

**AWARENESS-RAISING OF JUDICIAL  
AUTHORITIES CONCERNING TRAFFICKING  
IN HUMAN BEINGS**

**HANDBOOK**

**VOLUME I**

October 2005

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental body, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

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# Foreword

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This handbook is the result of the project 'Awareness raising of judicial authorities concerning trafficking in human beings'. It is intended as a guide for judiciaries and public prosecutors when involved in a case against traffickers in human beings. Participating countries are Belgium, Bulgaria, the Czech Republic, Germany, Hungary, The Netherlands and Poland.

The handbook is based on research conducted previously in the countries involved and the analysis of the European Legal Framework, as well as discussions, comparisons and analyses made during the meeting of the Steering Committee in June 2005 in The Hague.

Contents of this handbook focus on the practice of conducting prosecution cases. Besides an overview of the legal framework in each of the countries involved, a major part is reserved for cases and discussions arising from the different topics. The volume I of the handbook is composed of two parts, the first giving background information, examples, discussions and recommendations. The first chapter will give an overview of the legislation in the seven countries involved, compare the regulations on the provisions for trafficking in human beings (THB), the difference with smuggling and the part organised crime plays in the subject. The second chapter will deal with cooperation at both national and international level. The third chapter will make a comparison of the regulations concerning the protection of and assistance to victims of trafficking, give information on the possibilities for assistance and illustrate the dilemmas around the role of the victim as a witness. In chapter four you will find background information concerning the motives underlying the behaviour of a victim of trafficking. Finally, chapter five is a plea for including the financial aspects in the assessment of THB cases.

The second part is intended as a very practical hand-out for judicial authorities. You will find addresses and contact persons in the seven countries involved, of specialised police and prosecution departments, central offices dealing with requests for international cooperation and liaison officers. Addresses of shelters for victims of THB will give an idea of the possibility for assistance and contacts for information. Finally, the work of Eurojust will be described as a possible instrument for mutual legal assistance.

Extensive background information on the subjects discussed in volume I can be found in the country reports and the analysis of the European Legal Framework, in volume II of this handbook. To keep this handbook to a manageable size, the annexes to the reports have been left out. The full text of the reports can be found on [www.iom-nederland.nl](http://www.iom-nederland.nl)

A first training workshop was held on 28, 29 and 30 September 2005. You will find the programme of the training in Annex I, as an example for future workshops. Some of the lectures given during the workshop were added to the handbook. However, further outlines, cases and presentations are available at [missionthehague@iom.int](mailto:missionthehague@iom.int) to be used as teachers' material.





# PART I



# General introduction into Trafficking in Human Beings; causes and features <sup>[1]</sup>

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By Dagmar A.C. Koster <sup>[2]</sup>

## An introduction into THB

Attention for structural training of the judiciary on the item of trafficking in human beings (THB) is in many countries insufficient or lacking, both for prosecutors and for judges. Yet, knowledge and building experience with the judiciary are important to improve and strengthen the fight against trafficking. With the project “Awareness raising of judicial authorities concerning THB”, IOM the Netherlands and her partners in the participating countries (Belgium, Bulgaria, Czech Republic, Germany, Hungary, the Netherlands and Poland) provide the basis and a practical tool for the organisation of training in this field. Training is necessary, on the one hand to improve or keep up the (high level of) enforcement by the law enforcement authorities, on the other hand to raise the awareness of the judiciary for what THB really entails and means. The fact that this is a joint project, in which the judiciary from seven countries participates, gives it extra added value. First, because from joint initiatives people can learn from each other in the sense of exchanging knowledge and expertise. Second, because it also makes it possible to get to know each other, which enhances the possibilities and likelihood of cooperation between people. And cooperation is the core of a successful fight against THB; cooperation at all levels.

## 28 September 2001

And that is precisely what the ministers of Justice of the EU member states strived for when they met, 4 years ago, at a JHA-Council in Brussels. The ministers then reached political agreement on the draft Framework decision on combating THB, which is at present date one of the core documents of the EU fight against THB. At that meeting the ministers expressed their intention to undertake concrete and continuous action to fight THB, by announcing measures that should guarantee an overall and integrated approach of the phenomenon. These measures should focus on three levels of attention: Prevention, Repression and Victim assistance. The Council rightfully concluded that only when a policy comprises these three elements, effective results in the fight against THB can be achieved.

