for recognition or to apply for a national protection measure in the Member State addressed.
- (17) The limitation of the effects of recognition is exceptional due to the special nature of the subject matter of this Regulation and should not serve as a precedent for other instruments in civil and commercial matters.
- (18) This Regulation should deal only with the recognition of the obligation imposed by the protection measure. It should not regulate the procedures for implementation or enforcement of the protection measure, nor should it cover any potential sanctions that might be imposed if the obligation ordered by the protection measure is infringed in the Member State addressed. Those matters are left to the law of that Member State. However, in accordance with the general principles of Union law and particularly the principle of mutual recognition, Member States are to ensure that protection measures recognised under this Regulation can take effect in the Member State addressed.

⁽¹⁾ OJ L 338, 21.12.2011, p. 2.

⁽²⁾ OJ L 338, 23.12.2003, p. 1.

- (19) Protection measures covered by this Regulation should afford protection to the protected person at his or her place of residence or place of work, or at another place which that person visits on a regular basis, such as the residence of close relatives or the school or educational establishment attended by his or her child. Irrespective of whether the place in question or the extent of the area covered by the protection measure is described in the protection measure by one or more specific addresses or by reference to a circumscribed area which the person causing the risk may not approach or enter, respectively (or a combination of the two), the recognition of the obligation imposed by the protection measure relates to the purpose which the place serves for the protected person rather than to the specific address.
- (20) In the light of the foregoing and provided that the nature and the essential elements of the protection measure are maintained, the competent authority of the Member State addressed should be allowed to adjust the factual elements of the protection measure where such adjustment is necessary in order for the recognition of the protection measure to be effective in practical terms in the Member State addressed. Factual elements include the address, the general location or the minimum distance the person causing the risk must keep from the protected person, the address or the general location. However, the type and the civil nature of the protection measure may not be affected by such adjustment.
- (21) In order to facilitate any adjustment of a protection measure, the certificate should indicate whether the address specified in the protection measure constitutes the place of residence, the place of work or a place that the protected person visits on a regular basis. Furthermore, if relevant, the circumscribed area (approximate radius from the specific address) to which the obligation imposed by the protection measure on the person causing the risk applies should also be indicated in the certificate.
- (22) In order to facilitate the free movement of protection measures within the Union, this Regulation should introduce a uniform model of certificate and provide for the establishment of a multilingual standard form for that purpose. The issuing authority should issue the certificate upon request by the protected person.
- (23) Free text fields in the multilingual standard form for the certificate should be as limited as possible, so that translation or transliteration may be provided in most cases without imposing any costs on the protected person by making use of the standard form in the relevant language. Any costs for necessary translation that goes beyond the text of the multilingual standard form are to be allocated as provided under the law of the Member State of origin.
- (24) Where a certificate contains free text, the competent authority of the Member State addressed should determine whether any translation or transliteration is required. This should not preclude the protected person or the issuing authority of the Member State of origin from providing a translation or transliteration on their own initiative.
- (25) To ensure respect for the rights of defence of the person causing the risk, where the protection measure was ordered in default of appearance or under a procedure that does not provide for prior notice to that person (*ex parte* proceeding), the issue of the certificate should only be possible if that person has had the opportunity to arrange for his or her defence against the protection measure. However, with a view to avoiding circumvention and taking into account the typical urgency of cases necessitating protection measures, it should not be required that the period for raising such defence has expired before a certificate may be issued. The certificate should be issued as soon as the protection measure is enforceable in the Member State of origin.
- (26) Having regard to the objectives of simplicity and speed, this Regulation provides for simple and quick methods to be used for bringing procedural steps to the notice of the person causing the risk. Those specific methods of notification should apply only for the purposes of this Regulation due to the special nature of its subject matter, should not serve as a precedent for other instruments in civil and commercial matters and should not affect any obligations of a Member State concerning the service abroad of judicial and extrajudicial documents in civil matters arising from a bilateral or multilateral convention concluded between that Member State and a third country.
- (27) When the certificate is brought to the notice of the person causing the risk and also when any adjustment is made to any factual elements of a protection measure in the Member State addressed, due regard should be paid to the interest of the protected person in not having his or her whereabouts or other contact details disclosed. Such details should not be disclosed to the person causing the risk unless such disclosure is necessary for compliance with, or the enforcement of, the protection measure.
- (28) The issuing of the certificate should not be subject to appeal.

- (29) The certificate should be rectified where, due to an obvious error or inaccuracy, such as a typing error or an error of transcription or copying, the certificate does not correctly reflect the protection measure, or should be withdrawn if it was clearly wrongly granted, for example where it was used for a measure that falls outside the scope of this Regulation or where it was issued in breach of the requirements for its issuing.
- (30) The issuing authority of the Member State of origin should, upon request, assist the protected person in obtaining information on the authorities of the Member State addressed before which the protection measure is to be invoked or enforcement is to be sought.
- (31) The harmonious functioning of justice requires that irreconcilable decisions should not be delivered in two Member States. To that end, this Regulation should provide for a ground for refusal of recognition or enforcement of the protection measure in cases of irreconcilability with a judgment given or recognised in the Member State addressed.
- (32) Public interest considerations may, in exceptional circumstances, justify a refusal by the court of the Member State addressed to recognise or enforce a protection measure where its application would be manifestly incompatible with the public policy of that Member State. However, the court should not be able to apply the public-policy exception in order to refuse recognition or enforcement of a protection measure when to do so would be contrary to the rights set out in the Charter of Fundamental Rights of the European Union, and in particular Article 21 thereof.
- (33) In the event of suspension or withdrawal of the protection measure or withdrawal of the certificate in the Member State of origin, the competent authority of the Member State addressed should, upon submission of the relevant certificate, suspend or withdraw the effects of recognition and, where applicable, the enforcement of the protection measure.
- (34) A protected person should have effective access to justice in other Member States. To ensure such effective access in procedures covered by this Regulation, legal aid is to be provided in accordance with Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes ⁽¹⁾.
- (35) In order to facilitate the application of this Regulation, Member States should be required to provide certain information regarding their national rules and procedures concerning protection measures in civil matters within the framework of the European Judicial Network in civil and commercial matters established by Council Decision 2001/470/EC ⁽²⁾. Access to the information provided by the Member States should be made available through the European e-Justice Portal.
- (36) In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission with regard to the establishment and subsequent amendment of the forms provided for in this Regulation. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁽³⁾.
- (37) The examination procedure should be used for the adoption of implementing acts establishing and subsequently amending the forms provided for in this Regulation.
- (38) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure the rights of the defence and fair trial, as established in Articles 47 and 48 thereof. This Regulation should be applied according to those rights and principles.
- (39) Since the objective of this Regulation, namely to establish rules for a simple and rapid mechanism for the recognition of protection measures ordered in a Member State in civil matters, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (40) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Regulation.

⁽¹⁾ OJ L 26, 31.1.2003, p. 41.

⁽²⁾ OJ L 174, 27.6.2001, p. 25.

⁽³⁾ OJ L 55, 28.2.2011, p. 13.

- (41) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (42) The European Data Protection Supervisor delivered an opinion on 17 October 2011 ⁽¹⁾, based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾,

imposing one or more of the following obligations on the person causing the risk with a view to protecting another person, when the latter person's physical or psychological integrity may be at risk:

- (a) a prohibition or regulation on entering the place where the protected person resides, works, or regularly visits or stays;
- (b) a prohibition or regulation of contact, in any form, with the protected person, including by telephone, electronic or ordinary mail, fax or any other means;
- (c) a prohibition or regulation on approaching the protected person closer than a prescribed distance;

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation establishes rules for a simple and rapid mechanism for the recognition of protection measures ordered in a Member State in civil matters.

Article 2

Scope

1. This Regulation shall apply to protection measures in civil matters ordered by an issuing authority within the meaning of point (4) of Article 3.
2. This Regulation shall apply to cross-border cases. For the purposes of this Regulation, a case shall be deemed to be a cross-border case where the recognition of a protection measure ordered in one Member State is sought in another Member State.
3. This Regulation shall not apply to protection measures falling within the scope of Regulation (EC) No 2201/2003.

Article 3

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) 'protection measure' means any decision, whatever it may be called, ordered by the issuing authority of the Member State of origin in accordance with its national law and

- (2) 'protected person' means a natural person who is the object of the protection afforded by a protection measure;
- (3) 'person causing the risk' means a natural person on whom one or more of the obligations referred to in point (1) have been imposed;
- (4) 'issuing authority' means any judicial authority, or any other authority designated by a Member State as having competence in the matters falling within the scope of this Regulation, provided that such other authority offers guarantees to the parties with regard to impartiality, and that its decisions in relation to the protection measure may, under the law of the Member State in which it operates, be made subject to review by a judicial authority and have similar force and effects to those of a decision of a judicial authority on the same matter;
- (5) 'Member State of origin' means the Member State in which the protection measure is ordered;
- (6) 'Member State addressed' means the Member State in which the recognition and, where applicable, the enforcement of the protection measure is sought.

CHAPTER II

RECOGNITION AND ENFORCEMENT OF PROTECTION MEASURES

Article 4

Recognition and enforcement

1. A protection measure ordered in a Member State shall be recognised in the other Member States without any special procedure being required and shall be enforceable without a declaration of enforceability being required.

⁽¹⁾ OJ C 35, 9.2.2012, p. 10.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

2. A protected person who wishes to invoke in the Member State addressed a protection measure ordered in the Member State of origin shall provide the competent authority of the Member State addressed with:

- (a) a copy of the protection measure which satisfies the conditions necessary to establish its authenticity;
- (b) the certificate issued in the Member State of origin pursuant to Article 5; and
- (c) where necessary, a transliteration and/or a translation of the certificate in accordance with Article 16.

3. The certificate shall take effect only within the limits of the enforceability of the protection measure.

4. Irrespective of whether the protection measure has a longer duration, the effects of recognition pursuant to paragraph 1 shall be limited to a period of 12 months, starting from the date of the issuing of the certificate.

5. The procedure for the enforcement of protection measures shall be governed by the law of the Member State addressed.

Article 5

Certificate

1. The issuing authority of the Member State of origin shall, upon request by the protected person, issue the certificate using the multilingual standard form established in accordance with Article 19 and containing the information provided for in Article 7.

2. No appeal shall lie against the issuing of the certificate.

3. Upon request by the protected person, the issuing authority of the Member State of origin shall provide the protected person with a transliteration and/or a translation of the certificate by making use of the multilingual standard form established in accordance with Article 19.

Article 6

Requirements for the issuing of the certificate

1. The certificate may only be issued if the protection measure has been brought to the notice of the person causing the risk in accordance with the law of the Member State of origin.

2. Where the protection measure was ordered in default of appearance, the certificate may only be issued if the person causing the risk had been served with the document which instituted the proceeding or an equivalent document or, where relevant, had been otherwise informed of the initiation of the proceeding in accordance with the law of the Member State of origin in sufficient time and in such a way as to enable that person to arrange for his or her defence.

3. Where the protection measure was ordered under a procedure that does not provide for prior notice to be given to the person causing the risk (*ex-parte* proceeding), the certificate may only be issued if that person had the right to challenge the protection measure under the law of the Member State of origin.

Article 7

Contents of the certificate

The certificate shall contain the following information:

- (a) the name and address/contact details of the issuing authority;
- (b) the reference number of the file;
- (c) the date of issue of the certificate;
- (d) details concerning the protected person: name, date and place of birth, where available, and an address to be used for notification purposes, preceded by a conspicuous warning that that address may be disclosed to the person causing the risk;
- (e) details concerning the person causing the risk: name, date and place of birth, where available, and address to be used for notification purposes;
- (f) all information necessary for enforcement of the protection measure, including, where applicable, the type of the measure and the obligation imposed by it on the person causing the risk and specifying the function of the place and/or the circumscribed area which that person is prohibited from approaching or entering, respectively;
- (g) the duration of the protection measure;
- (h) the duration of the effects of recognition pursuant to Article 4(4);

- (i) a declaration that the requirements laid down in Article 6 have been met;
- (j) information on the rights granted under Articles 9 and 13;
- (k) for ease of reference, the full title of this Regulation.

Article 8

Notification of the certificate to the person causing the risk

1. The issuing authority of the Member State of origin shall bring to the notice of the person causing the risk the certificate and the fact that the issuing of the certificate results in the recognition and, where applicable, in the enforceability of the protection measure in all Member States pursuant to Article 4.
2. Where the person causing the risk resides in the Member State of origin, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State of origin or in a third country, the notification shall be effected by registered letter with acknowledgment of receipt or equivalent.

Situations in which the address of the person causing the risk is not known or in which that person refuses to accept receipt of the notification shall be governed by the law of the Member State of origin.

3. The whereabouts or other contact details of the protected person shall not be disclosed to the person causing the risk unless their disclosure is necessary for compliance with, or the enforcement of, the protection measure.

Article 9

Rectification or withdrawal of the certificate

1. Without prejudice to Article 5(2) and upon request by the protected person or the person causing the risk to the issuing authority of the Member State of origin or on that authority's own initiative, the certificate shall be:
 - (a) rectified where, due to a clerical error, there is a discrepancy between the protection measure and the certificate; or
 - (b) withdrawn where it was clearly wrongly granted, having regard to the requirements laid down in Article 6 and the scope of this Regulation.

2. The procedure, including any appeal, with regard to the rectification or withdrawal of the certificate shall be governed by the law of the Member State of origin.

Article 10

Assistance to the protected person

Upon request by the protected person, the issuing authority of the Member State of origin shall assist that person in obtaining information, as made available in accordance with Articles 17 and 18, concerning the authorities of the Member State addressed before which the protection measure is to be invoked or enforcement is to be sought.

Article 11

Adjustment of the protection measure

1. The competent authority of the Member State addressed shall, where and to the extent necessary, adjust the factual elements of the protection measure in order to give effect to the protection measure in that Member State.
2. The procedure for the adjustment of the protection measure shall be governed by the law of the Member State addressed.
3. The adjustment of the protection measure shall be brought to the notice of the person causing the risk.
4. Where the person causing the risk resides in the Member State addressed, the notification shall be effected in accordance with the law of that Member State. Where the person causing the risk resides in a Member State other than the Member State addressed or in a third country, the notification shall be effected by registered letter with acknowledgment of receipt or equivalent.

Situations in which the address of the person causing the risk is not known or in which that person refuses to accept receipt of the notification shall be governed by the law of the Member State addressed.

5. An appeal against the adjustment of the protection measure may be lodged by the protected person or the person causing the risk. The appeal procedure shall be governed by the law of the Member State addressed. However, the lodging of an appeal shall not have suspensive effect.

*Article 12***No review as to substance**

Under no circumstances may a protection measure ordered in the Member State of origin be reviewed as to its substance in the Member State addressed.

*Article 13***Refusal of recognition or enforcement**

1. The recognition and, where applicable, the enforcement of the protection measure shall be refused, upon application by the person causing the risk, to the extent such recognition is:

- (a) manifestly contrary to public policy in the Member State addressed; or
- (b) irreconcilable with a judgment given or recognised in the Member State addressed.

2. The application for refusal of recognition or enforcement shall be submitted to the court of the Member State addressed as communicated by that Member State to the Commission in accordance with point (a)(iv) of Article 18(1).

3. The recognition of the protection measure may not be refused on the ground that the law of the Member State addressed does not allow for such a measure based on the same facts.

*Article 14***Suspension or withdrawal of recognition or enforcement**

1. In the event of suspension or withdrawal of the protection measure in the Member State of origin, suspension or limitation of its enforceability, or withdrawal of the certificate in accordance with point (b) of Article 9(1), the issuing authority of the Member State of origin shall, upon request by the protected person or the person causing the risk, issue a certificate indicating that suspension, limitation or withdrawal using the multilingual standard form established in accordance with Article 19.

2. Upon submission by the protected person or the person causing the risk of the certificate issued in accordance with paragraph 1, the competent authority of the Member State addressed shall suspend or withdraw the effects of the recognition and, where applicable, the enforcement of the protection measure.

CHAPTER III

GENERAL AND FINAL PROVISIONS*Article 15***Legalisation and other similar formalities**

No legalisation or other similar formality shall be required for documents issued in a Member State in the context of this Regulation.

*Article 16***Transliteration or translation**

1. Any transliteration or translation required under this Regulation shall be into the official language or one of the official languages of the Member State addressed or into any other official language of the institutions of the Union which that Member State has indicated it can accept.

2. Subject to Article 5(3), any translation under this Regulation shall be done by a person qualified to do translations in one of the Member States.

*Article 17***Information made available to the public**

The Member States shall provide, within the framework of the European Judicial Network in civil and commercial matters established by Decision 2001/470/EC and with a view to making the information available to the public, a description of the national rules and procedures concerning protection measures in civil matters, including information on the type of authorities which are competent in the matters falling within the scope of this Regulation.

The Member States shall keep that information updated.

*Article 18***Communication of information by the Member States**

1. By 11 July 2014, Member States shall communicate to the Commission the following information:

- (a) the type of authorities which are competent in the matters falling within the scope of this Regulation, specifying, where applicable:
 - (i) the authorities which are competent to order protection measures and issue certificates in accordance with Article 5;
 - (ii) the authorities before which a protection measure ordered in another Member State is to be invoked and/or which are competent to enforce such a measure;

- (iii) the authorities which are competent to effect the adjustment of protection measures in accordance with Article 11(1);
- (iv) the courts to which the application for refusal of recognition and, where applicable, enforcement is to be submitted in accordance with Article 13;
- (b) the language or languages accepted for translations as referred to in Article 16(1).

2. The Commission shall make the information referred to in paragraph 1 available to the public through any appropriate means, in particular through the website of the European Judicial Network in civil and commercial matters.

Article 19

Establishment and subsequent amendment of the forms

The Commission shall adopt implementing acts establishing and subsequently amending the forms referred to in Articles 5 and 14. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 20.

Article 20

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 12 June 2013.

For the European Parliament
The President
M. SCHULZ

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 21

Review

By 11 January 2020, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation. If necessary, the report shall be accompanied by proposals for amendments.

Article 22

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 11 January 2015.

This Regulation shall apply to protection measures ordered on or after 11 January 2015, irrespective of when proceedings have been instituted.

For the Council
The President
L. CREIGHTON

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2012

establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice, the cornerstone of which is the mutual recognition of judicial decisions in civil and criminal matters.

(2) The Union is committed to the protection of, and to the establishment of minimum standards in regard to, victims of crime and the Council has adopted Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings ⁽⁴⁾. Under the Stockholm Programme – An open and secure Europe serving and protecting citizens ⁽⁵⁾, adopted by the European Council at its meeting on 10 and 11 December 2009, the Commission and the Member States were asked to examine how to improve legislation and practical support measures for the protection of victims, with particular attention paid to, support for and recognition of, all victims, including for victims of terrorism, as a priority.

(3) Article 82(2) of the Treaty on the Functioning of the European Union (TFEU) provides for the establishment of minimum rules applicable in the Member States to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, in particular with regard to the rights of victims of crime.

(4) In its resolution of 10 June 2011 on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings ⁽⁶⁾ (the Budapest roadmap), the Council stated that action should be taken at Union level in order to strengthen the rights of, support for, and protection of victims of crime. To that end and in accordance with that resolution, this Directive aims to revise and supplement the principles set out in Framework Decision 2001/220/JHA and to take significant steps forward in the level of protection of victims throughout the Union, in particular within the framework of criminal proceedings.

(5) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women ⁽⁷⁾ called on the Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures, and called on the Union to guarantee the right to assistance and support for all victims of violence.

(6) In its resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women ⁽⁸⁾ the European Parliament proposed a strategy to combat violence against women, domestic violence and female genital mutilation as a basis for future legislative criminal-law instruments against gender-based violence including a framework to fight violence against women (policy, prevention, protection, prosecution, provision and partnership) to be followed up by a Union action plan. International regulation within this area includes the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted on 18 December 1979, the CEDAW Committee's recommendations and decisions, and the Council of Europe Convention on preventing and combating violence against women and domestic violence adopted on 7 April 2011.

⁽¹⁾ OJ C 43, 15.2.2012, p. 39.

⁽²⁾ OJ C 113, 18.4.2012, p. 56.

⁽³⁾ Position of the European Parliament of 12 September 2012 (not yet published in the Official Journal) and decision of the Council of 4 October 2012.

⁽⁴⁾ OJ L 82, 22.3.2001, p. 1.

⁽⁵⁾ OJ C 115, 4.5.2010, p. 1.

⁽⁶⁾ OJ C 187, 28.6.2011, p. 1.

⁽⁷⁾ OJ C 285 E, 21.10.2010, p. 53.

⁽⁸⁾ OJ C 296 E, 2.10.2012, p. 26.

- (7) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order⁽¹⁾ establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims⁽²⁾ and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography⁽³⁾ address, inter alia, the specific needs of the particular categories of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.
- (8) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism⁽⁴⁾ recognises that terrorism constitutes one of the most serious violations of the principles on which the Union is based, including the principle of democracy, and confirms that it constitutes, inter alia, a threat to the free exercise of human rights.
- (9) Crime is a wrong against society as well as a violation of the individual rights of victims. As such, victims of crime should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. In all contacts with a competent authority operating within the context of criminal proceedings, and any service coming into contact with victims, such as victim support or restorative justice services, the personal situation and immediate needs, age, gender, possible disability and maturity of victims of crime should be taken into account while fully respecting their physical, mental and moral integrity. Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice.
- (10) This Directive does not address the conditions of the residence of victims of crime in the territory of the Member States. Member States should take the necessary measures to ensure that the rights set out in this Directive are not made conditional on the victim's residence status in their territory or on the victim's citizenship or nationality. Reporting a crime and participating in criminal proceedings do not create any rights regarding the residence status of the victim.
- (11) This Directive lays down minimum rules. Member States may extend the rights set out in this Directive in order to provide a higher level of protection.
- (12) The rights set out in this Directive are without prejudice to the rights of the offender. The term 'offender' refers to a person who has been convicted of a crime. However, for the purposes of this Directive, it also refers to a suspected or accused person before any acknowledgement of guilt or conviction, and it is without prejudice to the presumption of innocence.
- (13) This Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. Complaints made to competent authorities outside the Union, such as embassies, do not trigger the obligations set out in this Directive.
- (14) In applying this Directive, children's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child adopted on 20 November 1989. Child victims should be considered and treated as the full bearers of rights set out in this Directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.
- (15) In applying this Directive, Member States should ensure that victims with disabilities are able to benefit fully from the rights set out in this Directive, on an equal basis with others, including by facilitating the accessibility to premises where criminal proceedings are conducted and access to information.
- (16) Victims of terrorism have suffered attacks that are intended ultimately to harm society. They may therefore need special attention, support and protection due to the particular nature of the crime that has been committed against them. Victims of terrorism can be under significant public scrutiny and often need social recognition and respectful treatment by society. Member States should therefore take particular account of the needs of victims of terrorism, and should seek to protect their dignity and security.

⁽¹⁾ OJ L 338, 21.12.2011, p. 2.

⁽²⁾ OJ L 101, 15.4.2011, p. 1.

⁽³⁾ OJ L 335, 17.12.2011, p. 1.

⁽⁴⁾ OJ L 164, 22.6.2002, p. 3.

- (17) Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.
- (18) Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust. Victims of violence in close relationships may therefore be in need of special protection measures. Women are affected disproportionately by this type of violence and the situation can be worse if the woman is dependent on the offender economically, socially or as regards her right to residence.
- (19) A person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them. It is possible that family members of victims are also harmed as a result of the crime. In particular, family members of a person whose death has been directly caused by a criminal offence could be harmed as a result of the crime. Such family members, who are indirect victims of the crime, should therefore also benefit from protection under this Directive. However, Member States should be able to establish procedures to limit the number of family members who can benefit from the rights set out in this Directive. In the case of a child, the child or, unless this is not in the best interests of the child, the holder of parental 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⁽¹⁾.
- (51) If the victim has left the territory of the Member State where the criminal offence was committed, that Member State should no longer be obliged to provide assistance, support and protection except for what is directly related to any criminal proceedings it is conducting regarding the criminal offence concerned, such as special protection measures during court proceedings. The Member State of the victim's residence should provide assistance, support and protection required for the victim's need to recover.
- (52) Measures should be available to protect the safety and dignity of victims and their family members from secondary and repeat victimisation, from intimidation and from retaliation, such as interim injunctions or protection or restraining orders.

⁽¹⁾ OJ L 328, 15.12.2009, p. 42.

- (53) The risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender or as a result of participation in criminal proceedings should be limited by carrying out proceedings in a coordinated and respectful manner, enabling victims to establish trust in authorities. Interaction with competent authorities should be as easy as possible whilst limiting the number of unnecessary interactions the victim has with them through, for example, video recording of interviews and allowing its use in court proceedings. As wide a range of measures as possible should be made available to practitioners to prevent distress to the victim during court proceedings in particular as a result of visual contact with the offender, his or her family, associates or members of the public. To that end, Member States should be encouraged to introduce, especially in relation to court buildings and police stations, feasible and practical measures enabling the facilities to include amenities such as separate entrances and waiting areas for victims. In addition, Member States should, to the extent possible, plan the criminal proceedings so that contacts between victims and their family members and offenders are avoided, such as by summoning victims and offenders to hearings at different times.
- (54) Protecting the privacy of the victim can be an important means of preventing secondary and repeat victimisation, intimidation and retaliation and can be achieved through a range of measures including non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of the victim. Such protection is particularly important for child victims, and includes non-disclosure of the name of the child. However, there might be cases where, exceptionally, the child can benefit from the disclosure or even widespread publication of information, for example where a child has been abducted. Measures to protect the privacy and images of victims and of their family members should always be consistent with the right to a fair trial and freedom of expression, as recognised in Articles 6 and 10, respectively, of the European Convention for the Protection of Human Rights and Fundamental Freedoms.
- (55) Some victims are particularly at risk of secondary and repeat victimisation, of intimidation and of retaliation by the offender during criminal proceedings. It is possible that such a risk derives from the personal characteristics of the victim or the type, nature or circumstances of the crime. Only through individual assessments, carried out at the earliest opportunity, can such a risk be effectively identified. Such assessments should be carried out for all victims to determine whether they are at risk of secondary and repeat victimisation, of intimidation and of retaliation and what special protection measures they require.
- (56) Individual assessments should take into account the personal characteristics of the victim such as his or her age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime. They should also take into account the type or nature and the circumstances of the crime such as whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship, whether the offender was in a position of control, whether the victim's residence is in a high crime or gang dominated area, or whether the victim's country of origin is not the Member State where the crime was committed.
- (57) Victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and of retaliation and there should be a strong presumption that those victims will benefit from special protection measures.
- (58) Victims who have been identified as vulnerable to secondary and repeat victimisation, to intimidation and to retaliation should be offered appropriate measures to protect them during criminal proceedings. The exact nature of such measures should be determined through the individual assessment, taking into account the wish of the victim. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure.
- (59) Immediate operational needs and constraints may make it impossible to ensure, for example, that the same police officer consistently interview the victim; illness, maternity or parental leave are examples of such constraints. Furthermore, premises specially designed for interviews with victims may not be available due, for example, to renovation. In the event of such operational or practical constraints, a special measure envisaged following an individual assessment may not be possible to provide on a case-by-case basis.

- (60) Where, in accordance with this Directive, a guardian or a representative is to be appointed for a child, those roles could be performed by the same person or by a legal person, an institution or an authority.
- (61) Any officials involved in criminal proceedings who are likely to come into personal contact with victims should be able to access and receive appropriate initial and ongoing training, to a level appropriate to their contact with victims, so that they are able to identify victims and their needs and deal with them in a respectful, sensitive, professional and non-discriminatory manner. Persons who are likely to be involved in the individual assessment to identify victims' specific protection needs and to determine their need for special protection measures should receive specific training on how to carry out such an assessment. Member States should ensure such training for police services and court staff. Equally, training should be promoted for lawyers, prosecutors and judges and for practitioners who provide victim support or restorative justice services. This requirement should include training on the specific support services to which victims should be referred or specialist training where their work focuses on victims with specific needs and specific psychological training, as appropriate. Where relevant, such training should be gender sensitive. Member States' actions on training should be complemented by guidelines, recommendations and exchange of best practices in accordance with the Budapest roadmap.
- (62) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations working with victims of crime, in particular in policymaking initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of measures to support and protect victims of crime. For victims of crime to receive the proper degree of assistance, support and protection, public services should work in a coordinated manner and should be involved at all administrative levels — at Union level, and at national, regional and local level. Victims should be assisted in finding and addressing the competent authorities in order to avoid repeat referrals. Member States should consider developing 'sole points of access' or 'one-stop shops', that address victims' multiple needs when involved in criminal proceedings, including the need to receive information, assistance, support, protection and compensation.
- (63) In order to encourage and facilitate reporting of crimes and to allow victims to break the cycle of repeat victimisation, it is essential that reliable support services are available to victims and that competent authorities are prepared to respond to victims' reports in a respectful, sensitive, professional and non-discriminatory manner. This could increase victims' confidence in the criminal justice systems of Member States and reduce the number of unreported crimes. Practitioners who are likely to receive complaints from victims with regard to criminal offences should be appropriately trained to facilitate reporting of crimes, and measures should be put in place to enable third-party reporting, including by civil society organisations. It should be possible to make use of communication technology, such as e-mail, video recordings or online electronic forms for making complaints.
- (64) Systematic and adequate statistical data collection is recognised as an essential component of effective policy-making in the field of rights set out in this Directive. In order to facilitate evaluation of the application of this Directive, Member States should communicate to the Commission relevant statistical data related to the application of national procedures on victims of crime, including at least the number and type of the reported crimes and, as far as such data are known and are available, the number and age and gender of the victims. Relevant statistical data can include data recorded by the judicial authorities and by law enforcement agencies and, as far as possible, administrative data compiled by healthcare and social welfare services and by public and non-governmental victim support or restorative justice services and other organisations working with victims of crime. Judicial data can include information about reported crime, the number of cases that are investigated and persons prosecuted and sentenced. Service-based administrative data can include, as far as possible, data on how victims are using services provided by government agencies and public and private support organisations, such as the number of referrals by police to victim support services, the number of victims that request, receive or do not receive support or restorative justice.
- (65) This Directive aims to amend and expand the provisions of Framework Decision 2001/220/JHA. Since the amendments to be made are substantial in number and nature, that Framework Decision should, in the interests of clarity, be replaced in its entirety in relation to Member States participating in the adoption of this Directive.

- (66) This Directive respects fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union. In particular, it seeks to promote the right to dignity, life, physical and mental integrity, liberty and security, respect for private and family life, the right to property, the principle of non-discrimination, the principle of equality between women and men, the rights of the child, the elderly and persons with disabilities, and the right to a fair trial.
- (67) Since the objective of this Directive, namely to establish minimum standards on the rights, support and protection of victims of crime, cannot be sufficiently achieved by the Member States, and can therefore, by reason of its scale and potential effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (68) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁽¹⁾ and in accordance with the principles laid down in the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, which all Member States have ratified.
- (69) This Directive does not affect more far reaching provisions contained in other Union acts which address the specific needs of particular categories of victims, such as victims of human trafficking and victims of child sexual abuse, sexual exploitation and child pornography, in a more targeted manner.
- (70) In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the TEU and to the TFEU, those Member States have notified their wish to take part in the adoption and application of this Directive.
- (71) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.

- (72) The European Data Protection Supervisor delivered an opinion on 17 October 2011⁽²⁾ based on Article 41(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁽³⁾,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER 1

GENERAL PROVISIONS

Article 1

Objectives

1. The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

Article 2

Definitions

1. For the purposes of this Directive the following definitions shall apply:

(a) 'victim' means:

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death;

⁽¹⁾ OJ L 350, 30.12.2008, p. 60.

⁽²⁾ OJ C 35, 9.2.2012, p. 10.

⁽³⁾ OJ L 8, 12.1.2001, p. 1.

(b) 'family members' means the spouse, the person who is living with the victim in a committed intimate relationship, in a joint household and on a stable and continuous basis, the relatives in direct line, the siblings and the dependants of the victim;

(c) 'child' means any person below 18 years of age;

(d) 'restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party.

2. Member States may establish procedures:

(a) to limit the number of family members who may benefit from the rights set out in this Directive taking into account the individual circumstances of each case; and

(b) in relation to paragraph (1)(a)(ii), to determine which family members have priority in relation to the exercise of the rights set out in this Directive.

CHAPTER 2

PROVISION OF INFORMATION AND SUPPORT

Article 3

Right to understand and to be understood

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

Article 4

Right to receive information from the first contact with a competent authority

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

(a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;

(b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;

(c) how and under what conditions they can obtain protection, including protection measures;

(d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;

(e) how and under what conditions they can access compensation;

(f) how and under what conditions they are entitled to interpretation and translation;

(g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;

(h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;

(i) the contact details for communications about their case;

(j) the available restorative justice services;

(k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

2. The extent or detail of information referred to in paragraph 1 may vary depending on the specific needs and personal circumstances of the victim and the type or nature of the crime. Additional details may also be provided at later stages depending on the needs of the victim and the relevance, at each stage of proceedings, of such details.

*Article 5***Right of victims when making a complaint**

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.

2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

*Article 6***Right to receive information about their case**

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:

- (a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
- (b) the time and place of the trial, and the nature of the charges against the offender.

2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:

- (a) any final judgment in a trial;
- (b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

*Article 7***Right to interpretation and translation**

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. Member States shall ensure that victims who are entitled to information about the time and place of the trial in accordance with Article 6(1)(b) and who do not understand the language of the competent authority, are provided with a translation of the information to which they are entitled, upon request.

5. Victims may submit a reasoned request to consider a document as essential. There shall be no requirement to translate passages of essential documents which are not relevant for the purpose of enabling victims to actively participate in the criminal proceedings.

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

7. Member States shall ensure that the competent authority assesses whether victims need interpretation or translation as provided for under paragraphs 1 and 3. Victims may challenge a decision not to provide interpretation or translation. The procedural rules for such a challenge shall be determined by national law.

8. Interpretation and translation and any consideration of a challenge of a decision not to provide interpretation or translation under this Article shall not unreasonably prolong the criminal proceedings.

Article 8

Right to access victim support services

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

4. Victim support services and any specialist support services may be set up as public or non-governmental organisations and may be organised on a professional or voluntary basis.

5. Member States shall ensure that access to any victim support services is not dependent on a victim making a formal complaint with regard to a criminal offence to a competent authority.

Article 9

Support from victim support services

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

- (a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
- (b) information about or direct referral to any relevant specialist support services in place;
- (c) emotional and, where available, psychological support;
- (d) advice relating to financial and practical issues arising from the crime;
- (e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:

- (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
- (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

CHAPTER 3

PARTICIPATION IN CRIMINAL PROCEEDINGS

Article 10

Right to be heard

1. Member States shall ensure that victims may be heard during criminal proceedings and may provide evidence. Where a child victim is to be heard, due account shall be taken of the child's age and maturity.

2. The procedural rules under which victims may be heard during criminal proceedings and may provide evidence shall be determined by national law.

Article 11

Rights in the event of a decision not to prosecute

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

4. Where the decision not to prosecute is taken by the highest prosecuting authority against whose decision no review may be carried out under national law, the review may be carried out by the same authority.

5. Paragraphs 1, 3 and 4 shall not apply to a decision of the prosecutor not to prosecute, if such a decision results in an out-of-court settlement, in so far as national law makes such provision.

Article 12

Right to safeguards in the context of restorative justice services

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

- (a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;
- (b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;
- (c) the offender has acknowledged the basic facts of the case;
- (d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
- (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

Article 13

Right to legal aid

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

*Article 14***Right to reimbursement of expenses**

Member States shall afford victims who participate in criminal proceedings, the possibility of reimbursement of expenses incurred as a result of their active participation in criminal proceedings, in accordance with their role in the relevant criminal justice system. The conditions or procedural rules under which victims may be reimbursed shall be determined by national law.

*Article 15***Right to the return of property**

Member States shall ensure that, following a decision by a competent authority, recoverable property which is seized in the course of criminal proceedings is returned to victims without delay, unless required for the purposes of criminal proceedings. The conditions or procedural rules under which such property is returned to the victims shall be determined by national law.

*Article 16***Right to decision on compensation from the offender in the course of criminal proceedings**

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

*Article 17***Rights of victims resident in another Member State**

1. Member States shall ensure that their competent authorities can take appropriate measures to minimise the difficulties faced where the victim is a resident of a Member State other than that where the criminal offence was committed, particularly with regard to the organisation of the proceedings. For this purpose, the authorities of the Member State where the criminal offence was committed shall, in particular, be in a position:

- (a) to take a statement from the victim immediately after the complaint with regard to the criminal offence is made to the competent authority;
- (b) to have recourse to the extent possible to the provisions on video conferencing and telephone conference calls laid down in the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 ⁽¹⁾ for the purpose of hearing victims who are resident abroad.

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;

⁽¹⁾ 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
COM(2012) 286 final

**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
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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 organs¹. 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 level², 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 euro³ 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 boys⁴.

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 citizenship⁵. 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

¹ Trafficking in human beings differs from human smuggling (facilitated migration) because it involves the use of force and involves exploitation, and because there is no need to cross a border or be physically transported.

² International Labour Organization, 'ILO 2012 Global estimates of forced labour', June 2012. The report states that human trafficking can be regarded as forced labour, and so the estimates captures the full realm of human trafficking for labour and sexual exploitation (page 13).

³ Estimated global annual profits made from the exploitation of all trafficked forced labour are US\$31.6 billion. Of this, US\$15.5 billion, that is 49 per cent, is generated in industrialised economies (in Patrick Belser, 'Forced Labor and Human Trafficking: Estimating the Profits', Working Paper, Geneva, International Labour Office, 2005).

⁴ The Globalization of Crime: A Transnational Organized Crime Threat Assessment, UNODC, 2010.

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

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 1990s⁶.

A major step forward recently was the adoption of **Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims**⁷. The Directive adopts a comprehensive, integrated approach that focuses on human rights and on the victims and is gender-specific. It is expected to have considerable impact, once fully transposed by the Member States by 6 April 2013. It not only focuses on law enforcement but also aims to prevent crime and ensure that victims of trafficking are given an opportunity to recover and to reintegrate into society.

In the meantime, a number of EU instruments in various policy areas contribute to addressing trafficking in human beings⁸. 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 beings⁹.

⁶ Communication on *trafficking in women for the purpose of sexual exploitation* (COM(96) 567 final), Communication on *Fighting trafficking in human beings: an integrated approach and proposals for an action plan* (COM(2005) 514 final), the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01) and Commission working document on *the Evaluation and monitoring of the implementation of the EU plan* (COM(2008) 657 final).

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

⁸ The Proposal for the Directive on the rights of victims (COM(2011) 275 final), action on violence against women, of which gender equality and anti-discrimination are fundamental elements; An EU Agenda for the Rights of the Child (COM(2011) 0060 final); the Action Plan on Unaccompanied Minors (COM(2010) 213 final); Directive 2009/52/EC on sanctions against employers who knowingly employ illegally staying third country workers; and the proposal for a Directive on seasonal employment of third-country nationals (COM(2010) 379 final).

⁹ 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**¹⁰ — highlights the importance of cooperating with third countries of origin, transit and destination and identifies as one of its four pillars the prevention and reduction of irregular migration and trafficking in human beings. This line is also followed in the **2009 Action Oriented Paper on strengthening the EU external dimension against trafficking in human beings**¹¹.

Trafficking in human beings is also addressed in numerous external relations instruments, such as the annual progress reports on candidate and potential candidate countries, the roadmaps and action plans regarding visa liberalisation dialogues with third countries, the Country Strategy Papers and National and Regional Indicative Programmes and programmes in the framework of the European Neighbourhood Policy. It is also addressed in bilateral Action Plans and ongoing political dialogue with third countries¹².

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 2011¹³ and will oversee the implementation of this Strategy. The Commission has also developed a website¹⁴ 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 Beings¹⁵. **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 coherent¹⁶.

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

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

¹² In particular in the context of Human Rights Dialogues held with over 40 countries worldwide, the Migration and Mobility Dialogues amounting to seven regional processes covering more than a hundred countries and over twenty bilateral processes.

¹³ Her tasks include addressing the urgent need to ensure consistent and coordinated strategic planning at EU level and with international organisations and third countries, to address this issue in a comprehensive manner.

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

¹⁵ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Treaty Series, vol. 2237, p. 319; Convention on Action against Trafficking in Human Beings (CETS No.197), Council of Europe, Warsaw, 16 May 2005.

¹⁶ UN Convention on the Elimination of All Forms of Discrimination Against Women, New York, 18 December 1979, Treaty Series, vol. 1249, p. 13, UN Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, ILO Forced Labour Convention, 1930 (No 29), ILO Abolition of Forced Labour Convention, 1957 (No 105), ILO Worst Forms of Child Labour Convention, 1999 (No 182) and ILO Domestic Workers Convention, 2011 (No 189).

2. KEY PRIORITIES

With this Strategy, the European Commission seeks to **focus on concrete measures that will support the transposition and implementation of Directive 2011/36/EU, bring added value and complement the work done by governments, international organisations and civil society in the EU and third countries.**

The main responsibility for addressing trafficking in human beings lies with the Member States. The purpose of this Communication is to show how the European Commission intends to support the Member States in doing this. The *Rantsev v Cyprus and Russia*¹⁷ judgment provides a decisive human rights benchmark with clear obligations for Member States to take the necessary steps to address different areas of trafficking in human beings. These include recruitment, investigation, prosecution, protection of human rights, and providing assistance to victims. If the authorities are aware of a case of human trafficking, or that an individual risks being a victim of human trafficking, they are obliged to take appropriate measures.

The measures included in this Strategy are the result of a thorough examination of measures and policies that are already in place, the work of the Group of Experts¹⁸, 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

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

¹⁸ Group of Experts advise the Commission on policy and legislation and are based on Commission Decisions, most recently OJ, 12.08.2011, L 207/14.

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 crime¹⁹.

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.

¹⁹ 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 lives²⁰.

EU legislation provides for the protection of child victims and assistance and support to such victims²¹. 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 States²² and their roles, qualifications and understanding of competences vary from one Member State to another²³. 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**

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

²¹ Directives 2011/36/EU on trafficking in human beings and 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA.

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

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

and migrant rights that victims of trafficking in human beings have under EU law²⁴. 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 conduct²⁵, 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 beings²⁶.

(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

²⁴ This information includes the rights based on Directive 2004/81/EC on the residence permit issued to third country nationals who are victims of trafficking in human beings. The potential of the Directive is currently not being fully exploited and victims' lack of information about their rights has been identified as one of the key problem areas. The Commission has launched a study to analyse the current measures in place and schemes of protection for victims of trafficking provided in each Member State under the Directive, to understand whether the current somewhat divergent arrangements in the Member States hinder a consistent, effective approach to addressing trafficking in human beings. <http://ec.europa.eu/anti-trafficking/index>, <http://ec.europa.eu/immigration> and <http://e-justice.europa.eu>.

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

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

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**²⁷.

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 Europol²⁸ 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

²⁷ Such as the UNODC's Blue Heart Campaign or the Blue Blindfold Campaign of the UK.

²⁸ The units should function as a contact point for law enforcement bodies in other countries in and outside the EU and experts from the unit should participate in meetings such as the meeting of the Analytical Work Files group on human trafficking, meetings related to the EU policy cycle and meetings of the contact points mentioned in Europol's contact manual for human trafficking.

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 Recommendations²⁹, **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 sectors³⁰, 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,

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

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

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 account³¹. 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.

³¹ The agencies in question are CEPOL, EASO, EIGE, Europol, Eurojust, FRA and Frontex, <http://ec.europa.eu/anti-trafficking/entity.action?id=55a48066-dcf5-4e71-b191-cedcf0caa97a>.

The Commission will also work towards **strengthening and formalising partnerships with international organisations**³² active in the field of trafficking in human beings to improve the exchange of information and ensure cooperation, particularly in the areas of policy planning, prioritisation, data collection, research and monitoring and evaluation.

As a severe violation of human rights mentioned in the Charter of Fundamental Rights, trafficking in human beings will continue to be covered **under the Human Rights Clauses in the EU's agreements with third countries, including the Free Trade Agreements**, providing the basis for cooperation on and promotion of human rights³³.

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 projects³⁴. 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 Rights³⁵ requires the Commission to ensure

³² The Commission has formalised partnerships in different forms and cooperates with the UN, the Council of Europe, the International Organization for Migration, the Organization for Security and 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.

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

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

³⁵ Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union COM(2010) 573 final, 19 October 2010, available at: <http://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 Charter³⁶.

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 beings³⁷ 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 consistent³⁸. 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 stakeholders³⁹. 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.

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

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

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

³⁹ CEPOL provides training on trafficking in human beings as well as a Common Curriculum and an 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 2011-2015⁴⁰ 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 behind⁴¹, unaccompanied children, and children with disabilities, as well as people in the Roma community⁴². 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.

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

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

⁴² Taking into account research on the topic such as the Study on the Typology of and Policy Responses to Child Begging in the EU, JLS/2009/ISEC/PR/008-F2.

(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 victims⁴³. 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 agenda⁴⁴ 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 EU⁴⁵, and how this Communication relates to the Directive on human

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

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

⁴⁵ The intention is to exploit as far as possible existing reporting mechanisms in the field of trafficking in human beings, such as reporting under the EU Policy Cycle to fight serious and organised Crime, and

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.