[1] This is a somewhat adapted version of the introduction that was given at the start-off training workshop of the project, September 2005 in The Hague. The information in this article is for a large part based on the findings of the Dutch Rapporteurs' study on the scale and nature of the trafficking problem in The Netherlands.

[2] Staff member legal affairs of the Bureau of the Dutch National Rapporteur on Trafficking in Human Beings (Bureau NRM).

## Items addressed

In this introduction on the phenomenon of THB, some general items and questions, such as what are causes of THB, who are the victims and who are the perpetrators, are addressed. These are questions that are directly linked to the task that the Dutch National Rapporteur on THB was given, namely: providing information on the nature and the scale of THB through gathering of data.<sup>[3]</sup> Starting with a short explanation on the role and the use of a national rapporteur or a kind like institute, I will then go into the features of the crime, its victims and its perpetrators and I will also say some words about exploitation for labour and services outside the sex industry. At the end of the contribution a few more juridical aspects that are of interest are summed up.

## Need and use of data

Knowledge and the availability of information are at the basis of an effective anti-trafficking policy. In more concrete terms: in order to know what should be done to approach and fight the phenomenon, one must know what it looks like and who the actors are. But also: is it really a problem and if so, how big is it? When the member states and the (then) accession states of the EU in 1997 discussed possible measures to strengthen the fight against THB, they agreed that each country should appoint a Rapporteur that would inform their government on the scale and the nature of the trafficking problem in the country. This recommendation was laid down in the so-called The Hague Declaration.

Through solid research and analysis of available data on all possible aspects of THB, a picture of the trafficking situation in a country can be given. This should include information ranging from data on perpetrators, on modus operandi, on victims, but also on more general themes like prevention, legislation, governmental policy and important developments in these fields, on the national and the international level. Such information must be gathered from all possible sources, both state and non-governmental, that deal with the trafficking issue, and be brought together in widely spread reports that contain both qualitative and quantitative information on criminal investigation and prosecution, information with regard to prevention and on victim support. On the basis of these reports informed decisions on (policy) measures to be taken can be made. In the Netherlands, information gathering, research, reporting and drawing conclusions from the findings is done by the Dutch National Rapporteur on THB. Next to providing information on the nature and the scale of the trafficking problem in the Netherlands, the Rapporteur makes recommendations to the government to improve the fight against trafficking, which are debated in Parliament.

## Relativity of data

Although information is valuable and necessary, data are in a way also relative. First and foremost, describing THB is describing a hidden phenomenon. This means that a lot of information does not come to the surface and conclusions must thus always be drawn from the limited information available. Sometimes only assumptions can be made. Nevertheless, it is a certainty that THB is a serious crime with most times enormous consequences for the victims. The vicious nature of the crime itself is already the justification for undertaking action, regardless of the scale of it. Furthermore, giving reliable information is often only possible after a lapse of time. Information from differ-

[3] More information on the work of the Dutch Rapporteur and on the findings and conclusions based on the information gathered and studied by her Bureau, can be found in the annual reports of the Rapporteur (available via [www.victimology.nl](http://www.victimology.nl) or [a.g.korvinus@minjus.nl](mailto:a.g.korvinus@minjus.nl)).

ent sources must first be made available before it can be combined and interrelated in order to draw reliable conclusions from it. And registration and collecting data is not the priority of all organisations, especially not for causes outside the own organisation. Another remark concerns the fact that in many countries, if already available, information only concerns information on THB for sexual exploitation. The reason is that most countries are still adapting or only have just adapted their legislation to the Palermo protocol and the EU Framework decision on THB. And thus there is not much, if any at all, experience yet with exploitation for labour or services. Let alone that data on it are already available in registration systems.

## Causes of THB

Why does trafficking occur? In fact that is for a large part a question of supply and demand, for labour, for services or for organs. Without any doubt the motive of the trafficker - the supplier - is financial gain. And criminals look for easy gain, that is to say, as much money, as soon as possible, with the lowest risk of being caught. But perpetrators need victims; where do they come from and what drives them in the hands of traffickers? Apart from those victims that are kidnapped or sold by relatives, they more or less make themselves available (of course not with the intention of becoming a victim) because of their desire to escape from push factors in their region of origin and because of the existence of pull factors in the region of destination. Push factors concern living conditions, but also the person of the potential victim. Living conditions are for a large part determined by the economic situation and perspectives in the country of origin of the victim, such as unequal distribution of wealth, unequal opportunities on the labour market and geographical or political circumstances. Personal circumstances and motives of the person also play an important role. This concerns things as an unstable family situation, adventurous attitude, the urge to earn a lot of money or simply the need to survive. Especially for women, in many countries there are some additional push factors, such as a subordinate position and fewer rights than males, owning smaller part of the capital (e.g. less land, lower incomes) and fewer chances on the labour market (e.g. first to lose their jobs in periods of economic recession, culturally or religiously determined obligation to take care of children and parents). Regions of destination are mostly in the more developed and richer parts of the country or the world. Their economic and political(ly developed) systems offer attractive and inviting circumstances to those in search for a better life. This includes factors such as better economic situation in the destination region, demand for (often cheap) labour and a fairer attribution of rights and opportunities, at least for nationals, but not necessarily for those looking for new opportunities, as many of them soon find out upon arrival. Besides, there is also the market for labour and services that may very well and easily be offered under exploitative conditions. The most prominent example is of course the sex industry, but low skilled labour in the informal economy and in labour-intensive sectors that meet tough economic competition are also vulnerable branches. Also here sheer financial gain forms the motive for the exploitation. Not necessarily by the employer; in some cases he may not even be aware of the exploitative conditions under which his employee is living or working. In those case intermediaries, such as middlemen, pimps or temp agencies are the traffickers and the factual employer may pretty well remain ignorant of that situation.

## Features of THB

Apart from the different actions (recruitment and transport) and means (methods of coercion) that can be used in the process of THB, and irrespective of the branches it may be focussed on, the *core element* of trafficking is exploitation. Either the exploitation itself or the criminal intention of exploitation. Exploitation is indeed defined by the international community in the Palermo Protocol, yet the scope of that definition is not fully clear. What exactly is forced or compulsory labour, slavery or slavery like conditions and is exploitation always linked to bad physical or emotional conditions? That would be a discussion in itself, which is very necessary to have. Anyway, exploitation is a form of abuse that is excessive in nature, either by the seriousness of physical or emotional manipulation (threats and violence) or by a multitude of restrictions that are imposed on the victim. These excesses take the form of human rights violations, in the sense that elementary rights as safeguarded by international conventions, are trampled on. Exploitation is a limitation of the freedom of choice, movement and independence of a person that finds himself in a vulnerable position. Abuse of people that is not *excessive* in nature and does not lead to human rights violations, can of course still constitute criminal behaviour that should be tackled, even under criminal law. However, it should not (at least not necessarily) be regarded as THB. Trafficking in many countries is criminalised as one of the most severe crimes and should thus be ‘reserved’ for the excesses.

## The victims

Who are the victims or possible victims of the traffickers? Although, according to the broadly supported view, the interests of the victim should be at the centre of the attention paid to combating THB, not much is known about the victims. What *is* known is mostly based on findings concerning victims that have been identified in one way or the other, but a possibly large group of victims remains out of sight of the authorities. What *can* be said is the following. Undeniably the flow of victims mainly goes from the poorer regions to the richer regions in the world. Yet, it is a misunderstanding that victims are always the poorly educated, naïve people. Nor are they always the poorest people in the country. Such a relation between intellect, poverty and susceptibility for trafficking can not be established. Almost on the contrary! If one looks at the push and pull factors described earlier, it is people who are not satisfied with the situation they are in and who have the ambition and see a possibility to improve it. Apart from the victims who are kidnapped or sold, and also apart from the victims that are tricked into going abroad and into accepting work elsewhere while completely ignorant, a good share of victims are in a sense ‘equipped’ enough to know that the economic or political situation is better in other places. They also have access to possibilities and means to travel, be these limited. They thus make a more or less informed choice to follow their ambition, only though to soon find out that they have been cheated about the actual situation they end up in. In this, there is no difference between men and women, but of course their drive and the risk they run may and does differ. Where THB was initially associated especially or exclusively with exploitation in the sex industry, women and children were most likely to become victim. Yet, also men can be a victim of sexual exploitation. With the broader definition of THB in mind (labour, services and removal of organs), men as an obvious target group come on even more, next to women and children, depending on the type of labour/services. In a very recent report on trafficking in minors in the Netherlands, a considerable amount of cases of exploita-