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
PRIORITY A: Identifying, protecting and assisting victims of trafficking		
Development of national referral mechanisms	MS/COM	2012
Guidelines on protection of victims	COM	2015
Model for an EU transnational referral mechanism	COM	2015
Guidelines for better identification of victims of trafficking in human beings	COM	2014
Guidelines for consular services and border guards for identification of victims of trafficking	COM	2012
Guidelines on child protection systems	COM	2014
Strengthening of child protection systems to ensure safe return and prevent re-trafficking	MS	2015
Best practice model on the role of guardians and/or representatives for child victims	COM/FRA	2014
Information on labour, social, victim and migrant rights under EU law	COM	2013
Dissemination of information on labour, social, victim and migrant rights at national level	MS/COM	2014

PRIORITIES AND ACTIONS	RESPONSIBLE	TIMING
PRIORITY B: Stepping up the prevention of trafficking in human beings		
Research on reducing the demand for services provided by victims of trafficking	COM	2013
Establishment of a European Business Coalition against trafficking in human beings	COM	2014
Models and guidelines on the reduction of demand	COM/European Business Coalition	2016
Analysis of existing prevention initiatives carried out by stakeholders	COM	2013
EU-wide awareness-raising activities targeting specific vulnerable groups	COM	2014

PRIORITIES AND ACTION	RESPONSIBLE	TIMING
PRIORITY C: Increased prosecution of traffickers		
Establishment of national, multidisciplinary law-enforcement units on human trafficking	MS	Ongoing
Proactive financial investigations of trafficking cases and cooperation with EU agencies	MS	2013
Analysis of information received from MS on financial investigation in human trafficking cases	Europol/MS	2015
Joint Investigation Teams	MS/EU agencies	Ongoing

Full use of EU agencies	MS/EU agencies	Ongoing
Implementation of Eurojust Action Plan against trafficking in human beings	Eurojust/MS	2013
Regional cooperation on human trafficking along routes from the East to the EU	COM	2012

PRIORITIES AND ACTIONS	RESPONSIBLE	TIMING
PRIORITY D: Enhanced coordination and cooperation among key actors and policy coherence		
Coordination and monitoring of the implementation of the joint statement signed by EU JHA agencies	COM	Ongoing
Strengthening of the EU-wide coordination mechanism to support the Informal Network of National Rapporteurs or Equivalent Mechanisms	COM/MS	2013
Possible establishment of cooperation mechanisms in EU delegations in priority third countries and regions	COM/EEAS/MS	2013
Strengthening and formalisation partnerships with international organisations	COM/International Organisations/EEAS	Ongoing
Inclusion of human trafficking in the Human Rights Clauses	COM/EEAS	Ongoing
Funding of projects on trafficking in human beings in third countries and regions	COM/EEAS	Ongoing
EU platform of civil society organisations and service providers	COM	2013
Review of EU-funded projects on trafficking in human beings	COM	2014

Tool assessing fundamental rights in anti-trafficking policy and related actions	COM/FRA	2014
Assistance to Member States in implementing the assessment tool	COM/MS	Ongoing
Strengthening of training targeting judiciary and cross-border law enforcement officials	COM/EU agencies/MS	2012
Increased policy coherence through training programmes	COM/MS	Ongoing

PRIORITIES AND ACTIONS	RESPONSIBLE	TIMING
PRIORITY E: Increased knowledge of and effective response to changing trends in trafficking in human beings		
EU-wide system for the collection and publication of gender- and age- disaggregated data	COM/MS	2012
Comparable and reliable data in follow-up initiative 2011 and 2012	COM/MS/National Rapporteurs	2014
Research on the gender dimensions of human trafficking	COM	2013
Research on high-risk groups for human trafficking	COM	2014
Research on recruitment over the internet and through social networks	COM/MS	2014
Case-law study on trafficking or labour exploitation	COM/MS	2013
Best practices guide for public authorities on monitoring of temporary work agencies and intermediary agencies	EUROFOUND/COM	2015
Cooperation with labour, social and health, safety and fisheries inspectors	COM	2013

DIRECTIVES

DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 December 2011

on the European protection order

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(a) and (d) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Hungary, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Finland and the Kingdom of Sweden,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.
- (2) Article 82(1) of the Treaty on the Functioning of the European Union (TFEU) provides that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions.
- (3) According to the Stockholm Programme — An open and secure Europe serving and protecting citizens ⁽²⁾, mutual

recognition should extend to all types of judgments and decisions of a judicial nature, which may, depending on the legal system, be either criminal or administrative. It also calls on the Commission and the Member States to examine how to improve legislation and practical support measures for the protection of victims. The programme also points out that victims of crime can be offered special protection measures which should be effective within the Union. This Directive forms part of a coherent and comprehensive set of measures on victims' rights.

- (4) The resolution of the European Parliament of 26 November 2009 on the elimination of violence against women calls on Member States to improve their national laws and policies to combat all forms of violence against women and to act in order to tackle the causes of violence against women, not least by employing preventive measures and calls on the Union to guarantee the right to assistance and support for all victims of violence. The resolution of the European Parliament of 10 February 2010 on equality between women and men in the European Union 2009 endorses the proposal to introduce the European protection order for victims.
- (5) In its Resolution of 10 June 2011 on a Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, the Council stated that action should be taken at the level of the Union in order to strengthen the rights and protection of victims of crime and called on the Commission to present appropriate proposals to that end. In this framework, a mechanism should be created to ensure mutual recognition among Member States of decisions concerning protection measures for victims of crime. According to that Resolution, this Directive, which concerns the mutual recognition of protection measures taken in criminal matters, should be complemented by an appropriate mechanism concerning measures taken in civil matters.

⁽¹⁾ Position of the European Parliament of 14 December 2010 (not yet published in the Official Journal) and position of the Council at first reading of 24 November 2011 (not yet published in the Official Journal). Position of the European Parliament of 13 December 2011 (not yet published in the Official Journal).

⁽²⁾ OJ C 115, 4.5.2010, p. 1.

- (6) In a common area of justice without internal borders, it is necessary to ensure that the protection provided to a natural person in one Member State is maintained and

continued in any other Member State to which the person moves or has moved. It should also be ensured that the legitimate exercise by citizens of the Union of their right to move and reside freely within the territory of Member States, in accordance with Article 3(2) of the Treaty on European Union (TEU) and Article 21 TFEU, does not result in a loss of their protection.

- (7) In order to attain these objectives, this Directive should set out rules whereby the protection stemming from certain protection measures adopted according to the law of one Member State ('the issuing State') can be extended to another Member State in which the protected person decides to reside or stay ('the executing State').
- (8) This Directive takes account of the different legal traditions of the Member States as well as the fact that effective protection can be provided by means of protection orders issued by an authority other than a criminal court. This Directive does not create obligations to modify national systems for adopting protection measures nor does it create obligations to introduce or amend a criminal law system for executing a European protection order.
- (9) This Directive applies to protection measures which aim specifically to protect a person against a criminal act of another person which may, in any way, endanger that person's life or physical, psychological and sexual integrity, for example by preventing any form of harassment, as well as that person's dignity or personal liberty, for example by preventing abductions, stalking and other forms of indirect coercion, and which aim to prevent new criminal acts or to reduce the consequences of previous criminal acts. These personal rights of the protected person correspond to fundamental values recognised and upheld in all Member States. However, a Member State is not obliged to issue a European protection order on the basis of a criminal measure which does not serve specifically to protect a person, but primarily serves other aims, for example the social rehabilitation of the offender. It is important to underline that this Directive applies to protection measures which aim to protect all victims and not only the victims of gender violence, taking into account the specificities of each type of crime concerned.
- (10) This Directive applies to protection measures adopted in criminal matters, and does not therefore cover protection measures adopted in civil matters. For a protection measure to be executable in accordance with this Directive, it is not necessary for a criminal offence to have been established by a final decision. Nor is the criminal, administrative or civil nature of the authority adopting a protection measure relevant. This Directive

does not oblige Member States to amend their national law to enable them to adopt protection measures in the context of criminal proceedings.

- (11) This Directive is intended to apply to protection measures adopted in favour of victims, or possible victims, of crimes. This Directive should not therefore apply to measures adopted with a view to witness protection.
- (12) If a protection measure, as defined in this Directive, is adopted for the protection of a relative of the main protected person, a European protection order may also be requested by and issued in respect of that relative, subject to the conditions laid down in this Directive.
- (13) Any request for the issuing of a European protection order should be treated with appropriate speed, taking into account the specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.
- (14) Where information is to be provided under this Directive to the protected person or to the person causing danger, this information should also, where relevant, be provided to the guardian or the representative of the person concerned. Due attention should also be paid to the need for the protected person, the person causing danger or the guardian or representative in the proceedings, to receive the information provided for by this Directive, in a language that that person understands.
- (15) In the procedures for the issuing and recognition of a European protection order, competent authorities should give appropriate consideration to the needs of victims, including particularly vulnerable persons, such as minors or persons with disabilities.
- (16) For the application of this Directive, a protection measure may have been imposed following a judgment within the meaning of Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions⁽¹⁾, or following a decision on supervision measures within the meaning of Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the

⁽¹⁾ OJ L 337, 16.12.2008, p. 102.

principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ⁽¹⁾. If a decision was adopted in the issuing State on the basis of one of those Framework Decisions, the recognition procedure should be followed accordingly in the executing State. This, however, should not exclude the possibility to transfer a European protection order to a Member State other than the State executing decisions based on those Framework Decisions.

- (17) In accordance with Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and with the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, the person causing danger should be provided, either during the procedure leading to the adoption of a protection measure or before issuing a European protection order, with the possibility of being heard and challenging the protection measure.
- (18) In order to prevent a crime being committed against the victim in the executing State, that State should have the legal means for recognising the decision previously adopted in the issuing State in favour of the victim, while also avoiding the need for the victim to start new proceedings or to produce evidence in the executing State again, as if the issuing State had not adopted the decision. The recognition of the European protection order by the executing State implies, *inter alia*, that the competent authority of that State, subject to the limitations set out in this Directive, accepts the existence and validity of the protection measure adopted in the issuing State, acknowledges the factual situation described in the European protection order, and agrees that protection should be provided and should continue to be provided in accordance with its national law.
- (19) This Directive contains an exhaustive list of prohibitions and restrictions which, when imposed in the issuing State and included in the European protection order, should be recognised and enforced in the executing State, subject to the limitations set out in this Directive. Other types of protection measures may exist at national level, such as, if provided by national law, the obligation on the person causing danger to remain in a specified place. Such measures may be imposed in the issuing State in the framework of the procedure leading to the adoption of one of the protection measures which, according to this Directive, may be the basis for a European protection order.
- (20) Since, in the Member States, different kinds of authorities (civil, criminal or administrative) are competent to adopt and enforce protection measures, it is appropriate to provide a high degree of flexibility in the cooperation mechanism between the Member States under this Directive. Therefore, the competent authority in the

executing State is not required in all cases to take the same protection measure as those which were adopted in the issuing State, and has a degree of discretion to adopt any measure which it deems adequate and appropriate under its national law in a similar case in order to provide continued protection to the protected person in the light of the protection measure adopted in the issuing State as described in the European protection order.

- (21) The prohibitions or restrictions to which this Directive applies include, among others, measures aimed at limiting personal or remote contacts between the protected person and the person causing danger, for example by imposing certain conditions on such contacts or imposing restrictions on the contents of communications.
- (22) The competent authority of the executing State should inform the person causing danger, the competent authority of the issuing State and the protected person of any measure adopted on the basis of the European protection order. In the notification to the person causing danger, due regard should be taken of the interest of the protected person in not having that person's address or other contact details disclosed. Such details should be excluded from the notification, provided that the address or other contact details are not included in the prohibition or restriction imposed as an enforcement measure on the person causing danger.
- (23) When the competent authority in the issuing State withdraws the European protection order, the competent authority in the executing State should discontinue the measures which it has adopted in order to enforce the European protection order, it being understood that the competent authority in the executing State may — autonomously, and in accordance with its national law — adopt any protection measure under its national law in order to protect the person concerned.
- (24) Given that this Directive deals with situations in which the protected person moves to another Member State, issuing or executing a European protection order should not imply any transfer to the executing State of powers relating to principal, suspended, alternative, conditional or secondary penalties, or relating to security measures imposed on the person causing danger, if the latter continues to reside in the State that adopted the protection measure.
- (25) Where appropriate, it should be possible to use electronic means with a view to putting into practice the measures adopted in application of this Directive, in accordance with national laws and procedures.

⁽¹⁾ OJ L 294, 11.11.2009, p. 20.

- (26) In the context of cooperation among the authorities involved in ensuring the protection of the protected person, the competent authority of the executing State should communicate to the competent authority of the issuing State any breach of the measures adopted in the executing State with a view to executing the European protection order. This communication should enable the competent authority of the issuing State to promptly decide on any appropriate response with respect to the protection measure imposed in its State on the person causing danger. Such a response may comprise, where appropriate, the imposition of a custodial measure in substitution of the non-custodial measure that was originally adopted, for example, as an alternative to preventive detention or as a consequence of the conditional suspension of a penalty. It is understood that such a decision, since it does not impose *ex novo* a penalty in relation to a new criminal offence, does not interfere with the possibility that the executing State may, where applicable, impose penalties in the event of a breach of the measures adopted in order to execute the European protection order.
- (27) In view of the different legal traditions of the Member States, where no protection measure would be available in the executing State in a case similar to the factual situation described in the European protection order, the competent authority of the executing State should report any breach of the protection measure described in the European protection order of which it is aware to the competent authority of the issuing State.
- (28) In order to ensure the smooth application of this Directive in each particular case, the competent authorities of the issuing and the executing States should exercise their competencies in accordance with the provisions of this Directive, taking into account the principle of *ne bis in idem*.
- (29) The protected person should not be required to sustain costs related to the recognition of the European protection order which are disproportionate to a similar national case. When implementing this Directive, Member States should ensure that, after recognition of the European protection order, the protected person is not required to initiate further national proceedings to obtain from the competent authority of the executing State, as a direct consequence of the recognition of the European protection order, a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person.
- (30) Bearing in mind the principle of mutual recognition upon which this Directive is based, Member States should promote, to the widest extent possible, direct contact between the competent authorities when they apply this Directive.
- (31) Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States should consider requesting those responsible for the training of judges, prosecutors, police and judicial staff involved in the procedures aimed at issuing or recognising a European protection order to provide appropriate training with respect to the objectives of this Directive.
- (32) In order to facilitate the evaluation of the application of this Directive, Member States should communicate to the Commission relevant data related to the application of national procedures on the European protection order, at least with regard to the number of European protection orders requested, issued and/or recognised. In this respect, other types of data, such as, for example, the types of crimes concerned, would also be useful.
- (33) This Directive should contribute to the protection of persons who are in danger, thereby complementing, but not affecting, the instruments already in place in this field, such as Framework Decision 2008/947/JHA and Framework Decision 2009/829/JHA.
- (34) When a decision relating to a protection measure falls within the scope of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters⁽¹⁾, Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility⁽²⁾, or the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children⁽³⁾, the recognition and enforcement of that decision should be carried out in accordance with the provisions of the relevant legal instrument.
- (35) Member States and the Commission should include information about the European protection order, where it is appropriate, in existing education and awareness-raising campaigns on the protection of victims of crime.
- (36) Personal data processed when implementing this Directive should be protected in accordance with Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters⁽⁴⁾ and with the principles laid down in the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

⁽¹⁾ OJ L 12, 16.1.2001, p. 1.

⁽²⁾ OJ L 338, 23.12.2003, p. 1.

⁽³⁾ OJ L 48, 21.2.2003, p. 3.

⁽⁴⁾ OJ L 350, 30.12.2008, p. 60.

- (37) This Directive should respect the fundamental rights guaranteed by the Charter of Fundamental Rights of the European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in accordance with Article 6 TEU.
- (38) When implementing this Directive, Member States are encouraged to take into account the rights and principles enshrined in the 1979 United Nations Convention on the elimination of all forms of discrimination against women.
- (39) Since the objective of this Directive, namely to protect persons who are in danger, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (40) In accordance with Article 3 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Directive.
- (41) In accordance with Articles 1 and 2 of the Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (42) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Objective

This Directive sets out rules allowing a judicial or equivalent authority in a Member State, in which a protection measure has

been adopted with a view to protecting a person against a criminal act by another person which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity, to issue a European protection order enabling a competent authority in another Member State to continue the protection of the person in the territory of that other Member State, following criminal conduct, or alleged criminal conduct, in accordance with the national law of the issuing State.

Article 2

Definitions

For the purposes of this Directive the following definitions shall apply:

- (1) 'European protection order' means a decision, taken by a judicial or equivalent authority of a Member State in relation to a protection measure, on the basis of which a judicial or equivalent authority of another Member State takes any appropriate measure or measures under its own national law with a view to continuing the protection of the protected person;
- (2) 'protection measure' means a decision in criminal matters adopted in the issuing State in accordance with its national law and procedures by which one or more of the prohibitions or restrictions referred to in Article 5 are imposed on a person causing danger in order to protect a protected person against a criminal act which may endanger his life, physical or psychological integrity, dignity, personal liberty or sexual integrity;
- (3) 'protected person' means a natural person who is the object of the protection resulting from a protection measure adopted by the issuing State;
- (4) 'person causing danger' means the natural person on whom one or more of the prohibitions or restrictions referred to in Article 5 have been imposed;
- (5) 'issuing State' means the Member State in which a protection measure has been adopted that constitutes the basis for issuing a European protection order;
- (6) 'executing State' means the Member State to which a European protection order has been forwarded with a view to its recognition;
- (7) 'State of supervision' means the Member State to which a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has been transferred.

*Article 3***Designation of competent authorities**

1. Each Member State shall inform the Commission which judicial or equivalent authority or authorities are competent under its national law to issue a European protection order and to recognise such an order, in accordance with this Directive, when that Member State is the issuing State or the executing State.

2. The Commission shall make the information received available to all Member States. Member States shall inform the Commission of any change to the information referred to in paragraph 1.

*Article 4***Recourse to a central authority**

1. Each Member State may designate a central authority or, where its legal system so provides, more than one central authority, to assist its competent authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority or authorities responsible for the administrative transmission and reception of any European protection order, as well as for all other official correspondence relating thereto. As a consequence, all communications, consultations, exchanges of information, enquiries and notifications between competent authorities may be dealt with, where appropriate, with the assistance of the designated central authority or authorities of the Member State concerned.

3. Member States wishing to make use of the possibilities referred to in this Article shall communicate to the Commission information relating to the designated central authority or authorities. These indications shall be binding upon all the authorities of the issuing State.

*Article 5***Need for an existing protection measure under national law**

A European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:

- (a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- (b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or

- (c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

*Article 6***Issuing of a European protection order**

1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, inter alia, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

2. A judicial or equivalent authority of the issuing State may issue a European protection order only at the request of the protected person and after verifying that the protection measure meets the requirements set out in Article 5.

3. The protected person may submit a request for the issuing of a European protection order either to the competent authority of the issuing State or to the competent authority of the executing State. If such a request is submitted in the executing State, its competent authority shall transfer this request as soon as possible to the competent authority of the issuing State.

4. Before issuing a European protection order, the person causing danger shall be given the right to be heard and the right to challenge the protection measure, if that person has not been granted these rights in the procedure leading to the adoption of the protection measure.

5. When a competent authority adopts a protection measure containing one or more of the prohibitions or restrictions referred to in Article 5, it shall inform the protected person in an appropriate way, in accordance with the procedures under its national law, about the possibility of requesting a European protection order in the case that that person decides to leave for another Member State, as well as of the basic conditions for such a request. The authority shall advise the protected person to submit an application before leaving the territory of the issuing State.

6. If the protected person has a guardian or representative, that guardian or representative may introduce the request referred to in paragraphs 2 and 3, on behalf of the protected person.

7. If the request to issue a European protection order is rejected, the competent authority of the issuing State shall inform the protected person of any applicable legal remedies that are available, under its national law, against such a decision.

Article 7

Form and content of the European protection order

The European protection order shall be issued in accordance with the form set out in Annex I to this Directive. It shall, in particular, contain the following information:

- (a) the identity and nationality of the protected person, as well as the identity and nationality of the guardian or representative if the protected person is a minor or is legally incapacitated;
- (b) the date from which the protected person intends to reside or stay in the executing State, and the period or periods of stay, if known;
- (c) the name, address, telephone and fax numbers and e-mail address of the competent authority of the issuing State;
- (d) identification (for example, through a number and date) of the legal act containing the protection measure on the basis of which the European protection order is issued;
- (e) a summary of the facts and circumstances which have led to the adoption of the protection measure in the issuing State;
- (f) the prohibitions or restrictions imposed, in the protection measure underlying the European protection order, on the person causing danger, their duration and the indication of the penalty, if any, in the event of the breach of any of the prohibitions or restrictions;
- (g) the use of a technical device, if any, that has been provided to the protected person or to the person causing danger as a means of enforcing the protection measure;
- (h) the identity and nationality of the person causing danger, as well as that person's contact details;
- (i) where such information is known by the competent authority of the issuing State without requiring further inquiry, whether the protected person and/or the person causing danger has been granted free legal aid in the issuing State;
- (j) a description, where appropriate, of other circumstances that could have an influence on the assessment of the danger that confronts the protected person;

(k) an express indication, where applicable, that a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred to the State of supervision, when this is different from the State of execution of the European protection order, and the identification of the competent authority of that State for the enforcement of such a judgment or decision.

Article 8

Transmission procedure

1. Where the competent authority of the issuing State transmits the European protection order to the competent authority of the executing State, it shall do so by any means which leaves a written record so as to allow the competent authority of the executing State to establish its authenticity. All official communication shall also be made directly between those competent authorities.

2. If the competent authority of either the executing State or the issuing State is not known to the competent authority of the other State, the latter authority shall make all the relevant enquiries, including via the contact points of the European Judicial Network referred to in Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network ⁽¹⁾, the National Member of Eurojust or the National System for the coordination of Eurojust of its State, in order to obtain the necessary information.

3. When an authority of the executing State which receives a European protection order has no competence to recognise it, that authority shall, *ex officio*, forward the European protection order to the competent authority and shall, without delay, inform the competent authority of the issuing State accordingly by any means which leaves a written record.

Article 9

Measures in the executing State

1. Upon receipt of a European protection order transmitted in accordance with Article 8, the competent authority of the executing State shall, without undue delay, recognise that order and take a decision adopting any measure that would be available under its national law in a similar case in order to ensure the protection of the protected person, unless it decides to invoke one of the grounds for non-recognition referred to in Article 10. The executing State may apply, in accordance with its national law, criminal, administrative or civil measures.

⁽¹⁾ OJ L 348, 24.12.2008, p. 130.

2. The measure adopted by the competent authority of the executing State in accordance with paragraph 1, as well as any other measure taken on the basis of a subsequent decision as referred to in Article 11, shall, to the highest degree possible, correspond to the protection measure adopted in the issuing State.

3. The competent authority of the executing State shall inform the person causing danger, the competent authority of the issuing State and the protected person of any measures adopted in accordance with paragraph 1, as well as of the possible legal consequence of a breach of such measure provided for under national law and in accordance with Article 11(2). The address or other contact details of the protected person shall not be disclosed to the person causing danger unless such details are necessary in view of the enforcement of the measure adopted in accordance with paragraph 1.

4. If the competent authority in the executing State considers that the information transmitted with the European protection order in accordance with Article 7 is incomplete, it shall without delay inform the competent authority of the issuing State by any means which leaves a written record, assigning a reasonable period for it to provide the missing information.

Article 10

Grounds for non-recognition of a European protection order

1. The competent authority of the executing State may refuse to recognise a European protection order in the following circumstances:

- (a) the European protection order is not complete or has not been completed within the time limit set by the competent authority of the executing State;
- (b) the requirements set out in Article 5 have not been met;
- (c) the protection measure relates to an act that does not constitute a criminal offence under the law of the executing State;
- (d) the protection derives from the execution of a penalty or measure that, according to the law of the executing State, is covered by an amnesty and relates to an act or conduct which falls within its competence according to that law;
- (e) there is immunity conferred under the law of the executing State on the person causing danger, which makes it impossible to adopt measures on the basis of a European protection order;
- (f) criminal prosecution, against the person causing danger, for the act or the conduct in relation to which the protection measure has been adopted is statute-barred under the law of the executing State, when the act or the conduct falls within its competence under its national law;

(g) recognition of the European protection order would contravene the *ne bis in idem* principle;

(h) under the law of the executing State, the person causing danger cannot, because of that person's age, be held criminally responsible for the act or the conduct in relation to which the protection measure has been adopted;

(i) the protection measure relates to a criminal offence which, under the law of the executing State, is regarded as having been committed, wholly or for a major or essential part, within its territory.

2. Where the competent authority of the executing State refuses to recognise a European protection order in application of one of the grounds referred to in paragraph 1, it shall:

(a) without undue delay, inform the issuing State and the protected person of this refusal and of the grounds relating thereto;

(b) where appropriate, inform the protected person about the possibility of requesting the adoption of a protection measure in accordance with its national law;

(c) inform the protected person of any applicable legal remedies that are available under its national law against such a decision.

Article 11

Governing law and competence in the executing State

1. The executing State shall be competent to adopt and to enforce measures in that State following the recognition of a European protection order. The law of the executing State shall apply to the adoption and enforcement of the decision provided for in Article 9(1), including rules on legal remedies against decisions adopted in the executing State relating to the European protection order.

2. In the event of a breach of one or more of the measures taken by the executing State following the recognition of a European protection order, the competent authority of the executing State shall, in accordance with paragraph 1, be competent to:

(a) impose criminal penalties and take any other measure as a consequence of the breach, if that breach amounts to a criminal offence under the law of the executing State;

- (b) take any non-criminal decisions related to the breach;
- (c) take any urgent and provisional measure in order to put an end to the breach, pending, where appropriate, a subsequent decision by the issuing State.
3. If there is no available measure at national level in a similar case that could be taken in the executing State, the competent authority of the executing State shall report to the competent authority of the issuing State any breach of the protection measure described in the European protection order of which it is aware.

Article 12

Notification in the event of breach

The competent authority of the executing State shall notify the competent authority of the issuing State or of the State of supervision of any breach of the measure or measures taken on the basis of the European protection order. Notice shall be given using the standard form set out in Annex II.

Article 13

Competence in the issuing State

1. The competent authority of the issuing State shall have exclusive competence to take decisions relating to:
- (a) the renewal, review, modification, revocation and withdrawal of the protection measure and, consequently, of the European protection order;
- (b) the imposition of a custodial measure as a consequence of revocation of the protection measure, provided that the protection measure has been applied on the basis of a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or on the basis of a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA;
2. The law of the issuing State shall apply to decisions adopted in accordance with paragraph 1.
3. Where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, has already been transferred, or is transferred after the issuing of the European protection order, to another Member State, subsequent decisions, as provided for by those Framework Decisions, shall be taken in accordance with the relevant provisions of those Framework Decisions.

4. When the protection measure is contained in a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA which has been transferred or is transferred after the issuing of the European protection order to another Member State, and the competent authority of the State of supervision has made subsequent decisions affecting the obligations or instructions contained in the protection measure in accordance with Article 14 of that Framework Decision, the competent authority of the issuing State shall renew, review, modify, revoke or withdraw without delay the European protection order accordingly.

5. The competent authority of the issuing State shall inform the competent authority of the executing State without delay of any decision taken in accordance with paragraph 1 or 4.

6. If the competent authority in the issuing State has revoked or withdrawn the European protection order in accordance with point (a) of paragraph 1 or with paragraph 4, the competent authority in the executing State shall discontinue the measures adopted in accordance with Article 9(1) as soon as it has been duly notified by the competent authority of the issuing State.

7. If the competent authority in the issuing State has modified the European protection order in accordance with point (a) of paragraph 1 or with paragraph 4, the competent authority in the executing State shall, as appropriate:

- (a) modify the measures adopted on the basis of the European protection order, acting in accordance with Article 9; or
- (b) refuse to enforce the modified prohibition or restriction when it does not fall within the types of prohibitions or restrictions referred to in Article 5, or if the information transmitted with the European protection order in accordance with Article 7 is incomplete or has not been completed within the time limit set by the competent authority of the executing State in accordance with Article 9(4).

Article 14

Grounds for discontinuation of measures taken on the basis of a European protection order

1. The competent authority of the executing State may discontinue the measures taken in execution of a European protection order:
- (a) where there is clear indication that the protected person does not reside or stay in the territory of the executing State, or has definitively left that territory;
- (b) where, according to its national law, the maximum term of duration of the measures adopted in execution of the European protection order has expired;

- (c) in the case referred to in Article 13(7)(b); or
- (d) where a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, or a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA, is transferred to the executing State after the recognition of the European protection order.

2. The competent authority of the executing State shall immediately inform the competent authority of the issuing State and, where possible, the protected person of such decision.

3. Before discontinuing measures in accordance with point (b) of paragraph 1 the competent authority of the executing State may invite the competent authority of the issuing State to provide information as to whether the protection provided for by the European protection order is still needed in the circumstances of the case in question. The competent authority of the issuing State shall, without delay, reply to such an invitation.

Article 15

Priority in recognition of a European protection order

A European protection order shall be recognised with the same priority which would be applicable in a similar national case, taking into consideration any specific circumstances of the case, including the urgency of the matter, the date foreseen for the arrival of the protected person on the territory of the executing State and, where possible, the degree of risk for the protected person.

Article 16

Consultations between competent authorities

Where appropriate, the competent authorities of the issuing State and of the executing State may consult each other in order to facilitate the smooth and efficient application of this Directive.

Article 17

Languages

1. A European protection order shall be translated by the competent authority of the issuing State into the official language or one of the official languages of the executing State.

2. The form referred to in Article 12 shall be translated by the competent authority of the executing State into the official language or one of the official languages of the issuing State.

3. Any Member State may, either when this Directive is adopted or at a later date, state in a declaration that it shall deposit with the Commission that it will accept a translation in one or more other official languages of the Union.

Article 18

Costs

Costs resulting from the application of this Directive shall be borne by the executing State, in accordance with its national law, except for costs arising exclusively within the territory of the issuing State.

Article 19

Relationship with other agreements and arrangements

1. Member States may continue to apply bilateral or multilateral agreements or arrangements which are in force upon the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate further the procedures for taking protection measures.

2. Member States may conclude bilateral or multilateral agreements or arrangements after the entry into force of this Directive, in so far as they allow the objectives of this Directive to be extended or enlarged and help to simplify or facilitate the procedures for taking protection measures.

3. By 11 April 2012, Member States shall notify the Commission of the existing agreements and arrangements referred to in paragraph 1 which they wish to continue applying. Member States shall also notify the Commission of any new agreements or arrangements referred to in paragraph 2 within three months of the signing thereof.

Article 20

Relationship with other instruments

1. This Directive shall not affect the application of Regulation (EC) No 44/2001, Regulation (EC) No 2201/2003, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, or the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

2. This Directive shall not affect the application of Framework Decision 2008/947/JHA or Framework Decision 2009/829/JHA.

*Article 21***Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive by 11 January 2015. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 22***Data collection**

Member States shall, in order to facilitate the evaluation of the application of this Directive, communicate to the Commission relevant data related to the application of national procedures on the European protection order, at least on the number of European protection orders requested, issued and/or recognised.

*Article 23***Review**

By 11 January 2016, the Commission shall submit a report to the European Parliament and to the Council on the application of this Directive. That report shall be accompanied, if necessary, by legislative proposals.

*Article 24***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

*Article 25***Addressees**

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 13 December 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
M. SZPUNAR

ANNEX I

EUROPEAN PROTECTION ORDER

referred to in Article 7 of

DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 DECEMBER 2011
ON THE EUROPEAN PROTECTION ORDER**The information contained in this form is to be treated with appropriate confidentiality**

Issuing State:
Executing State:
(a) Information regarding the protected person: Surname: Forename(s): Maiden or previous name, where applicable: Sex: Nationality: Identity number or social security number (if any): Date of birth: Place of birth: Addresses/residences: — in the issuing State: — in the executing State: — elsewhere: Language(s) understood (if known):
Has the protected person been granted free legal aid in the issuing State (if information is available without further enquiry)? <input type="checkbox"/> Yes. <input type="checkbox"/> No. <input type="checkbox"/> Unknown. Where the protected person is a minor or is legally incapacitated, information regarding the person's guardian or representative: Surname: Forename(s): Maiden name or previous name, where applicable: Sex: Nationality: Office/Address:

(b) The protected person has decided to reside or already resides in the executing State, or has decided to stay or already stays in the executing State.

Date from which the protected person intends to reside or stay in the executing State (if known):

Period(s) of stay (if known):

(c) Have any technical devices been provided to the protected person or to the person causing danger to enforce the protection measure:

Yes; please give a short summary of the devices used:

No.

(d) Competent authority which issued the European protection order:

Official name:

Full address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

Details of the person(s) to be contacted

Surname:

Forename(s):

Position (title/grade):

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail (if any):

Languages that may be used for communication:

(e) Identification of the protection measure on the basis of which the European protection order has been issued:

The protection measure was adopted on (date: DD-MM-YYYY):

The protection measure became enforceable on (date: DD-MM-YYYY):

File reference of the protection measure (if available):

Authority that adopted the protection measure:

(f) Summary of the facts and description of the circumstances — including, where applicable, the classification of the offence — which have led to the imposition of the protection measure mentioned under (e) above:

(g) Indications regarding the prohibition(s) or restriction(s) that have been imposed by the protection measure on the person causing danger:

— Nature of the prohibition(s) or restriction(s): (more than one box may be ticked):

a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;

— if you ticked this box, please indicate precisely which localities, places or defined areas the person causing danger is prohibited from entering:

a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;

— if you ticked this box, please provide any relevant details:

a prohibition or regulation on approaching the protected person closer than a prescribed distance;

— if you ticked this box, please indicate precisely the distance which the person causing danger has to observe in respect of the protected person:

— Please indicate the length of time during which the abovementioned prohibition(s) or restriction(s) are imposed on the person causing danger:

— Indication of the penalty (if any) in the event of the breach of the prohibition or restriction:

(h) Information regarding the person causing danger on whom the prohibition(s) or restriction(s) mentioned under (g) have been imposed:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Addresses/residences:

— in the issuing State:

— in the executing State:

— elsewhere:

Language(s) understood (if known):

If available, please provide the following information:

— Type and number of the identity document(s) of the person (ID card, passport):

Has the person causing danger been granted free legal aid in the issuing State (if information is available without further enquiry)?

Yes.

No.

Unknown.

(i) Other circumstances that could have an influence on the assessment of the danger that could affect the protected person (optional information):

(j) Other useful information (such as, where available and necessary, information on other States where protection measures have been previously adopted with respect to the same protected person):

(k) Please complete:

a judgment within the meaning of Article 2 of Framework Decision 2008/947/JHA, has already been transmitted to another Member State

— If you ticked this box, please provide the contact details of the competent authority to whom the judgment has been forwarded:

a decision on supervision measures within the meaning of Article 4 of Framework Decision 2009/829/JHA has already been transmitted to another Member State

— If you ticked this box, please provide the contact details of the competent authority to whom the decision on supervision measures has been forwarded:

Signature of the authority issuing the European protection order and/or of its representative to confirm the accuracy of the content of the order:

Name:

Position (title/grade):

Date:

File reference (if any):

(Where appropriate) Official stamp:

ANNEX II

FORM

referred to in Article 12 of

**DIRECTIVE 2011/99/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 13 DECEMBER 2011
ON THE EUROPEAN PROTECTION ORDER****NOTIFICATION OF A BREACH OF THE MEASURE TAKEN ON THE BASIS OF THE EUROPEAN
PROTECTION ORDER****The information contained in this form is to be treated with appropriate confidentiality**

(a) Details of the identity of the person causing danger:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Aliases, where applicable:

Sex:

Nationality:

Identity number or social security number (if any):

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(b) Details of the identity of the protected person:

Surname:

Forename(s):

Maiden or previous name, where applicable:

Sex:

Nationality:

Date of birth:

Place of birth:

Address:

Language(s) understood (if known):

(c) Details of the European protection order:

Order issued on:

File reference (if any):

Authority which issued the order:

Official name:

Address:

(d) Details of the authority responsible for the execution of the protection measure, if any, which was taken in the executing State in line with the European protection order:

Official name of the authority:

Name of the person to be contacted:

Position (title/grade):

Address:

Tel. No (country code) (area code) (number):

Fax No (country code) (area code) (number):

E-mail:

Languages that may be used for communication:

(e) Breach of the prohibition(s) or restriction(s) imposed by the competent authorities of the executing State following recognition of the European protection order and/or other findings which could result in taking any subsequent decision:

The breach concerns the following prohibition(s) or restriction(s) (more than one box may be ticked):

- a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means;
- a prohibition or regulation on approaching the protected person closer than a prescribed distance;
- any other measure, corresponding to the protection measure at the basis of the European protection order, taken by the competent authorities of the executing State following recognition of the European protection order

Description of the breach(es) (place, date and specific circumstances):

In accordance with Article 11(2):

— measures taken in the executing State as a consequence of the breach:

— possible legal consequence of the breach in the executing State:

Other findings which could result in taking any subsequent decision

Description of the findings:

(f) Details of the person to be contacted if additional information is to be obtained concerning the breach:

Surname:

Forename(s):

Address:

Tel. No (country code) (area/city code) (number):

Fax No (country code) (area/city code) (number):

E-mail:

Languages that may be used for communication:

Signature of the authority issuing the form and/or its representative, to confirm that the contents of the form are correct:

Name:

Position (title/grade):

Date:

Official stamp (where applicable):

I

(Legislative acts)

DIRECTIVES

DIRECTIVE 2011/92/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, and replacing Council Framework Decision 2004/68/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,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Sexual abuse and sexual exploitation of children, including child pornography, constitute serious violations of fundamental rights, in particular of the rights of children to the protection and care necessary for their well-being, as provided for by the 1989 United Nations Convention on the Rights of the Child and by the Charter of Fundamental Rights of the European Union ⁽³⁾.

(2) In accordance with Article 6(1) of the Treaty on European Union, the Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union, in which Article 24(2) provides that in all actions relating to children, whether taken by public authorities or private

institutions, the child's best interests must be a primary consideration. Moreover, the Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens ⁽⁴⁾ gives a clear priority to combating the sexual abuse and sexual exploitation of children and child pornography.

(3) Child pornography, which consists of images of child sexual abuse, and other particularly serious forms of sexual abuse and sexual exploitation of children are increasing and spreading through the use of new technologies and the Internet.

(4) Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography ⁽⁵⁾ approximates Member States' legislation to criminalise the most serious forms of child sexual abuse and sexual exploitation, to extend domestic jurisdiction, and to provide for a minimum level of assistance for victims. Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings ⁽⁶⁾ establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. Moreover, the coordination of prosecution of cases of sexual abuse, sexual exploitation of children and child pornography will be facilitated by the implementation of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings ⁽⁷⁾.

(5) In accordance with Article 34 of the United Nations Convention on the Rights of the Child, States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. The 2000 United Nations Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and, in particular, the 2007 Council

⁽¹⁾ OJ C 48, 15.2.2011, p. 138.

⁽²⁾ Position of the European Parliament of 27 October 2011 (not yet published in the Official Journal) and decision of the Council of 15 November 2011.

⁽³⁾ OJ C 364, 18.12.2000, p. 1.

⁽⁴⁾ OJ C 115, 4.5.2010, p. 1.

⁽⁵⁾ OJ L 13, 20.1.2004, p. 44.

⁽⁶⁾ OJ L 82, 22.3.2001, p. 1.

⁽⁷⁾ OJ L 328, 15.12.2009, p. 42.

of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse are crucial steps in the process of enhancing international cooperation in this field.

- (6) Serious criminal offences such as the sexual exploitation of children and child pornography require a comprehensive approach covering the prosecution of offenders, the protection of child victims, and prevention of the phenomenon. The child's best interests must be a primary consideration when carrying out any measures to combat these offences in accordance with the Charter of Fundamental Rights of the European Union and the United Nations Convention on the Rights of the Child. Framework Decision 2004/68/JHA should be replaced by a new instrument providing such comprehensive legal framework to achieve that purpose.
- (7) This Directive should be fully complementary with 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 ⁽¹⁾, as some victims of human trafficking have also been child victims of sexual abuse or sexual exploitation.
- (8) In the context of criminalising acts related to pornographic performance, this Directive refers to such acts which consist of an organised live exhibition, aimed at an audience, thereby excluding personal face-to-face communication between consenting peers, as well as children over the age of sexual consent and their partners from the definition.
- (9) Child pornography frequently includes images recording the sexual abuse of children by adults. It may also include images of children involved in sexually explicit conduct, or of their sexual organs, where such images are produced or used for primarily sexual purposes and exploited with or without the child's knowledge. Furthermore, the concept of child pornography also covers realistic images of a child, where a child is engaged or depicted as being engaged in sexually explicit conduct for primarily sexual purposes.
- (10) Disability, by itself, does not automatically constitute an impossibility to consent to sexual relations. However, the abuse of the existence of such a disability in order to engage in sexual activities with a child should be criminalised.
- (11) In adopting legislation on substantive criminal law, the Union should ensure consistency of such legislation in particular with regard to the level of penalties. The Council conclusions of 24 and 25 April 2002 on the approach to apply regarding approximation of penalties, which indicate four levels of penalties, should be kept in mind in the light of the Lisbon Treaty. This Directive, because it contains an exceptionally high number of different offences, requires, in order to reflect the various degrees of seriousness, a differentiation in the level of penalties which goes further than what should usually be provided in Union legal instruments.
- (12) Serious forms of sexual abuse and sexual exploitation of children should be subject to effective, proportionate and dissuasive penalties. This includes, in particular, various forms of sexual abuse and sexual exploitation of children which are facilitated by the use of information and communication technology, such as the online solicitation of children for sexual purposes via social networking websites and chat rooms. The definition of child pornography should also be clarified and brought closer to that contained in international instruments.
- (13) The maximum term of imprisonment provided for in this Directive for the offences referred to therein should apply at least to the most serious forms of such offences.
- (14) In order to reach the maximum term of imprisonment provided for in this Directive for offences concerning sexual abuse and sexual exploitation of children and child pornography, Member States may combine, taking into account their national law, the imprisonment terms provided for in national legislation in respect of those offences.
- (15) This Directive obliges Member States to provide for criminal penalties in their national legislation in respect of the provisions of Union law on combating sexual abuse, sexual exploitation of children and child pornography. This Directive creates no obligations regarding the application of such penalties, or any other available system of law enforcement, in individual cases.
- (16) Especially for those cases where the offences referred to in this Directive are committed with the purpose of financial gain, Member States are invited to consider providing for the possibility to impose financial penalties in addition to imprisonment.
- (17) In the context of child pornography, the term 'without right' allows Member States to provide a defence in respect of conduct relating to pornographic material having for example, a medical, scientific or similar purpose. It also allows activities carried out under domestic legal powers, such as the legitimate possession of child pornography by the authorities in order to conduct criminal proceedings or to prevent, detect or investigate crime. Furthermore, it does not exclude legal defences or similar relevant principles that relieve a person of responsibility under specific circumstances, for example where telephone or Internet hotlines carry out activities to report those cases.

⁽¹⁾ OJ L 101, 15.4.2011, p. 1.

- (18) Knowingly obtaining access, by means of information and communication technology, to child pornography should be criminalised. To be liable, the person should both intend to enter a site where child pornography is available and know that such images can be found there. Penalties should not be applied to persons inadvertently accessing sites containing child pornography. The intentional nature of the offence may notably be deduced from the fact that it is recurrent or that the offence was committed via a service in return for payment.
- (19) Solicitation of children for sexual purposes is a threat with specific characteristics in the context of the Internet, as the latter provides unprecedented anonymity to users because they are able to conceal their real identity and personal characteristics, such as their age. At the same time, Member States acknowledge the importance of also combating the solicitation of a child outside the context of the Internet, in particular where such solicitation is not carried out by using information and communication technology. Member States are encouraged to criminalise the conduct where the solicitation of a child to meet the offender for sexual purposes takes place in the presence or proximity of the child, for instance in the form of a particular preparatory offence, attempt to commit the offences referred to in this Directive or as a particular form of sexual abuse. Whichever legal solution is chosen to criminalise 'off-line grooming', Member States should ensure that they prosecute the perpetrators of such offences one way or another.
- (20) This Directive does not govern Member States' policies with regard to consensual sexual activities in which children may be involved and which can be regarded as the normal discovery of sexuality in the course of human development, taking account of the different cultural and legal traditions and of new forms of establishing and maintaining relations among children and adolescents, including through information and communication technologies. These issues fall outside of the scope of this Directive. Member States which avail themselves of the possibilities referred to in this Directive do so in the exercise of their competences.
- (21) Member States should provide for aggravating circumstances in their national law in accordance with the applicable rules established by their legal systems on aggravating circumstances. They should ensure that those aggravating circumstances are available for judges to consider when sentencing offenders, although there is no obligation on judges to apply those aggravating circumstances. The aggravating circumstances should not be provided for in Member States' law when irrelevant taking into account the nature of the specific offence. The relevance of the various aggravating circumstances provided for in this Directive should be evaluated at national level for each of the offences referred to in this Directive.
- (22) Physical or mental incapacity under this Directive should be understood as also including the state of physical or mental incapacity caused by the influence of drugs and alcohol.
- (23) In combating sexual exploitation of children, 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 Organized 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⁽¹⁾, and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime Related Proceeds, Instrumentalities and Property⁽²⁾. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection should be encouraged.
- (24) Secondary victimisation should be avoided for victims of offences referred to in this Directive. In Member States where prostitution or the appearance in pornography is punishable under national criminal law, it should be possible not to prosecute or impose penalties under those laws where the child concerned has committed those acts as a result of being victim of sexual exploitation or where the child was compelled to participate in child pornography.
- (25) As an instrument of approximation of criminal law, this Directive provides for levels of penalties which should apply without prejudice to the specific criminal policies of the Member States concerning child offenders.
- (26) Investigating offences and bringing charges in criminal proceedings should be facilitated, to take into account the difficulty for child victims of denouncing sexual abuse and the anonymity of offenders in cyberspace. To ensure successful investigations and prosecutions of the offences referred to in this Directive, their initiation should not depend, in principle, on a report or accusation made by the victim or by his or her representative. The length of the sufficient period of time for prosecution should be determined in accordance with national law.
- (27) Effective investigatory tools should be made available to those responsible for the investigation and prosecutions

⁽¹⁾ OJ L 182, 5.7.2001, p. 1.

⁽²⁾ OJ L 68, 15.3.2005, p. 49.

of the offences referred to in this Directive. Those tools could include interception of communications, covert surveillance including electronic surveillance, monitoring of bank accounts or other financial investigations, taking into account, inter alia, the principle of proportionality and the nature and seriousness of the offences under investigation. Where appropriate, and in accordance with national law, such tools should also include the possibility for law enforcement authorities to use a concealed identity on the Internet.

- (28) Member States should encourage any person who has knowledge or suspicion of the sexual abuse or sexual exploitation of a child to report to the competent services. It is the responsibility of each Member State to determine the competent authorities to which such suspicions may be reported. Those competent authorities should not be limited to child protection services or relevant social services. The requirement of suspicion 'in good faith' should be aimed at preventing the provision being invoked to authorise the denunciation of purely imaginary or untrue facts carried out with malicious intent.
- (29) Rules on jurisdiction should be amended to ensure that sexual abusers or sexual exploiters of children from the Union face prosecution even if they commit their crimes outside the Union, in particular via so-called sex tourism. Child sex tourism should be understood as the sexual exploitation of children by a person or persons who travel from their usual environment to a destination abroad where they have sexual contact with children. Where child sex tourism takes place outside the Union, Member States are encouraged to seek to increase, through the available national and international instruments including bilateral or multilateral treaties on extradition, mutual assistance or a transfer of the proceedings, cooperation with third countries and international organisations with a view to combating sex tourism. Member States should foster open dialogue and communication with countries outside the Union in order to be able to prosecute perpetrators, under the relevant national legislation, who travel outside the Union borders for the purposes of child sex tourism.
- (30) Measures to protect child victims should be adopted in their best interest, taking into account an assessment of their needs. Child victims should have easy access to legal remedies and measures to address conflicts of interest where sexual abuse or sexual exploitation of a child occurs within the family. When a special representative should be appointed for a child during a criminal investigation or proceeding, this role may be also carried out by a legal person, an institution or an authority. Moreover, child victims should be protected from penalties, for example under national legislation on prostitution, if they bring their case to the attention of competent authorities. Furthermore, participation in criminal proceedings by child victims should not cause additional trauma to the extent possible, as a result of interviews or visual contact with offenders. A good understanding of children and how they behave when faced with traumatic experiences will help to ensure a high quality of evidence-taking and also reduce the stress placed on children when carrying out the necessary measures.
- (31) Member States should consider giving short and long term assistance to child victims. Any harm caused by the sexual abuse and sexual exploitation of a child is significant and should be addressed. Because of the nature of the harm caused by sexual abuse and sexual exploitation, such assistance should continue for as long as necessary for the child's physical and psychological recovery and may last into adulthood if necessary. Assistance and advice should be considered to be extended to parents or guardians of the child victims where they are not involved as suspects in relation to the offence concerned, in order to help them to assist child victims throughout the proceedings.
- (32) Framework Decision 2001/220/JHA establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition child victims of sexual abuse, sexual exploitation and child pornography should be given access 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 legal 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.
- (33) Member States should undertake action to prevent or prohibit acts related to the promotion of sexual abuse of children and child sex tourism. Different preventative measures could be considered, such as the drawing up and reinforcement of a code of conduct and self-regulatory mechanisms in the tourism industry, the setting-up of a code of ethics or 'quality labels' for tourist organisations combating child sex tourism, or establishing an explicit policy to tackle child sex tourism.

- (34) Member States should establish and/or strengthen policies to prevent sexual abuse and sexual exploitation of children, including measures to discourage and reduce the demand that fosters all forms of sexual exploitation of children, and measures to reduce the risk of children becoming victims, by means of, information and awareness-raising campaigns, and research and education programmes. In such initiatives, Member States should adopt a child-rights based approach. Particular care should be taken to ensure that awareness-raising campaigns aimed at children are appropriate and sufficiently easy to understand. The establishment of help-lines or hotlines should be considered.
- (35) Regarding the system of reporting sexual abuse and sexual exploitation of children and helping children in need, hotlines under the number 116 000 for missing children, 116 006 for victims of crime and 116 111 for children, as introduced by Commission Decision 2007/116/EC of 15 February 2007 on reserving the national numbering beginning with 116 for harmonised numbers for harmonised services of social value⁽¹⁾, should be promoted and experience regarding their functioning should be taken into account.
- (36) Professionals likely to come into contact with child victims of sexual abuse and sexual exploitation should be adequately trained to identify and deal with such victims. That training should be promoted for members of the following categories when they are likely to come into contact with child victims: police officers, public prosecutors, lawyers, members of the judiciary and court officials, child and health care personnel, but could also involve other groups of persons who are likely to encounter child victims of sexual abuse and sexual exploitation in their work.
- (37) In order to prevent the sexual abuse and sexual exploitation of children, intervention programmes or measures targeting sex offenders should be proposed to them. Those intervention programmes or measures should meet a broad, flexible approach focusing on the medical and psycho-social aspects and have a non-obligatory character. Those intervention programmes or measures are without prejudice to intervention programmes or measures imposed by the competent judicial authorities.
- (38) Intervention programmes or measures are not provided as an automatic right. It is for the Member State to decide which intervention programmes or measures are appropriate.
- (39) To prevent and minimise recidivism, offenders should be subject to an assessment of the danger posed by the offenders and the possible risks of repetition of sexual offences against children. Arrangements for such assessment, such as the type of authority competent to order and carry out the assessment or the moment in or after the criminal proceedings when that assessment should take place as well as arrangements for effective intervention programmes or measures offered following that assessment should be consistent with the internal procedures of Member States. For the same objective of preventing and minimising recidivism, offenders should also have access to effective intervention programmes or measures on a voluntary basis. Those intervention programmes or measures should not interfere with national schemes set up to deal with the treatment of persons suffering from mental disorders.
- (40) Where the danger posed by the offenders and the possible risks of repetition of the offences make it appropriate, convicted offenders should be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children. Employers when recruiting for a post involving direct and regular contact with children are entitled to be informed of existing convictions for sexual offences against children entered in the criminal record, or of existing disqualifications. For the purposes of this Directive, the term 'employers' should also cover persons running an organisation that is active in volunteer work related to the supervision and/or care of children involving direct and regular contact with children. The manner in which such information is delivered, such as for example access via the person concerned, and the precise content of the information, the meaning of organised voluntary activities and direct and regular contact with children should be laid down in accordance with national law.
- (41) With due regard to the different legal traditions of the Member States, this Directive takes into account the fact that access to criminal records is allowed only either by the competent authorities or by the person concerned. This Directive does not establish an obligation to modify the national systems governing criminal records or the means of access to those records.
- (42) The aim of this Directive is not to harmonise rules concerning consent of the person concerned when exchanging information from the criminal registers, i.e. whether or not to require such consent. Whether the consent is required or not under national law, this Directive does not establish any new obligation to change the national law and national procedures in this respect.

⁽¹⁾ OJ L 49, 17.2.2007, p. 30.

- (43) Member States may consider adopting additional administrative measures in relation to perpetrators, such as the registration in sex offender registers of persons convicted of offences referred to in this Directive. Access to those registers should be subject to limitation in accordance with national constitutional principles and applicable data protection standards, for instance by limiting access to the judiciary and/or law enforcement authorities.
- (44) Member States are encouraged to create mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual abuse and sexual exploitation of children. In order to be able to properly evaluate the results of actions to combat sexual abuse and sexual exploitation of children and child pornography, the Union should continue to develop its work on methodologies and data collection methods to produce comparable statistics.
- (45) Member States should take appropriate action for setting up information services to provide information on how to recognise the signs of sexual abuse and sexual exploitation.
- (46) Child pornography, which constitutes child sexual abuse images, is a specific type of content which cannot be construed as the expression of an opinion. To combat it, it is necessary to reduce the circulation of child sexual abuse material by making it more difficult for offenders to upload such content onto the publicly accessible web. Action is therefore necessary to remove the content and apprehend those guilty of making, distributing or downloading child sexual abuse images. With a view to supporting the Union's efforts to combat child pornography, Member States should use their best endeavours to cooperate with third countries in seeking to secure the removal of such content from servers within their territory.
- (47) However, despite such efforts, the removal of child pornography content at its source is often not possible when the original materials are not located within the Union, either because the State where the servers are hosted is not willing to cooperate or because obtaining removal of the material from the State concerned proves to be particularly long. Mechanisms may also be put in place to block access from the Union's territory to Internet pages identified as containing or disseminating child pornography. The measures undertaken by Member States in accordance with this Directive in order to remove or, where appropriate, block websites containing child pornography could be based on various types of public action, such as legislative, non-legislative, judicial or other. In that context, this Directive is without prejudice to voluntary action taken by the Internet industry to prevent the misuse of its services or to any support for such action by Member States. Whichever basis for action or method is chosen, Member States should ensure that it provides an adequate level of legal certainty and predictability to users and service providers. Both with a view to the removal and the blocking of child abuse content, cooperation between public authorities should be established and strengthened, particularly in the interests of ensuring that national lists of websites containing child pornography material are as complete as possible and of avoiding duplication of work. Any such developments must take account of the rights of the end users and comply with existing legal and judicial procedures and the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union. The Safer Internet Programme has set up a network of hotlines the goal of which is to collect information and to ensure coverage and exchange of reports on the major types of illegal content online.
- (48) This Directive aims to amend and expand the provisions of Framework Decision 2004/68/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.
- (49) Since the objective of this Directive, namely to combat sexual abuse, sexual exploitation of children and child pornography, cannot be sufficiently achieved by the Member States alone and can therefore, by reasons of the scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 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.
- (50) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and in particular the right to the protection of human dignity, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, the right to freedom of expression and information, the right to the protection of personal data, the right to an effective remedy and to a fair trial and the principles of legality and proportionality of criminal offences and penalties. This Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.

- (51) In accordance with Article 3 of the Protocol (No 21) on the position of 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, the United Kingdom and Ireland have notified their wish to take part in the adoption and application of this Directive.
- (52) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of sexual abuse and sexual exploitation of children, child pornography and solicitation of children for sexual purposes. It also introduces provisions to strengthen the prevention of those crimes and the protection of the victims thereof.

Article 2

Definitions

For the purposes of this Directive, the following definitions apply:

- (a) 'child' means any person below the age of 18 years;
- (b) 'age of sexual consent' means the age below which, in accordance with national law, it is prohibited to engage in sexual activities with a child;
- (c) 'child pornography' means:
- (i) any material that visually depicts a child engaged in real or simulated sexually explicit conduct;
 - (ii) any depiction of the sexual organs of a child for primarily sexual purposes;
 - (iii) any material that visually depicts any person appearing to be a child engaged in real or simulated sexually explicit conduct or any depiction of the sexual organs of any person appearing to be a child, for primarily sexual purposes; or
 - (iv) realistic images of a child engaged in sexually explicit conduct or realistic images of the sexual organs of a child, for primarily sexual purposes;
- (d) 'child prostitution' means the use of a child for sexual activities where money or any other form of remuneration

or consideration is given or promised as payment in exchange for the child engaging in sexual activities, regardless of whether that payment, promise or consideration is made to the child or to a third party;

- (e) 'pornographic performance' means a live exhibition aimed at an audience, including by means of information and communication technology, of:
- (i) a child engaged in real or simulated sexually explicit conduct; or
 - (ii) the sexual organs of a child for primarily sexual purposes;
- (f) 'legal person' means an 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 3

Offences concerning sexual abuse

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 6 is punishable.
2. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual activities, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 1 year.
3. Causing, for sexual purposes, a child who has not reached the age of sexual consent to witness sexual abuse, even without having to participate, shall be punishable by a maximum term of imprisonment of at least 2 years.
4. Engaging in sexual activities with a child who has not reached the age of sexual consent shall be punishable by a maximum term of imprisonment of at least 5 years.
5. Engaging in sexual activities with a child, where:
 - (i) abuse is made of a recognised position of trust, authority or influence over the child, shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 3 years of imprisonment, if the child is over that age; or
 - (ii) abuse is made of a particularly vulnerable situation of the child, in particular because of a mental or physical disability or a situation of dependence, shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 3 years of imprisonment if the child is over that age; or

(iii) use is made of coercion, force or threats shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

6. Coercing, forcing or threatening a child into sexual activities with a third party shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

Article 4

Offences concerning sexual exploitation

1. Member States shall take the necessary measures to ensure that the intentional conduct referred to in paragraphs 2 to 7 is punishable.

2. Causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent and of at least 2 years of imprisonment if the child is over that age.

3. Coercing or forcing a child to participate in pornographic performances, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

4. Knowingly attending pornographic performances involving the participation of a child shall be punishable by a maximum term of imprisonment of at least 2 years if the child has not reached the age of sexual consent, and of at least 1 year of imprisonment if the child is over that age.

5. Causing or recruiting a child to participate in child prostitution, or profiting from or otherwise exploiting a child for such purposes shall be punishable by a maximum term of imprisonment of at least 8 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

6. Coercing or forcing a child into child prostitution, or threatening a child for such purposes shall be punishable by a maximum term of imprisonment of at least 10 years if the child has not reached the age of sexual consent, and of at least 5 years of imprisonment if the child is over that age.

7. Engaging in sexual activities with a child, where recourse is made to child prostitution shall be punishable by a maximum term of imprisonment of at least 5 years if the child has not reached the age of sexual consent, and of at least 2 years of imprisonment if the child is over that age.

Article 5

Offences concerning child pornography

1. Member States shall take the necessary measures to ensure that the intentional conduct, when committed without right, referred to in paragraphs 2 to 6 is punishable.

2. Acquisition or possession of child pornography shall be punishable by a maximum term of imprisonment of at least 1 year.

3. Knowingly obtaining access, by means of information and communication technology, to child pornography shall be punishable by a maximum term of imprisonment of at least 1 year.

4. Distribution, dissemination or transmission of child pornography shall be punishable by a maximum term of imprisonment of at least 2 years.

5. Offering, supplying or making available child pornography shall be punishable by a maximum term of imprisonment of at least 2 years.

6. Production of child pornography shall be punishable by a maximum term of imprisonment of at least 3 years.

7. It shall be within the discretion of Member States to decide whether this Article applies to cases involving child pornography as referred to in Article 2(c)(iii), where the person appearing to be a child was in fact 18 years of age or older at the time of depiction.

8. It shall be within the discretion of Member States to decide whether paragraphs 2 and 6 of this Article apply to cases where it is established that pornographic material as referred to in Article 2(c)(iv) is produced and possessed by the producer solely for his or her private use in so far as no pornographic material as referred to in Article 2(c)(i), (ii) or (iii) has been used for the purpose of its production and provided that the act involves no risk of dissemination of the material.

Article 6

Solicitation of children for sexual purposes

1. Member States shall take the necessary measures to ensure that the following intentional conduct is punishable:

the proposal, by means of information and communication technology, by an adult to meet a child who has not reached the age of sexual consent, for the purpose of committing any of the offences referred to in Article 3(4) and Article 5(6), where that proposal was followed by material acts leading to such a meeting, shall be punishable by a maximum term of imprisonment of at least 1 year.

2. Member States shall take the necessary measures to ensure that an attempt, by means of information and communication technology, to commit the offences provided for in Article 5(2) and (3) by an adult soliciting a child who has not reached the age of sexual consent to provide child pornography depicting that child is punishable.

*Article 7***Incitement, aiding and abetting, and attempt**

1. Member States shall take the necessary measures to ensure that inciting or aiding and abetting to commit any of the offences referred to in Articles 3 to 6 is punishable.

2. Member States shall take the necessary measures to ensure that an attempt to commit any of the offences referred to in Article 3(4), (5) and (6), Article 4(2), (3), (5), (6) and (7), and Article 5(4), (5) and (6) is punishable.

*Article 8***Consensual sexual activities**

1. It shall be within the discretion of Member States to decide whether Article 3(2) and (4) apply to consensual sexual activities between peers, who are close in age and degree of psychological and physical development or maturity, in so far as the acts did not involve any abuse.

2. It shall be within the discretion of Member States to decide whether Article 4(4) applies to a pornographic performance that takes place in the context of a consensual relationship where the child has reached the age of sexual consent or between peers who are close in age and degree of psychological and physical development or maturity, in so far as the acts did not involve any abuse or exploitation and no money or other form of remuneration or consideration is given as payment in exchange for the pornographic performance.

3. It shall be within the discretion of Member States to decide whether Article 5(2) and (6) apply to the production, acquisition or possession of material involving children who have reached the age of sexual consent where that material is produced and possessed with the consent of those children and only for the private use of the persons involved, in so far as the acts did not involve any abuse.

*Article 9***Aggravating circumstances**

In so far as the following circumstances do not already form part of the constituent elements of the offences referred to in Articles 3 to 7, Member States shall take the necessary measures to ensure that the following circumstances may, in accordance with the relevant provisions of national law, be regarded as aggravating circumstances, in relation to the relevant offences referred to in Articles 3 to 7:

(a) the offence was committed against a child in a particularly vulnerable situation, such as a child with a mental or physical disability, in a situation of dependence or in a state of physical or mental incapacity;

(b) the offence was committed by a member of the child's family, a person cohabiting with the child or a person who has abused a recognised position of trust or authority;

(c) the offence was committed by several persons acting together;

(d) the offence was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime⁽¹⁾;

(e) the offender has previously been convicted of offences of the same nature;

(f) the offender has deliberately or recklessly endangered the life of the child; or

(g) the offence involved serious violence or caused serious harm to the child.

*Article 10***Disqualification arising from convictions**

1. In order to avoid the risk of repetition of offences, Member States shall take the necessary measures to ensure that a natural person who has been convicted of any of the offences referred to in Articles 3 to 7 may be temporarily or permanently prevented from exercising at least professional activities involving direct and regular contacts with children.

2. Member States shall take the necessary measures to ensure that employers, when recruiting a person for professional or organised voluntary activities involving direct and regular contacts with children, are entitled to request information in accordance with national law by way of any appropriate means, such as access upon request or via the person concerned, of the existence of criminal convictions for any of the offences referred to in Articles 3 to 7 entered in the criminal record or of the existence of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions.

3. Member States shall take the necessary measures to ensure that, for the application of paragraphs 1 and 2 of this Article, information concerning the existence of criminal convictions for any of the offences referred to in Articles 3 to 7, or of any disqualification from exercising activities involving direct and regular contacts with children arising from those criminal convictions, is transmitted in accordance with the procedures set out in Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States⁽²⁾ when requested under Article 6 of that Framework Decision with the consent of the person concerned.

⁽¹⁾ OJ L 300, 11.11.2008, p. 42.

⁽²⁾ OJ L 93, 7.4.2009, p. 23.

*Article 11***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 3, 4 and 5.

*Article 12***Liability of legal persons**

1. Member States shall take the necessary measures to ensure that legal persons may be held liable for any of the offences referred to in Articles 3 to 7 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, and having 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 take the necessary measures to ensure that legal persons may be held liable where the lack of supervision or control by a person referred to in paragraph 1 has made possible the commission, by a person under its authority, of any of the offences referred to in Articles 3 to 7 for the benefit of that legal person.

3. Liability of legal persons under paragraphs 1 and 2 shall be without prejudice to criminal proceedings against natural persons who are perpetrators, inciters or accessories to the offences referred to in Articles 3 to 7.

*Article 13***Sanctions on legal persons**

1. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 12(1) is punishable by 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; or
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

2. Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 12(2) is punishable by sanctions or measures which are effective, proportionate and dissuasive.

*Article 14***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 child victims of sexual abuse and sexual exploitation 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 4(2), (3), (5) and (6), and in Article 5(6).

*Article 15***Investigation and prosecution**

1. Member States shall take the necessary measures to ensure that investigations into or the prosecution of the offences referred to in Articles 3 to 7 are not dependent on a report or accusation being made by the victim or by his or her representative, and that criminal proceedings may continue even if that person has withdrawn his or her statements.

2. Member States shall take the necessary measures to enable the prosecution of any of the offences referred to in Article 3, Article 4(2), (3), (5), (6) and (7) and of any serious offences referred to in Article 5(6) when child pornography as referred to in Article 2(c)(i) and (ii) has been used, for a sufficient period of time after the victim has reached the age of majority and which is commensurate with the gravity of the offence concerned.

3. 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 offences referred to in Articles 3 to 7.

4. Member States shall take the necessary measures to enable investigative units or services to attempt to identify the victims of the offences referred to in Articles 3 to 7, in particular by analysing child pornography material, such as photographs and audiovisual recordings transmitted or made available by means of information and communication technology.

*Article 16***Reporting suspicion of sexual abuse or sexual exploitation**

1. Member States shall take the necessary measures to ensure that the confidentiality rules imposed by national law on certain professionals whose main duty is to work with children do not constitute an obstacle to the possibility, for those professionals, of their reporting to the services responsible for child protection any situation where they have reasonable grounds for believing that a child is the victim of offences referred to in Articles 3 to 7.

2. Member States shall take the necessary measures to encourage any person who knows about or suspects, in good faith that any of the offences referred to in Articles 3 to 7 have been committed, to report this to the competent services.

Article 17

Jurisdiction and coordination of prosecution

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 3 to 7 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 an offence referred to in Articles 3 to 7 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. Member States shall ensure that their jurisdiction includes situations where an offence referred to in Articles 5 and 6, and in so far as is relevant, in Articles 3 and 7, is committed by means of information and communication technology accessed from their territory, whether or not it is based on their territory.

4. For the prosecution of any of the offences referred to in Article 3(4), (5) and (6), Article 4(2), (3), (5), (6) and (7) and Article 5(6) committed outside the territory of the Member State concerned, as regards paragraph 1(b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the acts are a criminal offence at the place where they were performed.

5. For the prosecution of any of the offences referred to in Articles 3 to 7 committed outside the territory of the Member State concerned, as regards paragraph 1(b) of this Article, each Member State shall take the necessary measures to ensure that its jurisdiction is not subordinated to the condition that the prosecution can only be initiated 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 18

General provisions on assistance, support and protection measures for child victims

1. Child victims of the offences referred to in Articles 3 to 7 shall be provided assistance, support and protection in accordance with Articles 19 and 20, taking into account the best interests of the child.

2. Member States shall take the necessary measures to ensure that a child is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that a child might have been subject to any of the offences referred to in Articles 3 to 7.

3. Member States shall ensure that, where the age of a person subject to any of the offences referred to in Articles 3 to 7 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 19 and 20.

Article 19

Assistance and support to victims

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. Member States shall, in particular, take the necessary steps to ensure protection for children who report cases of abuse within their family.

2. Member States shall take the necessary measures to ensure that assistance and support for a child victim are not made conditional on the child victim's willingness to cooperate in the criminal investigation, prosecution or trial.

3. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims in enjoying their rights under this Directive, 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.

4. Child victims of any of the offences referred to in Articles 3 to 7 shall be considered as particularly vulnerable victims pursuant to Article 2(2), Article 8(4) and Article 14(1) of Framework Decision 2001/220/JHA.

5. Member States shall take measures, where appropriate and possible, to provide assistance and support to the family of the child victim in enjoying the rights under this Directive 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 of the child victim.

Article 20

Protection of child victims 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 special representative for the child victim where, under 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, or where the child is unaccompanied or separated from the family.

2. Member States shall ensure that child victims have, without delay, access 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.

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations relating to any of the offences referred to in Articles 3 to 7:

- (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 this purpose;
- (c) interviews with the child victim are carried out by or through professionals trained for this purpose;
- (d) the same persons, if possible and where appropriate, conduct all 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 purpose of criminal investigations and proceedings;
- (f) the child victim may be accompanied by his or her legal representative or, where appropriate, by an adult of his or her 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 3 to 7 all interviews with the child victim or, where appropriate, with a child witness, may be audio-visually

recorded and that such audio-visually 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 3 to 7, that it may be ordered that:

- (a) the hearing take place without the presence of the public;
- (b) the child victim be heard in the courtroom without being present, in particular through the use of appropriate communication technologies.

6. Member States shall take the necessary measures, where in the interest of child victims and taking into account other overriding interests, to protect the privacy, identity and image of child victims, and to prevent the public dissemination of any information that could lead to their identification.

Article 21

Measures against advertising abuse opportunities and child sex tourism

Member States shall take appropriate measures to prevent or prohibit:

- (a) the dissemination of material advertising the opportunity to commit any of the offences referred to in Articles 3 to 6; and
- (b) the organisation for others, whether or not for commercial purposes, of travel arrangements with the purpose of committing any of the offences referred to in Articles 3 to 5.

Article 22

Preventive intervention programmes or measures

Member States shall take the necessary measures to ensure that persons who fear that they might commit any of the offences referred to in Articles 3 to 7 may have access, where appropriate, to effective intervention programmes or measures designed to evaluate and prevent the risk of such offences being committed.

Article 23

Prevention

1. Member States shall take appropriate measures, such as education and training, to discourage and reduce the demand that fosters all forms of sexual exploitation of children.

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 children, becoming victims of sexual abuse or exploitation.

3. Member States shall promote regular training for officials likely to come into contact with child victims of sexual abuse or exploitation, including front-line police officers, aimed at enabling them to identify and deal with child victims and potential child victims of sexual abuse or exploitation.

Article 24

Intervention programmes or measures on a voluntary basis in the course of or after criminal proceedings

1. Without prejudice to intervention programmes or measures imposed by the competent judicial authorities under national law, Member States shall take the necessary measures to ensure that effective intervention programmes or measures are made available to prevent and minimise the risks of repeated offences of a sexual nature against children. Such programmes or measures shall be accessible at any time during the criminal proceedings, inside and outside prison, in accordance with national law.

2. The intervention programmes or measures, referred to in paragraph 1 shall meet the specific developmental needs of children who sexually offend.

3. Member States shall take the necessary measures to ensure that the following persons may have access to the intervention programmes or measures referred to in paragraph 1:

(a) persons subject to criminal proceedings for any of the offences referred to in Articles 3 to 7, under conditions which are neither detrimental nor contrary to the rights of the defence or to the requirements of a fair and impartial trial, and, in particular, in compliance with the principle of the presumption of innocence; and

(b) persons convicted of any of the offences referred to in Articles 3 to 7.

4. Member States shall take the necessary measures to ensure that the persons referred to in paragraph 3 are subject to an assessment of the danger that they present and the possible risks of repetition of any of the offences referred to in Articles 3 to 7, with the aim of identifying appropriate intervention programmes or measures.

5. Member States shall take the necessary measures to ensure that the persons referred to in paragraph 3 to whom intervention programmes or measures in accordance with paragraph 4 have been proposed:

(a) are fully informed of the reasons for the proposal;

(b) consent to their participation in the programmes or measures with full knowledge of the facts;

(c) may refuse and, in the case of convicted persons, are made aware of the possible consequences of such a refusal.

Article 25

Measures against websites containing or disseminating child pornography

1. Member States shall take the necessary measures to ensure the prompt removal of web pages containing or disseminating child pornography hosted in their territory and to endeavour to obtain the removal of such pages hosted outside of their territory.

2. Member States may take measures to block access to web pages containing or disseminating child pornography towards the Internet users within their territory. These measures must be set by transparent procedures and provide adequate safeguards, in particular to ensure that the restriction is limited to what is necessary and proportionate, and that users are informed of the reason for the restriction. Those safeguards shall also include the possibility of judicial redress.

Article 26

Replacement of Framework Decision 2004/68/JHA

Framework Decision 2004/68/JHA is hereby replaced in relation to Member States participating in the adoption of this Directive without prejudice to the obligations of those Member States relating to the time limits for transposition of the Framework Decision into national law.

In relation to Member States participating in the adoption of this Directive, references to Framework Decision 2004/68/JHA shall be construed as references to this Directive.

Article 27

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 18 December 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 those measures, they shall contain a reference to this Directive or 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 28

Reporting

1. The Commission shall, by 18 December 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, accompanied, if necessary, by a legislative proposal.

2. The Commission shall, by 18 December 2015, submit a report to the European Parliament and the Council assessing the implementation of the measures referred to in Article 25.

Article 29

Entry into force

This Directive shall enter into force on the day of 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 Strasbourg, 13 December 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. SZPUNAR

I

(Legislative acts)

DIRECTIVES

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Trafficking in human beings is a serious crime, often committed within the framework of organised crime, a gross violation of fundamental rights and explicitly prohibited by the Charter of Fundamental Rights of the European Union. Preventing and combating trafficking in human beings is a priority for the Union and the Member States.
- (2) This Directive is part of global action against trafficking in human beings, which includes action involving third countries as stated in the 'Action-oriented Paper on

strengthening the Union external dimension on action against trafficking in human beings; Towards global EU action against trafficking in human beings' approved by the Council on 30 November 2009. In this context, action should be pursued in third countries of origin and transfer of victims, with a view to raising awareness, reducing vulnerability, supporting and assisting victims, fighting the root causes of trafficking and supporting those third countries in developing appropriate anti-trafficking legislation.

- (3) This Directive recognises the gender-specific phenomenon of trafficking and that women and men are often trafficked for different purposes. For this reason, assistance and support measures should also be gender-specific where appropriate. The 'push' and 'pull' factors may be different depending on the sectors concerned, such as trafficking in human beings into the sex industry or for labour exploitation in, for example, construction work, the agricultural sector or domestic servitude.
- (4) The Union is committed to the prevention of and fight against trafficking in human beings, and to the protection of the rights of trafficked persons. For this purpose, Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings ⁽³⁾, and an EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings ⁽⁴⁾ were adopted. Moreover, the Stockholm Programme — An open and secure Europe serving and protecting citizens ⁽⁵⁾, adopted by the European Council, gives a clear priority to the fight against trafficking in human beings. Other measures should be envisaged, such as support for the development of general common indicators of the Union for the identification of victims of trafficking, through the exchange of best practices between all the relevant actors, particularly public and private social services.

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

⁽²⁾ Position of the European Parliament of 14 December 2010 (not yet published in the Official Journal) and decision of the Council of 21 March 2011.

⁽³⁾ OJ L 203, 1.8.2002, p. 1.

⁽⁴⁾ OJ C 311, 9.12.2005, p. 1.

⁽⁵⁾ OJ C 115, 4.5.2010, p. 1.

- (5) The law enforcement authorities of the Member States should continue to cooperate in order to strengthen the fight against trafficking in human beings. In this regard, close cross-border cooperation, including the sharing of information and the sharing of best practices, as well as a continued open dialogue between the police, judicial and financial authorities of the Member States, is essential. The coordination of investigations and prosecutions of cases of trafficking in human beings should be facilitated by enhanced cooperation with Europol and Eurojust, the setting-up of joint investigation teams, as well as by the implementation of Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflict of jurisdiction in criminal proceedings⁽¹⁾.
- (6) Member States should encourage and work closely with civil society organisations, including recognised and active non-governmental organisations in this field working with trafficked persons, in particular in policy-making initiatives, information and awareness-raising campaigns, research and education programmes and in training, as well as in monitoring and evaluating the impact of anti-trafficking measures.
- (7) This Directive adopts an integrated, holistic, and human rights approach to the fight against trafficking in human beings and when implementing it, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities⁽²⁾ and Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals⁽³⁾ should be taken into consideration. More rigorous prevention, prosecution and protection of victims' rights, are major objectives of this Directive. This Directive also adopts contextual understandings of the different forms of trafficking and aims at ensuring that each form is tackled by means of the most efficient measures.
- (8) Children are more vulnerable than adults and therefore at greater risk of becoming victims of trafficking in human beings. In the application of this Directive, the child's best interests must be a primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child.
- (9) The 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings are crucial steps in the process of enhancing international cooperation against trafficking in human beings. It should be noted that the Council of Europe Convention contains an evaluation mechanism, composed of the Group of experts on action against trafficking in human beings (GRETA) and the Committee of the Parties. Coordination between international organisations with competence with regard to action against trafficking in human beings should be supported in order to avoid duplication of effort.
- (10) This Directive is without prejudice to the principle of non-refoulement in accordance with the 1951 Convention relating to the Status of Refugees (Geneva Convention), and is in accordance with Article 4 and Article 19(2) of the Charter of Fundamental Rights of the European Union.
- (11) In order to tackle recent developments in the phenomenon of trafficking in human beings, this Directive adopts a broader concept of what should be considered trafficking in human beings than under Framework Decision 2002/629/JHA and therefore includes additional forms of exploitation. Within the context of this Directive, forced begging should be understood as a form of forced labour or services as defined in the 1930 ILO Convention No 29 concerning Forced or Compulsory Labour. Therefore, the exploitation of begging, including the use of a trafficked dependent person for begging, falls within the scope of the definition of trafficking in human beings only when all the elements of forced labour or services occur. In the light of the relevant case-law, the validity of any possible consent to perform such labour or services should be evaluated on a case-by-case basis. However, when a child is concerned, no possible consent should ever be considered valid. The expression 'exploitation of criminal activities' should be understood as the exploitation of a person to commit, inter alia, pick-pocketing, shop-lifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain. The definition also covers trafficking in human beings for the purpose of the removal of organs, which constitutes a serious violation of human dignity and physical integrity, as well as, for instance, other behaviour such as illegal adoption or forced marriage in so far as they fulfil the constitutive elements of trafficking in human beings.
- (12) The levels of penalties in this Directive reflect the growing concern among Member States regarding the development of the phenomenon of trafficking in human beings. For this reason this Directive uses as a basis levels 3 and 4 of the Council conclusions of 24-25 April 2002 on the approach to apply regarding

⁽¹⁾ OJ L 328, 15.12.2009, p. 42.

⁽²⁾ OJ L 261, 6.8.2004, p. 19.

⁽³⁾ OJ L 168, 30.6.2009, p. 24.

- approximation of penalties. When the offence is committed in certain circumstances, for example against a particularly vulnerable victim, the penalty should be more severe. In the context of this Directive, particularly vulnerable persons should include at least all children. Other factors that could be taken into account when assessing the vulnerability of a victim include, for example, gender, pregnancy, state of health and disability. When the offence is particularly grave, for example when the life of the victim has been endangered or the offence has involved serious violence such as torture, forced drug/medication usage, rape or other serious forms of psychological, physical or sexual violence, or has otherwise caused particularly serious harm to the victim, this should also be reflected in a more severe penalty. When, under this Directive, a reference is made to surrender, such reference should be interpreted in accordance with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States⁽¹⁾. The gravity of the offence committed could be taken into account within the framework of the execution of the sentence.
- (13) In combating trafficking in human beings, full use should be made of existing instruments on the seizure and confiscation of the proceeds of crime, such as the United Nations Convention against Transnational Organised Crime and the Protocols thereto, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime⁽²⁾, and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property⁽³⁾. The use of seized and confiscated instrumentalities and the proceeds from the offences referred to in this Directive to support victims' assistance and protection, including compensation of victims and Union trans-border law enforcement counter-trafficking activities, should be encouraged.
- (14) Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.
- (15) To ensure the success of investigations and prosecutions of human trafficking offences, their initiation should not depend, in principle, on reporting or accusation by the victim. Where the nature of the act calls for it, prosecution should be allowed for a sufficient period of time after the victim has reached the age of majority. The length of the sufficient period of time for prosecution should be determined in accordance with respective national law. Law enforcement officials and prosecutors should be adequately trained, in particular with a view to enhancing international law enforcement and judicial cooperation. Those responsible for investigating and prosecuting such offences should also have access to the investigative tools used in organised crime or other serious crime cases. Such tools could include the interception of communications, covert surveillance including electronic surveillance, the monitoring of bank accounts and other financial investigations.
- (16) In order to ensure effective prosecution of international criminal groups whose centre of activity is in a Member State and which carry out trafficking in human beings in third countries, jurisdiction should be established over the offence of trafficking in human beings where the offender is a national of that Member State, and the offence is committed outside the territory of that Member State. Similarly, jurisdiction could also be established where the offender is an habitual resident of a Member State, the victim is a national or an habitual resident of a Member State, or the offence is committed for the benefit of a legal person established in the territory of a Member State, and the offence is committed outside the territory of that Member State.
- (17) While Directive 2004/81/EC provides for the issue of a residence permit to victims of trafficking in human beings who are third-country nationals, and Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the rights of the citizens of the Union and their family members to move and reside freely within the territory of the Member States⁽⁴⁾ regulates the exercise of the right to move and reside freely in the territory of the Member States by citizens of the Union and their families, including protection from expulsion, this Directive establishes specific protective measures for any victim of trafficking in human beings. Consequently, this Directive does not deal with the conditions of the residence of the victims of trafficking in human beings in the territory of the Member States.
- (18) It is necessary for victims of trafficking in human beings to be able to exercise their rights effectively. Therefore assistance and support should be available to them before, during and for an appropriate time after criminal proceedings. Member States should provide for resources to support victim assistance, support and protection. The assistance and support provided should

⁽¹⁾ OJ L 190, 18.7.2002, p. 1.

⁽²⁾ OJ L 182, 5.7.2001, p. 1.

⁽³⁾ OJ L 68, 15.3.2005, p. 49.

⁽⁴⁾ OJ L 158, 30.4.2004, p. 77.

include at least a minimum set of measures that are necessary to enable the victim to recover and escape from their traffickers. The practical implementation of such measures should, on the basis of an individual assessment carried out in accordance with national procedures, take into account the circumstances, cultural context and needs of the person concerned. A person should be provided with assistance and support as soon as there is a reasonable-grounds indication for believing that he or she might have been trafficked and irrespective of his or her willingness to act as a witness. In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive. Where necessary, assistance and support should continue for an appropriate period after the criminal proceedings have ended, for example if medical treatment is ongoing due to the severe physical or psychological consequences of the crime, or if the victim's safety is at risk due to the victim's statements in those criminal proceedings.

- (19) Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings⁽¹⁾ establishes a set of victims' rights in criminal proceedings, including the right to protection and compensation. In addition, victims of trafficking in human beings should be given access without delay to legal counselling and, in accordance with the role of victims in the relevant justice systems, to legal representation, including for the purpose of claiming compensation. Such legal counselling and representation could also be provided by the competent authorities for the purpose of claiming compensation from the State. The purpose of legal counselling is to enable victims to be informed and receive advice about the various possibilities open to them. Legal counselling should be provided by a person having received appropriate legal training without necessarily being a lawyer. Legal counselling and, in accordance with the role of victims in the relevant justice systems, legal representation should be provided free of charge, at least when the victim does not have sufficient financial resources, in a manner consistent with the internal procedures of Member States. As child victims in particular are unlikely to have such resources, legal counselling and legal representation would in practice be free of charge for them. Furthermore, on the basis of an individual risk assessment carried out in accordance with national procedures, victims should be protected from retaliation, from intimidation, and from the risk of being re-trafficked.
- (20) Victims of trafficking who have already suffered the abuse and degrading treatment which trafficking

commonly entails, such as sexual exploitation, sexual abuse, rape, slavery-like practices or the removal of organs, should be protected from secondary victimisation and further trauma during the criminal proceedings. Unnecessary repetition of interviews during investigation, prosecution and trial should be avoided, for instance, where appropriate, through the production, as soon as possible in the proceedings, of video recordings of those interviews. To this end victims of trafficking should during criminal investigations and proceedings receive treatment that is appropriate to their individual needs. The assessment of their individual needs should take into consideration circumstances such as their age, whether they are pregnant, their health, a disability they may have and other personal circumstances, as well as the physical and psychological consequences of the criminal activity to which the victim was subjected. Whether and how the treatment is applied is to be decided in accordance with grounds defined by national law, rules of judicial discretion, practice and guidance, on a case-by-case basis.

- (21) Assistance and support measures should be provided to victims on a consensual and informed basis. Victims should therefore be informed of the important aspects of those measures and they should not be imposed on the victims. A victim's refusal of assistance or support measures should not entail obligations for the competent authorities of the Member State concerned to provide the victim with alternative measures.
- (22) In addition to measures available to all victims of trafficking in human beings, Member States should ensure that specific assistance, support and protective measures are available to child victims. Those measures should be provided in the best interests of the child and in accordance with the 1989 United Nations Convention on the Rights of the Child. Where the age of a person subject to trafficking is uncertain, and there are reasons to believe it is less than 18 years, that person should be presumed to be a child and receive immediate assistance, support and protection. Assistance and support measures for child victims should focus on their physical and psycho-social recovery and on a durable solution for the person in question. Access to education would help children to be reintegrated into society. Given that child victims of trafficking are particularly vulnerable, additional protective measures should be available to protect them during interviews forming part of criminal investigations and proceedings.
- (23) Particular attention should be paid to unaccompanied child victims of trafficking in human beings, as they need specific assistance and support due to their situation of particular vulnerability. From the moment an unaccompanied child victim of trafficking in human beings is identified and until a durable solution is found, Member States should apply reception measures appropriate to the needs of the child and should ensure that relevant procedural safeguards apply. The necessary measures should be taken to ensure that, where appropriate, a guardian and/or a representative are appointed

⁽¹⁾ OJ L 82, 22.3.2001, p. 1.

in order to safeguard the minor's best interests. A decision on the future of each unaccompanied child victim should be taken within the shortest possible period of time with a view to finding durable solutions based on an individual assessment of the best interests of the child, which should be a primary consideration. A durable solution could be return and reintegration into the country of origin or the country of return, integration into the host society, granting of international protection status or granting of other status in accordance with national law of the Member States.

- (24) When, in accordance with this Directive, a guardian and/or a representative are to be appointed for a child, those roles may be performed by the same person or by a legal person, an institution or an authority.
- (25) Member States should establish and/or strengthen policies to prevent trafficking in human beings, including measures to discourage and reduce the demand that fosters all forms of exploitation, and measures to reduce the risk of people becoming victims of trafficking in human beings, by means of research, including research into new forms of trafficking in human beings, information, awareness-raising, and education. In such initiatives, Member States should adopt a gender perspective and a child-rights approach. Officials likely to come into contact with victims or potential victims of trafficking in human beings should be adequately trained to identify and deal with such victims. That training obligation should be promoted for members of the following categories when they are likely to come into contact with victims: police officers, border guards, immigration officials, public prosecutors, lawyers, members of the judiciary and court officials, labour inspectors, social, child and health care personnel and consular staff, but could, depending on local circumstances, also involve other groups of public officials who are likely to encounter trafficking victims in their work.
- (26) Directive 2009/52/EC provides for sanctions for employers of illegally staying third-country nationals who, while not having been charged with or convicted of trafficking in human beings, use work or services exacted from a person with the knowledge that that person is a victim of such trafficking. In addition, Member States should take into consideration the possibility of imposing sanctions on the users of any service exacted from a victim, with the knowledge that the person has been trafficked. Such further criminalisation could cover the behaviour of employers of legally staying third-country nationals and Union citizens, as well as buyers of sexual services from any trafficked person, irrespective of their nationality.
- (27) National monitoring systems such as national rapporteurs or equivalent mechanisms should be 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⁽¹⁾, Member States are encouraged to draw up, for themselves and in the interest of the Union, their own tables which will, as far as possible, illustrate the correlation between this Directive and the transposition measures, and to make them public.

⁽¹⁾ OJ C 321, 31.12.2003, p. 1.

- (32) Since the objective of this Directive, namely to fight against trafficking in human beings, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (33) This Directive respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and notably human dignity, the prohibition of slavery, forced labour and trafficking in human beings, the prohibition of torture and inhuman or degrading treatment or punishment, the rights of the child, the right to liberty and security, freedom of expression and information, the protection of personal data, the right to an effective remedy and to a fair trial and the principles of the legality and proportionality of criminal offences and penalties. In particular, this Directive seeks to ensure full respect for those rights and principles and must be implemented accordingly.
- (34) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Directive.
- (35) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (36) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive establishes minimum rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. It also introduces common provisions, taking into account the gender perspective, to strengthen the prevention of this crime and the protection of the victims thereof.

Article 2

Offences concerning trafficking in human beings

1. Member States shall take the necessary measures to ensure that the following intentional acts are punishable:

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

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

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

4. The consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 has been used.

5. When the conduct referred to in paragraph 1 involves a child, it shall be a punishable offence of trafficking in human beings even if none of the means set forth in paragraph 1 has been used.

6. For the purpose of this Directive, 'child' shall mean any person below 18 years of age.

Article 3

Incitement, aiding and abetting, and attempt

Member States shall take the necessary measures to ensure that inciting, aiding and abetting or attempting to commit an offence referred to in Article 2 is punishable.

Article 4

Penalties

1. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least five years of imprisonment.

2. Member States shall take the necessary measures to ensure that an offence referred to in Article 2 is punishable by a maximum penalty of at least 10 years of imprisonment where that offence:

- (a) was committed against a victim who was particularly vulnerable, which, in the context of this Directive, shall include at least child victims;

- (b) was committed within the framework of a criminal organisation within the meaning of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ⁽¹⁾;
- (c) deliberately or by gross negligence endangered the life of the victim; or
- (d) was committed by use of serious violence or has caused particularly serious harm to the victim.

3. Member States shall take the necessary measures to ensure that the fact that an offence referred to in Article 2 was committed by public officials in the performance of their duties is regarded as an aggravating circumstance.

4. Member States shall take the necessary measures to ensure that an offence referred to in Article 3 is punishable by effective, proportionate and dissuasive penalties, which may entail surrender.

Article 5

Liability of legal persons

1. Member States shall take the necessary measures to ensure that legal persons can be held liable for the offences referred to in Articles 2 and 3 committed for their benefit by any person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

- (a) a power of representation of the legal person;
- (b) an authority to take decisions on behalf of the legal person; or
- (c) an authority to exercise control within the legal person.

2. Member States shall also ensure that a legal person can be held liable where the lack of supervision or control, by a person referred to in paragraph 1, has made possible the commission of the offences referred to in Articles 2 and 3 for the benefit of that legal person by a person under its authority.

3. Liability of a legal person under paragraphs 1 and 2 shall not exclude criminal proceedings against natural persons who are perpetrators, inciters or accessories in the offences referred to in Articles 2 and 3.

4. For the purpose of this Directive, 'legal person' shall mean any entity having legal personality under the applicable law, except for States or public bodies in the exercise of State authority and for public international organisations.