tion of minors was discovered. Most of them concerned older minors and the cases with very young 'victims' concerned illegal adoption (a reprehensible action, but to be debated whether this should be called trafficking or dealt with under other criminal provisions). Yet, the cases were there.

Although victims discovered in situations of *sexual exploitation*, according to the findings of the Dutch Rapporteur, increasingly possess a valid passport and come to the country in a legal way, illegality is still a firm ground to base (continued) exploitation on. The first findings of the Dutch Rapporteurs' study on 'other forms of exploitation' validate this premise, because the cases traced often concern victims who reside and/or work in the Netherlands illegally, or whom have a dependent status in the form of a permit to reside with a partner. The victims of these forms of exploitation also often take the lousy conditions for granted in order to gain some money, or are ill informed as to their rights as worker. For fear of deportation, their illegal or dependent position in the country nourishes their reluctance to come forward. Of course this reluctance is known for victims of all forms of THB.

## The perpetrators

Many of the traffickers are organised in large or smaller scale networks, in which a division of tasks is existing. Only some perpetrators operate as solo actors. Based on our knowledge of traffickers for *sexual exploitation* one can state that the more traffickers are organised, the more they are involved in transnational (cross-border) trafficking, thus leaving the internal trafficking to smaller criminal groups and to individual perpetrators. Just as victims are often times not discovered, traffickers are not in all cases tracked down and prosecuted or even not prosecuted at all, which occurs especially in cases of *cross-border* THB. In countries of destination it is often only the off-shoots of the networks that are dealt with: the traders who introduce the victims into prostitution at the end of the chain. The 'recruiters' at the beginning of the chain, who recruit the victims in the countries of origin and the accomplices who bring them across the borders and thus create a supply, then generally keep out of range. An important reason for this is the generally lower chances of a successful prosecution of the perpetrators in the beginning of the THB chain, whilst for successful prosecution of the actual exploiters it is not always needed to have a view on the total network. This is underlined by the fact that in cases of *internal* THB almost all traffickers (=exploiters) generally are prosecuted. At the same time *countries of origin* have reported problems in prosecuting recruiters who are known to them, because of lack of information on the subsequent links in the chain: the actual exploitation in the country of destination. Here is much to gain by mutual cooperation.

Specifically for the Netherlands: Contrary to the *victims* of THB, the number of foreign *suspects* of THB who were residing illegally in the Netherlands at the time of their arrest rose considerably in the past period, to over 60% in 2003. The share of foreign suspects *residing* legally in the Netherlands fell in inverse proportion. Again for sexual exploitation, most *suspects* are male, but a constant proportion of about a quarter of the suspects is female. More than half of the suspects of THB for sexual exploitation (in cases dealt with by the Dutch Public Prosecution Services) are Dutch residents, yet in quite a few cases they were born outside the country.

Perpetrators of sexual exploitation come from more or less the same countries as the victims. There thus seems to be a relation between their nationalities, which is logical considering that exploitation often occurs within certain ethnic groups. This is especially the case with other forms of exploitation, for example in Chinese restaurants.

## Study on other forms of exploitation

As already mentioned, gathering information on all aspects of THB, permanent and in a structural way, is not a regular activity in a lot of countries. This is even more the case when it concerns the often only recently criminalised ‘other forms of exploitation’ outside the sex industry. The Bureau of the Dutch Rapporteur is currently doing a study on those ‘other forms of exploitation’, in order to establish whether or not these forms of exploitation exist in the Netherlands, in which sectors and to get insight in the characteristics of that phenomenon. By spreading very short questionnaires to a large number of possible respondents (social workers, legal advisors/lawyers, police, labour inspectors, and pressure/support groups for specific minorities), sometimes followed by interviews, casuistry was collected on flagrant wrongs in labour situations outside the sex industry, in which a victim is forced to provide work.