Article 6

Sanctions on legal persons

Member States shall take the necessary measures to ensure that a legal person held liable pursuant to Article 5(1) or (2) is subject to effective, proportionate and dissuasive sanctions,

which shall include criminal or non-criminal fines and may include other sanctions, such as:

- (a) exclusion from entitlement to public benefits or aid;
- (b) temporary or permanent disqualification from the practice of commercial activities;
- (c) placing under judicial supervision;
- (d) judicial winding-up;
- (e) temporary or permanent closure of establishments which have been used for committing the offence.

Article 7

Seizure and confiscation

Member States shall take the necessary measures to ensure that their competent authorities are entitled to seize and confiscate instrumentalities and proceeds from the offences referred to in Articles 2 and 3.

Article 8

Non-prosecution or non-application of penalties to the victim

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Article 9

Investigation and prosecution

1. Member States shall ensure that investigation into or prosecution of offences referred to in Articles 2 and 3 is not dependent on reporting or accusation by a victim and that criminal proceedings may continue even if the victim has withdrawn his or her statement.

2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.

3. Member States shall take the necessary measures to ensure that persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3 are trained accordingly.

4. Member States shall take the necessary measures to ensure that effective investigative tools, such as those which are used in organised crime or other serious crime cases are available to persons, units or services responsible for investigating or prosecuting the offences referred to in Articles 2 and 3.

⁽¹⁾ OJ L 300, 11.11.2008, p. 42.

*Article 10***Jurisdiction**

1. Member States shall take the necessary measures to establish their jurisdiction over the offences referred to in Articles 2 and 3 where:

- (a) the offence is committed in whole or in part within their territory; or
- (b) the offender is one of their nationals.

2. A Member State shall inform the Commission where it decides to establish further jurisdiction over the offences referred to in Articles 2 and 3 committed outside its territory, inter alia, where:

- (a) the offence is committed against one of its nationals or a person who is an habitual resident in its territory;
- (b) the offence is committed for the benefit of a legal person established in its territory; or
- (c) the offender is an habitual resident in its territory.

3. For the prosecution of the offences referred to in Articles 2 and 3 committed outside the territory of the Member State concerned, each Member State shall, in those cases referred to in point (b) of paragraph 1, and may, in those cases referred to in paragraph 2, take the necessary measures to ensure that its jurisdiction is not subject to either of the following conditions:

- (a) the acts are a criminal offence at the place where they were performed; or
- (b) the prosecution can be initiated only following a report made by the victim in the place where the offence was committed, or a denunciation from the State of the place where the offence was committed.

*Article 11***Assistance and support for victims of trafficking in human beings**

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

4. Member States shall take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted⁽¹⁾ and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status⁽²⁾ or pursuant to other international instruments or other similar national rules.

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

*Article 12***Protection of victims of trafficking in human beings in criminal investigation and proceedings**

1. The protection measures referred to in this Article shall apply in addition to the rights set out in Framework Decision 2001/220/JHA.

2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

⁽¹⁾ OJ L 304, 30.9.2004, p. 12.

⁽²⁾ OJ L 326, 13.12.2005, p. 13.

3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

- (a) unnecessary repetition of interviews during investigation, prosecution or trial;
- (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
- (c) the giving of evidence in open court; and
- (d) unnecessary questioning concerning the victim's private life.

Article 13

General provisions on assistance, support and protection measures for child victims of trafficking in human beings

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.

2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

Article 14

Assistance and support to child victims

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views,

needs and concerns with a view to finding a durable solution for the child. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

2. 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.

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



European
Commission

Study on the **gender**
dimension of trafficking
in human beings
Executive summary



Migration and
Home Affairs

Authors

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EXECUTIVE SUMMARY (1)

Introduction

The purpose of this study is to contribute to the identification and understanding of what it means to be 'taking into account the gender perspective, to strengthen the prevention of this crime and protection of the victims thereof', as required in Article 1 of European Union (EU) Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in the context of the EU strategy (COM(2012) 286 final) towards the eradication of trafficking in human beings.

The study contributes to Priority E Action 2 of the strategy, which states that 'the Commission will develop knowledge on the gender dimensions of human trafficking, including 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.' Its specific objectives and tasks are to address: the 'gender dimension of vulnerability, recruitment, and victimisation'; 'gender issues related to traffickers and to those creating demand'; and 'an examination of law and policy responses on trafficking in human beings from a gender perspective'.

The study addresses the five priorities of the EU strategy: identifying, protecting, and assisting victims of trafficking; stepping up the prevention of trafficking in human beings; better law enforcement; enhanced coordination and cooperation among key actors and policy coherence; and increased knowledge of an effective response to emerging concerns.

This study, according to its terms of reference, aims to look specifically at the gender dimension of trafficking for the purpose of sexual exploitation. This follows evidence from statistical data from Eurostat, as well as data from the European Police Office (Europol) and the United Nations Office on Drugs and Crime (UNODC), according to which the most reported form of exploitation of victims is that of sexual exploitation and its strong gender dimension (96 % women and girls). It further addresses recommendations addressed in the Resolution of the European Parliament of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)) urging the European Commission to evaluate the impact that the European legal framework designed to eliminate trafficking for sexual exploitation has had to date and to undertake further research on patterns of prostitution, on human trafficking for the purpose of sexual exploitation and on the increased level of sex tourism in the EU, with particular reference to minors, and to promote the exchange of best practices among the Member States.

The study identifies and draws on EU law and policy competence in gender equality in its identification of the gender dimensions of trafficking. The gender dimensions are clustered into five issues: gender specificity and equal treatment; gender expertise, gender balance in decision-making and gender mainstreaming; the relationship between prostitution and trafficking; gendered policy fields and strategic priorities; gendered systems and the theory of prevention.

Methodology

There are three aspects to the methodology of the study: the first is a review of the academic and policy literature; the second is in-depth case studies; the third is high-level gender analysis.

The review of the literature is presented in two ways: a summary of the key issues that pertain to the study as a whole is in chapter 3; detailed reviews of the literature that pertain to the topics that were selected for in-depth study, and the case studies themselves are presented in chapters 4 to 9. The gender analysis is presented in three parts: the key issues to be addressed are introduced in chapter 3; the main analysis is presented in chapter 10; and the recommendations derived from the analysis are presented in chapter 11.

(1) Sylvia Walby.

Prevention

The study contributes to the goal of the directive to prevent trafficking in human beings, as well as to protecting its victims, 'to strengthen the prevention of this crime' (Article 1). Prevention requires a range of measures, identified in the directive at Article 18 as including those to 'discourage and reduce the demand that fosters all forms of exploitation related to trafficking in human beings'. In this analysis of the gender dimension, we consider various measures to achieve prevention, including innovations in the instruments to reduce demand.

Victim assistance

Trafficking is gender specific. The victims of trafficking in human beings for different purposes are gender specific. Women and girls are overwhelmingly (96 %) the victims of trafficking for purposes of sexual exploitation and the majority (75 %) of victims of trafficking for all purposes, while being 26 % of those trafficked for labour exploitation and 52 % of those trafficked for other forms of exploitation (according to data for 2012 from Eurostat).

The harms from trafficking are gender specific. The harms from trafficking for purposes of sexual exploitation are different from the harms from trafficking for purposes of labour and other forms of exploitation. Their seriousness is related to the specific ways that the bodies of trafficked women are abused. There are severe, brutal and long-term, gender-specific physical, gynaecological and mental health harms, risks to life and traumas from trafficking for purposes of sexual exploitation.

Identification of victims of trafficking needs to take account of this gender specificity. Victims of trafficking for purposes of sexual exploitation can be hidden within mixed populations of independent, exploited and coerced prostitutes and in mixed migration flows. They are fearful of both traffickers and authorities. Gender expertise is needed to provide gender-sensitive processes of victim identification in these circumstances.

Specialised service provision needs to be gender specific. It needs to take account of complex intersections with other forms of disadvantage and vulnerability. It needs to recognise the gender-specific longer recovery time from the harms of trafficking for purposes of sexual exploitation as compared with other forms. The provision of specialised services to victims of trafficking needs to be appropriate to their needs. These are different according to the form of trafficking to which they have been subjected, and hence gender specific. These services are best provided by organisations that include users, victim-survivors of trafficking and gender experts in their decision-making, and that have sustainable funding.

Access to mainstream services needs to be enabled by the mobilisation of the legal principle of equal treatment in access to goods and services. This is to ensure that those trafficked for sexual exploitation (who are disproportionately female) gain access, on equal terms with others, to welfare, social protection, health, criminal justice services, financial services and support to reintegrate into the economy.

The wider context of gender equality, including but not only in employment, is relevant to the likelihood that victims of trafficking can access the independent forms of livelihood that are conducive to escape and to recuperation. This includes the actions in the EU strategy for equality between women and men (COM(2010) 491 final), reducing the regulatory gap between workers in non-standard and standard work and the inclusion of gender equality in the EU 2020 strategy for smart, inclusive and sustainable economic growth (COM(2010) 491 final).

Measurement

There are four major ways of collecting data on trafficking in human beings: administrative statistics; large-scale surveys; other studies; and the expert judgement of key actors. Ideally, all would be available for the investigation of the causal processes linking changes in policy to changes in trafficking. There are current limitations to the data. However, these could be mitigated by a sustained programme of improvement in methodology and data collection.

The Eurostat working papers on statistics on trafficking in human beings, including its gendered dimensions, have made an important contribution to available knowledge and need to be sustained and improved. Member States

should collect and provide data on victims and traffickers consistently, using the definition of trafficking in the directive, and always disaggregate them by gender.

There is a need to develop and fund a programme of research to develop methodologies to estimate the changing scale and nature of trafficking which is sensitive to the gender dimensions. This should include concern for both registered and non-registered victims and the development of theory and techniques necessary to produce estimates of the total population of trafficked victims (registered and non-registered) from collected data, and should complement work by the UN Office on Drugs and Crime and the International Labour Organisation.

This programme of methodological development should be supported within the development and funding of a wider research programme into what works to prevent trafficking in human beings with appropriate attention to its gender dimension.

Demand reduction

'Demand reduction' is a strategy to prevent trafficking by reducing the economic attraction of the institutions into which people may be coerced by traffickers. In the case of trafficking for purposes of sexual exploitation, the most important institution is prostitution. This study addresses the ways that the different forms of regulation of prostitution might reduce demand for the services of people trafficked into prostitution.

The regulation of prostitution is centred on one or more of three targets: those who sell sex/are sold; those who engage in the exploitation of the prostitution of others; and the buyers of sex. Demand reduction through the regulation of prostitution can logically be centred either on those that seek to exploit by taking profit (e.g. rent or fees) from prostitution or on the men (usually) who seek to buy sex. It is sometimes focused on reducing the forms of prostitution that are likely to have a greater association with trafficking and other forms of criminality and sometimes focused on prostitution in general.

While the ideal data to test approaches to prevent trafficking would have included robust statistics that are comparative over time and between countries (supplemented by qualitative data), these are limited. Thus adjudicating between approaches depends upon a wider range of information including administrative data, research studies and the expert judgement of key actors, such as the police. We offer in-depth case studies of the Netherlands, Germany and Sweden, as well as some cross-country comparisons of the Netherlands, Germany and Sweden.

There are variations in the form of regulation of prostitution over time and between EU Member States. Recently, in the EU, there has been a substantial move to decriminalise the sellers of sex so that, in most EU Member States, selling sex is not always illegal. This move is recommended in the European Parliament Resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)). There are some exceptions in Member States, such as Croatia where selling sex is always illegal and in other Member States where it is illegal in particular locations, for example on the street. This decriminalisation of the selling of sex, while widespread in the EU, is not found in many other jurisdictions, such as the United States. It is important to note EU specificity when engaging in debates about trafficking and prostitution and to avoid any tendency to a false universalism concerning the criminalisation of the selling of sex. We find that increased regulation of one of the three parties does not necessarily mean increased regulation of the other two. Most EU Member States have decriminalised the sale of sex (with some exceptions); maintain the criminalisation of the exploitation of the prostitution of others; and criminalise the purchase of sex in specific circumstances, including from minors. The Netherlands and Germany have permitted some profit-taking from prostitution, combined with high levels of surveillance and regulation. Sweden has criminalised the purchase of sex.

We found that Germany has the largest proportion of prostitution (for population size) of any of the three countries in our study. This is followed by the Netherlands, then Sweden, which has the lowest proportion of prostitution per head of population. Although there are limitations to the accuracy of these comparative statistics, the larger scale of prostitution in Germany is rarely disputed. Both Germany and the Netherlands have introduced additional policies to combat trafficking in some cities, including total bans on street prostitution, and are either discussing or implementing bans on the purchase of sex from those under 21, not only under 18 years. These have been introduced to close down forms of prostitution (on the street and involving young people) that are considered by expert judgement of key actors to be the most associated with trafficking.

We conclude that the changes in the legal regulation of specific forms of profit-taking from prostitution have resulted in less trafficking in this sector than in the non-regulated and illegal sectors. The best statistics available suggest the overall scale of prostitution is larger in Germany and the Netherlands than in Sweden. This correlation between the decriminalisation of profit-taking in prostitution and its scale is consistent with the claim that this aspect of decriminalisation, however well regulated, is causally connected to a larger proportion of prostitution in the population. Reductions in trafficking have also occurred through the deployment of other legal instruments in the non-regulated and illegal sector, especially bans on particular forms of prostitution that have been enforced by the criminalisation of seller and buyer, thereby reducing the forms of prostitution most associated with trafficking. The evidence does not support the claim that innovations in the regulation of the exploitation of the prostitution of others in the Netherlands and Germany that allow specific and regulated profit-taking have reduced overall levels of trafficking for purposes of sexual exploitation in these countries. Our conclusion is that the criminalisation of the exploitation of the prostitution of others and of profit (rent and fee) taking from prostitution remains an important legal instrument to reduce the demand that drives trafficking.

A key claim as to the effectiveness of the law which criminalised the purchase of sex in reducing prostitution was the halving of street prostitution in Sweden registered by the police in the period immediately after the law came into effect, while that in neighbouring Nordic countries remained at similar levels. Since street prostitution is widely held to be a key site of trafficking, this is likely to have entailed a decline in trafficking at the same time. This may be considered to be the consequence of the normative effect of the legislation on male behaviour, or perhaps the threat of sanctions. However, there are debates as to whether off-street prostitution has grown in compensation; here the evidence base is weak and contested. In this context, an alternative approach to measuring changes has been to focus on men's willingness to buy sex. The proportion of men reporting that they have paid for sex decreased substantially after the law came into effect; some studies suggest that this fell by almost half, though the evidence base as to the exact proportions is contested. Nevertheless, there are indications that Sweden has a smaller market for sex than many other European countries. Thus the law may be considered to have had some of the effects that were sought in that it has reduced demand for the purchase of sex, with consequences for the scale of the Swedish sex market.

Law enforcement and justice and home affairs agencies

The study engages with the practices of the EU justice and home affairs agencies (JHA), especially: Europol, Eurojust, the European Union Agency for Fundamental Rights (FRA), the European Police College (CEPOL) and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). This includes a review of the materials through which they trained officers. The findings are that much progress has been made since the inception of the strategy to eradicate trafficking in human beings, particularly with regard to interagency cooperation and the coordination of activities. However, the embrace of the gender perspective remains uneven. Better acknowledgement of the gender-specific dimensions of trafficking and the development of gender expertise in addressing these would improve the likelihood of effective prosecution of traffickers. This could include: the use of explicitly gender-specific, rather than gender neutral, language in policies; the consistent application of the principle of equal treatment; the utilisation of more gender-specific materials during the training of law enforcement officers; improvement of the gender balance in decision-making; and better resourcing of JHA agencies to enable the appointment of gender-trained agency officers.

Knowledge: new technology

Various potential implications of developing techniques of analysis are emerging. The nature of the online world means that this more often concerns trafficking for sexual exploitation than for labour exploitation, and hence concerns women and girls in particular. Much of the technology development in the field is focused on victim identification. This aims to free women and children from trafficked situations but also to assist in the prosecution of perpetrators. The intersection of gender, sexual exploitation and digital technologies potentially form a distinctive nexus. This is a way of thinking about how anti-trafficking movements can effectively organise. Technical work on tracing traffickers' activities online using open-source intelligence identifies key themes that may assist in the identification and prevention of trafficking women and girls for the purposes of sexual exploitation. The gender specificity of the digital world image of trafficking for the purposes of sexual exploitation is clear in that the gender of those trafficked and displayed for sale is clearly visible. The majority of digital world image of trafficking

for sexual exploitation concern the selling of women to men for sex. Yet there appears to be little gender specificity in the law enforcement response. There is concern that anti-trafficking movements can sometimes offer exaggerated images of helpless femininity to assist their cause rather than images of resilience and resistance.

There is a need to develop gender expertise in relevant cybertechnologies. This would enable the better identification of victims and the traces left by traffickers, including their movement of illicit funds. It could discover the best ways to support those resisting trafficking. There is a need to improve the understanding of intersecting inequalities, including that of age. It is important to improve the gender balance in decision-making in cybersecurity matters. It is also important to enhance the collaboration between those with gender expertise in trafficking in human beings, law enforcement and cybersecurity experts. These developments would be assisted by the fuller implementation of the EU's principles of gender equality within the EU strategy on cybersecurity (JOIN(2013) 1 final).

Enhanced coordination and cooperation among key actors and policy coherence

There has been much development of EU policy to eradicate trafficking in human beings since the EU anti-trafficking directive in 2011 and the EU anti-trafficking strategy in 2012. The policy could be made more effective if it were more deeply embedded in the wider strategies of the EU, especially the fuller implementation of its gender aspects. This includes the strategies on security, equality between women and men, economic growth, cybersecurity, migration and external relations.

The strategy on security could include a more explicit gender dimension in the review of priorities of the European agenda on security (COM(2015) 185 final), including the 2018 mid-term review of the Internal Security Fund, and the Commission's planned reflection on maximisation of the contribution of relevant EU agencies to the Security strategy.

The strategy for equality between women and men (COM(2010) 491 final) could make an important contribution, if its principles were more fully implemented, since it addresses the interconnected nature of the forms of gender inequality that contribute to trafficking in human beings.

The EU 2020 strategy for smart, sustainable and inclusive growth (COM(2010) 2020 final) could include gender equality more explicitly as a goal. Reducing gender inequality in the economy assists the exit of women from trafficking, while prostitution should never be treated as an area for economic growth.

The strategy on cybersecurity (JOIN(2013) 1 final) could include an explicit reference to the significance of human dignity and the gender dimension of cybersecurity. This would facilitate recognition of the way that deep violations of human dignity are intrinsic to trafficking for purposes of sexual exploitation.

The European agenda on migration (COM(2015) 240 final) could give greater priority to anti-trafficking so as to facilitate the protection of victims.

The implementation of the action plan on human rights and democracy (JOIN (2015) 16 final) could include an explicit gender dimension in its anti-trafficking activities. Improving the democratic participation and economic independence of women and girls in 'source' countries aids in the prevention of trafficking.





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 Denmark¹.

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 beings².

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.

¹In this report 'Member States' means the Member States bound by the Directive.

² 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 measures³. 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’⁴. 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 States⁵. Member States address in diverse ways the position of

³ On the date of closing the work on this report.

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

⁵ 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 to⁶. In **SE**, the missing elements though are covered by the broader catch-all provision⁷. 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 18.⁸

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.

⁶ 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**).

⁷ 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.

⁸ 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,⁹ 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

⁹ : 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**¹⁰); covert surveillance (**BE, BG, CZ, EE, EL, ES, FI, FR; HR, IT, LU, HU, NL, AT, PL, PT, RO, SI, SK and UK**¹¹); 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

¹⁰ England/Wales, Northern Ireland and Scotland

¹¹ 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 nationals¹². Member States established mechanisms of diverse nature¹³ 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 dispersed 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.

¹² 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.

¹³ 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 States¹⁴ 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/EU¹⁵.

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

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

¹⁵ 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 victim¹⁶.

¹⁶ 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.¹⁷ 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.¹⁸

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

¹⁸ 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**.¹⁹

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.

¹⁹ 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 report²⁰.

²⁰ 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 States²¹ have appointed a specific person, others a body²², 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 2016²³.

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.

²¹ BE, FR, HU, NL, PT and UK (Gibraltar)

²² 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).

²³ 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 Security²⁴, 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**²⁵, 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.

²⁴ 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.

²⁵ 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.



Brussels, 2.12.2016
COM(2016) 719 final

**REPORT FROM THE COMMISSION 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, in accordance with Article 23 (2) of the
Directive 2011/36/EU**

1. Background and Purpose

This Report responds to the requirement of Article 23(2) of the Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, according to which: *"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"*.

Reference to the criminalisation of the use of services of victims of trafficking is set out in Article 18 (entitled "Prevention") (1) and (4) of Directive 2011/36/EU which states as follows: *"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. [...] 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**"*.

This Report provides a description of existing national legislation that criminalises the use of services of victims of trafficking and an assessment of the impact of any such legal measures. It is beyond the scope of Art.23(2) to examine other non-legislative measures that may exist at national level or legislative measures that do not touch upon the criminalisation of the use of services of victims of trafficking. Of note, this is not a report assessing compliance with the provisions of the Directive 2011/36/EU. It should be read in conjunction with the "Report 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), COM(2016) 722. It also takes into account the first Commission Report on the progress made in the fight against trafficking in human beings trafficking in human beings and protecting its victims (hereinafter "Progress Report").

In the drafting of this report, the Commission made use of information received from the Member States, through a questionnaire that was sent in May 2016, and consulted with the civil society via the EU Civil Society Platform against Trafficking in Human Beings¹ as well as via the European Commission's Group of Experts on Trafficking in Human Beings².

¹ For more information, please see 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.

² Commission Decision (2011/502/EU) of 10 August 2011 on setting up the Group of Experts on Trafficking in Human Beings and repealing Decision 2007/675/EC.

2. Existing national law establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings

2.1. Summary of replies

The analysis below is based on the replies provided by Member States. The Commission cannot exclude that other national provisions or developments may exist. In view of the analysis, the Commission asked Member States to report on *"Existing national law establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings; who is precisely criminalised; if criminalisation for all forms of exploitation is envisaged; if legislation requires proving the element of knowledge that the person is a victim of trafficking and how it impacts the applicability of the legislation; what measures were taken to ensure that the public is aware of the law to ensure better implementation; available statistical data on prosecutions and convictions and hurdles faced; if there is no existing national law, what are the reasons and what alternatives are in place to fulfil the obligation of considering criminalisation; how they assess the impact of such laws and if they have relevant suggestions; what consultation processes are in place and; if they have commissioned any evaluation and research of such laws."*

It should be highlighted from the outset that Member States did not elaborate in the information furnished on how they fulfilled the legal obligation to **consider** the criminalisation of users of victims stemming from Art.18 (4) Directive 2011/36/EU.

The analysis of the replies by Member States demonstrates that, at the time of drafting this report, there are **ten (10) Member States that have established as a criminal offence the use of services which are the objects of all forms of exploitation of victims of trafficking in human beings, and fifteen (15) Member States having established only a limited and selective criminalisation for the use of services of victims of trafficking in human beings.**

More specifically:

1) Member States that have established such a criminal offence for all forms of exploitation (BG, EL, HR, CY, LT, MT, PT, RO, SI, UK)

Ten (10) Member States reported having existing national law establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings (**BG, EL, HR, CY, LT, MT, PT, RO, SI, UK**³), addressing all forms of exploitation.

BG informed the Commission that according to the Bulgarian Criminal Code (Art.159c) an individual who uses a person affected by trafficking in human beings for debauchery, forced labour or begging, removal of organs, tissues, cells or body fluid or for keeping him/her in forceful subjection, regardless of his/her consent, shall be punished by deprivation of liberty of three to ten years and a fine of 10 000 to 20 000 leva. **HR** has a similar provision but goes even further, as it imposes the same penalties on anyone who knowingly uses a victim or the services thereof with

³ **UK** conveyed to the Commission that England and Wales have such existing measures for trafficking in human beings, while Scotland has no such measures in place and Northern Ireland reported to have such measures targeting only trafficking for the purpose of sexual exploitation.

those who are charged for committing the offence of trafficking in human beings. **CY** reports that Article 17 of Law 60(I)/2014 stipulates that any person who can reasonably assume that the labour or services s/he uses are provided by a victim of human trafficking shall have committed an offence under the anti-trafficking law. **EL** established such national legal provisions in 2013 with the Law 4198/2013, which criminalises those persons who knowingly accept the labour of a person who is a victim of trafficking as well as those persons who knowingly perform a sexual act with a person who is a victim of trafficking. **LT** reported that under Article 147-2 of the Criminal Code any person who uses services provided by victims of trafficking and who knew or should have known that they are victims shall be punished by a fine or freedom restricting measures. Of note, a person who commits such an act and subsequently voluntarily informs the law enforcement agencies and actively cooperates, before being declared a suspect, can be absolved of criminal liability. In addition, legal entities shall also be held liable for such acts. **MT** informed the Commission that any person engaged in or making use of services or labour in the knowledge that the person providing such services or labour has been trafficked, shall be guilty of an offence and be held liable, on conviction, to imprisonment for a term of eighteen months to five years. Similar provisions exist in **PT** and **SI** (imposing prison sentence of up to three years and a fine). **RO** informed the Commission that under Art. 216 of the Romanian Criminal Code any person who uses the services as set out in Art.182 of the Criminal Code (on exploitation) other than the trafficker, and who knows that the services are provided by a victim of trafficking in human beings shall be criminalised.

2) Member States that have not established explicit national legal provisions or that have established limited and selective criminalisation of the use of services of victims of trafficking in human beings⁴

Fourteen (14) Member States reported having no explicit national legal provisions in place for establishing as a criminal offence the use of services which are the objects of all forms of exploitation of victims of trafficking in human beings (**AT, BE, CZ, DE, EE, ES, FR, HU, IT, LV, LU, NL, PL, SK**). However, some Member States (**FI, IE, SE**) have instituted legislation targeting the use of victims of trafficking but only in respect to particular forms of exploitation. More specifically, **FI** and **IE** reported having existing national legislation targeting only at the use of victims of trafficking for sexual exploitation. **SE** reports that while there is no specific provision that criminalises the use of services of a victim of trafficking, they apply provisions under the law on banning the purchase of sexual services, which can cover the use of services exacted by victims of trafficking for sexual exploitation.

Of those Member States that have not established such explicit provisions, according to information provided by them, in some instances recourse could be made to provisions which relate to sexual offences or child sexual exploitation (e.g. **IT, ES, NL** and **BE**). While **IT** has no such explicit provisions, it reports having established as a criminal offence under Art. 603 *bis* of the Italian Criminal Code the unlawful brokering and exploitation of labour generally. While **AT** has no explicit provision on victims of trafficking in human beings, there is a recently adopted provision on

⁴ **FI, IE, SE** have established legal provisions only for trafficking for sexual exploitation and **AT, BE, DE, EE, FR, HU, IT, LV, LU, NL, PL, SK** only within the context of the Employers' Sanctions Directive.

engaging in a sexual act with persons against their will, by exploiting a predicament or after previous intimidation.

Furthermore, some Member States report having in place only measures which transpose and implement **Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals**⁵ (so-called **Employers' Sanction Directive**) (e.g. PL or HU). In this respect, the **Communication on the application of Directive 2009/52/EC of 18 June 2009** notes that Member States have in general criminalised illegal employment in all the circumstances described in Article 9 (including instances where the employer knows that the worker is a victim of human trafficking). According to this Communication, CZ and ES did not specifically penalise illegal employment in situations where 'the employer was aware that the worker was a victim of human trafficking'.⁶

It should be noted, however, that the personal scope of **Directive 2009/52/EC is limited only to third country nationals illegally staying in the EU**. Hence, it does not cover victims of trafficking who are EU nationals or victims of trafficking who are third country nationals but lawfully residing in the EU. In addition, while the Directive applies to instances of dependent employment⁷, it does not cover cases where victims are self-employed or cases where the user is not the employer. Thus, the criminalisation set forth in **Directive 2009/52/EC is adapted to its subject matter and scope, which is limited and not sufficient** in addressing all instances of trafficking in human beings. However, it serves as a good example of measures that could be used in this direction to further develop and consolidate the anti-trafficking legal framework.

3) Alternatives to the lack of criminalisation

As mentioned above, according to the Art. 18(4) of the Directive, Member States have an obligation to at least consider criminalising those who knowingly use the services of victims of trafficking. However, Member States provided limited information to the Commission on alternatives when there are no national measures criminalising those who use the services of victims of trafficking. From the replies to the questionnaires it appears that only NL and ES provided information in this respect. NL reported information campaigns on anonymous reporting of crimes, raising awareness and publicity on prosecutions of child sexual abuse where recourse is made to payment, covenants with business sectors on promoting respect for human rights. ES reported that despite not having a provision explicitly on the criminalisation of the use of the sexual services of a victim of trafficking in human beings, where there is knowledge of the state of vulnerability of the victim any such act

⁵ Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009L0052>

⁶ Bearing in mind the period lapsed since the adoption of the Commission on the application of the Directive 2009/52/EC, it cannot be excluded that relevant legislation was adopted in the meantime. For more information see the Communication from the Commission to the European Parliament and the Council on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals, COM (2014) 286final.

⁷ The definition of employment encompasses the exercise of activities whatever form of labour or work regulated under national law or in accordance with established practice for or under the direction and/or supervision of an employer (Article 2 (c) Directive 2009/52/EC); the preamble specifies that this should be irrespective of the legal relationship (Recital 7).

could be considered as an offence against the sexual freedom and integrity of a person, and relevant articles of the Penal Code would be applicable.

4) Evaluations

A limited number of Member States reported having commissioned **evaluations** of such laws or relevant research (e.g. **FI**, **SE**). **SE** reported to the Commission that the inquiry report on the Ban against the Purchase of Sexual Services was published in 2010. Among the key findings were: (a) street prostitution had been reduced by half; (b) the internet had become a new arena for prostitution; (c) the ban on the purchase of sexual services had counteracted the establishment of organized crime; and (d) public support for the ban had increased. Furthermore, an Anti-Trafficking Inquiry is expected which will evaluate the application of the penal provision on trafficking in human beings, and which will also scrutinize how law enforcement authorities investigate and handle human trafficking matters.

FI has commissioned research following a landmark judgment of the Supreme Court on the so-called partial criminalisation of the purchase of sexual services from procured prostitutes and victims of trafficking in human beings. The research concluded that the major problem in the application of the law was that very few cases of abuse of a victim of sex trade had been detected, investigated, prosecuted and punished. The requirement of *mens rea* in the partial criminalisation of sex purchasers was reported to be problematic. The report stated that the situation favoured sex buyers who avoid gaining any knowledge of the prostitute's circumstances but were intimately familiar with the letter of the law. The researchers proposed the full criminalisation of the buying of sex. Following this report, the Government proposed the amendment of the offence establishing it on the user's negligence⁸.

UK (Northern Ireland) expects an evaluation in 2018 and reported that **Scotland** commissioned research on the subject matter during the scrutiny of the Human Trafficking and Exploitation Act (2015).

Generally, **statistical data** provided to the Commission by all Member States is scarce with only a limited number of prosecutions and convictions communicated. Moreover, it is questionable whether such disaggregated data on this offence is available at national level. For example, **IT** stresses that at present there is no separate data concerning the use of services provided by victims of trafficking. This is an area that the Commission will further look into in the context of the work delivered in improving the quality and comparability of statistical data on trafficking in human beings collected at EU level.

⁸ For more information see Johanna Niemi & Jussi Aaltonen, "Abuse of a victim of sex trade: Evaluation of the Finnish sex purchase ban", Ministry of Justice of Finland, 2014 available at http://ec.europa.eu/anti-trafficking/publications/abuse-victim-sex-trade_en

2.2. Assessing the impact and the application

The information conveyed to the Commission shows that Member States follow rather diverse approaches and practices. In all Member States where there are national measures establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, the personal scope of those provisions is limited only to those who directly use services or labour provided by the victims.

In the vast majority of Member States where there is a national law establishing as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, Member States report that it is too soon to assess their impact. This is due to the fact that the measures came into force following the deadline of transposition of the Directive 2011/36/EU in 2013 due to the short period for the implementation of the Directive.

Of those Member States that have such provisions, all require that the user had prior knowledge that the person whose services are being used is a victim of trafficking in human being. In these cases, a general difficulty with regard to evidence building has been reported. In most of the Member States concerned, the burden of proof rests primarily with the prosecutor: the suspect/defendant benefits from the presumption of innocence and has no obligation to prove his innocence. Only, in the case of **IE** the burden of proof is shifted and it rests with the defendant to show that he or she did not know, and had no reasonable grounds for believing, that the person against whom the offence was committed was a victim of human trafficking.

In this regard, the Explanatory Report of the Council of Europe Convention on Action against Trafficking in Human Beings notes that "[...] Proving knowledge may be a difficult matter for the prosecution authorities. A similar difficulty arises with various other types of criminal law provision requiring evidence of some non-material ingredient of an offence. However, **the difficulty of finding evidence is not necessarily a conclusive argument for not treating a given type of conduct as a criminal offence**". In this context, difficulties in building evidence for a crime should not result in not criminalising certain conduct.

While the number of successful investigations, prosecutions and convictions has unquestionably a deterrent effect, it is questionable how such statistics may be interpreted, particularly in relation to assessing the impact or success of relevant measures. **Given that the greatest impact of such measures lies in preventing the crime from occurring in the first place, statistics on prosecutions and convictions cannot give a safe indication of the efficacy of the measures.** As stated above, statistical data provided for this report are scarce. For 2014 and 2015, **BG** reports that there were respectively four (4) indictments and one (1) conviction and five (5) indictments and two (2) convictions. **EL** reported that according to the statistical data of the Hellenic Police there was one (1) prosecution since the entry into force of the new Law. **RO** further informs that in 2015 the first cases were reported to the Directorate for Investigating Organized Crime and Terrorism and nine (9) persons were prosecuted for the offence of using the services of trafficking victims. According to the Superior Council of Magistracy, up to May 2016, 15 people had been convicted for the offence of using the services of an exploited person. These sentences were not final however, and could be appealed before the Supreme Court.

In this respect, the Commission wishes to recall the findings of the Progress Report *“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”*.

Restricting criminal liability only to the situation where the user has direct and actual knowledge that the person is a victim of human trafficking creates a very high threshold for achieving prosecutions. In this respect, consideration of the level of knowledge that should be required for this offence should be a matter for close examination.

3. Ensuring effective prevention of trafficking in human beings

This chapter reflects the deliberations⁹ by the Commission on the matter, guided by the EU Anti-Trafficking Strategy¹⁰ and other key policy instruments¹¹, and provides a backbone to the analysis thereof. The abovementioned analysis has demonstrated an incomplete and diverse legal framework at national level on the legal treatment of users of victims of trafficking, which impacts the effective prevention of the crime. It is in this environment, that trafficking in human beings remains pervasive despite efforts made, with no indications that this serious crime is decreasing.

In this respect, a foundation **for any decisive deterrent action for trafficking in human beings is accountability of the perpetrators**. This is also reflected in other key international and European legal instruments.¹² It was further touched upon by the **European Parliament**¹³ and the **Parliamentary Assembly of the Council of Europe**,¹⁴ and by the **civil society**.¹⁵

⁹ Such as the Commission studies i.e. on prevention initiatives on trafficking in human beings and on gender dimension of trafficking in human beings, which were deliverables of the EU Anti-Trafficking Strategy.

¹⁰ Communication on The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016, (COM(2012) 286 final).

¹¹ Such as the European Agenda on Security, the European Agenda on Migration, the EU Strategic Engagement on Gender Equality, the EU Human Rights and Democracy Action Plan.

¹² For example, the 2000 United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Art. 9) and the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (Art. 6 and 19).

¹³ European Parliament resolution of 12 May 2016 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)), European Parliament resolution of 5 July 2016 on the fight against trafficking in human beings in the EU's external relations (2015/2340(INI)), European Parliament Resolution of 26 February 2014 on sexual exploitation and prostitution and its impact on gender equality (2013/2103(INI)).

¹⁴ Council of Europe Parliamentary Assembly Resolution Prostitution, Trafficking and Modern Slavery in Europe Resolution 1983 (2014).

Available at: <http://assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewPDF.asp?FileID=20716&lang=en>

¹⁵ Organisations participating in the EU civil society platform against trafficking in human beings note that legislation is the most important measure that Member States should take in order to ensure prevention and demand reduction. Commission Staff Working Document Accompanying the document Report on the progress made in the fight against

The Commission has stipulated in the **European Agenda on Security** and repeatedly stressed in its reports and studies that trafficking in human beings, as a serious, cross-border and organised crime, has huge human social and economic costs.¹⁶ It is driven by **demand** for all forms of exploitation and by high **profits**. The profits, in both the legal and illegal economies, result in a complex interplay between supply and demand that must be addressed¹⁷ if the crime is to be eradicated¹⁷. Addressing this demand and reducing it is a legal obligation in Directive 2011/36/EU and aims at preventing the harm from happening, by changing the wider environment so as to reduce incentives for trafficking in human beings.

3.1. Identifying the user of services exacted by victims of trafficking in human beings

In this context, demand encompasses all those individuals, groups or legal persons, that are driven by the objective of exploiting victims in order to make a profit on many levels, those who directly use and abuse the victims, as well as those who act as promoters or facilitators and generally those who create and contribute to creating an enabling environment for this.

Businesses using trafficking victims and taking profits from trafficking are not restricted to criminal organisations and trafficking often involves a chain of legitimate businesses. Profit-takers range from relatives of victims, to informal or formal recruitment agencies, labour market intermediaries supplying labour in specific sectors or sub-contractors in global supply chains, as well as travel agencies and transport enterprises, as well as information and communication technologies companies.

Another source of demand is consumers, who may be individuals purchasing products manufactured by victims but with no knowledge of how they have been produced, or knowing users of victims of trafficking, who ignore obvious signs of trafficking and labour/sexual exploitation, such as very low prices or signs of violence and intimidation. In this respect, this report refrains from using terms such as "client" in the context of trafficking for sexual exploitation of either adult or child victims, since such terminology would obscure the suffering, abuse and violations that victims of trafficking have endured.

As stated in the Commission Staff Working Document accompanying the document Report on the progress made in the fight against trafficking in human beings and protecting its victims: “The final objective of eradication of trafficking in human beings can only be achieved **if the crime is prevented from happening in the first place and using the wide range of available tools at EU and national level [...]** This means **not only addressing the root causes that make people more vulnerable to trafficking** – such as poverty, gender inequality and violence against women, ethnic

trafficking in human beings trafficking in human beings and protecting its victims, COM(2016) 267 final, SWD(2016) 159 final, p. 64.

¹⁶ 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", COM (2015) 185 final.

¹⁷Progress Report.

discrimination, societal marginalisation, irregular migration – but **also ensuring that those who profit from the crime and exploit the victims are brought to justice**".¹⁸

It is clear that trafficking in human beings and any aspect of it is always illicit. There is nothing legitimate about trafficking in human beings. Exploitation of a person in coercive circumstances from another person is reprehensible conduct in every criminal justice system. Trafficking in human beings has no legal or moral face. It is a serious crime and a grave violation of human dignity, as per the prohibition in Article 5(3) of the Charter of Fundamental Rights of the European Union. The lack of criminalisation of the use of services of a trafficked person, **especially with the knowledge that she or he is a victim of human trafficking**, renders the overall fight against trafficking in human beings less effective and hinders the attainment of the objectives of Directive 2011/36/EU. Even if national legislations do not establish as a criminal offence the use of services which are the objects of exploitation of trafficking in human beings, the fact of the matter remains: victims often have been repeatedly raped, mentally and psychically abused, suffered offences against not least their freedom, dignity, sexual self-determination, bodily integrity.

4. Concluding remarks and way forward

As stipulated in Article 18(4) of the Directive 2011/36/EU, in order to make the preventing and combating of trafficking in human beings more effective, Member States shall consider taking measures to establish as a criminal offence the use of services which are the objects of exploitation of victims of trafficking. The analysis made in this Report, in the context of assessing the impact of existing relevant national legislation, as per Article 23(2) of the Directive, demonstrates **a rather diverse legal landscape which fails to effectively contribute to discouraging demand of such services**.

In the complete absence or inadequate criminalisation of the use of such services in the context of trafficking in human beings, **the activity of traffickers which by definition includes exploitation of their victims, may not only be less discouraged, but adversely may be even fostered including through a culture of impunity**. Obviously, the challenge of discouraging demand implies to **focus more on those who actually use the services of different forms of trafficking** with the knowledge that the person is victim of an offence.

Currently, several Member States' legal systems do not, or only partially, outlaw those who make use of such services with relevant knowledge, **impacting on legal uncertainty with regards**, for example, the criminal liability linked to the relation of the user with the victim, the legal treatment of those who profit from or enable and facilitate such exploitation, the distinction between a user and an exploiter, the liability of intermediaries, as well as the broader supply chains.

Member States should step up their efforts to ensure a more unified and dissuasive action against this element of the cross-border crime of trafficking in human beings. The ultimate aim of this Report is to contribute to meeting the objectives of the Directive 2011/36/EU on reducing demand

¹⁸ Commission Staff Working Document Accompanying the document Report on the progress made in the fight against trafficking in human beings and protecting its victims, COM(2016) 267 final, SWD(2016) 159 final, p. 39

and prevent trafficking in human beings, in order to ensure that criminal groups are not benefiting from the diverse legal treatment of users of victims of trafficking. In this respect, the Commission draws important conclusions from monitoring the situation in the Member States and will further examine potential options and consider in the future, if necessary, appropriate legislative proposals, as per Article 23 (2) of the Directive 2011/36/EU.



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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

[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

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)
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)

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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**¹ ('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.²

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 document³ 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

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

² https://ec.europa.eu/anti-trafficking/eu-anti-trafficking-coordinator_en

³ SWD(2016) 159.

Strategy towards the eradication of trafficking in human beings 2012-2016⁴ (‘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;⁵ the European Agenda on Security;⁶ the EU Action Plan against migrant smuggling 2015-2020;⁷ the Action Plan on Human Rights and Democracy 2015-2019;⁸ the new framework for the EU’s activities on gender equality and women’s empowerment in the EU’s external relations for 2016-2020⁹ and the Strategic engagement of the EU for gender equality 2016-2019.¹⁰

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**¹¹ 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**.¹²

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

⁵ 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

⁶ http://ec.europa.eu/dgs/home-affairs/e-library/documents/basic-documents/docs/eu_agenda_on_security_en.pdf

⁷ http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/asylum/general/docs/eu_action_plan_against_migrant_smuggling_en.pdf

⁸ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/joint_communication_on_human_rights_and_democracy_en.pdf

⁹ http://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender-2016-2020-20150922_en.pdf

¹⁰ http://ec.europa.eu/europeaid/sites/devco/files/staff-working-document-gender-2016-2020-20150922_en.pdf

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

¹² 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 beings¹³ was published in 2015 and covers the period 2010-2012.

The trends in the statistical data for the **period 2013-2014**¹⁴ 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)¹⁵. 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 children¹⁶.
- **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.

¹³ https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eurostat_report_on_trafficking_in_human_beings_-_2015_edition.pdf

¹⁴ 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.

¹⁵ 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.

¹⁶ 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 system¹⁷ in connection with the crime of trafficking in human beings.¹⁸
- 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.¹⁹

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.

¹⁷ 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

¹⁸ 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.

¹⁹ 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'.²⁰ 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.²¹

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 increased²², 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.

²⁰ *ibid.*

²¹ 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.

²² 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 marriages²³ 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.²⁴

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.²⁵

²³ 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

²⁴ Europol Situation Report: Trafficking in human beings in the EU, February 2016.

²⁵ 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.²⁶ 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.²⁷ 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.²⁸

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.²⁹

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.³⁰

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**

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

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

²⁸ *ibid.*

²⁹ 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

³⁰ Europol Situation Report: Trafficking in human beings in the EU, February 2016

such.³¹ 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,³² 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),³³ 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.³⁴

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.

³¹ *ibid.*

³² 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

³³ IOM Italy, http://www.italy.iom.int/index.php?option=com_content&task=view&id=341&Itemid=46

³⁴ 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.³⁵ This is contrary to Financial Action Task Force (FATF) standards³⁶ and Council recommendations.³⁷

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**

³⁵ This issue is elaborated in the accompanying SWD.

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

³⁷ 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 Conclusions³⁸ 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 States³⁹ 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.

³⁸ 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.

³⁹ 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.**⁴⁰

The **Employers' Sanctions Directive**⁴¹, 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.

⁴⁰ 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.

⁴¹ <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**⁴² 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

⁴² [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 level⁴³ 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.

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



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](#)

IP/16/1757

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FIRST ANTI-TRAFFICKING REPORT

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

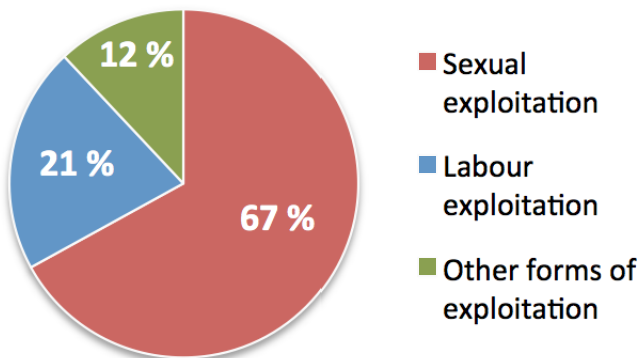
Trafficking in human beings (THB) is a crime driven by demand and profit through the exploitation of people and their vulnerabilities. It is a gross violation of human rights, it is explicitly prohibited under the Charter of Fundamental Rights of the European Union and it is subject of a comprehensive 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.

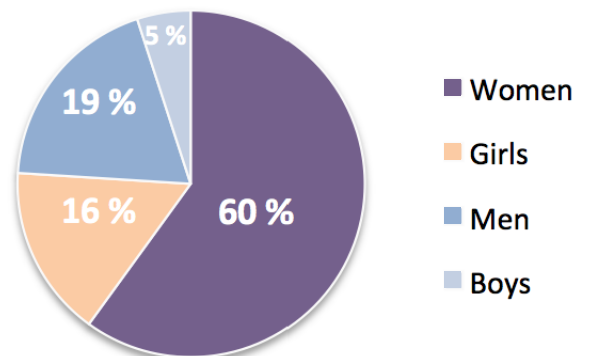
15 846 victims registered in the EU in 2013-2014 (Member States data)

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.

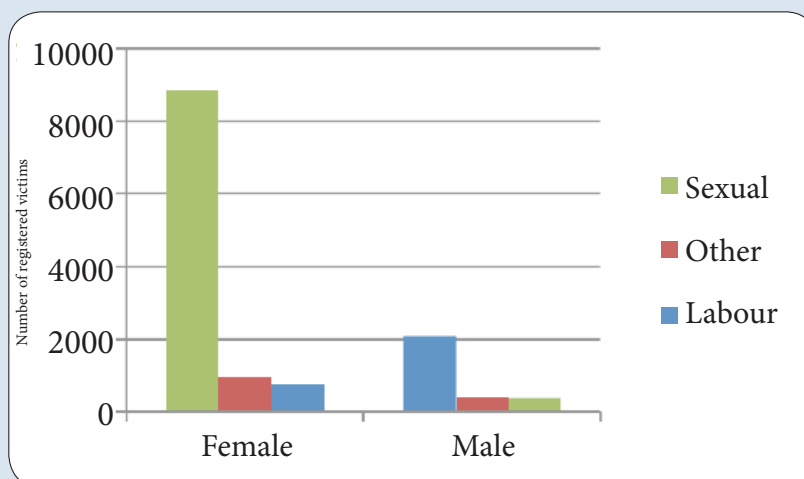
REGISTERED VICTIMS BY FORM OF EXPLOITATION



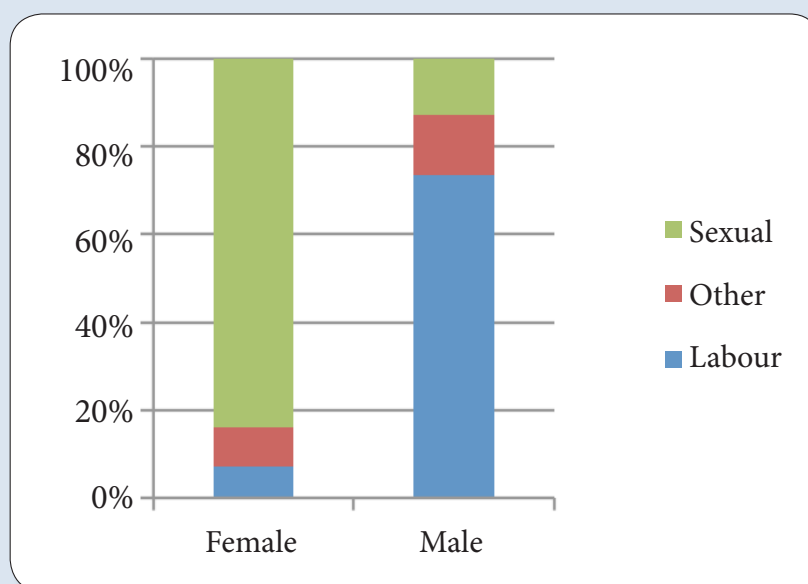
REGISTERED VICTIMS BY GENDER AND AGE



REGISTERED VICTIMS BY GENDER AND FORM OF EXPLOITATION



Source: Member States data 2013-2014

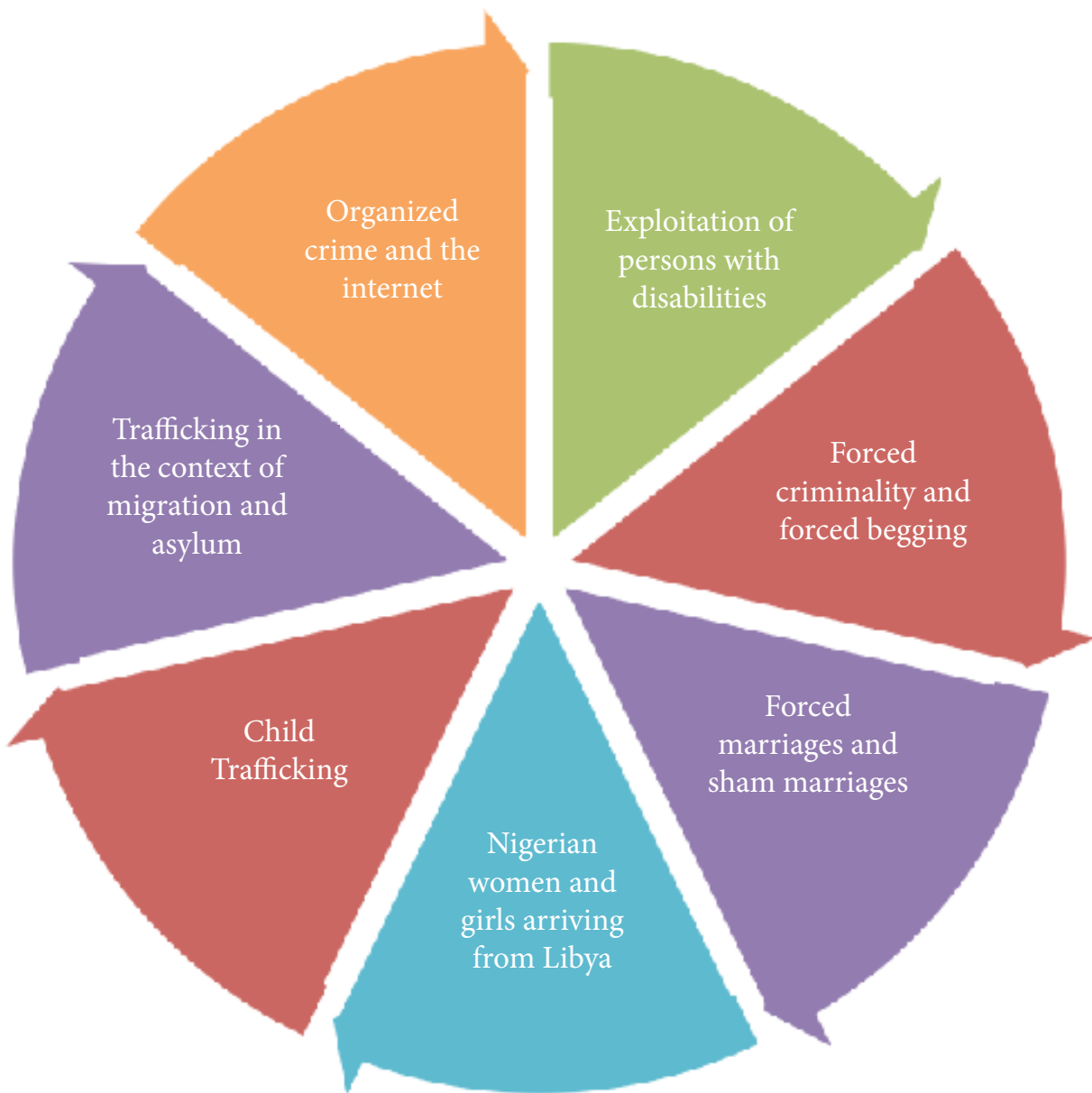


Source: Member States data 2013-2014

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

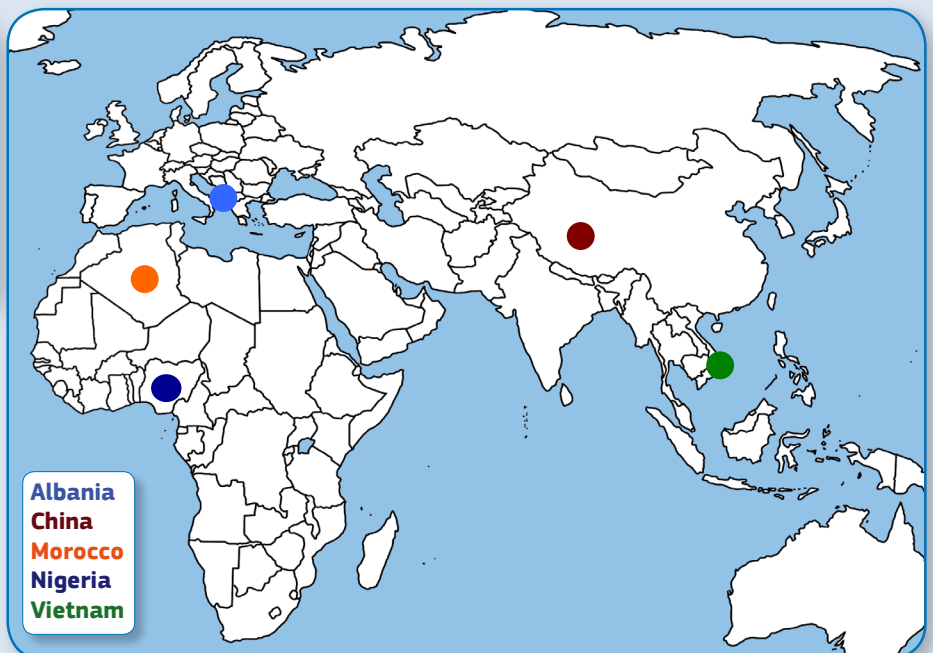
**While the majority of Member States refer to the number of individuals, some Member States refer to the number of cases or offenses rather than individuals. Not all Member States provided data on prosecution and convictions for the two year period. No observable trend, although the numbers remain low.*

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

- 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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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** ⁽¹⁾ 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’ ⁽²⁾.

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

⁽¹⁾ 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

⁽²⁾ 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 ⁽³⁾ 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.

⁽³⁾ 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.



A photograph of two hands, one on the left and one on the right, both clenched into fists. They are bound together by a thick, light-brown rope. The background is a bright blue sky with soft, white clouds. The overall mood is one of struggle and resistance.

The EU rights of victims of trafficking in human beings

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Foreword



Cecilia Malmström,
EU Commissioner for Home Affairs

‘Trafficking in human beings is the slavery of our times, and a gross violation of human rights. It is a serious crime affecting women, men, girls and boys of all nationalities, causing severe and lifelong harm to its victims. To protect and assist victims of human trafficking, and help them recover as far as possible, EU legislation grants them a number of rights — to legal assistance,

medical help, temporary residence and more. For those rights to be known and applied effectively in practice victims and practitioners working in the field of trafficking in human beings need clear and accessible information about their content. I hope that this overview of the EU rights of victims of human trafficking will help authorities in EU Member States in their daily work to deliver the assistance and protection that victims need and deserve.’

A handwritten signature in black ink that reads "Cecilia Malmström". The signature is written in a cursive, flowing style.

Introduction

Addressing trafficking in human beings is a priority for the European Union and the Member States. The EU approach recognises the gender-specific nature of trafficking in human beings. It places the victim and its human rights at the centre, and recognises the need for a child-sensitive approach. It emphasises the need for coordinated, multidisciplinary action.

Clear and consistent information to victims of trafficking in human beings on their rights is essential. These rights range from (emergency) assistance and health care to labour rights, rights regarding access to justice and to a lawyer, and on the possibilities of claiming compensation. This document provides an overview of those rights based on the Charter of Fundamental Rights of the European Union, EU directives, framework decisions and European Court of Human Rights case-law. Additional rights for children have been included at the end of each chapter.

This document is addressed to victims and to practitioners seeking an overview of rights based on EU legislation, as well as to Member States developing similar overviews of rights of human trafficking victims at national level. EU legislation provides for minimum standards, Member States can go beyond these standards as appropriate.

Rights deriving from EU legislation which is due to be transposed into national law by Member States after the publication of this document are marked in italics in the text.

For the purpose of the rights and obligations set out in this document, a 'child' shall mean any person below 18 years of age. Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the victim is presumed to be a child.

'Victim' for the purposes of this document refers to an individual who is subject to trafficking in human beings.

'Perpetrator' and 'offender' for the purposes of this document refers to an individual or individuals who have been accused or found guilty of human trafficking.

'Third-country national' is an individual who is not a citizen of a Member State of the European Union.

With this document, the European Commission is implementing one of the actions in the EU strategy towards the eradication of trafficking in human beings 2012–2016, namely under PRIORITY A: Identifying, protecting and assisting victims of trafficking, Action 4: Provision of Information on the rights of victims.

'Trafficking in human beings' as defined in Directive 2011/36/EU, Article 2:

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

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

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

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.



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The description of EU legislation and relevant case-law pertaining in this document is non-exhaustive, and therefore does not cover in detail the conditions for benefiting from the rights covered, or other rights that an individual might be entitled to under EU legislation depending on their circumstances. The rights in this document benefit victims of trafficking in human beings, even when the rights in the respective EU legislation are applicable to a broader group of persons. This document in itself does not constitute any binding obligations on any parties, but describes rights and obligations deriving from EU legislation that need to be transposed in national law of Member States. Articles of legislation referenced in this document were correct as of 1 January 2013 (legislation may be subsequently altered or repealed). This document in no way constitutes a binding interpretation of the legislation cited, but is intended to be a reference document designed for ease of use.

EU rights of victims of trafficking in human beings

This document intends to inform victims, practitioners and Member States on the rights of victims under EU law. It does in no way constitute a binding interpretation of EU legislation. All rights need to be read within the context of the full legal provision and appropriate legislation.

Chapter 1: Assistance and support

1.1 Victims are entitled to assistance and support as soon as the competent authorities have reasonable grounds to believe that they might have been trafficked.

1.2 Victims are entitled to assistance and support before, during, and for an appropriate time after the conclusion of criminal proceedings.

1.3 Assistance and support should not be conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial; in cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period.

1.4 Assistance and support can only be provided with the victim's consent on an informed basis.

1.5 Victims are entitled at least to a subsistence-level standard of living, appropriate and safe accommodation and material assistance.

1.6 Victims are entitled to necessary medical treatment including psychological assistance, counselling and information.

1.7 Victims are entitled to translation and interpretation services where appropriate.

1.8 Victims with special needs (in particular needs in relation to pregnancy, health, disability, physical or mental illness or have suffered serious physical, sexual or psychological violence) shall be attended to.

1.9 Victims, in accordance with their needs, have the right to access confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members are entitled to access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

1.10 Specialist support services must provide: (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation; (b) targeted and integrated support for victims with specific needs, including victims of sexual violence and victims of gender-based violence, including trauma support and counselling.

1.11 Victims who are third-country nationals must be informed of the reflection and recovery period and provided with information on the possibilities of obtaining international protection.

1.12 Victims have the right to seek asylum, and be informed of the possibilities for obtaining international protection and should be protected against refoulement (return to the country where there is a risk of death, torture or other inhuman or degrading treatment or punishment).

Child victims

1.13 The child's best interest shall be a primary consideration and shall be assessed on an individual basis. *A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.*

1.14 Child victims are entitled to assistance and support taking account of their special circumstances. Member States need to take necessary measures to provide a durable solution based on an individual assessment of the best interest of the child.

1.15 A guardian or representative will be appointed to a child victim when the holders of parental responsibility are precluded from ensuring the child's best interest and/or representing the child.

Chapter 2: Protection of victims of trafficking in human beings

Protection prior to criminal proceedings

2.1 Victims have the right to appropriate protection based on an individual risk assessment. *The individual assessment should be timely and should aim to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings due to the particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.*

2.2 Victims of trafficking should not be prosecuted or be subject of penalties imposed for their involvement in criminal activities which they have been compelled to commit as a direct result of being subjected to trafficking in human beings, in accordance with national law.

2.3 Victim personal data can be collected from victims only for specified, explicit and legitimate purposes and in the framework of the tasks of the competent authority and may be processed only for the same purpose for which the data was collected. Processing of this data has to be lawful, adequate, relevant and not excessive (in relation to the purpose for which it was collected).

2.4 Victim personal data must be deleted or made anonymous when it is no longer required for the purpose for which it was collected.

2.5 Victims are entitled to information from their first contact with the competent authorities (such as the police, judicial authorities, etc.) and as far as possible in languages commonly understood.

2.6 Victims are entitled to information on:

- the type of services or organisations to which they can turn for support;
- the type of support which they can obtain;
- where and how they can report an offence;
- procedures following such a report and their role in connection with such procedures;
- how and under what conditions they can obtain protection;
- to what extent and on what terms they have access to legal advice, legal aid or any other sort of advice;
- requirements for them to be entitled to compensation;
- if they are resident in another Member State, any special arrangements available to them in order to protect their interests;
- *how to receive reimbursement for the expenses incurred as a result of their participation in criminal proceedings.*

Protection during and after criminal proceedings

2.7 According to an individual assessment by the competent authority, victims are entitled under certain conditions to specific treatment aimed at preventing secondary victimisation, namely avoiding unnecessary repetition of interviews during investigations, prosecution or trial, visual contact between the victim and the perpetrator, giving evidence in open court and unnecessary questions about the victim's private life.

2.8 Victims have access without delay to legal counselling and to legal representation, including for the purpose of claiming compensation.

2.9 Legal advice and representation is free of charge where the victim does not have sufficient financial resources.

2.10 Victims have in accordance with their role in the relevant criminal justice system the right to a review of a decision not to prosecute.

2.11 Victims have the right to understand and be understood in criminal proceedings and to receive communications in an understandable manner, taking into account personal considerations such as disability.

2.12 Victims are entitled under certain conditions to be accompanied by someone of their choice who can help them understand or be understood in the first contact with a competent authority, unless this would be against the interests of the victim or proceedings.

2.13 If they make a formal complaint, victims are entitled to written acknowledgement of the complaint, receive translation or necessary linguistic assistance for making the complaint.

2.14 Victims must be informed that they are entitled to information about criminal proceedings as a result of the complaint (decisions on halting the investigation or not prosecuting the offender, what charges will be brought against the offender, the time and date of the trial, the final judgment and the state of criminal proceedings) without unnecessary delay, according to the wishes of the victim.

2.15 *Victims can request to be notified without unnecessary delay if the offender is released or escapes from custody.*

2.16 *Depending on their formal role in criminal proceedings, victims have the right to interpretation free of charge, during interviews or questioning during criminal proceedings before investigative and judicial authorities and for their active participation in court hearings.*

2.17 *Depending on their formal role in criminal proceedings, victims are entitled to free-of-charge translation of information essential to the exercise of their rights in criminal proceedings in a language that they understand received during criminal proceedings.*

2.18 *Victims can use communication technology such as videoconference, telephones or the Internet for translation purposes unless the physical presence of an interpreter is required for the victim to exercise their rights or understand proceedings.*

2.19 *Victims have the right to participate voluntarily in restorative justice programmes based on their informed consent, which can be withdrawn at any time. The victim has a right to full and unbiased information about the process. Discussions which do not take place in public can remain confidential (unless agreed by the victim and perpetrator or if the information has to be released due to an overriding public interest, such as threats or acts of violence).*

2.20 *A European Protection Order may be issued when the victim is staying or residing in another Member State and a protection measure against the trafficker has been issued such as a prohibition to enter certain locations, places and areas where the victim resides or visits, or prohibition or regulation of contact (including phone, mail). A European Protection Order applies to a protection measure under criminal law in one EU country for a victim, by extending this protection to another EU country where he or she has moved.*

2.21 *Member States must minimise possible communication difficulties (for example if they speak a different language or have impediments) for victims who are witnesses or are involved in the proceedings in other ways so that they can understand their involvement in each step of criminal proceedings.*

Child victims

2.22 *Interviews with child victims should take place without unjustified delay. Child victims are entitled to be interviewed, where necessary, in premises designed or adapted for that purpose.*

2.23 *Interviews with child victims should be conducted by the same people if possible, limiting the number of interviews as much as possible and only where strictly necessary for criminal investigations and proceedings. The victim can be accompanied by a representative or adult of the child's choice (where appropriate) unless a reasoned decision against the appropriateness of that person has been made.*

2.24 *Criminal hearings involving child victims should take place without the presence of the public and without the direct presence of the child, who can be otherwise heard using appropriate communication facilities (such as video links, etc.).*

2.25 *Member States may prevent the public dissemination of any information that could lead to the identification of a child victim.*

2.26 *When possible and under the circumstances of each case, if the victim is a child, Member States could defer prosecution of the perpetrator(s) for a period of time after the child victim has reached the age of majority.*

Chapter 3: Compensation

3.1 Victims are entitled to access existing compensation schemes for victims of violent intentional crimes.

3.2 Member States should promote measures to encourage perpetrators to provide adequate compensation to victims in the course of criminal proceedings.

3.3 Victims are entitled to obtain a decision on compensation by the perpetrator in the course of criminal proceedings within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

3.4 Victims are entitled to the return of their own property (unless urgently needed for criminal proceedings) which has been recovered or seized during criminal proceedings, without delay.

Access to compensation schemes in cross-border situations

3.5 Victims are entitled to apply in their Member State of habitual residence for compensation in the Member State where the crime was committed.

3.6 Victims are entitled to essential information on the possibilities to claim compensation. This includes information and guidance on how the application should be completed, what supporting documentation may be required and on requests for supplementary information.

3.7 Victims are entitled to receive, as soon as possible, information on the contact person or department responsible for handling their compensation claim, an acknowledgement of the receipt of the application, (if possible) an indication of the time by which a decision on their application will be made and on the decision taken.



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Chapter 4: Integration and labour rights

4.1 EU citizens have the right to remain within the territory of the Member States for up to three months provided that they have a valid passport or identity document, subject to limitations and conditions.

4.2 EU citizens have the right to remain anywhere in the EU provided that they have legal work or are studying at an accredited educational establishment and have comprehensive health insurance (or have enough money to ensure that they or their family members do not become a burden on their host's social security system) or have a family member satisfying any of these conditions.

4.3 Every EU citizen has the right to education and to have access to vocational and continuing training.

4.4 Every EU citizen has the freedom to choose an occupation and right to engage in work in any Member State (subject to certain restrictions) and nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of the citizens of the Union.

4.5 Every worker has the right to fair and just working conditions which respect his or her health, safety and dignity and to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Third-country nationals

4.6 Member States should define the rules under which victims who are third-country nationals, holding a residence permit, have access to the labour market, to vocational training and education, limited to the duration of the residence permit.

4.7 Victims who are third-country nationals must have access to existing programmes or schemes aimed for them to recover to a normal life, including where appropriate courses designed to improve their professional skills, or preparation of their assisted return to the country of origin.

4.8 Victims who are third-country nationals are entitled to equal treatment with nationals of the Member State where they live with regard to working conditions, including pay and dismissal as well as health and safety at the workplace, freedom of association, education and vocational training, recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures, branches of social security, tax benefits, access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law.

4.9 Victims who are irregularly staying third-country nationals are entitled to lodge a complaint against their employer directly or through third parties such as trade unions or associations.

4.10 Victims who are irregularly staying third-country nationals have the right to claim outstanding remuneration (wages) against their employer, even if the victim has returned to the country of origin. They should be systematically and objectively informed about their rights before the enforcement of any return decision.

4.11 The level of remuneration should be at least as high as the wage provided for by laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless parties prove otherwise.

4.12 The victim who is an irregularly staying third-country national may introduce a claim against their employer and eventually enforce a judgment for any outstanding remuneration.

Child victims

4.13 Child victims who are third-country nationals are entitled to have access to the educational system under the same conditions as national children within a reasonable time.

Chapter 5: Reflection period and residence permit for victims who are third-country nationals

Reflection period

5.1 Third-country nationals who are victims of trafficking in human beings are entitled to a reflection period. This is intended to allow them to recover and escape the influence of the perpetrators so that they can make an informed decision on whether to cooperate with the police and judicial authorities.

5.2 Victims cannot be expelled from the country during the reflection period.

5.3 The reflection period may be ended if the victim renews contact with the perpetrator, or for reasons relating to public policy and the protection of national security.

5.4 Victims are entitled to receive at least emergency medical treatment and specific services, including psychological services for the most vulnerable during the reflection period.

Residence permit

5.5 Once the reflection period is over for the third-country national, the victim has the right to be considered for a residence permit based on whether the victim:

- is necessary for the investigation or judicial proceedings;
- has shown a clear intention to cooperate;
- has severed all relations with the people or person responsible for trafficking her/him;
- would pose no risk to public order, policy or security.

The permit must be valid for at least six months and can be renewed based on the same conditions.

5.6 After a residence permit has been granted, the victim who does not have sufficient resources is still entitled to be granted at least standards of living capable of ensuring subsistence, access to emergency medical treatment, and, where appropriate, translation and interpreting services. Specific attendance to the needs of the most vulnerable, including psychological services, should be ensured. Safety and protection needs must be taken into account in accordance with national law as well. Support may include free legal aid, according to national law.

5.7 The residency permit can be withdrawn if the victim renews contact with the people or persons responsible for trafficking her/him, when the victim's cooperation is fraudulent or the complaint is fraudulent or wrong, might pose a risk to public policy and to the protection of national security, ceases to cooperate or if the authorities decide to discontinue proceedings.

Long-term residents

5.8 A victim who is a third-country national and has resided legally within the Member State for at least five years, is entitled to long-term resident status. This is dependent on the victim having sufficient resources to maintain her/himself and her/his family without needing social security or sickness insurance.

Chapter 6: Return

6.1 If a victim who is a third-country national is not allowed to stay in the EU and therefore obliged to return to their country of origin, the victim will normally be granted a voluntary departure period of between 7 and 30 days.

6.2 This period can be extended to take specific circumstances into account, such as family, social links or children attending school and the length of stay.

6.3 Victims of trafficking who have been granted a residence permit and cooperate with the police and judicial authorities cannot be banned from entering Member State territory for a specified period if they comply with the obligation to return, provided they do not pose a threat to public policy or security.

6.4 A victim can always appeal to an authority, with legal advice representation and interpretation (if necessary).

6.5 Removal must be postponed when the principle of non-refoulement would be violated. It may also be postponed for other reasons taking into account specific circumstances of the individual case, in particular the victim's physical state or mental capacity, or technical reasons such as lack of transportation capacity or lack of identification of the victim.

6.6 Countries which have signed a readmission agreement with the European Union are obliged to automatically readmit their nationals, their (unmarried) children and their spouses, or those who hold or held a valid visa or residence permit.

Child victims

6.7 A child victim who is a third-country national, unaccompanied by a parent or guardian, can only be returned once the child's best interest has been taken into consideration and the Member State is satisfied that the child will be returning to the family, a nominated guardian or adequate reception facilities.

References

Chapter 1: Assistance and support

1.1 Directive 2011/36/EU, Article 11, paragraph 2:

2. Member States shall take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable grounds indication for believing that the person might have been subjected to any of the offences referred to in Articles 2 and 3.

1.2 Directive 2011/36/EU, Article 11, paragraph 1:

1. Member States shall take the necessary measures to ensure that assistance and support are provided to victims before, during and for an appropriate period of time after the conclusion of criminal proceedings in order to enable them to exercise the rights set out in Framework Decision 2001/220/JHA, and in this Directive.

1.3. Directive 2011/36/EU, Article 11, paragraph 3:

3. Member States shall take the necessary measures to ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial, without prejudice to Directive 2004/81/EC or similar national rules.

Directive 2011/36/EU, recital 18:

In cases where the victim does not reside lawfully in the Member State concerned, assistance and support should be provided unconditionally at least during the reflection period. If, after completion of the identification process or expiry of the reflection period, the victim is not considered eligible for a residence permit or does not otherwise have lawful residence in that Member State, or if the victim has left the territory of that Member State, the Member State concerned is not obliged to continue providing assistance and support to that person on the basis of this Directive.

Directive 2004/81/EC, Article 1:

The purpose of this Directive is to define the conditions for granting residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who cooperate in the fight against trafficking in human beings or against action to facilitate illegal immigration.

Directive 2004/81/EC, Article 6, paragraph 2:

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

Directive 2004/81/EC, Article 7:

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

2. Member States shall take due account of the safety and protection needs of the third-country nationals concerned when applying this Directive, in accordance with national law.

3. Member States shall provide the third-country nationals concerned, where appropriate, with translation and interpreting services.

4. Member States may provide the third-country nationals concerned with free legal aid, if established and under the conditions set by national law.

Directive 2004/81/EC, Article 9:

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

1.4–7 Directive 2011/36/EU, Article 11, paragraph 5:

5. The assistance and support measures referred to in paragraphs 1 and 2 shall be provided on a consensual and informed basis, and shall include at least standards of living

capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate.

1.8 Directive 2011/36/EU, Article 11, paragraph 7:

7. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered.

1.9 Directive 2012/29/EU, Article 8, paragraph 1 and 2:

1. Member States shall ensure that victims, in accordance with their needs, have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings. Family members shall have access to victim support services in accordance with their needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

2. Member States shall facilitate the referral of victims, by the competent authority that received the complaint and by other relevant entities, to victim support services.

1.10 Directive 2012/29/EU, Article 8, paragraph 3:

3. Member States shall take measures to establish free of charge and confidential specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support. Victims, in accordance with their specific needs, shall have access to such services and family members shall have access in accordance with their specific needs and the degree of harm suffered as a result of the criminal offence committed against the victim.

Directive 2012/29/EU, Article 9:

1. Victim support services, as referred to in Article 8(1), shall, as a minimum, provide:

- (a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;
- (b) information about or direct referral to any relevant specialist support services in place;
- (c) emotional and, where available, psychological support;
- (d) advice relating to financial and practical issues arising from the crime;
- (e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation.

2. Member States shall encourage victim support services to pay particular attention to the specific needs of victims who have suffered considerable harm due to the severity of the crime.

3. Unless otherwise provided by other public or private services, specialist support services referred to in Article 8(3), shall, as a minimum, develop and provide:

- (a) shelters or any other appropriate interim accommodation for victims in need of a safe place due to an imminent risk of secondary and repeat victimisation, of intimidation and of retaliation;
- (b) targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.

1.11 Directive 2011/36/EU, Article 11, paragraph 6:

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

1.12 Charter of Fundamental Rights of the European Union, Article 18:

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties').

Charter of Fundamental Rights of the European Union, Article 19:

- 1. Collective expulsions are prohibited.
- 2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

Directive 2011/95/EU, Article 2(d):

(d) 'refugee' means a third-country national who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, political opinion or membership of a particular social group, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or a stateless person, who, being outside of the country of former habitual residence for the same reasons as mentioned above, is unable or, owing to such fear, unwilling to return to it, and to whom Article 12 does not apply.

Directive 2004/83/EC, Article 21:

1. Member States shall respect the principle of non-refoulement in accordance with their international obligations.
2. Where not prohibited by the international obligations mentioned in paragraph 1, Member States may refoule a refugee, whether formally recognised or not, when:
 - (a) there are reasonable grounds for considering him or her as a danger to the security of the Member State in which he or she is present; or
 - (b) he or she, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that Member State.
3. Member States may revoke, end or refuse to renew or to grant the residence permit of (or to) a refugee to whom paragraph 2 applies.

Child victims

1.13 Directive 2011/36/EU, Article 13, paragraphs 1 and 2:

1. Child victims of trafficking in human beings shall be provided with assistance, support and protection. In the application of this Directive the child's best interests shall be a primary consideration.
2. Member States shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection in accordance with Articles 14 and 15.

Directive 2012/29/EU, Article 1, paragraphs 1 and 2:

1. *The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.*

Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings. The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status.

2. Member States shall ensure that in the application of this Directive, where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis. A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child.

1.14 Directive 2011/36/EU, Article 14, paragraph 1:

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, in the short and long term, in their physical and psycho-social recovery, are undertaken following an individual assessment of the special circumstances of each particular child victim, taking due account of the child's views, needs and concerns with a view to finding a durable solution for the child.

Directive 2011/36/EU, Article 16, paragraphs 1 and 2:

1. Member States shall take the necessary measures to ensure that the specific actions to assist and support child victims of trafficking in human beings, as referred to in Article 14(1), take due account of the personal and special circumstances of the unaccompanied child victim.
2. Member States shall take the necessary measures with a view to finding a durable solution based on an individual assessment of the best interests of the child.

1.15 Directive 2011/36/EU, Article 14, paragraph 2:

2. 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.

Chapter 2: Protection of victims of trafficking in human beings

Protection prior to criminal proceedings

2.1 Directive 2011/36/EU, Article 12, paragraph 3:

3. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment, inter alia, by having access to witness protection programmes or other similar measures, if appropriate and in accordance with the grounds defined by national law or procedures.

Directive 2012/29/EU, Article 22:

1. Member States shall ensure that victims receive a timely and individual assessment, in accordance with national procedures, to identify specific protection needs and to determine whether and to what extent they would benefit from special measures in the course of criminal proceedings, as provided for under Articles 23 and 24, due to their particular vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

2. The individual assessment shall, in particular, take into account:

- (a) the personal characteristics of the victim;
- (b) the type or nature of the crime; and
- (c) the circumstances of the crime.

3. In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered.

4. For the purposes of this Directive, child victims shall be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation



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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.

European Court of Human Rights, Case of Rantsev v. Cyprus and Russia (application no. 25965/04)

286. As with Articles 2 and 3 of the Convention, Article 4 may, in certain circumstances, require a State to take operational measures to protect victims, or potential victims, of trafficking (see, *mutatis mutandis*, *Osman*, cited above, § 115; and *Mahmut Kaya v. Turkey*, no. 22535/93, § 115, ECHR 2000-III). In order for a positive obligation to take operational measures to arise in the circumstances of a particular case, it must be demonstrated that the State authorities were aware, or ought to have been aware, of circumstances giving rise to a credible suspicion that an identified individual had been, or was at real and immediate risk of being, trafficked or exploited within the meaning of Article 3(a) of the Palermo Protocol and Article 4(a) of the Anti-Trafficking Convention. In the case of an answer in the affirmative, there will be a violation of Article 4 of the Convention where the authorities fail to take appropriate measures within the scope of their powers to remove the individual from that situation or risk (see, *mutatis mutandis*, *Osman*, cited above, §§116 to 117; and *Mahmut Kaya*, cited above, §§ 115 to 116).

2.2 Directive 2011/36/EU, Article 8:

Member States shall, in accordance with the basic principles of their legal systems, take the necessary measures to ensure that competent national authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being subjected to any of the acts referred to in Article 2.

Directive 2011/36/EU, recital 14:

(14) Victims of trafficking in human beings should, in accordance with the basic principles of the legal systems of the relevant Member States, be protected from prosecution or punishment for criminal activities such as the use of false documents, or offences under legislation on prostitution or immigration, that they have been compelled to commit as

a direct consequence of being subject to trafficking. The aim of such protection is to safeguard the human rights of victims, to avoid further victimisation and to encourage them to act as witnesses in criminal proceedings against the perpetrators. This safeguard should not exclude prosecution or punishment for offences that a person has voluntarily committed or participated in.

2.3 Council Framework Decision 2008/977/JHA, Article 3, paragraph 1:

1. Personal data may be collected by the competent authorities only for specified, explicit and legitimate purposes in the framework of their tasks and may be processed only for the same purpose for which data were collected. Processing of the data shall be lawful and adequate, relevant and not excessive in relation to the purposes for which they are collected.

2.4 Council Framework Decision 2008/977/JHA, Article 4, paragraph 2:

2. Personal data shall be erased or made anonymous when they are no longer required for the purposes for which they were lawfully collected or are lawfully further processed. Archiving of those data in a separate data set for an appropriate period in accordance with national law shall not be affected by this provision.

2.5 Council Framework Decision 2001/220/JHA, Article 4, paragraph 1:

1. Each Member State shall ensure that victims in particular have access, as from their first contact with law enforcement agencies, by any means it deems appropriate and as far as possible in languages commonly understood, to information of relevance for the protection of their interests.

2.6 Council Framework Decision 2001/220/JHA, Article 4, paragraph 1:

1. (a) the type of services or organisations to which they can turn for support;
- (b) the type of support which they can obtain;
- (c) where and how they can report an offence;
- (d) procedures following such a report and their role in connection with such procedures;
- (e) how and under what conditions they can obtain protection;
- (f) to what extent and on what terms they have access to:
 - (i) legal advice or
 - (ii) legal aid, or
 - (iii) any other sort of advice,if, in the cases envisaged in point (i) and (ii), they are entitled to receive it;
- (g) requirements for them to be entitled to compensation;
- (h) if they are resident in another State, any special arrangements available to them in order to protect their interests.

Directive 2012/29/EU, Article 4, paragraph 1:

1. Member States shall ensure that victims are offered the following information, without unnecessary delay, from their first contact with a competent authority in order to enable them to access the rights set out in this Directive:

- (a) the type of support they can obtain and from whom, including, where relevant, basic information about access to medical support, any specialist support, including psychological support, and alternative accommodation;
- (b) the procedures for making complaints with regard to a criminal offence and their role in connection with such procedures;
- (c) how and under what conditions they can obtain protection, including protection measures;
- (d) how and under what conditions they can access legal advice, legal aid and any other sort of advice;
- (e) how and under what conditions they can access compensation;
- (f) how and under what conditions they are entitled to interpretation and translation;
- (g) if they are resident in a Member State other than that where the criminal offence was committed, any special measures, procedures or arrangements, which are available to protect their interests in the Member State where the first contact with the competent authority is made;
- (h) the available procedures for making complaints where their rights are not respected by the competent authority operating within the context of criminal proceedings;
- (i) the contact details for communications about their case;
- (j) the available restorative justice services;
- (k) how and under what conditions expenses incurred as a result of their participation in the criminal proceedings can be reimbursed.

Protection during and after criminal proceedings

2.7 Directive 2011/36/EU, Article 12, paragraph 4:

4. Without prejudice to the rights of the defence, and according to an individual assessment by the competent authorities of the personal circumstances of the victim, Member States shall ensure that victims of trafficking in human beings receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible and in accordance with the grounds defined by national law as well as with rules of judicial discretion, practice or guidance, the following:

- (a) unnecessary repetition of interviews during investigation, prosecution or trial;
- (b) visual contact between victims and defendants including during the giving of evidence such as interviews and cross-examination, by appropriate means including the use of appropriate communication technologies;
- (c) the giving of evidence in open court; and
- (d) unnecessary questioning concerning the victim's private life.

2.8 Directive 2011/36/EU, Article 12, paragraph 2:

2. Member States shall ensure that victims of trafficking in human beings have access without delay to legal counselling, and, in accordance with the role of victims in the relevant justice system, to legal representation, including for the purpose of claiming compensation.

2.9 Directive 2011/36/EU, Article 12, paragraph 2:

2. Legal counselling and legal representation shall be free of charge where the victim does not have sufficient financial resources.

Directive 2012/29/EU, Article 13:

Member States shall ensure that victims have access to legal aid, where they have the status of parties to criminal proceedings. The conditions or procedural rules under which victims have access to legal aid shall be determined by national law.

2.10 Directive 2012/29/EU, Article 11, paragraphs 1, 2 and 3:

1. Member States shall ensure that victims, in accordance with their role in the relevant criminal justice system, have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

2. Where, in accordance with national law, the role of the victim in the relevant criminal justice system will be established only after a decision to prosecute the offender has been taken, Member States shall ensure that at least the victims of serious crimes have the right to a review of a decision not to prosecute. The procedural rules for such a review shall be determined by national law.

3. Member States shall ensure that victims are notified without unnecessary delay of their right to receive, and that they receive sufficient information to decide whether to request a review of any decision not to prosecute upon request.

2.11 Directive 2012/29/EU, Article 3, paragraphs 1 and 2:

1. Member States shall take appropriate measures to assist victims to understand and to be understood from the first contact and during any further necessary interaction they have with a competent authority in the context of criminal proceedings, including where information is provided by that authority.

2. Member States shall ensure that communications with victims are given in simple and accessible language, orally or in writing. Such communications shall take into account the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

2.12 Directive 2012/29/EU, Article 3, paragraph 3:

3. Unless contrary to the interests of the victim or unless the course of proceedings would be prejudiced, Member States shall allow victims to be accompanied by a person of

their choice in the first contact with a competent authority where, due to the impact of the crime, the victim requires assistance to understand or to be understood.

2.13 Directive 2012/29/EU, Article 5:

1. Member States shall ensure that victims receive written acknowledgement of their formal complaint made by them to the competent authority of a Member State, stating the basic elements of the criminal offence concerned.

2. Member States shall ensure that victims who wish to make a complaint with regard to a criminal offence and who do not understand or speak the language of the competent authority be enabled to make the complaint in a language that they understand or by receiving the necessary linguistic assistance.

3. Member States shall ensure that victims who do not understand or speak the language of the competent authority, receive translation, free of charge, of the written acknowledgement of their complaint provided for in paragraph 1, if they so request, in a language that they understand.

2.14 Directive 2012/29/EU, Article 6, paragraphs 1, 2, 3 and 4:

1. Member States shall ensure that victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by the victim and that, upon request, they receive such information:

- (a) any decision not to proceed with or to end an investigation or not to prosecute the offender;
- (b) the time and place of the trial, and the nature of the charges against the offender.

2. Member States shall ensure that, in accordance with their role in the relevant criminal justice system, victims are notified without unnecessary delay of their right to receive the following information about the criminal proceedings instituted as a result of the complaint with regard to a criminal offence suffered by them and that, upon request, they receive such information:

- (a) any final judgment in a trial;
- (b) information enabling the victim to know about the state of the criminal proceedings, unless in exceptional cases the proper handling of the case may be adversely affected by such notification.

3. Information provided for under paragraph 1(a) and paragraph 2(a) shall include reasons or a brief summary of reasons for the decision concerned, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

4. The wish of victims as to whether or not to receive information shall bind the competent authority, unless that information must be provided due to the entitlement of the victim to active participation in the criminal proceedings. Member States shall allow victims to modify their wish at any moment, and shall take such modification into account.

2.15 Directive 2012/29/EU, Article 6, paragraphs 5 and 6:

5. Member States shall ensure that victims are offered the opportunity to be notified, without unnecessary delay, when the person remanded in custody, prosecuted or sentenced for criminal offences concerning them is released from or has escaped detention. Furthermore, Member States shall ensure that victims are informed of any relevant measures issued for their protection in case of release or escape of the offender.

6. Victims shall, upon request, receive the information provided for in paragraph 5 at least in cases where there is a danger or an identified risk of harm to them, unless there is an identified risk of harm to the offender which would result from the notification.

2.16 Directive 2012/29/EU, Article 7, paragraph 1:

1. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, upon request, with interpretation in accordance with their role in the relevant criminal justice system in criminal proceedings, free of charge, at least during any interviews or questioning of the victim during criminal proceedings before investigative and judicial authorities, including during police questioning, and interpretation for their active participation in court hearings and any necessary interim hearings.

2.17 Directive 2012/29/EU, Article 7, paragraphs 3 and 6:

3. Member States shall ensure that victims who do not understand or speak the language of the criminal proceedings concerned are provided, in accordance with their role in the relevant criminal justice system in criminal proceedings, upon request, with translations of information essential to the exercise of their rights in criminal proceedings in a language that they understand, free of charge, to the extent that such information is made available to the victims. Translations of such information shall include at least any decision ending the criminal proceedings related to the criminal offence suffered by the victim, and upon the victim's request, reasons or a brief summary of reasons for such decision, except in the case of a jury decision or a decision where the reasons are confidential in which cases the reasons are not provided as a matter of national law.

6. Notwithstanding paragraphs 1 and 3, an oral translation or oral summary of essential documents may be provided instead of a written translation on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings.

2.18. Directive 2012/29/EU, Article 7, paragraph 2:

2. Without prejudice to the rights of the defence and in accordance with rules of judicial discretion, communication technology such as videoconferencing, telephone or internet may be used, unless the physical presence of the interpreter is required in order for the victims to properly exercise their rights or to understand the proceedings.

2.19 Directive 2012/29/EU, Article 12:

1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:

- (a) the restorative justice services are used only if they are in the interest of the victim, subject to any safety considerations, and are based on the victim's free and informed consent, which may be withdrawn at any time;
- (b) before agreeing to participate in the restorative justice process, the victim is provided with full and unbiased information about that process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement;
- (c) the offender has acknowledged the basic facts of the case;
- (d) any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings;
- (e) discussions in restorative justice processes that are not conducted in public are confidential and are not subsequently disclosed, except with the agreement of the parties or as required by national law due to an overriding public interest.

2. Member States shall facilitate the referral of cases, as appropriate to restorative justice services, including through the establishment of procedures or guidelines on the conditions for such referral.

2.20 Directive 2011/99/EU, Article 5:

A European protection order may only be issued when a protection measure has been previously adopted in the issuing State, imposing on the person causing danger one or more of the following prohibitions or restrictions:

- (a) a prohibition from entering certain localities, places or defined areas where the protected person resides or visits;
- (b) a prohibition or regulation of contact, in any form, with the protected person, including by phone, electronic or ordinary mail, fax or any other means; or
- (c) a prohibition or regulation on approaching the protected person closer than a prescribed distance.

Directive 2011/99/EU, Article 6, paragraph 1:

1. A European protection order may be issued when the protected person decides to reside or already resides in another Member State, or when the protected person decides to stay or already stays in another Member State. When deciding upon the issuing of a European protection order, the competent authority in the issuing State shall take into account, *inter alia*, the length of the period or periods that the protected person intends to stay in the executing State and the seriousness of the need for protection.

2.21 Council Framework Decision 2001/220/JHA, Article 5:

Each Member State shall, in respect of victims having the status of witnesses or parties to the proceedings, take the

necessary measures to minimise as far as possible communication difficulties as regards their understanding of, or involvement in, the relevant steps of the criminal proceedings in question, to an extent comparable with the measures of this type which it takes in respect of defendants.

Child victims

2.22 Directive 2011/36/EU, Article 15, paragraph 3:

3. Without prejudice to the rights of the defence, Member States shall take the necessary measures to ensure that in criminal investigations and proceedings in respect of any of the offences referred to in Articles 2 and 3:

- (a) interviews with the child victim take place without unjustified delay after the facts have been reported to the competent authorities;
- (b) interviews with the child victim take place, where necessary, in premises designed or adapted for that purpose.