Based on the answers received, the conclusion is that exploitation for labour and services does exist in the Netherlands. It can be found especially in hidden sectors, such as the informal economy and behind private family doors. Victims are most often individuals who reside and/or work in the Netherlands illegally, or who have a dependent status in the form of a permit to reside with a partner. Individuals who do not speak a Western European language are particularly vulnerable for exploitation. A whole range of possible indicators of exploitation came up, such as force (physical or otherwise), bad working conditions (for example unreasonable hours, low pay), lack of freedom (for example no possession of own passport) and multiple dependency (for example debt bondage, or being dependent not only for employment, but also for food, transport or shelter). In the study also a lot of cases came up with signals that clearly indicate abuse of the vulnerable position of individuals, but in which the victim still had a certain degree of choice. This could be called the grey area, in which a more clearly marked out definition of THB would come in handy, in order to determine how to tackle these situations. What can be concluded from the study is that it is not necessary for a victim to be held in factual captivity in order to speak of grossly exploitative labour situations.

## Points for further consideration

To end this general introduction into trafficking, some more *juridical* points are mentioned, without going very much into them. These need further discussion and consideration.

- Although Palermo has given us for the first time an internationally agreed upon definition of THB, the exact content and scope of that definition, particularly with regard to exploitation outside the sex industry, is not clear. In order to successfully improve international cooperation, for example via mutual legal assistance and by sharing information, more clarity on this point is needed. What is the exact dividing line between illegal employment and trafficking for exploitation outside the sex industry, and what acts, in which people are treated or used as trading goods, should be considered to be THB? What we need is a common and uniform explanation of the term ‘exploitation’, based on the use and effects of this term in the legal practice. Of course we can learn from the experience of countries in which the broader definition is already in place.
- Focus on taking away the profits of the trafficking may prove to be the most effective repressive action that can be undertaken. Money is what the perpetrators are looking for, money is what should be taken away from them to make them lose appetite.



- For sexual and other forms of exploitation alike, fact is that we still need the victims to speak up. Fact is also that they are very reluctant to come forward. One way of trying to get them to cooperate is providing good and 'perspective-full' assistance. Since often foreign victims are involved, also in assistance to victims the idea of a 'chain reaction' should be elaborated. Adequate protection in cross-border THB can only be achieved in a transnational way. This means that countries should not only arrange for reception and assistance for victims as long as they are in their country, but that also should be provided for protective measures when the victims leave the country of exploitation. Victim assistance needs to be mutually tuned by concluding bilateral or preferably international agreements on this point.
- Invest in other forms of exploitation: what are signals and how can victims be identified? But also: put a structure into place to provide for preventive measures, to collect signals at a central place, to coordinate law enforcement and to take care of victims. Only when that chain is complete, the phenomenon can successfully be tackled.
- When investigating and prosecuting THB both police officers, prosecutors and judges should be attentive to the fact that not all victims themselves *feel* exploited. And also that not all victims comply with the idea that victims of exploitation are literally deprived of their liberty and are terrified and pitiful persons. Some are seemingly independent, but in practice subject to very subtle means of coercion. Coming across persons that are treated in a very deviant way from own nationals in a comparable position should make alert to possible exploitation, also when the possible victim denies.
- What must not be forgotten in the fight against THB is that criminal law is ultimum remedium. Before looking for solutions in criminal repressive action, other possible ways of dealing with the problem should be tried, such as awareness raising, schooling and training, taking away factors that stimulate trafficking and creating just and equal labour conditions for example. This is in fact the three levels of attention the ministers of Justice referred to at the earlier mentioned Brussels JHA-Council of 4 years ago. Prevention, Repression and Victim assistance. The one does not go without the other.

# I. Legislation THB versus Smuggling

The chapter on legislation regarding THB will give an overview of the similarities and differences in the seven countries involved. This chapter is a result of the presentations given during the meeting of the Steering Committee in June 2005 and based on the findings in the research reports. Extensive explanation is given in the country reports (Volume II). The text of the different provisions on THB is attached as Annex I (except for Belgium as it is not available in English yet).