2.23 Directive 2011/36/EU, Article 15, paragraph 3(c), (d), (e) and (f):

- 3. (c) interviews with the child victim are carried out, where necessary, by or through professionals trained for that purpose;
- (d) the same persons, if possible and where appropriate, conduct all the interviews with the child victim;
- (e) the number of interviews is as limited as possible and interviews are carried out only where strictly necessary for the purposes of criminal investigations and proceedings;
- (f) the child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

2.24 Directive 2011/36/EU, Article 15, paragraph 4:

4. Member States shall take the necessary measures to ensure that in criminal investigations of any of the offences referred to in Articles 2 and 3 all interviews with a child victim or, where appropriate, with a child witness, may be video recorded and that such video recorded interviews may be used as evidence in criminal court proceedings, in accordance with the rules under their national law.

Directive 2011/36/EU, Article 15, paragraph 5:

5. Member States shall take the necessary measures to ensure that in criminal court proceedings relating to any of the offences referred to in Articles 2 and 3, it may be ordered that:

- (a) the hearing take place without the presence of the public; and
- (b) the child victim be heard in the courtroom without being present, in particular, through the use of appropriate communication technologies.

2.25 Directive 2012/29/EU, Article 21, paragraph 1:

1. Member States shall ensure that competent authorities may take during the criminal proceedings appropriate measures to protect the privacy, including personal characteristics of the victim taken into account in the individual assessment provided for under Article 22, and images of victims and of their family members. Furthermore, Member States shall ensure that competent authorities may take all lawful measures to prevent public dissemination of any information that could lead to the identification of a child victim.

2.26 Directive 2011/36/EU, Article 9, paragraph 2:

2. Member States shall take the necessary measures to enable, where the nature of the act calls for it, the prosecution of an offence referred to in Articles 2 and 3 for a sufficient period of time after the victim has reached the age of majority.

Chapter 3: Compensation

3.1 Directive 2011/36/EU, Article 17:

Member States shall ensure that victims of trafficking in human beings have access to existing schemes of compensation to victims of violent crimes of intent.

3.2 Directive 2012/29/EU, Article 16:

1. Member States shall ensure that, in the course of criminal proceedings, victims are entitled to obtain a decision on compensation by the offender, within a reasonable time, except where national law provides for such a decision to be made in other legal proceedings.

2. Member States shall promote measures to encourage offenders to provide adequate compensation to victims.

3.3 Council Framework Decision 2001/220/JHA, Article 9, paragraph 1:

1. Each Member State shall ensure that victims of criminal acts are entitled to obtain a decision within reasonable time limits on compensation by the offender in the course of criminal proceedings, except where, in certain cases, national law provides for compensation to be awarded in another manner.

3.4 Council Framework Decision 2001/220/JHA, Article 9, paragraph 3:

3. Unless urgently required for the purpose of criminal proceedings, recoverable property belonging to victims which is seized in the course of criminal proceedings shall be returned to them without delay.

Access to compensation in cross-border situations

3.5 Directive 2004/80/EC, Article 1:

Member States shall ensure that where a violent intentional crime has been committed in a Member State other than the Member State where the applicant for compensation

is habitually resident, the applicant shall have the right to submit the application to an authority or any other body in the latter Member State.

3.6 Directive 2004/80/EC, Article 4:

Member States shall ensure that potential applicants for compensation have access to essential information on the possibilities to apply for compensation, by any means Member States deem appropriate.

Directive 2004/80/EC, Article 5:

1. The assisting authority shall provide the applicant with the information referred to in Article 4 and the required application forms, on the basis of the manual drawn up in accordance with Article 13(2).

2. The assisting authority shall, upon the request of the applicant, provide him or her with general guidance and information on how the application should be completed and what supporting documentation may be required.

3. The assisting authority shall not make any assessment of the application.

3.7 Directive 2004/80/EC, Article 7:

Upon receipt of an application transmitted in accordance with Article 6, the deciding authority shall send the following information as soon as possible to the assisting authority and to the applicant:

- (a) the contact person or the department responsible for handling the matter;
- (b) an acknowledgement of receipt of the application;
- (c) if possible, an indication of the approximate time by which a decision on the application will be made.

Chapter 4: integration and labour rights

4.1 Treaty on the Functioning of the European Union, Article 21, paragraph 1:

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.

Directive 2004/38/EC, Article 6:

1. Union citizens shall have the right of residence on the territory of another Member State for a period of up to three months without any conditions or any formalities other than the requirement to hold a valid identity card or passport.

2. The provisions of paragraph 1 shall also apply to family members in possession of a valid passport who are not nationals of a Member State, accompanying or joining the Union citizen.

Regulation (EC) No 562/2006, Schengen Border Code, Article 2, paragraph 5:

5. 'persons enjoying the Community right of free movement' means:

- (a) Union citizens within the meaning of Article 17(1) of the Treaty, and third-country nationals who are members of the family of a Union citizen exercising his or her right to free movement to whom Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (1) applies;
- (b) third-country nationals and their family members, whatever their nationality, who, under agreements between the Community and its Member States, on the one hand, and those third countries, on the other hand, enjoy rights of free movement equivalent to those of Union citizens;

4.2 Directive 2004/38/EC, Article 7, paragraph 1:

1. All Union citizens shall have the right of residence on the territory of another Member State for a period of longer than three months if they:

- (a) are workers or self-employed persons in the host Member State; or
- (b) have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence and have comprehensive sickness insurance cover in the host Member State; or
- (c) – are enrolled at a private or public establishment, accredited or financed by the host Member State on the basis of its legislation or administrative practice, for the principal purpose of following a course of study, including vocational training; and

– have comprehensive sickness insurance cover in the host Member State and assure the relevant national authority, by means of a declaration or by such equivalent means as they may choose, that they have sufficient resources for themselves and their family members not to become a burden on the social assistance system of the host Member State during their period of residence; or

- (d) are family members accompanying or joining a Union citizen who satisfies the conditions referred to in points (a), (b) or (c).

4.3 Charter of Fundamental Rights of the European Union, Article 14:

Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.

2. This right includes the possibility to receive free compulsory education.

3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

4.4 Charter of Fundamental Rights of the European Union, Article 15:

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.

2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.

3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

4.5 Charter of Fundamental Rights of the European Union, Article 31:

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

Third-country nationals

4.6 Directive 2004/81/EC Article 11, paragraph 1:

1. Member States shall define the rules under which holders of the residence permit shall be authorised to have access to the labour market, to vocational training and education.

4.7 Directive 2004/81/EC, Article 12:

1. The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin.

Member States may provide specific programmes or schemes for the third-country nationals concerned.

2. Where a Member State decides to introduce and implement the programmes or schemes referred to in paragraph 1, it may make the issue of the residence permit or its renewal conditional upon the participation in the said programmes or schemes.

4.8 Directive 2011/98/EU, Article 12, paragraph 1:

1. *Third-country workers as referred to in points (b) and (c) of Article 3(1) shall enjoy equal treatment with nationals of the Member State where they reside with regard to:*

- (a) working conditions, including pay and dismissal as well as health and safety at the workplace;*
- (b) freedom of association and affiliation and membership of an organisation representing workers or employers or of any organisation whose members are engaged in a specific occupation, including the benefits conferred by such organisations, without prejudice to the national provisions on public policy and public security;*
- (c) education and vocational training;*
- (d) recognition of diplomas, certificates and other professional qualifications in accordance with the relevant national procedures;*
- (e) branches of social security, as defined in Regulation (EC) No 883/2004;*
- (f) tax benefits, in so far as the worker is deemed to be resident for tax purposes in the Member State concerned;*
- (g) access to goods and services and the supply of goods and services made available to the public including procedures for obtaining housing as provided by national law, without prejudice to the freedom of contract in accordance with Union and national law;*
- (h) advice services afforded by employment offices.*

4.9 Directive 2009/52/EC Article 13, paragraph 1:

1. Member States shall ensure that there are effective mechanisms through which third-country nationals in illegal employment may lodge complaints against their employers, directly or through third parties designated by

Member States such as trade unions or other associations or a competent authority of the Member State when provided for by national legislation.

4.10-12 Directive 2009/52/EC, Article 9, paragraph 1(d):

(d) The infringement is committed by an employer who, while not having been charged with or convicted of an offence established pursuant to Framework Decision 2002/629/JHA, uses work or services exacted from an illegally staying third-country national with the knowledge that he or she is a victim of trafficking in human beings.

Directive 2009/52/EC, Article 6:

1. In respect of each infringement of the prohibition referred to in Article 3, Member States shall ensure that the employer shall be liable to pay:

- (a) any outstanding remuneration to the illegally employed third-country national. The agreed level of remuneration shall be presumed to have been at least as high as the wage provided for by the applicable laws on minimum wages, by collective agreements or in accordance with established practice in the relevant occupational branches, unless either the employer or the employee can prove otherwise, while respecting, where appropriate, the mandatory national provisions on wages;
- (b) an amount equal to any taxes and social security contributions that the employer would have paid had the third-country national been legally employed, including penalty payments for delays and relevant administrative fines;
- (c) where appropriate, any cost arising from sending back payments to the country to which the third-country national has returned or has been returned.

2. In order to ensure the availability of effective procedures to apply paragraph 1(a) and (c), and having due regard to Article 13, Member States shall enact mechanisms to ensure that illegally employed third-country nationals:

- (a) may introduce a claim, subject to a limitation period defined in national law, against their employer and eventually enforce a judgment against the employer for any outstanding remuneration, including in cases in which they have, or have been, returned; or
- (b) when provided for by national legislation, may call on the competent authority of the Member State to start procedures to recover outstanding remuneration without the need for them to introduce a claim in that case.

Illegally employed third-country nationals shall be systematically and objectively informed about their rights under this paragraph and under Article 13 before the enforcement of any return decision.

3. In order to apply paragraph 1(a) and (b), Member States shall provide that an employment relationship of at least three months duration be presumed unless, among others, the employer or the employee can prove otherwise.

4. Member States shall ensure that the necessary mechanisms are in place to ensure that illegally employed third-country nationals are able to receive any back payment of remuneration referred to in paragraph 1(a) which is recovered as part of the claims referred to in paragraph 2, including in cases in which they have, or have been, returned.

5. In respect of cases where residence permits of limited duration have been granted under Article 13(4), Member States shall define under national law the conditions under which the duration of these permits

may be extended until the third-country national has received any back payment of his or her remuneration recovered under paragraph 1 of this Article.

4.13 Directive 2011/36/EU, Article 14, paragraph 1:

1. Within a reasonable time, Member States shall provide access to education for child victims and the children of victims who are given assistance and support in accordance with Article 11, in accordance with their national law.

Directive 2004/81/EC Article 10(b):

(b) Member States shall ensure that minors have access to the educational system under the same conditions as nationals. Member States may stipulate that such access must be limited to the public education system.

Chapter 5: Reflection period and residence permit for victims who are third-country nationals

Reflection period

5.1 Directive 2011/36/EU, Article 11, paragraph 6:

6. The information referred to in paragraph 5 shall cover, where relevant, information on a reflection and recovery period pursuant to Directive 2004/81/EC, and information on the possibility of granting international protection pursuant to Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (1) and Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (2) or pursuant to other international instruments or other similar national rules.

Directive 2004/81/EC, Article 6, paragraph 1:

1. Member States shall ensure that the third-country nationals concerned are granted a reflection period allowing them to recover and escape the influence of the perpetrators of the offences so that they can take an informed decision as to whether to cooperate with the competent authorities.

5.2 Directive 2004/81/EC, Article 6, paragraph 2:

2. During the reflection period and while awaiting the decision of the competent authorities, the third-country nationals concerned shall have access to the treatment referred to in Article 7 and it shall not be possible to enforce any expulsion order against them.

5.3 Directive 2004/81/EC, Article 6, paragraph 4:

4. The Member State may at any time terminate the reflection period if the competent authorities have established that the person concerned has actively, voluntarily and on his/her own initiative renewed contact with the perpetrators of the offences referred to in Article 2(b) and (c) or for reasons relating to public policy and to the protection of national security.

5.4 Directive 2004/81/EC, Article 7, paragraph 1:

1. Member States shall ensure that the third-country nationals concerned who do not have sufficient resources are granted standards of living capable of ensuring their subsistence and access to emergency medical treatment. They shall attend to the special needs of the most vulnerable, including, where appropriate and if provided by national law, psychological assistance.

Residence permit

5.5 Directive 2004/81/EC, Article 8:

1. After the expiry of the reflection period, or earlier if the competent authorities are of the view that the third-country national concerned has already fulfilled the criterion set out in subparagraph (b), Member States shall consider:

- (a) the opportunity presented by prolonging his/her stay on its territory for the investigations or the judicial proceedings, and
- (b) whether he/she has shown a clear intention to cooperate and

(c) whether he/she has severed all relations with those suspected of acts that might be included among the offences referred to in Article 2(b) and (c).

2. For the issue of the residence permit and without prejudice to the reasons relating to public policy and to the protection of national security, the fulfilment of the conditions referred to in paragraph 1 shall be required.

3. Without prejudice to the provisions on withdrawal referred to in Article 14, the residence permit shall be valid for at least six months. It shall be renewed if the conditions set out in paragraph 2 of this Article continue to be satisfied.

5.6 Directive 2004/81/EC, Article 9:

1. Member States shall ensure that holders of a residence permit who do not have sufficient resources are granted at least the same treatment provided for in Article 7.

2. Member States shall provide necessary medical or other assistance to the third-country nationals concerned, who do not have sufficient resources and have special needs, such as

pregnant women, the disabled or victims of sexual violence or other forms of violence and, if Member States have recourse to the option provided for in Article 3(3), minors.

5.7 Directive 2004/81/EC, Article 14:

The residence permit may be withdrawn at any time if the conditions for the issue are no longer satisfied. In particular, the residence permit may be withdrawn in the following cases:

- (a) if the holder has actively, voluntarily and in his/her own initiative renewed contacts with those suspected of committing the offences referred to in Article 2(b) and (c); or
- (b) if the competent authority believes that the victim's cooperation is fraudulent or that his/her complaint is fraudulent or wrongful; or
- (c) for reasons relating to public policy and to the protection of national security; or
- (d) when the victim ceases to cooperate; or
- (e) when the competent authorities decide to discontinue the proceedings.



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Long-term residents

5.8 Directive 2003/109/EC, Article 3:

1. This Directive applies to third-country nationals residing legally in the territory of a Member State.

2. This Directive does not apply to third-country nationals who:

- (a) reside in order to pursue studies or vocational training;
- (b) are authorised to reside in a Member State on the basis of temporary protection or have applied for authorisation to reside on that basis and are awaiting a decision on their status;
- (c) are authorised to reside in a Member State on the basis of a subsidiary form of protection in accordance with international obligations, national legislation or the practice of the Member States or have applied for authorisation to reside on that basis and are awaiting a decision on their status;

Directive 2003/109/EC, Article 4, paragraph 1:

1. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.

Directive 2003/109/EC, Article 5, paragraph 1:

1. Member States shall require third-country nationals to provide evidence that they have, for themselves and for dependent family members:

- (a) stable and regular resources which are sufficient to maintain himself/herself and the members of his/her family, without recourse to the social assistance system of the Member State concerned. Member States shall evaluate these resources by reference to their nature and regularity and may take into account the level of minimum wages and pensions prior to the application for long-term resident status;
- (b) sickness insurance in respect of all risks normally covered for his/her own nationals in the Member State concerned.

Directive 2004/83/EC, Article 29, paragraph 1:

1. Member States shall ensure that beneficiaries of refugee or subsidiary protection status have access to health care under the same eligibility conditions as nationals of the Member State that has granted such statuses.

Chapter 6: Return

6.1 Directive 2008/115/EC, Article 7, paragraph 1:

1. A return decision shall provide for an appropriate period for voluntary departure of between seven and thirty days, without prejudice to the exceptions referred to in paragraphs 2 and 4. Member States may provide in their national legislation that such a period shall be granted only following an application by the third-country national concerned. In such a case, Member States shall inform the third-country nationals concerned of the possibility of submitting such an application.

The time period provided for in the first subparagraph shall not exclude the possibility for the third-country nationals concerned to leave earlier.

6.2 Directive 2008/115/EC, Article 7, paragraph 2:

2. Member States shall, where necessary, extend the period for voluntary departure by an appropriate period, taking into account the specific circumstances of the individual case, such as the length of stay, the existence of children attending school and the existence of other family and social links.

6.3 Directive 2008/115/EC, Article 11, paragraph 3:

3. Member States shall consider withdrawing or suspending an entry ban where a third-country national who is the subject of an entry ban issued in accordance with paragraph 1, second subparagraph, can demonstrate that

he or she has left the territory of a Member State in full compliance with a return decision.

Victims of trafficking in human beings who have been granted a residence permit pursuant to Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities shall not be subject of an entry ban without prejudice to paragraph 1, first subparagraph, point (b), and provided that the third-country national concerned does not represent a threat to public policy, public security or national security. Member States may refrain from issuing, withdraw or suspend an entry ban in individual cases for humanitarian reasons. Member States may withdraw or suspend an entry ban in individual cases or certain categories of cases for other reasons.

6.4 Directive 2008/115/EC, Article 13:

1. The third-country national concerned shall be afforded an effective remedy to appeal against or seek review of decisions related to return, as referred to in Article 12(1), before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence.

2. The authority or body mentioned in paragraph 1 shall have the power to review decisions related to return, as referred to in Article 12(1), including the possibility of temporarily suspending their enforcement, unless a temporary suspension is already applicable under national legislation.

3. The third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary, linguistic assistance.

4. Member States shall ensure that the necessary legal assistance and/or representation is granted on request free of charge in accordance with relevant national legislation or rules regarding legal aid, and may provide that such free legal assistance and/or representation is subject to conditions as set out in Article 15(3) to (6) of Directive 2005/85/EC.

6.5 Directive 2008/115/EC, Article 9:

1. Member States shall postpone removal:

- (a) when it would violate the principle of non-refoulement, or
- (b) for as long as a suspensory effect is granted in accordance with Article 13(2).

2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account:

- (a) the third-country national's physical state or mental capacity;
- (b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.

3. If a removal is postponed as provided for in paragraphs 1 and 2, the obligations set out in Article 7(3) may be imposed on the third-country national concerned.

6.6 Directive 2008/115/EC, Article 3, paragraph 3:

3. 'return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:

- his or her country of origin, or
- a country of transit in accordance with Community or bilateral readmission agreements or other arrangements.

Child victims

6.7 Directive 2008/115/EC, Article 10:

1. Before deciding to issue a return decision in respect of an unaccompanied minor, assistance by appropriate bodies other than the authorities enforcing return shall be granted with due consideration being given to the best interests of the child.

2. Before removing an unaccompanied minor from the territory of a Member State, the authorities of that Member State shall be satisfied that he or she will be returned to a member of his or her family, a nominated guardian or adequate reception facilities in the State of return.

Reference to EU legislation

2012/C326/47	Consolidated version of the Treaty on the Functioning of the European Union
2012/29/EU	<i>Directive on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (deadline transposition 16 November 2015)</i>
2011/99/EU	<i>Directive on the European protection order (deadline transposition 11 January 2015)</i>
2011/98/EU	<i>Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (deadline transposition 25 December 2013)</i>
2011/95/EU	<i>Directive on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (deadline transposition of specific articles 21 December 2013)</i>
2011/36/EU	Directive on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA
	European Court of Human Rights, Case of Rantsev v. Cyprus and Russia, Application no. 25965/04
2010/C83/02	Charter of Fundamental Rights of the European Union
2009/52/EC	Directive on providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals
2008/977/JHA	Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters
2008/115/EC	Directive on common standards and procedures in Member States for returning illegally staying third-country nationals
(EC) No 562/2006	Regulation establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)
2004/83/EC	Council Directive on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
2004/81/EC	Council Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

2004/80/EC	Council Directive relating to compensation to crime victims
2004/38/EC	Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC
2003/109/EC	Council Directive concerning the status of third-country nationals who are long-term residents
2001/220/JHA	Council Framework Decision on the standing of victims in criminal proceedings

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MEMO

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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 level¹. 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.

¹ 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)², which will also relieve victims of the burden of testifying in court.

² 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

Homepage DG Home Affairs:

http://ec.europa.eu/dgs/home-affairs/index_en.htm

European Commission Anti-trafficking website:

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

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Reference document

Guidelines for the **identification** of victims of trafficking in human beings

Especially for
Consular Services
and Border Guards

EU legal and policy framework on trafficking in human beings

Trafficking in human beings is a serious crime and a grave violation of human rights prohibited under Article 5 on the prohibition of slavery and forced labour of the Charter of Fundamental Rights of the European Union⁽¹⁾.

Based on the Treaty on the Functioning of the European Union⁽²⁾, over the last few years the EU has developed a comprehensive policy and legislative framework to effectively address trafficking in human beings. The framework focuses equally on the prevention of trafficking, prosecution of criminals, protection of victims and partnership across relevant disciplines and with the different stakeholders and actors involved. This integrated and multidisciplinary perspective is combined with a human-rights-centred and gender-specific approach.

On 19 June 2012 the Commission adopted the Communication 'The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016'⁽³⁾ ('the Strategy') replacing the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings of 2005.⁽⁴⁾ The Strategy focuses on concrete measures that support the implementation of the new Directive 2011/36/EU on preventing and combating trafficking in human

beings and protecting its victims⁽⁵⁾ ('the Directive').

The main responsibility for addressing trafficking in human beings lies with the Member States; the Strategy shows how the Commission will support Member States in addressing the challenges for the next five years in a way which is as concrete and practical as possible. The Strategy proposes a series of concrete actions (about 40) grouped under the following key priorities: identifying, protecting and assisting victims of trafficking; stepping up the prevention of trafficking in human beings; increased prosecution of traffickers; and enhanced coordination and cooperation among key actors and policy coherence; increased knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings. The Strategy includes a strong gender and human rights perspective whilst promoting a multidisciplinary approach which incorporates different actors.

On 25 October 2012, the Council adopted Conclusions endorsing the EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016⁽⁶⁾ which present a set of recommendations for EU Member States, relevant EU Agencies and the Commission.

Identification of victims of trafficking – a key challenge

The Directive **obliges Member States to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that he or she might be a victim of trafficking.** Member States also need **to establish appropriate mechanisms aimed at early identification,**

(1) Charter of Fundamental Rights of the European Union (2000/C 364/01), O J L 364, 18.12.2000, p. 1 / Article 5: Prohibition of slavery and forced labour

(2) Treaty on the Functioning of the European Union, article 79 on Policies on Border Checks, Asylum and Immigration and article 83 on Judicial Cooperation in Criminal Matters

(3) Communication The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 COM(2012)286 final

(4) EU Plan on Best Practices, Standards and Procedures for Combating and Preventing Trafficking in Human Beings of 9 December 2005, 2005/C 311/01

(5) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims, and Replacing Council Framework Decision 2002/629/JHA, O J L 101, 15. 4.2011, p. 1

(6) Council conclusions on the new EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016, 3195th JUSTICE and HOME AFFAIRS Council meeting, Luxembourg, 25 October 2012

assistance, and support for victims based on their individual needs, at the very least including appropriate and safe accommodation, material assistance, medical treatment, psychological assistance, counselling and information and translation and interpretation services. The Directive also requires Member States to **grant special treatment to particularly vulnerable victims, including children, pregnant women and victims with disabilities**. In order to prevent trafficking in human beings, Member States are obliged to **promote the regular training for officials likely to come into contact with both victims and potential victims**, including front-line police officers, to enable them to identify and help them.

Against this background, it should be emphasised that **early identification is crucial to promptly assist, support and protect victims of trafficking in human beings and enables police and prosecution authorities to better investigate and punish traffickers**. At the same time, mechanisms to protect, assist and socially include victims of trafficking need to be established.

Under the priority 'Identifying, protecting and assisting victims of trafficking', the Strategy promotes concrete actions to improve identification of victims of trafficking. In this context, the Strategy highlights the crucial role consular services and border guards play in the identification of victims and potential victims of trafficking in human beings as front-line officers.

Development of the Reference Document for Consular Services and Border guards

In order to increase coherence and avoid duplication of efforts in this area, as well as bearing in mind the on-going projects related to identification of victims of trafficking in human beings funded by the Commission (*see List of projects in attachment*), the aim of this document is **to highlight existing documents and projects on the identification of victims**, and in particular those targeting consular services and border guards and thus encourage their systematic use by the respective officials.

Indeed, the Commission is currently **funding various projects addressing directly or indirectly the issue of identification of victims of trafficking**. More specifically, and as highlighted in the Strategy, the Commission currently funds a specific project under the ISEC Programme ("Development of Common

Guidelines and Procedures on Identification of Victims of Trafficking in Human Beings" EuroTrafGuID) which aims to develop guidelines to better identify victims of trafficking in human beings, taking into account the EC/ILO 2009 lists of indicators on trafficking in human beings. The aim of the project is to propose tools to enhance and harmonise methods and procedures for the first level of identification of victims of trafficking within the EU in order to better address trafficking and to ensure equal treatment of victims as regards their rights, including the right to protection.

Regarding the existing handbooks and manuals on this matter, the Commission highlights in particular two specific documents addressed to border guards and consular services namely the **"Anti-trafficking Training for Border Guards – Trainer's Manual"** of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the **"Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking"** of the Council of the Baltic Sea States (CBSS).

Indeed, these two documents provide comprehensive guidance to early identify victims of trafficking addressing separately consular services and border guards in a clear, comprehensible format and provide helpful, targeted advice useful to front-line officers in the course of their day to day duties. These documents, combined with other existing handbooks of more general nature such as e.g. Recommended Principles and Guidelines on Human Rights and Human Trafficking of UN Human Rights Office of the High Commissioner as well as input from the Group of Experts advising the European Commission on trafficking in human beings⁽⁷⁾, have fed into the Commission's indicative guidelines contained in this document.

In order to avoid duplication and to ensure that the Commission's document is of practical use to front-line officers the document contains only indicative guidelines presented in a concise way.

This document should also complement and

(7) Commission Decision of 10 August 2011 on setting up the Group of Experts on Trafficking in Human Beings and repealing Decision 2007/675/EC, 2011/502/EU http://ec.europa.eu/anti-trafficking/section.action?sectionId=d55a635a-4b9c-4cd8-b3be-17d1c7c2fc33§ionType=LIST_ENTITIES_WITH_ATT

synergistically interact with other work streams such as the funded projects for the development of comprehensive guidelines to facilitate a pan-European Union, coordinated approach to the identification and assistance of victims. It should also offer an overview of the EU and policy framework on trafficking in human beings in order to provide a basic understanding and equip consular services and border guards with basic tools to identify situation of trafficking.

The indicative guidelines include basic provisions on identification, interviewing, referral, data collection, cooperation and prevention whilst also referencing existing documentation to provide more in depth information. Given the vulnerability of children the document contains special guidelines for children to attend the specificity of this group.

Anti-trafficking Training for Border Guards – Trainer’s Manual (Frontex)

The FRONTEX Trainer’s Manual on Anti-trafficking Training for Border Guards was developed in 2011 by the FRONTEX Training Unit in collaboration with experts from 13 Member States and Schengen Associated Countries as well as experts from CEPOL and EUROJUST. International organisations such as the IOM, OHCHR, UNHCR, UNICEF and the OSCE contributed to the development of the Manual to ensure the reflection of international standards and a human rights based approach.

The Manual aims at assisting national trainers to raise awareness on trafficking in human beings among first and second line border guards and equipping them with the special skills needed to identify and interview potential victims and perpetrators. The Manual provides practical guidance to support Member States in the early identification, assistance and support for victims of trafficking at the border by placing the fundamental rights of the victims at the centre of efforts addressing trafficking in human beings with particular regards for vulnerable groups such as children and persons in need of international protection.

As explained in the introduction to the Manual, the training package comprises three training modules; awareness, identification and interviewing. Each module is composed of learning objectives, lesson plans and training material and contains a dedicated chapter on children. The Awareness module increases understanding and enhances knowledge of trafficking in human beings and the human rights violations it entails, its characteristics, actors, functioning and mechanism.

The Identification module is aimed at improving the ability of border guards to identify potential victims of trafficking and suspected traffickers by providing indicators illustrated by real world examples. The interviewing module helps experts determine whether the person is a victim of human trafficking, taking into account any need for assistance as well as the most effective referral for further follow-up.

Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking (CBSS)

The Handbook for diplomatic and consular personnel on how to assist and protect victims of human trafficking has been published by the Council of the Baltic Sea States (CBSS) Secretariat in 2011 as the culmination of a two year training programme carried out by the CBSS Task Force against Trafficking in human beings (TF-THB) and the IOM mission to Moldova. The Handbook incorporates the expert inputs from trainers from NGOs, governmental authorities and International Organisations provided during the training seminars conducted between 2008 and 2010 by TF-THB and IOM.

The Handbook aims at increasing knowledge about trafficking in human beings among consular and diplomatic personnel and guiding them when dealing with suspected incidents of trafficking. It provides tools for consular personnel to properly identify assist and protect victims of trafficking in their daily work and for cooperating with relevant actors.

The Handbook is a practical and illustrative guide divided into chapters. It initially explains trafficking in human beings and the role of diplomatic and consular personnel and it provides an overview of the international legal framework, including EU law. The chapters include advice on how to identify and interview potential victims of trafficking and how to develop strategies to effectively work against human trafficking as well as data confidentiality, risk assessment and safe return. It contains specific guidelines for identifying and assisting children and finally provides a list of relevant referral organisations and contact points for further assistance for CBSS Member States.

Indicative guidelines for consular services and border guards on the identification of victims of trafficking

Objective/Purpose of the Guidelines

The EU Member States have a responsibility to act to prevent trafficking, to investigate and prosecute traffickers and to assist and protect victims of trafficking. Consular services and border guards play, as front-line officers, a very important role in the possible early identification of this crime, when traffickers decide to cross borders. The **indicative guidelines** complemented by all existing documents on this matter should be taken into account by consular services and border guards to help them to understand how, in the performance of their duties, to identify and adequately deal with victims of trafficking in human beings.

Definition

Offences concerning trafficking in human beings⁽⁸⁾:

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

Introduction

Trafficking in human beings is a serious crime and a gross violation of human rights. Consular services and border guards play, as front-line officers, a very important role in the possible early identification of potential victims and therefore contribute to the fight against this crime. As such consular services and border guards should refer the identified potential victims to the appropriate authorities for adequate follow up with due respect for the rights of the victims.

Member States shall ensure that the national competent authorities are entitled not to prosecute or impose penalties on victims of trafficking in human beings for their involvement in criminal activities which they have been compelled to commit as a direct consequence of being trafficked.

Consular services and border guards should ensure the raising of awareness of their staff that when an offence of trafficking in human beings was committed by public officials in the performance of their duties, it is regarded as an aggravating circumstance.

Operational Guidelines

General

Consular services and border guards should take the necessary measures in cooperation with the competent national authorities to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations.

Consular services and border guards should in cooperation with the competent national authorities endeavour to pay extra attention to particularly vulnerable victims, in particular, pregnant women, people with a disability, a mental or psychological disorder, or people who suffered from a serious form of psychological, physical or sexual violence.

Identification

Consular services and border guards should conduct regular training for officials likely to come into contact with victims or potential victims of trafficking in human beings aimed at enabling them to identify and deal with victims and potential victims of trafficking in human beings.

Victims of human trafficking possibly suffer from various psychological problems as they may have experienced multi-traumatic incidents in their lives. Therefore, it is very important to acknowledge the impact of trauma upon trafficked persons and recognise the symptoms.

(8) DIRECTIVE 2011/36/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims.

Interviewing

Victims of trafficking in human beings have the right to receive information as from their first contact with the national authorities relevant for the protection of their interests in the context of criminal proceedings.

Communication difficulties to understand what is going on and the role of the victim involved in the proceedings should be minimised. Where appropriate interpretation should be made available.

Investigation into or prosecution of trafficking in human beings offences is not dependent on reporting or accusation by a victim, and criminal proceedings may continue even if the victim has withdrawn his or her statement.

Information on a reflection and recovery period and information on the possibility of seeking and obtaining international protection should be provided to the potential victim at the beginning of the interview.

Referral

Consular services and border guards should take the necessary measures to ensure that a person is directed towards the competent national authorities that provide assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to any of the offences related to trafficking in human beings.

Consular services and border guards should take the necessary measures to refer the potential victims to the competent national authorities that provide assistance and support for a victim.

Data Processing, including data collection

Individual

Information should be passed on as soon as possible, and to appropriate authorities and partners who are entitled to use it. This information should be treated in a legitimate way and with full respect for the victim's interests and privacy. The personal data of potential victims and victims of trafficking in human beings should always be treated in full compliance with

applicable data protection rules.

Statistical

Consular services and border guards should consider ensuring in full compliance with relevant data protection rules that data concerning individuals who are trafficked is disaggregated on the basis of age, gender, nationality, form of exploitation and other relevant characteristics, like the use of documents and the travel route taken.

Cooperation

Consular services and border guards should consider developing cooperation arrangements to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in full compliance with applicable data protection rules .

From the moment there are reasonable grounds to suspect a person is a victim of trafficking consular services and border guards should be aware that assistance and support should be provided. Consular services and border guards should aim to develop together with the competent national authorities appropriate mechanisms that will allow this, eventually in co-operation with relevant support organisations like Non-Governmental Organisations.

Prevention and training

Consular services and border guards should consider identifying in cooperation with the relevant national authorities appropriate points of intervention to provide information to migrants and potential migrants about possible dangers and consequences of trafficking and to provide information that enables them to seek assistance if required.

Consular services and border guards should consider including anti-trafficking dossiers into internal training curricula. Anti-trafficking dossiers should also be introduced in the intranet and internet websites of both consular services and border guards (coherence should be established with relevant general anti-trafficking website if existing).

Special guidelines for Children

General

When the crime of trafficking in human beings involves a child, it shall be a punishable offence even if none of the means has been used, which implies that the definition of trafficking in children is : The recruitment, transportation, transfer, harbouring or reception of children, including the exchange or transfer of control over those children for the purpose of exploitation.

Child victims of trafficking in human beings shall be provided with assistance, support and protection.

Consular services and border guards shall ensure that, where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection

Interviewing

Interviews of child victims should take place without unjustified delay after the facts have been reported to the competent authorities.

Interviews of child victims should take place, where necessary, in premises designed or adapted for that purpose.

Interviews with child victims should be carried out, where necessary, by or through professionals trained for that purpose.

The same persons, if possible and where appropriate, should conduct all of the interviews with a particular child victim.

The number of interviews should be as limited as possible. They should be carried out only where strictly necessary for the purposes of criminal investigations and proceedings.

The child victim may be accompanied by a representative or, where appropriate, an adult of the child's choice, unless a reasoned decision has been made to the contrary in respect of that person.

ANNEX I:

Projects on identification of victims of trafficking in human beings funded by Commission under AGIS, ISEC, Return, TAIEX and External Borders Fund.

Reference	Title	Promoter	Country	Partners	Country	EC Fund
AGIS 2003 AGIS/2003/083	Identifying Rights: towards a standard protocol for identification and assistance of trafficked women	Anti-Slavery International, UK	UK	Eaves Housing for Women	UK	€ 140,000.00
				On the Road	Italy	
				Police Academy	Netherlands	
				Policy Academy	Albania	
				Policy Academy	Nigeria	
				Policy Academy	Thailand	
AGIS 2004 AGIS/2004/203	Awareness Training on Trafficking in Human Beings for Police, Border Guards and Customs Officials – Development of a European Curriculum	ICMPD – International Centre for Migration Policy Development	International Organisation	Czech Ministry of Interior	Czech Republic	€ 365,000
				Austrian Federal Ministry of Interior	Austria	
				On the Road	Italy	
AGIS 2004 AGIS/2004/011	Capacity building to Combat the Forced Labour Outcomes of Human Trafficking	International Labour Office	International Organisation	ICMPD – International Centre for Migration Policy Development	IO, HQ in Austria	€ 110,000
				Department for Work and Pensions	UK	
				Association for Technical Cooperation, GTZ	Germany	
					Poland	
					Romania	
					Moldova	
	Ukraine					

Guidelines for the identification of victims of trafficking in human beings

Reference	Title	Promoter	Country	Partners	Country	EC Fund
AGIS 2004 AGIS/2004/115	Forum to improve best practice in prevention, detection and the investigation of Human Trafficking. Examination of best practices aimed at fighting and preventing corruption of public officials in the Immigration administrations	Irish Police Service, Ireland	Ireland	National Criminal Intelligence Service (NCIS)	UK	€ 73,000
AGIS 2005 AGIS/2005/045	Development of a child-rights methodology to identify and support child victims of traffic	Save the Children, Italy	Italy	Bulgaria Foundations Caritas Save the Children	Bulgaria Germany Romania	€ 155,000.00
ISEC 2007 ISEC/2007/537	AGIRE. Acting for stronger private-public partnerships in the field of identification and support of children victims and at risk of trafficking in Europe	Save the Children, Italy	Italy	International Centre for migration Policy Development (ICMPD) Ministry of Interior, Criminal Intelligence Service. Association for the Social Support of Youth, ARSIS Hellenic Police State Security Division, Central Directorate against Crime, State Police Department of Equal Opportunities, Presidency of the Council of Ministers Interdepartmental Centre on Human Rights of Peoples, University of Padua National Agency against Trafficking in Persons Save the Children	IO, HQ in Austria Austria Greece Greece Italy Italy Italy Romania Romania	€ 235,000.00
TAIEX 2009 JHA IND/EXP 31785	Training for female Border Guards on How to fight against Trafficking in Human Beings	Ministry of the Interior, Albania	Albania			€ 14,000.00

Guidelines for the identification of victims of trafficking in human beings

Reference	Title	Promoter	Country	Partners	Country	EC Fund
ISEC 2009 ISEC/2009/054	Developing agreed methodology of identification and referral for trafficking for labour exploitation: guaranteeing the victims the access to protection	ACCEM, Spain	Spain	On the Road Churches Commission for Migrants in Europe Foundation Floarea Ialomiteana	Italy IO, HQ in Belgium Romania	€ 290,000.00
ISEC 2010 HOME-2010-ISEC-AG-016	Development of common guidelines and procedures on identification of victims of trafficking (CoGuideID-THB)	France Cooperation International, French Ministry of Foreign and European Affairs	France	National Commission for Combating Trafficking in Human beings Ministry for Equality Ministry of Security and Justice, General Inspectorate of the Police Council of Europe International Labour organisation ICMPD UNDOC	Bulgaria Spain Netherlands Romania IO, HQ in France IO, HQ in Switzerland IO, HQ in Austria IO	€ 612,000.00
ISEC 2011 HOME/2011/ISEC/AG/2495	FRONTLINE- cooperation in fighting against human trafficking by exchanging best practices on the investigation/enforcement in the prostitution branch	Amsterdam-Amstelland Police, Netherlands	Netherlands	County Administrative Board of Stockholm (National Task Force Against Prostitution/Trafficking), Sweden	Sweden	€ 200,000
ISEC 2012 HOME/2012/ISEC/AG/THB/4 000003911	Protection First: early identification, protection and assistance of child victims and at risk of trafficking and exploitation	Save the Children, Italy	Italy	On the Road Cooperativa sociale Dedalus Stichting Defence for Children International Nederland- ECPAT Save the Children	Italy Italy Netherlands Romania	€ 430,658.42

ANNEX II:

Descriptive of Projects on identification of victims of trafficking in human beings funded by Commission under AGIS, ISEC, Return, TAIEX and External Borders Fund.

Project	<i>Identifying Rights: towards a standard protocol for identification and assistance of trafficked women</i>
Reference	AGIS/2003/083
Promoter	Anti-Slavery International, UK http://www.antislavery.org/
Budget	€ 180 000 (€ 140 000 of EU support)
Timeframe	December 2003 — September 2005
Partners	Anti-Slavery International; Eaves Housing for Women, UK; Association On the road, Italy; Police Academy, Netherlands; Albania, Nigeria, Thailand
Objectives and results	The main objective of this project was to develop a model protocol for government officials to correctly interview migrants in order to determine whether they are victims of trafficking and related violence. To implement this protocol, training was organised for law enforcement officials and other front-line workers who encounter trafficked persons. It helped them deal more sensitively with migrants, especially those who may have been trafficked. Around 180 law enforcement officers from three member states took part in the training sessions.
Publications and other resources	Identification protocol for Identification and Assistance to Trafficked Persons Training kit
Further information	Ms Klara Skrivankova, Anti-Slavery International - k.skrivankova@antislavery.org Mr Rod Leith - r.leith@antislavery.org

Guidelines for the identification of victims of trafficking in human beings

Project	<i>Awareness Training on Trafficking in Human Beings for Police, Border Guards and Customs Officials — Development of a European Curriculum</i>
Reference	AGIS/2004/203
Promoter	ICMPD — International Centre for Migration Policy Development http://www.icmpd.org/
Budget	€ 691 000 (€ 365 000 of EU support)
Timeframe	December 2004 — March 2006
Partners	Czech Ministry of Interior; Austrian Federal Ministry of Interior; On the Road Association, Italy
Objectives and results	<p>The objective of the project was to enhance the capabilities of law enforcement services to detect, investigate and counteract trafficking and to support victims. For this purpose training modules were developed for police officers, border guards and customs officials of all ranks. Based on European and UN standards and guidelines, the modules were tested in 10 Member States and candidate countries. The curricula were disseminated at the EU level via CEPOL and ACT (Ad Hoc Centre for Training of Border Guards) and could be adapted to each national context.</p> <p>Consideration was also given to stepping up cooperation with NGOs by involving them closely in the victim support activities. Two meetings were organised to exchange information and best practice — in June 2005 in Budapest and in Traiskirchen, Austria, in February 2006.</p>
Publications and other resources	Website www.anti-trafficking.net Training manuals with lesson plans and exercises and a summary of the project
Further information	Mrs B. Stevkovski, ICMPD – Brigitte.stevkovski@icmpd.org

Guidelines for the identification of victims of trafficking in human beings

Project	<i>Capacity building to Combat the Forced Labour Outcomes of Human Trafficking</i>
Reference	AGIS/2004/011
Promoter	International Labour Office (ILO) www.ilo.org
Budget	€ 230 000 (€ 110 000 of EU support)
Timeframe	September 2004 — December 2006
Partners	International Centre for Migration Policy Development (ICMPD); Department for Work and Pensions (DWP), UK, Association for Technical Cooperation (GTZ), Germany, Poland, Romania, Moldova, Ukraine.

Objectives and results The project made a contribution to the prevention and progressive elimination of human trafficking for the purposes of forced labour and sexual exploitation. Its main focus was on administrative controls to detect forced labour. The cover activities of private recruitment agencies were explored, especially regarding travel, mail-order bride, model and other agencies — part of the *modus operandi* of the trafficking criminals.

The three main components of the project were:

- 1) Help law enforcement officials from countries of origin and destination to better understand the forced labour outcomes of human trafficking
- 2) Incorporate in national training curricula the ILO training module on monitoring private recruitment agencies
- 3) Encourage private recruitment agencies and their business associations to adopt self-regulation mechanisms.

The project was intended to help EU Member States fulfil their obligation to implement the provisions of the Palermo Protocol and to help the EU harmonise its anti-trafficking response on this issue.

Publications and other resources Website www.anti-trafficking.net

Publication of reports and a translation of the ILO manual in English, German, Romanian, Ukrainian, Polish, and Portuguese

Further information Overkaemping Sabine, ILO - overkaemping@ilo.org

Guidelines for the identification of victims of trafficking in human beings

Project	<i>Forum to improve best practice in prevention, detection and the investigation of Human Trafficking. Examination of best practices aimed at fighting and preventing corruption of public officials in the Immigration administrations</i>
Reference	AGIS/2004/115
Promoter	Irish Police Service, Ireland www.garda.ie
Budget	€ 120 000 (€ 73 000 of EU support)
Timeframe	December 2004 — March 2006
Partners	National Criminal Intelligence Service (NCIS), UK; Immigration Service, UK; Protective Service of Law Enforcement Agency (PLSEA), Hungary; Hungarian Border Guards; Ireland, Czech Republic, Latvia, Italy, Lithuania, Holland, Spain
Objectives and results	<p>This project aimed at exploring immigration trends in trafficking in human beings and at exchanging best practice and other information on prevention, detection and investigation. A particular focus was put on preventing corruption in public administration. Another important goal was to step up cooperation with the applicant countries, other non-EU countries and appropriate regional and international organisations.</p> <p>The project comprised data gathering, seminars and study visits.</p>
Publications and other resources	CD-ROM with the results of the project
Further information	Thomas Dixon — tom.dixon@garda.ie or Catherine Whelan - gnib@iol.ie or Orla McPartlin - gicu@iol.ie from Irish National police

Guidelines for the identification of victims of trafficking in human beings

Project	<i>Development of a child-rights methodology to identify and support child victims of traffic</i>
Reference	AGIS/2005/045
Promoter	ONLUS — Save the Children, Italy http://www.savethechildren.it/
Budget	€ 214.000 (€ 155.000 of EU support)
Timeframe	December 2005 — December 2007
Partners	Bulgaria Foundations, Bulgaria; Caritas, Germany; Save the Children, Romania
Objectives and results	The project was designed to develop a child-rights-based methodology and techniques for correctly interviewing, properly identifying and adequately supporting and assisting child victims of trafficking. It also aimed to increase the knowledge and strengthen the professional skills of the practitioners involved.
Publications and other resources	Results of and materials used in the project, published on the website www.savethechildren.it Research report and a summary of methodology (pva)
Further information	Costella Giuseppe, Save the children, Italy - pippo@savethechildren.it

Guidelines for the identification of victims of trafficking in human beings

Project	<i>AGIRE. Acting for stronger private-public partnerships in the field of identification and support of children victims and at risk of trafficking in Europe</i>
Reference	ISEC/2007/537
Promoter	Save the Children Italia Onlus http://www.savethechildren.it/
Budget	€ 336 000 (€ 235 000 of EU support)
Timeframe	December 2007 – December 2010
Partners	International Centre for Migration Policy Development (ICMPD), Austria; Federal Ministry of Interior, Criminal Intelligence Service, Austria; Association for the Social Support of Youth, ARSIS, Greece; Hellenic Police, State Security Division; Central Directorate against Crime, State Police, Italy; Department for Equal Opportunities, Presidency of the Council of Ministers, Italy; Interdepartmental Centre on Human Rights and the Rights of Peoples, University of Padua, Italy; National Agency against Trafficking in Persons, Romania; Save the Children, Romania
Objectives and results	<p>The project aimed to help prevent and combat child trafficking by developing a strong private-public partnership. It paid a special attention to the following aspects:</p> <ul style="list-style-type: none">review of existing methodologies for supporting and identifying children who are victims of, or at risk from, trafficking;research into the profile of children who are victims or at risk, with a view to developing relevant indicators;adapting existing training modules to better enable private-public actors to use identification and support methodologies;developing best practices for identification, support and assistance. <p>Four training seminars and four training courses in central police schools were planned, involving around 240 participants.</p>
Publications and other resources	http://www.savethechildren.it/IT/Page/t01/view_html?idp=498
Further information	Ms Carlotta BELLINI, Save the Children Italia Onlus - carlotta.bellini@savethechildren.it and sarah.digiglio@savethechildren.it

Guidelines for the identification of victims of trafficking in human beings

Project	<i>Developing agreed methodology of identification and referral for trafficking for labour exploitation: guaranteeing the victims the access to protection</i>
Reference	ISEC/2009/054
Promoter	Catholic Commission for Migration Association, Spain www.accem.es
Budget	€ 290 000 of EU support
Timeframe	From February 2010 to January 2012
Partners	Opere Riunite Buon Pastore, Association on the road, Italy; Churches Commission for migrants in Europe, Belgium; Foundation Floarea Ialomiteana, Romania
Objectives and results	<p>The main aim of the project was to develop a methodology for identifying and referring risk situations, as this is the only way to ensure that the victims of human trafficking have access to protection.</p> <p>The main activities were:</p> <ul style="list-style-type: none">- Mapping sectors and circumstances where trafficking for labour exploitation is more likely to happen in targeted countries.- Country visits and training sessions.- Preparing awareness-raising materials to be disseminated in each targeted country.- Drawing up the final methodology
Further information	Maria Reyes Castillo, Catholic Commission for Migration Association - internacional@accem.es

Guidelines for the identification of victims of trafficking in human beings

Project	<i>Training for Female Border Guards on How to Fight against Trafficking in Human Beings</i>
Reference	JHA IND/EXP 31785
Promoter	Ministry of the Interior, Albania
Budget	14.000€
Timeframe	2009
Objectives and results	<p>The objective was to train female border guards on how to detect victims of trafficking with a particular focus on interrogations.</p> <p>In co-operation with the Belgian Federal Police (Directorate for the fight against criminality against persons), the project supported the improvement of the existing mechanism for detection of victims of trafficking in human beings. Particular emphasis was paid to cases of trafficking for sexual exploitation and forced labour.</p> <p>Scientific policing, financial investigation and internet monitoring cases were covered by the experts.</p> <p>The Belgium experts stressed the need to set up an integrated approach to the phenomenon of human trafficking (cooperation with labour inspectorates and state social services) and the importance of facilitating the cooperation between law enforcement agencies and the victims.</p>
Further information	Technical Assistance and Information Exchange Instrument (TAIEX), DG Enlargement, European Commission - Elarg-Taiaex@ec.europa.eu

Guidelines for the identification of victims of trafficking in human beings

Project	<i>Development of common guidelines and procedures on identification of victims of trafficking (CoGuideID-THB)</i>
Reference	HOME-2010-ISEC-AG-016
Promoter	France Cooperation International, French Ministry of Foreign and European Affairs
Foreseen Budget	612.000€
Timeframe	2011-2012
Partners	National Commission for Combating Trafficking in Human Beings, Bulgaria; Ministry for Equality, Spain; Ministry of Security and Justice, Netherlands; General Inspectorate of the Police, Romania; Council of Europe; International Labour Organisation (SAPFL); UNODC; ICMPD
Objectives and results	<p>The overall objective of the project was to enhance and harmonise the methods and procedures for the identification of victims of trafficking (adults and children) within the EU in order to better tackle trafficking and to ensure equal treatment of victims.</p> <p>More specifically, the project intended to:</p> <ol style="list-style-type: none">1. Develop a network of national contact points in the participating countries (Bulgaria, France, Greece, Romania, Spain and The Netherlands) with the aim of collecting and exchanging best practices among law enforcement officers, prosecutors, judges, labour inspectors, organisations providing services to victims, NGOs and trade unions.2. Develop common guidelines and procedures on identification of victims on the basis of national reports. The guidelines were tested during a 4-month pilot phase in Spain before final endorsement and publication in 7 EU official languages.3. Dissemination and training sessions for key experts <p>Nearly 150 persons participated in the project.</p>

Expected Publications and other resources

Guidelines and procedures for the identification of victims of trafficking

Further information

Mr Alan Dreanic – Ministry of Foreign and European Affairs, Paris - alan.dreanic@diplomatie.gouv.fr

Guidelines for the identification of victims of trafficking in human beings

Project	<i>FRONTLINE - cooperation in fighting against human trafficking by exchanging best practices on the investigation/enforcement in the prostitution branch</i>
Reference	HOME/2011/ISEC/AG/2493
Promoter	Amsterdam-Amstelland Police, the Netherlands www.amsterdam.politie.nl
Budget	253.000€ (200.000€ of EU requested support)
Timeframe	2012 - 2014
Partners	County Administrative Board of Stockholm (National Task Force Against Prostitution/Trafficking), Sweden; Stockholm County Police, Sweden; Stichting HVO-Querido, the Netherlands
Objectives and results	<p>FRONTLINE project is a partnership between police and social welfare organisations in Sweden and The Netherlands. Other actors such as municipalities, health care, prosecution, lawyers etc. will be involved as well.</p> <p>Inspections and supervision in the prostitution sector are important tools for the police in the fight against trafficking. Shelter and support for victims can be of great value to the police since victims who feel safe can provide useful information to the investigation.</p> <p>Even if Sweden and the Netherlands have different legislations regarding prostitution, they consider the detection of hidden prostitution as a priority. Exchange of best practices should contribute to the improvement of the detection and investigations and search for efficient and innovative solutions. Best practices can among others relate to investigation and prosecution of punishable customers and investigations on the use of the Internet.</p> <p>The project includes training sessions involving a wide range of experts.</p> <p>The results will be made available for all THB professionals in Europe through a toolkit and a film presenting best practices.</p>
Further information	Ms Corine Horstra - corine.horstra@amsterdam.politie.nl

Guidelines for the identification of victims of trafficking in human beings

Project	<i>Protection First: early identification, protection and assistance of child victims and at risk of trafficking and exploitation</i>
Reference	HOME/2012/ISEC/AG/TH/B/4000003911
Promoter	Save the Children (IT)
Budget	478.509€ (maximum EU grant – 430.658€)
Timeframe	24 months.
Partners	On the Road ONLUS (IT); Cooperativa sociale Dedalus (IT); Stichting Defence for Children International Nederland-ECPAT Nederland (NL); Organizatia Salvati Copiii (Save the Children Romania) (RO)
Objectives and outputs	<p>The project is implemented in Italy, The Netherlands and Romania. Its general objective is to improve knowledge on child trafficking and to prevent child trafficking and protect child victims and children at risk of trafficking and any form of exploitation, including the less known ones (e.g. involvement in criminal activities) through research, the use of identification tools and awareness raising.</p> <p>The specific objectives are:</p> <ul style="list-style-type: none">To improve the identification of child victims or at risk of trafficking and exploitation in care facilities in Italy, The Netherlands and Romania;To raise awareness among child victims and children at risk and improve their capacity to self-assess the risks and if they are in the process of trafficking/exploitation. <p>Some of the results expected are:</p> <ul style="list-style-type: none">A desk review and a research collecting 18 case studies on child trafficking and exploitation;Development of nine new tools on early identification, children's self-assessment and aware raising;Four trainings to 105 care workers and guardians;A EU final event in Brussels.
Further information	Ms Elisabetta Leonardi – Italy-EU Programmes Unit Coordinator elisabetta.leonardi@savethechildren.it



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TOGETHER AGAINST TRAFFICKING IN HUMAN BEINGS

Europa > Together against Trafficking in Human Beings



NEWS

EU POLICY 31.07.2013

Targeted Call of expression of interest to participate in the EU Civil Society Platform against Trafficking in Human Beings

Civil society organisations from Slovenia, four selected neighbouring priority third countries (Albania, Morocco, Turkey and Ukraine) and civil society organisations dedicated to children rights are invited to express an interest to participate in th [more+](#)

EU POLICY 19.06.2012

New European Strategy 2012-2016

On 19 June 2012, the European Commission adopted the "EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)". The Strategy is a set of concrete and practical [more+](#)

EU POLICY 27.06.2013

ISEC 2013 targeted calls for proposal

The ISEC 2013 targeted call for proposals on trafficking in human beings has been published. The deadline for submission of proposals is 31 October 2013 (12:00 CET). [more+](#)

EU POLICY 15.04.2013

The EU rights of victims of trafficking

European Commission-DG Home Affairs, 2013, 32 pages The EU approach places the victim and its human rights at the centre [more+](#)

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Cecilia Malmström,
EU Commissioner
for Home Affairs



Myria Vassiliadou,
EU Anti-Trafficking
Coordinator

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EVENTS

[Data protection and right to privacy for marginalised groups: a new challenge in anti-trafficking policies](#)

Dates: 25/09/2013 - 27/09/2013

[Inter-Ministerial Conference:](#)

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

European Commission DG Home Affairs

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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

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

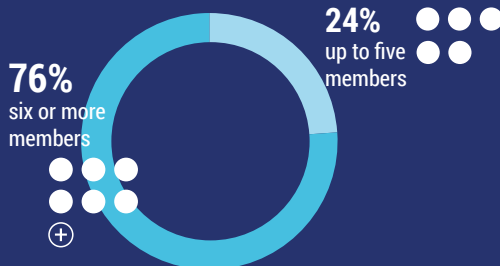


>180
nationalities involved

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

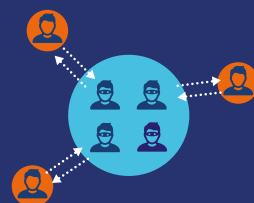


Many OCGs have expanded their crime portfolio in response to the sustained high level of demand for smuggling services during the migration crisis.



▲ 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

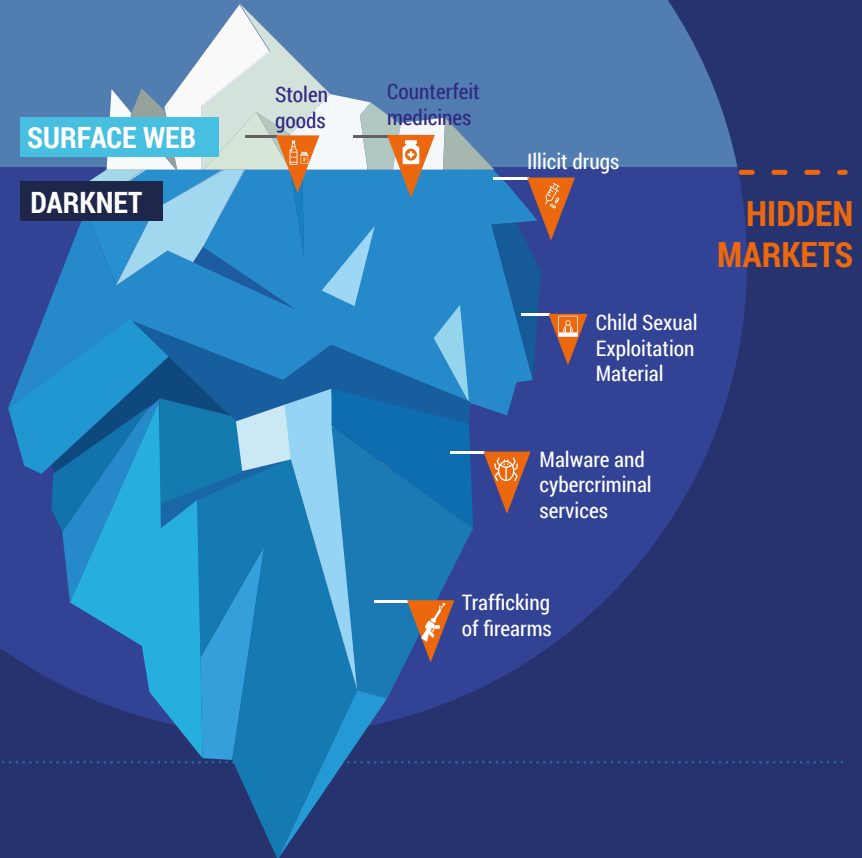


85% of internet users feel at risk of becoming a victim of cybercrime



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.

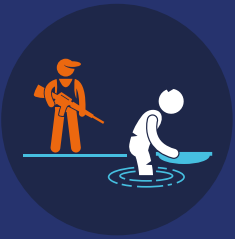


- ▲ The migration crisis has resulted in an increase in the number of potential victims of THB.
- ▲ A growing number of **vulnerable adults and unaccompanied minors** in the EU are likely to be targeted by traffickers.

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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EUROPOL

Situation Report

Trafficking in human beings in the EU

This Europol product is descriptive and oriented towards explaining the current crime situation providing an overview of all relevant factors (OCGs, criminal markets, and geographical dimension).

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Key findings

Trafficking in human beings (THB) in the EU is predominantly a European affair.

- ◇ 70% of the identified victims and suspects in the EU are EU nationals.
- ◇ Victims and suspects generally share nationality, ethnic ties and sometimes kinship links.
- ◇ Mobility and rotation of victims are key features within this criminal market. Austria is a crucial transit country, especially for victims originating from Central Eastern Europe. Italy, Spain and the United Kingdom are key entry points for non-EU victims.

A vast majority of the criminal groups active in THB are capable of controlling the entire process of trafficking, from the recruitment of victims to the reinvestment of the criminal proceeds.

- ◇ While most traffickers are male, female suspects are also involved in low-ranking tasks. Nigerian criminal networks form an exception where women play a central role in the exploitation process.
- ◇ The typical structure of criminal groups engaged in THB consists of loose networks linked by kinship or ethnic ties.
- ◇ Criminal proceeds are primarily sent back to their country of origin.

Human trafficking for the purpose of sexual exploitation is the most reported form of THB in the EU.

- ◇ Most reported victims are female EU nationals from Central and Eastern Europe.
- ◇ Non-EU victims mainly originate from Albania, Brazil, China, Nigeria, and Vietnam.
- ◇ EU victims usually use genuine documents, while non-EU victims use forged or look-alike documents.
- ◇ Deception is commonly used to lure potential victims, including the 'lover boy' method.

Human trafficking for the purpose of labour exploitation is increasingly being investigated.

- ◇ Most reported victims are male EU nationals originating from Bulgaria, the Czech Republic, Estonia, Poland, Romania, and Slovakia.
- ◇ The majority of non-EU victims come from countries bordering the EU (i.e. Albania, Moldova, Morocco, Russia, Turkey, and Ukraine) and to a lesser extent from China, India, Iraq, Pakistan, the Philippines, Sri Lanka and Vietnam.
- ◇ The exploitation tends to take place in labour intensive and/or under-regulated industries such as the agricultural sector, the construction industry and hotel/restaurant/catering businesses.
- ◇ Trafficked workers use legitimate identification documents and often have legitimate permits which expire over time.

Other forms of THB identified in the EU are for the purposes of forced begging, forced criminality and forced sham marriage.

- ◇ Traffickers involved in forced criminality (i.e. 'smash and grab' theft, purse snatching, metal theft, pick pocketing and fraud, drug production and drug trafficking) and begging deliberately target vulnerable groups.
- ◇ Women have been forced to engage in marriages of convenience, in order to provide the legal right of stay to non-EU (third-country) nationals.

Future expectations

- ◇ Current trends in sexual and labour exploitation are expected to increase.
- ◇ The current migration crisis occurring in North Africa and the Middle East will have a major impact on trafficking in human beings.
- ◇ It is possible that attempts to gain legitimate residency will result in more forced marriages of convenience.

1. Trafficking in human beings

1.1. Defining trafficking in human beings

- ◊ The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000) and the EU Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims defines the crime of trafficking in human beings.
- ◊ Victims of trafficking in human beings are always in a position of vulnerability, meaning a person has no real or acceptable alternative but to submit to the abuse.
- ◊ The consent of the victim, whether intended or actual, is irrelevant for the prosecution of those suspected of human trafficking.
- ◊ When a child is the victim of trafficking in human beings, the crime is recognised even if none of the means specified in the EU Directive 2011/36 was used.

Trafficking in human beings (THB) is a serious crime and an abuse of an individual's fundamental rights and dignity. It involves the exploitation of vulnerable persons traded by criminals as commodities for the sole purpose of economic gain. This crime often has a transnational character; it comprises victims of all genders and age and, due to its nature, is often hard to discover and investigate.

Human trafficking is a major problem in the EU and a priority for MS law enforcement agencies. Consistent action against human traffickers at the European level started with the adoption of a common framework in 2002, when the Council of Europe provided the official definition of the crime of THB, describing it as *'a serious violation of fundamental human rights and human dignity and involves ruthless practices such as the abuse and deception of vulnerable persons, as well as the use of violence, threats, debt bondage and coercion'*¹.

In 2011, EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting its Victims² and replacing

the former Council Decision, adopted a broader definition given by the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplemented the UN Convention against Transnational Organized Crime (2000).

Article 3 of the UN Protocol, better known as the Palermo Protocol, defines THB as: ***'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 and benefits to achieve the consent of a person, having control over another person, for the purpose of exploitation'***. The main change that the Palermo Protocol brought was that the crime of THB would be recognised prior to the actual exploitation, and that a person could be considered a victim of THB if subjected to at least one of the actions mentioned and by one of the means specified³.

¹ European Union: Council of European Union, Council Framework Decision 2002/629 on Combating Trafficking in Human Beings, 2002/629/JHA, 19 July 2002.

² European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5th April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA, 15 April 2011.

³ Explanatory Report of the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197)

The Council of Europe later expanded the list of means used to lure victims to include the *'abduction of women for sexual exploitation, enticement of children for use in paedophile or prostitution rings, violence by pimps to keep the prostitutes under their thumb, taking advantage of an adolescent's or adult's vulnerability, whether or not resulting from sexual assault, or abusing the economic insecurity or poverty of an adult hoping to better their own or their family's lot.'*⁴

⁴ Ibid 3

⁵ Council of the Baltic States, *Children trafficked for exploitation in begging and criminality*, 2013.

The purposes behind trafficking in persons are varied. The Palermo Protocol enumerated several forms of exploitation, though not limiting them, giving legislators the possibility to include other forms. Therefore, the crime of THB *'shall include, at a minimum, the exploitation of prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or removal of organs.'* The Directive 2011/36/EU moreover specified particular forms of exploitation for the purpose of forced criminality (Art. 2.3), such as *'pickpocketing, shoplifting, drug trafficking and other similar activities which are subject to penalties and imply financial gain.'*

Trafficking in human beings always involves the exploitation of a vulnerable individual. Article 2 of the Directive 2011/36/EU explains that *'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.'* In the Explanatory Report, the Council of Europe points out that such vulnerability *'might be of any kind, whether physical, psychological, emotional, family-related, social or economic. The situation might, for example, involve insecurity or illegality of the victim's administrative*

status, economic dependence or fragile health. In short, the exploitation can be any state of hardship in which a human being is impelled to accept being exploited.'

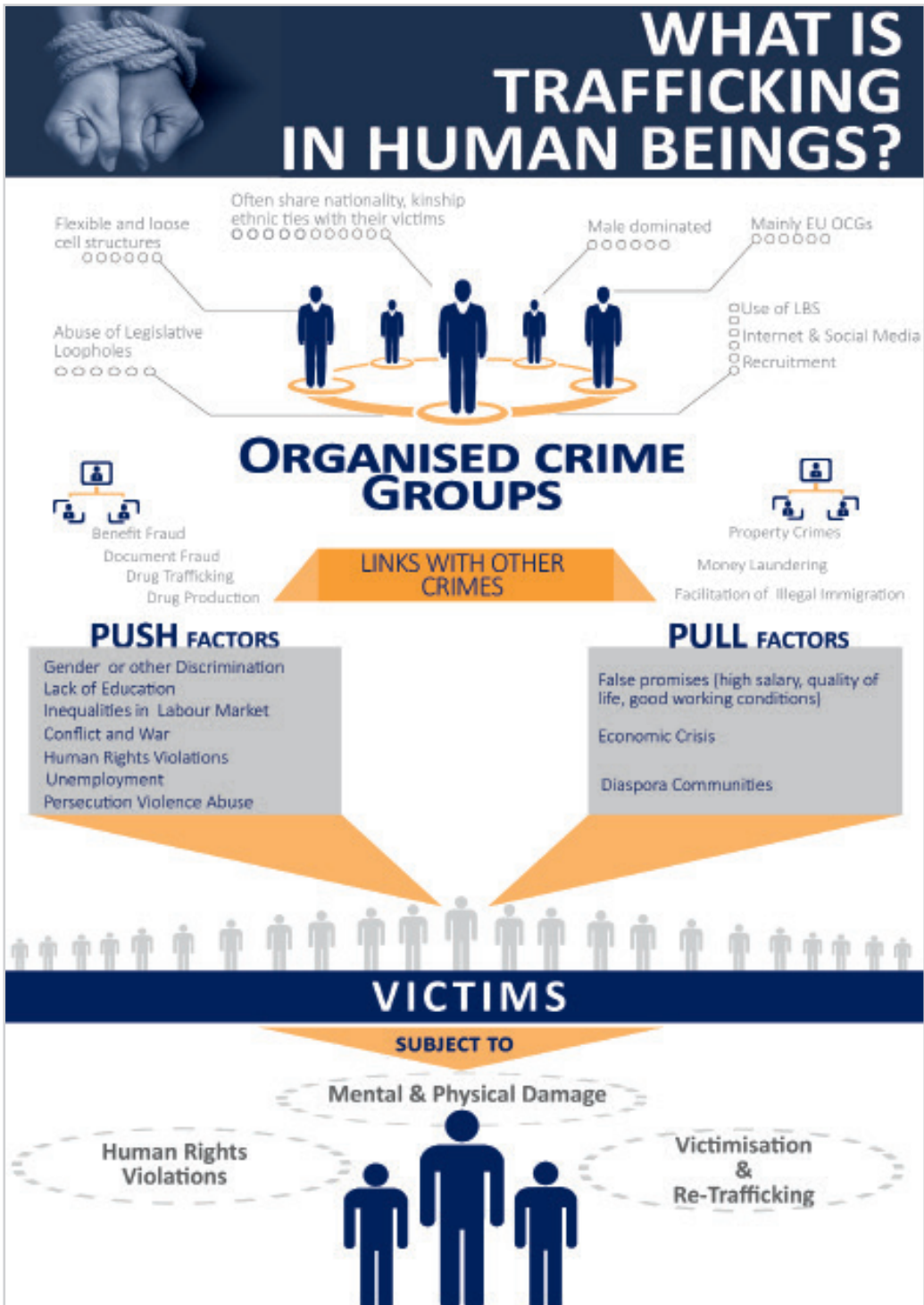
Exploitative situations are hard to discover due to their clandestine nature and because of the difficulty of recognising the abuse. Although a victim of trafficking might be aware of being involved in an exploitative situation, Directive 2011/36/EU specifies that *'the consent of a victim of trafficking in human beings to the exploitation, whether intended or actual, shall be irrelevant where any of the means [...] has been used.'* Article 8 of the EU Directive 2011/36 recommends Member States' competent authorities not to prosecute or impose penalties on victims, *'despite their involvement in criminal activities which they have been compelled to commit as a direct consequence [of the exploitation].'*

Children are the most vulnerable category among victims of trafficking, and particular attention has been paid to them in both the Palermo Protocol and the EU Directive. When the crime of THB involves a child, *'[the child] is to be regarded as a victim even if none of the means specified (...) has been used.'* Unfortunately, there is a lack of consensus on how to evaluate child exploitation, especially when the exploitative act is not considered as violent or abusive by the children themselves.

Moreover, there is no consensus on whether separate databases should be created for minor and adult victims, or if minors should be recorded along with the adults in a single database. Therefore, an agreed understanding of the phenomenon of child exploitation and on how to identify it in practice remains a challenge that needs development at both the national and the European levels⁵.

Although human smuggling and human trafficking share similar patterns, they are differentiated by precise legal distinctions. The crime of migrant smuggling, also known as facilitation of illegal immigration (FII), is a crime that violates national and international border-related laws. On the contrary, THB is a crime against the person because it violates their fundamental human rights. Even if both offences entail the transportation of humans, FII always requires the illegal crossing of national borders while THB might occur within the same national territory.

Another crucial legal distinction between the two offences revolves around the concept of consent. The migrants' consent to be transported and their bond with the smugglers ends once the migrants have reached their destination. A victim of human trafficking might have consented to their transportation to a new destination; however, this initial consent becomes legally irrelevant as the trafficker starts using threats, coercion, deception or fraud in order to exploit the victim. Europol defines "trafficking" as linked to THB and "smuggling" to facilitation of illegal immigration.



The key features of the crime of THB are illustrated in the model above, Europol, 2015.

1.2. Overall scale of THB in Europe

- ◊ During 2013 and 2014, Europol registered 8 037 suspects of THB and 7 500 victims/potential victims⁶.
- ◊ The majority of victims (71%) and suspects (70%) were EU nationals.
- ◊ Intra-EU trafficking is on the rise.

The extent of THB within the EU is hard to assess. Human exploitation can be hidden behind other criminal offences, such as prostitution, irregular migration, property crime or even labour disputes. Victims are often exploited in multiple ways or may be involved in other illicit activities, resulting in cases of THB not being investigated or recorded as human trafficking. Moreover, differences in national legal definitions of THB hinder the comparison and assessment of common trends and patterns across the EU.

In the past decade, MS law enforcement authorities have witnessed a considerable increase in intra-EU trafficking.

During 2013-2014, the number of victims and suspects reported to Europol has

increased. Europol's team dedicated to THB received a total of 5 909 contributions. In 2013, 3 910 suspects and 3 315 victims were registered, while in 2014 the number of suspects rose to 4 127 and the number of victims reached 4 185. No distinctive trend in this variation of data was recognised as linked to any particular fact. A possible reason could be that Europol is increasingly being addressed by MS law enforcement for the provision of operational support during cross-border THB investigations.

The majority of THB victims (71%) registered in Europol's database in 2014 were EU citizens, and 29% were non-EU.

⁶ 'Victims/potential victims' will be referred to as 'victims' in the rest of this document.

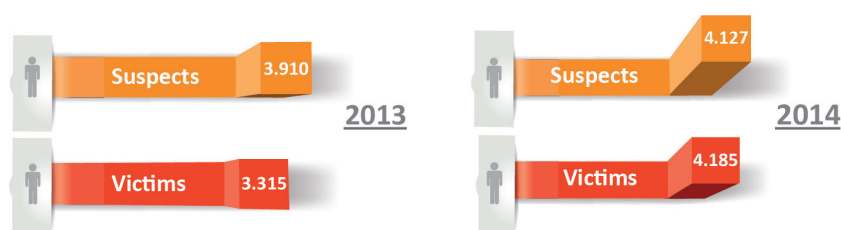


Figure 1. Victims and Suspects registered by Europol in 2013 and 2014*
*Based on Member States' contributions

2. Push & Pull factors

2.1. Push factors

- ◊ Social and economic circumstances in countries of origin, also known as push factors, influence victims and exploiters and facilitate the perpetration of THB.
- ◊ Potential victims of THB experience adverse personal circumstances, lack of education, high levels of unemployment and low living standards, gender discrimination or inequalities in the labour market; they may experience human rights violations and abusive situations or be fleeing from conflict zones.

There are a number of social and economic conditions which influence the actions of both victims and exploiters and facilitate the occurrence of THB. Among these, several push factors are found in the local environment of victims and traffickers, since they often share the same national and cultural background⁷. Traffickers encourage the victims to undertake hazardous initiatives, often based on promises of a better life.

Victims of trafficking are always vulnerable individuals. Although each case has its own dynamic and specific characteristics, persons targeted by traffickers are usually living in [adverse personal circumstances](#). Recruiters generally use these complicated conditions to manipulate victims.

Victims may be experiencing [family problems](#), [a lack of employment opportunities or lack of education](#); others may face [gender \(or other\) discrimination or inequality in the labour market](#). In certain cases, they may be exposed to [violent and abusive situations](#), and others may experience systematic [human rights violations](#).

Trafficked children are likely to be exposed

to [domestic violence](#) and/or may have a very [low family income](#). In some cases of child trafficking, the victim's family plays an active role: children are sold or traded to strangers or to other relatives, who take charge of their exploitation across the EU, forcing them to be sexually abused, to become beggars or burglars and keeping them deprived of food or using psychological coercion.

In some cases, victims of human trafficking may be [fleeing war zones](#) or [conflict areas](#). Due in part to the confusion between the definitions of human smuggling and human trafficking, the identification of victims of THB originating from war zones and conflict areas is still problematic.

⁷ UNODC, Global Report on Trafficking in Persons, United Nations publication, Sales No. E.14.V.10, 2014.

2.2. Pull factors

The most common pull factors include:

- ◊ General high living standards and employment opportunities;
- ◊ The increased demand for cheap labour services due to the economic crisis;
- ◊ Foreign diaspora communities established across the EU;
- ◊ Differences between MS legislation.

There are a number of factors which make some countries more attractive for human trafficking than others. For example, traffickers often refer to the [high living standards](#) and [quality of life](#) that characterise some Western MS, the numerous [employment opportunities](#), the [high salaries](#) and [good working conditions](#).

There are several other factors that have the power to influence the behaviour of both victims and criminals. These factors define the societal, legal, political and economic context of the destination countries of THB victims, and may serve as pull factors.

As a result of the economic crisis, there is an [increased demand for cheap labour services](#). Although consumers create the demand for products and services, including commercial sex, domestic work and personal care, only a few of them are aware of the contractual obligations and working conditions⁸ of the employees. For example, in countries where prostitution is legal and regulated, it is possible that sex work is affected by the demand for cheap labour.

The numerous foreign [diaspora communities established across the EU](#) serve as hotspots for migrants, where they can find kinship and ethnic networks, shared language and customs with fellow

nationals⁹. The presence of these foreign communities in almost all EU cities provides logistical support to foreign criminals involved in THB who often make use of these locations, especially during the transportation and harbouring of their victims.

⁸ OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Ending Exploitation. Ensuring that Businesses do not Contribute to Trafficking in Human Beings: Duties of the States and the Private Sector, Occasional Paper Series no.7, 2014.

⁹ Europol, Serious and Organised Crime Threat Assessment, 2013.

2.3. Facilitating factors

THB is heavily facilitated by external factors including:

- ◊ Social tolerance;
- ◊ Lack of harmonised legislation across the EU;
- ◊ High profits vs. low risks;
- ◊ Global development of online infrastructures.

Social tolerance or a lack of public awareness can create a more permissive environment for certain crimes¹⁰. In the context of THB, a general tolerance towards exploitative conditions – in particular when it concerns foreign workers – may facilitate the perpetration of such crimes and increase the likelihood of exploitation by criminals.

Differences between the legislation of MS greatly facilitate the activities of organised crime groups involved in THB. Through the abuse of legislative loopholes and of differences among national legislation, criminals can identify, react to and even anticipate new opportunities for crime. Legal channels are especially abused by human traffickers to arrange the entry of their victims into the EU; forced marriages between EU victims and non-EU migrants are arranged in order to legalise their stay. The Common European Asylum System (CEAS), meant for people fleeing persecution or serious harm, is abused by human traffickers who make victims apply in order to freely move within the Schengen area during the assessment period. Furthermore, whenever a more extensive definition of THB is adopted in a MS, criminals rapidly shift their activities to countries where more permissive legislation is still in place. As previously mentioned, there are MS where prostitution is legal, making it much easier for traffickers who wish to use a legal environment in order to

exploit their victims.

Organised crime groups engaged in THB calculate the risks, rewards and effort involved, both in absolute terms and in comparison with other activities¹¹. One of the reasons for the large number of persons trafficked and exploited in the EU is the extremely high profits involved, against relatively limited risks. Human traffickers constantly try to **optimise profits against the operating risks and costs**. While cost reduction primarily affects the living conditions of victims – who may be deprived of food or be kept in extremely poor conditions – the main risk for criminals is from detection by law enforcement, a threat that is countered by a number of means illustrated in the following chapter on OCGs.

The **global development of online infrastructures** has made the Internet a crucial tool for human traffickers, and it is likely to become more significant in the future. Online interaction facilitates several aspects of human trafficking and exploitation: targeting of potential victims; access to personal data; arrangement of logistics and transportation; recruitment through social media, chat forums and other websites; advertisement of victims; their exploitation and surveillance. On the other hand, both victims and traffickers leave permanent digital traces on the Internet which can support law enforcement investigations.

¹⁰ Europol, Serious and Organised Crime Threat Assessment, 2013.

¹¹ ILO International Labour Organisation, Human Trafficking in Europe: an Economic Perspective, Working Paper No.3, by G. Van Liemt, 2004.

3. Criminal networks involved in THB

- ◊ The most threatening OCGs are those capable of controlling the entire process of trafficking.
- ◊ The typical structure of criminal groups active in THB consists of loose networks linked by family kinship or ethnic ties.
- ◊ The majority of traffickers are male; women are involved mainly in low-ranking tasks.
- ◊ In 2014, 69% of suspects registered at Europol were EU nationals from Bulgaria, Hungary, Romania and Slovakia. Chinese and Nigerian groups are also considerably active in Europe.
- ◊ Nigerian networks are proficient in the use of fraudulent visas or genuine/look-alike/ stolen passports, and often abuse the asylum system.
- ◊ Chinese networks are proficient in the production of falsified travel documents and frequently exploit the tourist visa regime.
- ◊ Bulgarian, Czech Hungarian, Romanian, and Slovakian criminal networks have hierarchical yet flexible structures, and use a degree of physical coercion towards their victims. Cases of collaboration between these groups have been found.

One of the most threatening aspects of THB is that it displays an increasing level of modernisation, to the point of becoming a corporate business. The offenders show a growing competence and professionalisation, and marketing is used for the 'products' and 'services' and tools such as the Internet and other communication devices are utilised extensively.

There are several common patterns of behaviour characterising the OCGs involved in THB. By analysing the characteristics of these OCGs, law enforcement can gain a deeper understanding of their profiles, resources and vulnerabilities. By looking at the most often occurring dynamics and trends, they can intervene where major vulnerabilities have been detected.

Human trafficking can be conducted

by individual criminals with limited organisation in place, especially when the victims are few and are exploited locally¹². However, when the trafficking involves transfers between continents, it needs careful planning, a sophisticated level of organisation and the engagement of several individuals (often located in different sites and with different tasks).

The most threatening OCGs are generally those capable of governing the entire process of trafficking, from the recruitment of victims to the reinvestment of the criminal proceeds. These groups are relatively small (up to 15 persons) but have the ability to simultaneously handle numerous victims and to move them around between different sites of exploitation, having established logistical bases and contacts in source, transit and destination countries.

¹² UNODC, Global Report on Trafficking in Persons, United Nations publication, Sales No. E.14.V.10, 2014.

3.1. General findings

Human traffickers usually target their fellow nationals. Recruitment is generally carried out in the country of origin of both the exploiter and victim, while the exploitation itself often occurs in several foreign countries. Ethno-linguistic similarities between trafficker and victims facilitate the recruitment phase, while traffickers in a foreign country often require connections with the local criminal environment.

¹³ Europol, The Financial Business Model, Assessing the Current State of Knowledge, 2015.

¹⁴ UNODC, Global Report on Trafficking in Persons, United Nations publication, Sales No. E.14.V.10, 2014.

¹⁵ Europol, Serious and Organised Crime Threat Assessment, 2013.

The typical organisational structure of the criminal groups involved in THB consists of loose networks linked by kinship or ethnicity with interchangeable roles amongst members. Their flexibility and adaptability is shown by their presence in several countries and by their rotation of victims through different countries. These groups are able to adapt to changing circumstances and quickly respond to new opportunities, shifting their operations to other countries upon detection by law enforcement or if they consider the exploitation to be more profitable elsewhere. The loose structure of the criminal networks thwarts detection, especially of the leaders, even when an operational cell is identified and prosecuted.

There is no systematic structure regarding the allocation of tasks among OCG members. Nevertheless, in smaller groups members tend to participate in all steps of the THB operation with each member responsible for certain victims. In larger groups, the leaders can be located both in the country of origin and the country of exploitation, from where they monitor operations and collect the proceeds. Members staying in the country of origin are usually responsible for receiving the money on behalf of the OCG leaders and organising the recruitment¹³.

In 2013, Europol registered 504 female suspects and 570 in 2014, one sixth of the total amount of male suspects. It is worth noting that women suspects might also have been victims of trafficking who were later prosecuted as collaborators, or they might have been identified as members of the criminal network. Although these figures have to be treated with caution, engagement of female exploiters is especially frequent when it involves close interaction or familial links with victims. The majority of identified female suspects were playing the role of recruiters in the country of origin, money collectors, supervisors of younger victims, managing the victims' air travel or the online advertisement of their services. These low-ranking tasks often result in women traffickers running a higher risk of detection by law enforcement. This tendency is observed in all groups to varying degrees. However, female involvement in THB seems higher for criminal networks from Africa (Nigerian criminal networks use women that play crucial roles in the trafficking cycle) and Central Asia¹⁴, where women tend to be more directly engaged in the trafficking of young girls.

Considering the significant degree of planning and organisation required for inter-continental human trafficking, especially when numerous victims are handled simultaneously, it is likely that the trafficking process is the core activity of an OCG. However, this crime is linked to a wide range of other offences which often support the exploitation (e.g. facilitation of illegal immigration, document fraud, asylum abuse, money laundering) or are carried out by the same victims, such as drug production and trafficking, extortion, property crimes and benefit fraud¹⁵. Occasionally, shared trafficking channels or links with local criminal networks are utilised, which can lead to further criminal collaboration.

OCGs involved in THB frequently abuse legitimate business structures (LBS). Criminals may own businesses outright, secretly infiltrate and use LBS to conceal their illicit activities, or may even persuade executives and employees to collaborate through bribes or threats¹⁶. Criminal networks often use LBS as shell companies. Travel, fashion and dance agencies may function as intermediaries between traffickers and victims during the recruitment phase; hotels, massage parlours, nail bars, sauna clubs and cafés may provide cover for prostitution activities.

Joint Operation targeting a Pakistani Organised Crime Group

A joint operation coordinated by Europol, involving 365 officers from the Spanish Guardia Civil and Polish Border Agency, resulted in the arrest of several members of a Pakistani OCG, involved in facilitation of illegal immigration. The migrants from Pakistan paid €14,000 for transportation across the Mediterranean Sea into the EU.

The OCG forced migrants into working in a network of restaurants across Spain to repay their debts for travel and forged identity documents. This OCG was in close contact with another OCG based in Poland, which ran a network of businesses used to obtain fraudulent work and residence permits.

Profits from the exploitation were re-invested in new restaurants or sent to Pakistan via wire transfers.

A common feature of all OCGs involved in THB is that they regularly move their criminal proceeds back to their countries

of origin, via wire transfers using Money Service Businesses (MSBs) or overland when it concerns cash. The money is generally transferred in small amounts to several recipients (either family members or low-level criminals) in order to blur the links between group members and to avoid suspicion¹⁷. Criminals often use victims' identities to open bank accounts, to register bogus companies, to rent private apartments or to pay bills. In most cases, criminal groups use LBS and shell companies to invest in real estate and undertake financial investments in their countries of origin to launder the money generated by the exploitation. This method increases the likelihood that the leaders of the criminal networks remain distanced from the exploitation sites, and they usually remain in their own country.

The physical movement of cash across borders is another common method of laundering the criminal proceeds. Cash couriers are generally used to carry large amounts of money across borders, either overland (e.g. concealed in vehicle parts) or by air. One increasingly observed trend is the use of victims of THB to transfer or move criminal proceeds electronically or physically on behalf of OCG members. This is done through coercion, where they are forced to carry out money transfers or through employment scams where victims believe they are working for legitimate companies.

Human traffickers implement a series of countermeasures which aim to reduce the risk of detection by law enforcement authorities. Some of the most common measures applied are:

¹⁶ Europol, Serious and Organised Crime Threat Assessment, 2013.

¹⁷ Europol, The THB Financial Business Model, Assessing the Current State of Knowledge, 2015.

- ◇ the frequent change of vehicles;
- ◇ the use of cash;
- ◇ forcing victims to apply for asylum in transit countries;
- ◇ forcing victims to tell false stories to police in case of detection;
- ◇ the rotation of victims, and the movement of the criminal proceeds, among different countries before they are sent back to their country of origin;
- ◇ the use of guards and digital surveillance systems;
- ◇ physical and psychological violence towards victims; and
- ◇ the use of fraudulent identity documents.

¹⁸ Eurostat, Trafficking in Human Beings, Statistical Working Paper, 2014.

3.2. Origin of organised crime groups

Cases contributed to Europol between 2013 and 2014 show that the majority of criminals involved in THB are EU nationals (70%). In 2013 and 2014, 8037 suspects were contributed to Europol. A vast majority of the suspects originated from Bulgaria, Hungary, Nigeria and Romania. Other suspects were originating from Brazil, China, the Czech Republic, Latvia, Lithuania, Poland, Russia, and Slovakia.

Austria, Belgium, France, Germany, Greece, Italy, the Netherlands, Spain, Switzerland,¹⁸ and the United Kingdom are the most targeted countries by human traffickers, due to high demand for cheap sexual and labour services in these countries. THB also occurs within the same national borders – though less frequently – and one country can be origin, transit or destination for different flows of THB victims. For example, Hungary is a destination country for Asian victims and the origin country for national victims trafficked to the Western MS.

3.3. Features of organised crime groups

During 2013-2014, Europol worked on several priority areas representing the most threatening organised crime groups active in THB in Europe: Bulgarian, Chinese, Czech, Hungarian, Nigerian, Romanian, and Slovakian criminal networks. These OCGs were mainly involved in THB for the purpose of sexual exploitation, labour exploitation and child trafficking. All groups were suspected of trafficking mainly from their countries of origin to Central and Western MS. The picture presented is not wholly representative as findings are based on investigations shared with Europol.

Chinese networks are known to be active in THB in many MS, but the real scale of this

phenomenon is still unknown due to the state of isolation in which Chinese diaspora communities tend to live. Chinese OCGs appear to be highly structured, containing several cells tasked with different trafficking phases (e.g. as recruiters, arranging passports and visas for the potential victims; harbouring cells, located within the Chinese diaspora in Europe; or as exploiters, carers, or drivers). They are particularly proficient in the production of falsified travel documents in order to facilitate the trafficking. Nevertheless, they also use genuine or look-alike documents¹⁹. The different phases of trafficking are often carried out by individual cells, which can make it problematic to investigate whether separate cells are part of the same OCG. Chinese criminal networks involved in THB may simultaneously conduct facilitation of illegal immigration, fraud and money laundering.

¹⁹ Europol, Trafficking in Human Beings in the European Union, Knowledge Product, 2011.

Joint Action to tackle Chinese human trafficking network (Spring 2015)

More than 1 154 persons, mainly women and men from China, were checked on 288 locations in Austria, Cyprus, Slovenia and Switzerland, during an international operation supported by Europol that involved 455 police officers. Twenty-six offenders were arrested and 14 potential victims of trafficking were identified. During the operation, restaurants, places of prostitution and major international airports were checked. The objective of the operation was to identify people trafficked from China and to enhance the intelligence picture of the organised crime groups and human traffickers involved. After being recruited in their own countries, the victims were trafficked to Europe and sent to brothels, massage parlours, nail studios and restaurants, facilitated by forged identity documents.

Nigerian networks involved in THB are usually composed of cellular structures, through which they are able to operate independently while using an extensive network of personal contacts across the EU. They are particularly proficient in using fraudulent educational, business and tourism visas or genuine/look-alike/stolen passports, and often abuse the asylum system to facilitate their victims' entry into the EU.

Nigerian women (often called madams or mamans) also play important roles in the exploitation process, and some of them supervise the entire trafficking process. These madams are commonly former victims of trafficking who engage in exploitation for economic gain; they manage victims' movements, debts and other logistical tasks, sometimes supported by a male driver and/or a warden. African victims often do not perceive themselves as

exploited but rather as migrants who must repay their transportation and harbouring costs; they are prone to support or form an alliance with their offenders. This often results in victims being reluctant to cooperate with law enforcement. Nigerian networks involved in THB are usually not active in other types of crime.

Criminal networks of Roma ethnicity²⁰ are extremely mobile. Young women and minors of this group are especially vulnerable to exploitation and trafficking, which is sometimes arranged by their own families. This happens quite frequently in cases of child trafficking, where parents and close relatives are part of the recruitment circle²¹. Destination countries for trafficked minors from Roma communities are mainly the United Kingdom and France, where they are subjected to sexual exploitation, labour exploitation, forced begging, petty crimes, and to a lesser extent the systematic defrauding of the social security and welfare benefit systems. The perpetration of property crimes is the main activity and source of income. Women and minors are mainly engaged in street crimes such as pick pocketing, bag-snatching and shoplifting in crowded and tourist areas, while men are in charge of the logistical and organisational management of the criminal activities (e.g. document forging, recruitment of new members, trade of high value vehicles and management of belongings).

Bulgarian, Czech, Hungarian, Romanian, and Slovakian OCGs have many characteristics in common. They have hierarchical structures with strict divisions of tasks and operate with small and mobile groups of victims controlled by few members. They frequently make use of the Internet to arrange appointments with clients through escort websites. These

criminal groups often use physical violence, threats and coercion against their victims, who experience severe physical and psychological dependence.

The OCGs are mainly involved in sexual exploitation, although recently reported cases have seen criminal networks trafficking persons across the EU for the purpose of labour exploitation, forced begging (involving disabled victims), forced sham marriages between EU victims and third-country nationals and to a lesser extent, benefit fraud. Cases of Slovakian and Hungarian OCGs cooperating to abuse welfare systems via false applications for social benefits have also been recently reported to Europol.

Cases registered at Europol have seen Hungarian, Bulgarian and Romanian groups simultaneously working in several MS, often choosing Austria as a transit country on the way to Western MS. Hungarian networks have been discovered to be active near airports, most likely for logistical purposes.

²⁰ European Commission: "The Roma people are Europe's largest ethnic minority. Roma is the term commonly used in EU policy documents and discussions, although it encompasses diverse groups that include names like Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti and Boyash." http://ec.europa.eu/justice/discrimination/roma/index_en.htm.

²¹ Council of the Baltic States, Children trafficked for exploitation in begging and criminality, 2013.

4. The exploitation

THB comprises several different types of exploitative situations. The most commonly reported form of exploitation by MS to Europol is sexual exploitation, followed by labour exploitation. The other forms of human trafficking that were detected in the EU are the following:

- ◇ THB for the purpose of forced begging;
- ◇ THB for the purpose of forced criminality, mainly property crimes, drug trafficking; and,
- ◇ THB for the purpose of forced sham marriages, mainly to obtain residence, social and work benefits.

During 2013-2014, Europol received nearly 6 000 contributions on OCGs involved in THB. Of these, 90% concerned THB for sexual exploitation, 5.6% concerned cases of labour exploitation, 1.9% was on forced sham marriages and 0.3% was on forced criminality and begging. Among all contributions, 1.9% involved trafficked minors, most of whom were young girls forced into prostitution and children forced to beg and commit property crimes.

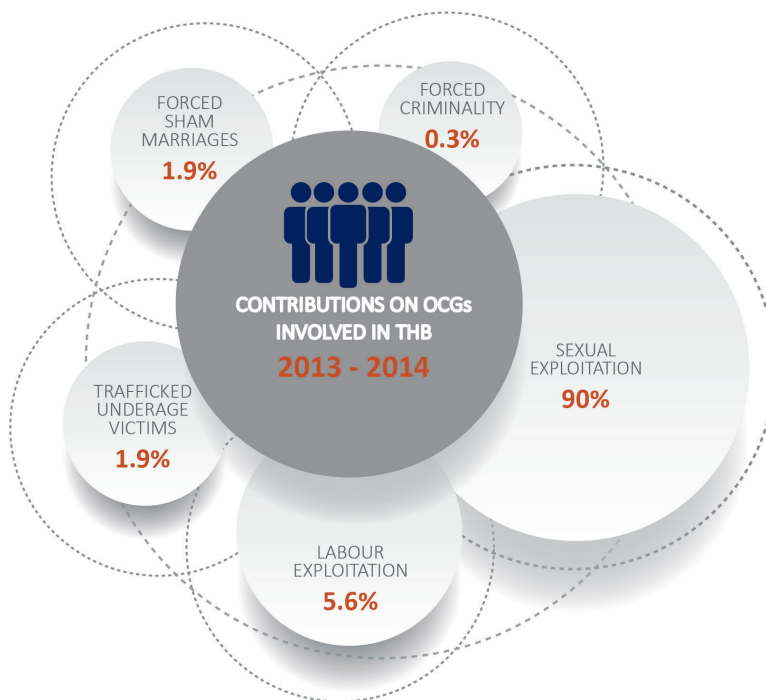


Figure 2. Contributions on OCGs involved in THB (Europol 2013-2014)

4.1. Sexual exploitation

- ◇ Sexual exploitation is the most frequently reported form of THB in Europe.
- ◇ The majority of victims of THB for sexual exploitation registered at Europol are EU nationals from Central and Eastern Europe.
- ◇ Austria is a transit country for victims coming from Central and Eastern Europe. Italy, Spain and the United Kingdom are transit countries for non-EU victims.
- ◇ EU victims use genuine documents, while non-EU victims mainly use forged or look-alike identity documents.
- ◇ The use of deception is common for recruitment purposes. The 'lover boy' method is used particularly in cases of underage victims.
- ◇ The use of violence is decreasing, while the use of soft coercion methods is increasing.
- ◇ The rotation of victims is common, as well as their exploitation in other criminal activities.

Although increasing efforts are made by MS law enforcement to tackle sexual exploitation, there is still a high demand for sexual services within all MS.

Trafficking in human beings for sexual exploitation is a gender-specific phenomenon, as the vast majority of victims are women. Contributions to Europol from MS law enforcement authorities in 2013 consisted of a total of 427 victims of THB for sexual exploitation, of which 92% were adults and 8% were minors. In 2014, 570

decrease in underage victims reported in 2014 was not due to any particular reason.



Figure 4. Sexual Exploitation: age breakdown of registered victims (Europol)

Although it is difficult to identify trafficking routes constantly in use, during 2010-2012 a prevalence of intra-EU trafficking was detected, with the most recurrent victim nationalities being Bulgarian, Dutch, Hungarian, Polish and Romanian²².

In 2013-2014, the largest number of victims registered at Europol also originated from the EU, in particular from Bulgaria, Hungary, Romania, and Slovakia. Lithuania

²² Eurostat, Trafficking in Human Beings, Statistical Working Paper, 2014.

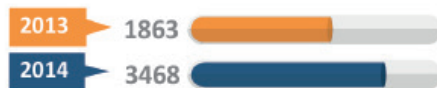


Figure 3. Contributions received by Europol on Sexual Exploitation

victims of sexual exploitation were identified by Europol; of this number, 95% were adult victims and 5% were underage. The slight

was recently added to the most common countries of origin for victims of sexual exploitation.

Trafficking for sexual exploitation most frequently flows from east to west, as victims from Central and Eastern Europe are exploited either in their countries of origin or trafficked to Western MS. Although the majority of victims of sexual exploitation originate from the European MS, a considerable number of identified victims are non-EU nationals (these are mainly from Albania, Brazil, China, Nigeria²³, and Vietnam, which demonstrates the transnational dimension of this criminal phenomenon). In these cases, traffickers usually provide victims with counterfeit documents in order to conceal their real identity and to enable entry to the EU, either with fraudulently obtained visas or as asylum seekers. In some cases, victims are placed in refugee shelters following their asylum application, from where they suddenly disappear and are transferred to other MS by their traffickers.

In Western Europe, the MS most targeted as destinations for victims of sexual exploitation are Austria, Belgium, France, Germany, Greece, Italy, the Netherlands, Spain and the United Kingdom. EU victims tend to be trafficked using their own travel documents, which eliminates the risk of exposure and detection and saves traffickers the cost of obtaining forged documents. However, false documents are still used in cases of trafficked minors.

Member States situated at the borders of the EU – mainly Italy, Portugal, Spain, and the United Kingdom – often serve as entry points for non-EU victims, who are dispatched as commodities to different locations in Europe. Several cases of victims trafficked to Western countries, previously detected in Austria, were reported to Europol. This shows the likelihood of Austria functioning as a transit

point for victims originating from Central and Eastern Europe (especially Bulgaria, Hungary and Romania) who are later transferred to other destinations. This is due, in part, to Austria's central European geographic location.

Europe's major airports are known to be entry hubs, especially for victims originating from Asia, Africa and the Americas, though smaller airports and low-cost airlines are also used for intra-EU trafficking. Victims often use airline tickets purchased by their traffickers²⁴ or by other members of the OCG. Since exploiters are aware of the presence of law enforcement and customs, they choose airports which they perceive as having fewer controls. Once law enforcement authorities respond to trafficking by increasing those controls, OCGs rapidly move elsewhere.

4.1.1. Modi operandi

Recruitment usually begins in the country of origin, where victims are deceived, persuaded and abducted. The most common means through which vulnerable people become victims of trafficking is deception, typically by false promises of employment, good working conditions, perhaps even free housing and a good salary. In addition, the 'lover boy' method is also frequently used by traffickers in order to manipulate their victims. In these cases, victims get emotionally attached to their exploiters, who then propose to travel abroad or even get married²⁵. Victims of this type are usually minors, but there have been cases of adults.

Traffickers usually share links with the territory in which they operate, and originate from the same ethnic community or even share family ties with their victims. This ethno-linguistic aspect is crucial, especially where the trafficking of minors is concerned²⁶. The recruitment and transportation of victims is usually arranged by their fellow

²³ Europol reported Nigeria as the second most frequent nationality of victims of sexual exploitation (18% of the total) in 2013.

²⁴ Europol, Trafficking in Human Beings in the European Union, 2011.

²⁵ Ibid 24

²⁶ UNODC, Global Report on Trafficking in Persons, United Nations publication, Sales No. E.14.V.10, 2014.

nationals. The final exploiters may be either local or foreign citizens²⁷.

In cases of non-EU victims, traffickers often persuade them to request a residence permit or apply for asylum in a transit country on arrival in the EU, which enables them to move within the Schengen area and to easily reach the locations where they will be exploited. A case recently reported to Europol involved Nigerian women trafficked using their own identity documents or look-alike documents, and travelling across the EU with Spanish and Italian residence and working permits.

²⁷ Ibid 26.

²⁸ Europol, Trafficking in Human Beings and the Internet, Intelligence Notification 15/2014, 2014.

²⁹ Ibid 28.

Once in the destination country, victims are forced into prostitution. They work for many hours a day and most of their earnings are collected by their exploiters, though they may receive a very small salary in order to fulfil their basic needs. In many cases, victims are forced to repay the cost of their transportation and accommodation to their exploiters, and are kept in debt bondage for indefinite periods. Usually, the profits from the exploitation are sent back to the country of origin of the exploiters via different channels, mainly wire transfers or by cash couriers. When victims are transferring the money, they may do it under supervision by their exploiters. Victims can be also deployed as cash mules.

If victims are abused within the 'dark market', for example in countries where prostitution is illegal, their services are advertised through local newspapers or word of mouth, or via social media and dedicated escort and/or dating websites. In cases of child sexual exploitation, the advertisement of victims via social media is increasing, allowing offenders to easily access their personal data and to recruit potential victims, to share abusive material and to exchange information on destinations where it is easier to abuse minors. Occasionally, exploiters arrange

appointments by telephone with potential clients or even issue 'membership cards' for clients²⁸.

Victims are made highly dependent on the members of the criminal organisation: receiving threats and subjected to coercion, through physical, psychological and/or financial threats²⁹. In cases of African victims, exploiters use voodoo rituals to make them more compliant with the abuse. However, the majority of victims are kept under control without violence. This is done through 'soft methods' of psychological intimidation, which reduce public attention and the chance of detection by law enforcement. Some

Severe sentences for criminal gang behind forced prostitution in the UK (July 2014)

In July 2014, 5 people were found guilty of being part of an organised crime group involved in trafficking more than 100 women from Hungary into the UK. The criminal group had a hierarchical structure and was composed of Hungarian and British nationals. Women from Hungary were recruited through adverts on the Internet while applying to what they believed were administrative, cleaning and babysitting jobs. Victims were then flown to London where they were forced into prostitution across the city. Their passports were retained and their earnings were collected by the criminal group, and victims were controlled with threats of violence and intimidation, including threatening to harm their families or tell their families they were prostitutes. The gang managed the victims from a make-shift call centre and used over 40 mobile phones to organise bookings on a commercial scale. Each phone had details of the victim's working names, fees and brothels locations taped to it.

cases involve the use of digital surveillance systems (e.g. geo-location services provided by social media), through which exploiters monitor victims' activities while remaining distanced from the sites of the exploitation. This provides an advantage to the offenders, who tend to operate from afar and thus reduce the risk of being detected by law enforcement.

Occasionally, victims are denied access to telephone contact, to prevent any other relationship except for the one with their exploiters. Traffickers also frequently transfer their victims from one city to another to maximise profits and/or to trade them with other exploiters. This rotation of victims (which also occurs across different countries) not only serves to 'refresh' the supply and avoid detection, but also prevents victims from establishing relationships with clients, outreach workers or social services. A number of cases reported to Europol of victims of sexual exploitation from Eastern Europe demonstrate that victims were first transferred to Austria, where they were

forced into starting a prostitution career – exploiting the legal status of the prostitution industry – and later relocated to other MS, assigned to other cells of the same criminal network. In another case, Nigerian networks expanded geographically to several cities in Sweden, where they would advertise their activities and provide services for a few days, before moving on to a new destination.

Victims of trafficking for sexual exploitation are also forced to perform a range of criminal activities such as committing property crimes (e.g. 'smash and grab' raids, burglaries, thefts), begging, trafficking and selling drugs, sham marriages, forced labour and benefit fraud.

4.2. Labour exploitation

- ◊ Labour exploitation is increasingly being investigated by law enforcement in the EU, leading to a rise in the number of identified victims.
- ◊ The majority of victims are male EU nationals from Bulgaria, the Czech Republic, Estonia, Poland, Romania, and Slovakia.
- ◊ Victims are lured through word of mouth and online advertisements, posted on social media and on specific websites (e.g. online recruitment agencies).
- ◊ Trafficked workers mainly use legal documents to enter the country and often have legal permits which expire with time.
- ◊ The use of LBS is common for both recruitment (e.g. false job agencies) and exploitation purposes (e.g. bogus companies, bank accounts).
- ◊ Traffickers frequently open and control bank accounts under their victims' names.

Labour exploitation is the second most common form of THB in the EU after sexual exploitation. As already defined in 1930 by the ILO Forced Labour Convention, labour exploitation comprises *'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.'* Accordingly, the crime of labour exploitation involves practices such as slavery or those similar to slavery, debt bondage and servitude.

Labour exploitation in the EU is a recurrent and increasing phenomenon, mainly due to the high demand for low cost services by producers and consumers which can be found in most MS. The abuse takes place in a multifaceted way, and workers' rights and human dignity are ignored in favour of earning maximum profit. Labour exploitation mainly occurs in less regulated industries, such as the agriculture (especially seasonal harvesting) and construction sectors, hotel/catering businesses and in retail. Moreover, the transportation sector, the cleaning industry and textile and manufacturing industries may also have businesses that abuse victims of labour exploitation. Servitude and treatment similar to slavery also take place within the domestic environment, where the rights of maids and housekeepers are frequently infringed. Victims of THB for the purpose of labour exploitation are very difficult to identify since this form of crime is less visible and evident than others; it concerns individuals who may not be aware they are being exploited. Adult males between the ages of 20-50 are the principal target for labour exploitation.



Figure 5. Contributions received by Europol on Labour Exploitation

In 2013, Europol received 142 contributions by MS law enforcement concerning cases of THB for the purpose of labour exploitation, while in 2014 it received 190 contributions.

Between 2013 and 2014, the majority of victims of labour exploitation reported to Europol were citizens of EU MS from Central and Eastern Europe: mainly from Bulgaria, Poland, and Romania, followed by Slovakia, the Czech Republic and Estonia. In contrast with sexual exploitation, a larger percentage of identified trafficked workers were non-EU citizens, in particular from countries bordering the EU such as Albania, Moldova, Morocco, Russia, Turkey, and Ukraine. Furthermore, victims from Asia – China, India, Sri Lanka, Pakistan, the Philippines and Vietnam – and from the Middle East (i.e. Iraq) were also identified. The main flows of trafficked workers are directed mostly towards Austria, France, Italy, Greece, the Netherlands, Spain, Portugal, Switzerland and the United Kingdom.

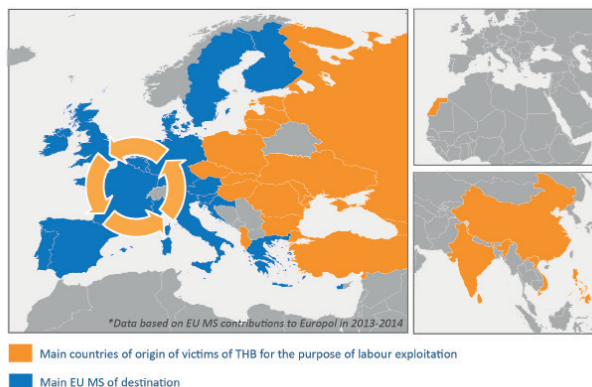


Figure 6. Main countries of origin of victims of THB for labour exploitation



4.2.1. Modi operandi

Profits from labour exploitation are produced not only through the work done by victims but also through a system of debt bondage. Similar to other forms of THB, victims are usually recruited within their country of origin by their own nationals using ethnic and kinship ties. In some cases, victims voluntarily leave their countries of origin, supported by their desire to improve their living standards and hoping to gain better wages. Once in the destination country, they may be approached by fellow nationals who orchestrate their exploitation.

The use of deception is a common feature in the recruitment process for labour exploitation. Victims are lured through newspapers, word of mouth and local employment agencies (especially in third countries), as well as through online adverts posted on specific websites and social media. The Internet advertises well-paid jobs which often do not require any qualifications or previous experience. Some cases involve fashion, dance and travel businesses functioning as intermediaries during the recruitment and transportation phases.

Male workers exploited in supply chains are often recruited in groups, and when a victim responds to an advertisement or is approached by a recruiter, they will be encouraged to convince friends and family to join the group. Agents, usually fellow nationals of the victims, act as intermediaries between them and the labour supply agents in the country of destination. They often ask for employment fees.

As the majority of victims of labour exploitation are trafficked within the EU, land transportation is most commonly used. In cases of non-EU victims, traffickers provide them with false documents and sometimes even bogus work contracts to

help them pass the border-crossing checks. However, trafficked workers mainly use legal documents to enter the country and often possess legal permits, although they are likely to become irregular over time as their permits expire - which exposes them to further vulnerability.

Victims are charged the cost of their transportation and other 'employment fees' by exploiters in order to be able to work. Sometimes, no employment has been arranged upon their arrival, and victims are kept in captivity and in extremely poor or inhumane conditions. Additional fees and deductions are usually applied on their already scarce wages, placing the exploited workers in further debt and a more precarious state of dependence from which

Police dismantle criminal gang exploiting vulnerable people through forced labour (April 2015)

Europol supported British and Slovak law enforcement in dismantling a large criminal network suspected of trafficking adults and children to the UK for exploitation in forced labour and social benefit fraud. The victims, originating from Slovakia, were recruited with false promises of well-paid jobs and subsequently trafficked to several British cities, where they were exploited. UK authorities initiated an investigation after receiving intelligence on an extensive labour exploitation network from the Human Anti-Trafficking Unit of the Slovak National Department for Combating Illegal Immigration. The initial enquiry led to 10 linked investigations in different areas of the UK. Europol provided support throughout the entire investigation and during the action day. Support from Europol and the Slovak authorities was assessed as critical to the success of this operation.

it is very hard to escape. Standard features of labour exploitation are extremely long hours for a very low or no salary, limited nutrition – with food costs sometimes deducted from their salary – and poor health conditions.

Once victims fall in the hands of traffickers, their passports are taken, impeding their requests for support from the police, embassies or consulates. Sometimes, exploiters will blackmail their non-EU victims by threatening to report them to the police as irregular migrants; they will voluntarily stay away from law enforcement fearing deportation back to their country of citizenship before they are able to pay off their debt to the traffickers. Workers originating from Asia, Africa and Latin America are sometimes not fully aware of the employment standards and workers' rights in the EU and may not even recognise the exploitative nature of their conditions³⁰. In a case of domestic servitude supported by Europol, victims from Vietnam and the Philippines were forced to undergo thorough medical examinations and indefinite trial periods without receiving any salary, and had to work many hours a day without breaks.

The use of physical violence is uncommon; victims are frequently subjected to verbal manipulation, psychological pressure and threats instead. In a similar manner to victims of sexual exploitation, victims of labour exploitation are often forced to conduct illegal activities alongside the labour exploitation (e.g. carrying counterfeit documents); some are employed in illegal business activities (e.g. cannabis cultivation), and sometimes traffickers use victims' documents in order to obtain social benefits. To conceal their identity, traffickers frequently open and control bank accounts in the victims' names, which are also used to take out loans and make purchase agreements. Victims can also be registered as directors of bogus

companies, which are used by the traffickers to launder their proceeds.

The rotation of victims between several countries also occurs in THB for the purpose of labour exploitation, although to a lesser extent than in THB for the purpose of sexual exploitation. However, the exploitative situation is limited in time and victims return to their countries of origin or start a new life at the end of their exploitation (especially in the case of seasonal workers). The employment period normally only leaves time for victims to extinguish their debt with traffickers and recruiters, after which they are encouraged to go back to their country of origin or to move away from the site of exploitation. Isolation from society that victims experience during the exploitation increases their risk of re-victimisation³¹.

4.3. Other forms of THB

The most recurrent forms of THB (after sexual exploitation and labour exploitation) that take place in the EU are THB for the purpose of forced criminality (e.g. theft, robbery, burglary, illegal adoption of children, drug

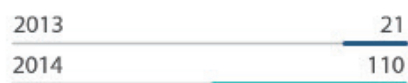


Figure 7. Contributions received by Europol on other forms of THB

production and trafficking), THB for the purpose of forced street begging and THB for the purpose of forced sham marriage.

Cases registered by Europol and other EU agencies confirm that trafficking routes similar to those used for sexual and labour exploitation are utilised in these types of THB. Victims of exploitation for forced criminality and begging are trafficked mainly from Eastern and Central MS to Western Europe. Within Europol's database, the majority of

³⁰ Europol, Trafficking in Human Beings in the European Union, Knowledge Product, 2011.

³¹ Re-victimisation means that the victim of abuse of crime has a statistically higher tendency to be victimised again.

victims forced into sham marriages were moved to the United Kingdom, Denmark (where most cases are treated as irregular migration) and the Netherlands. Other reported cases of THB for the purposes of sham marriages occurred in Germany where this offence is not yet recognised as a THB crime. The majority of cases of forced

begging and forced criminality registered in 2013-2014 by Europol's team dedicated to THB involved children of Roma origin, who were trafficked through several EU countries (predominantly to the United Kingdom and France).

4.3.1. Forced criminality

- ◆ The most common forms of criminality are linked to property crimes, drugs production and drugs trafficking.
- ◆ Victims of forced criminality are predominantly minors.

Trafficking in human beings for the purpose of forced criminality and street begging usually involves the same victims. Although some cases feature adult victims, human traffickers target predominantly underage victims – both male and female – for exploitation, as well as for the production and trade of pornographic material³².

Victims exploited for the purpose of criminality are forced to perform a wide range of unlawful activities, which may be carried out in support of their own exploitation (e.g. they may work as supervisors of other victims, as cash couriers and so on). The majority of victims trafficked for this purpose are forced to carry out pick pocketing, shoplifting, 'smash and grab' thefts, metal thefts, burglaries, benefit and welfare fraud, cannabis cultivation and drug trafficking.

Trafficking victims exploited in forced criminality and begging are often identified as suspects and convicted for criminal offences related to the illicit activity they were conducting under coercion. This misinterpretation not only leads to the contravention of Article 8 of the EU Directive 2011/36, which recommends non-punishment provisions for victims of THB,

Criminal group behind forced prostitution and property crimes dismantled (April 2014)

A joint operation between Belgium, Romania, United Kingdom and Italy have dismantled a mafia-type organised crime group of Romanian nationals who were actively trafficking young Romanian women to Italy to exploit them through forced prostitution. The victims were recruited in Romania and then transferred to Italy to be exploited in the sex industry. Prostitution was practised on the streets, in houses and hotels, and advertised on dedicated escort websites and newspapers, with rates and places of work dictated by the organisation's leaders. The victims were forced to commit a wide range of property crimes beside their sexual exploitation. The investigation has revealed that the criminal network was systematically using mafia-style methods involving violence, intimidation, extortion and assaults, to control the prostitution business. Europol actively supported the operation and provided analytical support including facilitation of information exchange, analysis, organisation of operational meetings, and deployment of mobile office and real-time cross-checks of data during the action day.

³² UNODC, Global Report on Trafficking in Persons, United Nations publication, Sales No. E.14.V.10, 2014.

but also to consequent low reporting on these crimes, thereby obscuring the real scale of the phenomenon.

In general, victims exploited for the purpose of conducting criminal actions are often engaged in activities that require a low level of expertise and which involve the risk of detection by law enforcement. Victims

exploited in cannabis cultivation live in precarious conditions and experience food deprivation, often without being able to leave the production site. Victims used for pick pocketing operate in well-frequented or prosperous areas or in front of shopping centres, and may be instructed on which item they should steal from people (by purse snatching or pick pocketing) or from shops.

4.3.2. Forced begging

- ◊ Human traffickers mainly target young victims. Adults with physical and psychological disabilities are targeted in particular for forced street begging.
- ◊ When the victims are minors, recruitment often takes place following a voluntary offer made by the victim's family to the traffickers.
- ◊ Mobility is a significant feature of THB for the purpose of forced begging, with frequent victim rotation among cities and countries.
- ◊ Trafficked minors usually travel on genuine passports of non-related adults, especially via land routes.

Human traffickers often target young victims for their exploitation through forced begging, although adults are also recruited and used for street begging (sometimes on their own or along with children). In some cases, victims of THB for the purpose of forced begging are particularly vulnerable individuals with physical and/or psychological disabilities.

As with other forms of THB, ethnic and cultural links are used by traffickers who mainly target their fellow nationals. In the case of minors, recruitment often takes place following a request from the victim's family to the traffickers. This is sometimes shown by authorising documents signed off by the parents of the victim, found in the hands of traffickers³³. In other cases, a monetary transaction between the traffickers and the family may serve as an 'act of sale' of the child to the exploiters.

A lower level of coercion is required for trafficked children than for adult victims, as minors are automatically dependent on adult traffickers. Children usually cannot escape, and often feel forced to perform any kind of request due to the pressure by the exploiters, their community and family. A number of cases suggest that children exploited in forced begging repeatedly have contact with law enforcement while they are travelling with their traffickers³⁴. Trafficked minors usually travel on genuine passports of non-related adults. Due to the fact that children resemble each other, photographs showing a different child may not be spotted when checked by border police. Mobility is a significant characteristic of this type of THB. Minors are often moved from one country to another in small groups³⁵ to avoid excessive attention by authorities. Once a child is approached either by social services or the police, they are rapidly relocated to another country³⁶.

³³ Council of the Baltic States, Children trafficked for exploitation in begging and criminality, 2013.

³⁴ Ibid 33.

³⁵ Ibid 32.

³⁶ Europol, Trafficking in Human Beings in the European Union, 2011.

4.3.3. Forced sham marriage

- ◊ Legislative differences among Member States misrepresent the real scale of the phenomenon.
- ◊ Human trafficking for the purpose of forced sham marriages targets mostly girls or young women.
- ◊ Victims originate from Eastern European countries (mainly Czech, Hungarian, Latvian, Polish, Romanian, and Slovakian) and are forced to marry mainly Asian men (Pakistanis and Indians).

Recently, Europol reported on several investigations regarding OCGs arranging marriages of convenience or sham marriages. In most cases these marriages serve to legalise the stay of an irregular migrant in the EU, and are likely to be identified as facilitation of illegal immigration. However, recent evidence shows that some cases of marriages of convenience can be qualified as THB.

Trafficking in human beings for the purpose of sham marriages most commonly targets girls or young women³⁷. In the EU, the most common victims are female EU citizens mostly originating from Eastern MS such as the Czech Republic, Hungary, Latvia, Poland, Romania, and Slovakia –, who are trafficked to Western MS and forced to marry Asian men, typically Pakistanis and Indians³⁸.

Cases of victims of marriages of convenience have been detected in Cyprus, Ireland, the Netherlands, Sweden and the United Kingdom. The lack of harmonisation of EU legislation regarding the crime of sham marriage, as well as legislative loopholes and differences among MS, result in misrepresentation of the real scale of the crime area.

Recruiters are often victims' fellow nationals or sometimes citizens of the country of

destination. In the recruitment phase, deception is a significant factor. Victims are typically lured by false promises of a well-paid job in the country of destination. In some cases, victims acknowledge that the purpose of their journey is to arrange a sham wedding with a third-country national, and they may know the price of the arrangement beforehand and communicate with their future groom via phone or video calls.

Human trafficking gang jailed (April 2014)

A criminal gang led by Hungarian and Pakistani nationals was jailed following a UK investigation supported by Europol. The ringleaders were a Hungarian and a Pakistani citizen, who were trafficking young women into the UK through the port of Dover. Once on the British soil, the women were forced to take part in sham marriages to Pakistani men. They all were unaware as to what they would endure when they arrived to UK. Europol supported this cross-border operation from the start by facilitating the information exchange and the development of international links, as well as organising an operational meeting in Hungary for the competent authorities.

³⁷ UNODC, Global Report on Trafficking in Persons, United Nations publication, Sales No. E.14.V.10, 2014.

³⁸ Europol, Marriages of Convenience: A link between facilitation of illegal immigration and THB, Early Warning Notification 2014/08, 2014.

Generally, the third-country national – usually male – who requests the sham marriage, buys his spouse from a ‘broker’ and covers all expenses related to the provision of this ‘service’: tickets, accommodation and a service fee. However, sometimes victims are forced to pay off the costs of their transportation to the traffickers.

In some cases, victims are kidnapped and brought to the country of destination against their will. Although certain victims might be aware of the intended sham marriage, they may not be aware of the risk of exploitation afterwards. Traffickers may keep victims’ documents and hold them in captivity and isolation, or they may be abused by their new husbands or forced into prostitution. Victims may not only be sexually abused, but can also be forced to conduct other criminal activities and/or to beg.

The identification and prosecution of victims of THB for the purpose of sham marriage is a challenge for both law enforcement and prosecutors. The brides may, at first, be willing to enter into a marriage; however, when the conditions change they may be lured with false pretences or forced to finalise the union. In some cases, victims have provided false testimony in order to escape prosecution for a marriage of convenience which they originally consented to. Whenever possible, investigators should try to clarify whether the bride’s status was that of an accomplice or a victim.

4.3.4. Benefit fraud

THB for the purpose of benefit fraud is often perpetrated together with labour or sexual exploitation. Cases supported by Europol show a modus operandi linking labour exploitation and benefit fraud. The OCG provides counterfeit identity documents and pays the travel expenses for the victims. Travel methods are usually road/ferry or low-

cost airlines. Frequently, OCGs will be linked to employment agencies owned by nationals of the country of destination, who provide the contracts for the work carried out by victims of labour exploitation.

Upon arrival, the genuine identification documents of the victims are taken by the OCG in order to prevent them from escaping. The victims are housed in poor conditions and they are forced to work without the necessary time for rest and recovery. They are also forced to hand over their earnings to the perpetrators under the threat of violence. The proceeds of crime are significant, as the suspects combine their gain from the labour or sexual exploitation with the benefit fraud.

Victims are made to open bank accounts, over which they do not have control, and money is withdrawn by the traffickers. The members of the OCG later use the workers’ identities to submit fraudulent social benefit claims and take advantage of tax credits and/or child benefits, especially exploiting those MS where the benefits system is particularly developed.

In some cases, victims are lured only for the purpose of committing social and child benefit fraud. The victims stay in the country for 3 to 4 days and then leave their ID documents, bank documentation, bank cards and other items with the OCG who empty their bank account. Once the benefits expire, the OCG renews them on the victim’s behalf. The OCG maintains control over their passports and bank accounts and launder the proceeds of crime, usually by sending it back to the country of origin in cash or via wire transfers. In one case, an OCG recruited victims and made them request loans. Initially, small amounts of money were taken and repaid to the bank in order to avoid suspicion. Then, a large amount of money was taken from the bank and not paid back.

OCGs defraud welfare systems by recruiting families with many children. The OCG transports the children to another country where, with the help of accomplices, they submit the necessary documents to obtain social benefits. In some cases, only the children's documentation was taken by the exploiters (instead of the children themselves) in order to obtain social benefits. The exploiters keep most of the social benefits; only a small percentage of the money is given to the person for whom the social benefits are requested.

5. The effect of THB

- ◇ THB harms human dignity and physical and psychological integrity. It first and foremost affects the victims of trafficking, but it also has a vast impact on society overall.
- ◇ Especially in case of underage victims, the risk of re-victimisation and re-trafficking is high. Victims often lack information about their rights and how to effectively exercise them.
- ◇ Human traffickers generate billions of euros in profit every year³⁹. Prosecution and detention of suspects and prevention and awareness programmes also have a significant economic impact.
- ◇ The quality of products and services is affected by the cheap and unregulated system in which labour exploitation occurs.

Trafficking in human beings is one of the most detrimental crimes against persons, as it harms human dignity and the physical and psychological integrity of victims, which are indispensable rights protected by the Charter of Fundamental Rights of the European Union. The EU Charter also forbids other gross human rights violations linked to THB, such as conditions of servitude and forced labour, as well as torture and inhumane or degrading treatment or punishment; it also reaffirms the prohibition of employment of children below the school leaving age, as well as the right for everyone to access health care, social security and assistance.

The crime of THB involves violence, abuse and trauma, which often accompany victims from the beginning to the end of their exploitation. Vulnerable individuals, who were deceived through false promises may suffer further victimisation once the exploitation ends. Victims of trafficking may feel unable to return to their relatives, fearing their disapproval or misunderstanding. During their exploitation, victims run a high risk of being exposed to severe physical and/or psychological violence, and even death. In the worst cases, poor living conditions, food deprivation and not undergoing

regular health checks not only increase the possibility of contracting serious illnesses without receiving the proper medicine, but also the risk to public health in general.

The risk of re-victimisation and re-trafficking is very high in the case of child victims. The European Commission recently asked the EU Agency for Fundamental Rights to produce an overview of national protection systems across the EU to develop a best practice model on the role of guardians and/or representatives of child victims of trafficking, while MS have been called to strengthen their national child protection systems and all measures that ensure the best interests of minor victims are met⁴⁰.

Victims often lack information about their rights and on how to effectively exercise them. This problem has been identified as one of the main issues related to the implementation of Directive 2011/36/EU. To further increase the range of tools and means dedicated to increasing the awareness of victims, the European Commission pledged in 2013 to create a clear, user-friendly collection of information regarding the rights that victims of THB have under EU law.

³⁹ European Parliament Directorate General for Internal Policies Policy Department C: Citizens' Rights and Constitutional Affairs Special Committee on Organised Crime, Corruption and Money Laundering "The economic, financial and social impacts of organised crime in the EU" A study (2013).

⁴⁰ These policy fields are Children's rights, Criminal Justice, Civil Justice, Asylum and Integration, Health and Justice.

6. Combating THB: The EU legal and political commitment

- ◊ The EU Serious and Organised Crime Policy Cycle started in 2013 to ensure cooperation between MS law enforcement authorities, EU institutions, EU agencies and relevant third parties in the fight against serious international and organised crime. THB is one of the nine priorities of the current policy cycle.
- ◊ Europol is assigned to provide support to cross-border and high-level investigations and analytical and operational assistance as well as administrative and logistical support during coordinated actions.
- ◊ Europol's operational project dealing with THB was launched in 2007 within the Serious and Organised Crime (SOC) Operations Department.
- ◊ The EU Strategy towards the eradication of the crime of Trafficking in Human Beings 2012-2016 has been established to support the transposition of the EU Directive 2011/36 into the MS legislation and to set up a harmonised approach to achieving this.

Europe is a region of origin, transit and destination for victims of trafficking and exploitation. In order to tackle this crime, the European Union has pledged a strong commitment at the European level. To achieve the full eradication of THB, Member States are encouraged to adopt a comprehensive legal and policy framework and to undertake strategic and consistent actions. Europol assists all MS law enforcement authorities, third countries and neighbouring regions in the implementation of coordinated investigative responses against the most threatening OCGs active in the EU.

6.1. The role of Europol

Europol functions as a centre of expertise for strategic and operational intelligence and as an information hub for criminal data concerning the most threatening OCGs active in the EU.

Europol provides operational support to MS law enforcement authorities. The EU

Strategy 2012-2016 outlined specific tools through which Europol can assist MS' investigative activities and persecution of traffickers. These include the enhancing of the intelligence picture on criminal phenomena and the training of specific law enforcement units and experts.

Europol's operational project dealing with THB was opened in June 2007, with the purpose of supporting MS competent authorities in preventing and combating all forms of criminality within Europol's mandate associated with THB. The crimes investigated with the strategic and operational support of Europol concern OCGs engaged in THB in at least two Member States of the European Union, as well as any associated criminal activity within Europol's mandate discovered in the course of investigation and carried out by the criminal networks in the MS concerned.

Twenty-five MS currently participate in Europol's THB project.

In 2014, Europol’s THB dedicated team accepted and processed 3 820 contributions from MS law enforcement, an increase of 65% compared to the previous year, when it received 2 520 contributions.

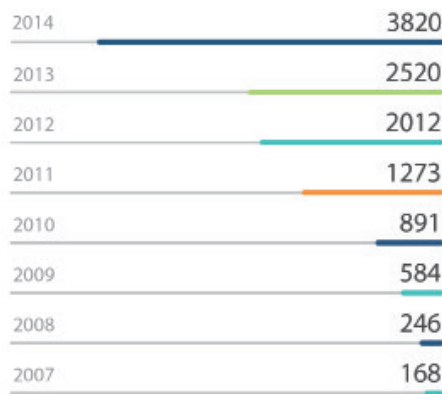


Figure 8. Yearly Contributions by MS to Europol’s THB project.

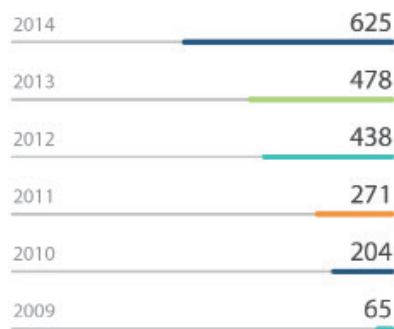


Figure 9. Cases submitted by MS to Europol’s THB project

6.2. The EU policy and legislative framework against THB

Member States are called upon to tackle the criminal phenomenon together with third countries and neighbouring regions. A series of legislative and policy tools have been established to achieve this.

Following the recommendation of the Organised Crime Threat Assessment for the EU (OCTA, 2011), the European Commission implemented a two-year pilot EU policy cycle. During this pilot, one of the priority areas was THB. THB was supported by a European Multi Disciplinary Platform Against Criminal Threats (EMPACT) in 2011-2013. This EMPACT Program encouraged Member States to participate in joint, multidisciplinary operational actions to combat organised criminals involved in the trafficking of human beings.

Further to the recommendations of the Serious and Organised Crime Threat Assessment for the EU (SOCTA, 2013), THB was again highlighted as a priority threat area, and was allocated an EMPACT program for a further four years (2013-2017).

In 2009, the [Global Approach to Migration and Mobility](#)⁴¹ and the [Action Oriented Paper \(AOP\) on strengthening the EU external dimension against trafficking in human beings](#)⁴² stressed the importance of cooperating with third partners among origin, transit and destination countries. The more recent [2015 EU Agenda on Migration](#) provides Member States with a comprehensive set of tools to manage migration issues and THB in the immediate, medium and long term.

[EU Directive 2004/81/EC](#) issued by the European Council regulates the granting of a temporary residence permit to third-country nationals who are victims of THB cooperating

⁴¹ European Union: Communication from the Commission to the European Parliament, The European Economic and Social Committee and the Committee of the Regions, The Global Approach to Migration and Mobility /*COM/2011/0743final*/.

⁴² European Union: Council of the European Union, Implementing the Strategy for the External Dimension of Justice and Home Affairs: Global Freedom, Security and Justice, Action-Oriented Paper on strengthening the EU external dimension on action against trafficking in human beings; Towards Global EU Action against Trafficking in Human Beings, 11450/5/09, 19 November 2009.

with the [authorities in their investigation and prosecution of the alleged traffickers](#). The legal and policy framework to address THB at the EU level was established in 2011 by [Directive 2011/36/EU on preventing and combating THB and protecting its victims](#)⁴³. This document comprehensively describes the criminal phenomenon of THB, adopting the official definition of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplemented the 2000 UN Convention against Transnational Organized Crime.

In 2012, an additional [Directive 2012/29/EU](#) established [minimum standards regarding the rights, support and protection of victims of crime](#), increasing the rights which victims of trafficking can benefit from and which were not specified in the Directive 2011/36/EU.

The Commission recommended the [implementation of the EU Directive 2011/36/EU within Member States' national legislation by 6 April 2013](#)⁴⁴. In 2014, twenty-five MS had fully implemented the Directive within their national laws, except for Belgium, which has transposed the Directive only partially; Germany, which has pledged to incorporate the law before the end of the current legislative term; and Denmark, which decided not to participate in the implementation of the Directive. The incorporation of Directive 2011/36/EU into the national legislation is currently being analysed and reviewed by the Commission.

In 2012, a common [EU Strategy towards the eradication of the crime of Trafficking in Human Beings 2012-2016](#)⁴⁵ was launched to support the implementation of the EU Directive 2011/36 and to set up a harmonised approach in realising this.

An [EU Anti-Trafficking Coordinator \(EU ATC\)](#) has been appointed by the Commission to provide strategic policy orientation, to ensure consistent and coordinated planning among MS and third parties, as well as to monitor the implementation of the EU Strategy.

The EU Strategy 2012-2016 identified [five priorities](#) to focus on to address the crime of THB in a consistent manner:

1. [Identifying, protecting and assisting victims of trafficking](#) through the establishment of national and transnational referral mechanisms, the improvement of the identification of victims, the protection of child victims of trafficking and the provision of information to the victims on their rights;
2. [Stepping up the prevention of trafficking in human beings](#) by understanding and reducing demand, by promoting the establishment of a private sector platform, and by implementing awareness raising activities and prevention programmes;
3. [Increasing prosecution of traffickers](#) through the establishment of national multidisciplinary law enforcement units, the furthering of financial investigations, the increase of cross-border policing and judicial cooperation and cooperation beyond borders;
4. [Enhancing coordination and cooperation among key actors and policy coherence](#) by strengthening the EU network of national rapporteurs or equivalent mechanisms, coordinating EU external policy activities, promoting the establishment of a civil society platform, reviewing projects funded by the EU, strengthening the fundamental rights in anti-trafficking policy and related actions, and coordinating training needs in a multidisciplinary context⁴⁶.

⁴³ European Union: Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5th April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA, 15 April 2011.

⁴⁴ Except for Denmark, which does not participate in the implementation of the Directive.

⁴⁵ European Union: European Commission, 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, 19 June 2012, Com (2012) 296 final.

⁴⁶ Ibid 45.

5. **Increasing knowledge of and an effective response to emerging concerns related to all forms of THB** by developing an EU-wide system for data collection, increasing knowledge relating to the gender dimension of trafficking and vulnerable groups, understanding online recruitment and targeting labour exploitation.

In order to implement the abovementioned priorities, the Commission encourages a concerted effort by MS, the European External Action Service (EEAS), EU institutions, EU agencies, international organisations, third countries, civil society organisations and the private sector. A database containing all legal instruments, initiatives, projects and interested parties dealing with THB has also been created. Furthermore, an extensive funding framework has been set up to promote quantitative and qualitative research projects, to increase the exchange of valuable knowledge and to improve the quality of data collection.

The third priority of the EU Strategy 2012-2016 encourages MS law enforcement to improve investigations and prosecution of human traffickers through the creation of national multidisciplinary law enforcement units working on human trafficking. Those units should function as contact points for all EU agencies, especially for Europol, and should provide information to their Europol national unit (ENU) for further distribution to the relevant law enforcement authorities. Those national units are required to work on all forms of THB, to improve their data collection and the exchange of information and of intelligence.

7. Conclusions

7.1. The main challenges for policing


To effectively function as a centre of expertise for strategic and operational intelligence, Europol relies on the information provided by the Member States. [Europol's capabilities should be promoted among MS 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 OCGs active in the EU can be drawn.

[Data collection on child trafficking should be based on a common definition](#) of this crime phenomenon. Some MS consider child trafficking 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 the EU level. Furthermore, EU law enforcement and especially border authorities are encouraged to [improve data collection on minors travelling with non-related adults](#), as they are particularly vulnerable to victimisation and trafficking.


Since most of the OCGs active in human trafficking transfer their criminal proceeds to their country of origin, often via wire transfers, [more attention should be given to the financial aspect of THB](#). Financial investigations should be promoted between the countries of destination of victims and the countries of origin of the suspects, in order to determine the money flows.

As the Internet is progressively becoming an essential tool in many stages of the

exploitation process, [EU law enforcement authorities are encouraged to increase online monitoring activities](#) on social media, online job agencies and escort forums and sex chats, where potential exploitative circumstances can be spotted and the victimisation of vulnerable individuals can be prevented.



FACTSHEET COMBATING THB



EUROPOL'S TOOLS


Focal Point Phoenix

EMPACT priority


Europol Information System (EIS)


Internet Referral Unit (IRU)


CARIN Network (proceeds of crime)



EU MEMBER STATES


National Investigations 

International Investigations 



EU POLICY LEGISLATIVE FRAMEWORK

2013- 2017	EMPACT Priority
2011	EU Directive 2011/36/EU on preventing and combatting THB and protecting its victims
2012- 2016	EU Strategy towards the eradication of the crime of Trafficking in Human Beings 2012-2016 Com (2012) 296 final



- ▼ Identify, protect and assist victims of human trafficking
- ▼ Stepping up the prevention of trafficking in human beings
- ▼ Increasing prosecution of traffickers
- ▼ Enhance coordination and cooperation among key actors and policy coherence
- ▼ Increase knowledge of and an effective response to emerging concerns related to all forms of trafficking in human being

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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

Adopted and opened for signature, ratification and accession by General Assembly resolution 55/25 of 15 November 2000

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

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.