The chapter will start with a table giving a summary of the findings followed by a short explanation per country. The countries involved have all taken into account the Palermo Protocol and the EU Framework Decision on combating Trafficking in Human Beings, albeit at different levels.

Four similarities were found in all the countries involved:

- All seven countries are currently using the broad definition of trafficking in human beings (following the Palermo Protocol), which includes sexual as well as economic exploitation. Four countries include trafficking in organs as well.
- All seven countries make a clear distinction in legislation between THB and smuggling.
- The activity of prostitution is not considered as an offence in any of the countries involved.
- There is no hard evidence in any of the seven countries of cases of trafficking in organs.

Summary table 1

	Belgium	Germany	Czech Republic	Bulgaria	Hungary	Poland	The Netherlands
<b>THB</b>							
Provision	433quin	232/233	232a	159abc	175/B	253. 1	273a CC
Broad definition	except organs	except organs	except organs	yes	yes	yes	yes
force/coercion as condition	no	no	no	no	no	no	yes (except minors) <sup>[4]</sup>
Transnationality as condition	no	no	no	yes	no	no	no
Distinct from smuggling	yes	yes	yes	yes	yes	yes	yes
<b>Smuggling</b>							
Provision	77bis	96/97	171a	279	218	264	197a CC
Definition including entry	yes	yes	yes	yes	yes	yes	yes
Definition including stay	yes	yes	no	no	no	yes	yes
Definition including transit	yes	yes	yes	yes	no	yes	yes
Profit as a condition	no	no	no	no	no	for stay only	for stay only
<b>Organised crime</b>							
Condition for charge THB	no	no	no	no	no	no	no
Aggravating circumstance	yes	yes	yes	yes	yes	yes	yes

[4] See also page 23, special provision for transnational THB for sexual exploitation.

In the summary table you will find references to the articles containing the provisions concerning THB and smuggling in each country, followed by some of the most important conditions.

Smuggling has been divided into three parts as some countries regard only illegal aid in crossing the border as the act of smuggling while other categorise aiding the actual stay or the transfer to a third country as smuggling as well. The condition of organised crime for charge under THB emerged as an important theme in the discussions as it is closely linked to THB. It has been added to the table as a separate item.

## Belgium

### THB

The provisions of 1995 are based on migration law which meant among other things, that victims had to be foreigners. The definition of THB herein was so broad that it was in practice non-existent. It included sexual as well as economic exploitation. In practice a large number of THB cases were investigated and charged as smuggling in order to secure any chance of a conviction.

The new legislation on THB came into force in September 2005. In the new legislation smuggling remains basically as it is but THB moves to the Criminal Code. THB within the Criminal Code in the new legislation focuses on different types of exploitation, mostly combined with aggravating circumstances (organised crime, minors, use of force or coercion).

Transnationality is no longer a condition; both victim and perpetrator can be nationals. The THB definition is based on the Palermo Protocol. However, the trafficking of organs is defined under separate legislation.

### Smuggling

No proof of profit is required but it would help the case of the prosecution. Proof of profit is not an aggravating circumstance as smuggling is a serious crime in itself.

Smuggling includes aiding illegal entry, stay and/or transit. Smuggling can be combined with exploitation and coercion and then be charged as THB.

With the distinction between THB and smuggling in the new legislation, more smuggling cases (for example to the UK) will probably be treated as THB. The housing of foreigners staying illegally in the country can be considered as THB as well but not on its own. It would have to be combined with other offences.

### Organised crime as condition for THB

Organised crime is not a condition for charge under THB but is an aggravating circumstance.

## Bulgaria

### THB

THB is defined under Article 159 a, 159b, 159c of the Penal Code in compliance with the Palermo Protocol (since 1 January 2003) and includes sexual and economic exploitation and trafficking of organs.

Articles 159b and 159c have a transnational character.

Article 159b concerns cross-border THB for the purpose defined under Article 159a paragraphs 1 and 2.

Article 159c in connection with Article 159b also concerns cross-border THB when the act represents a dangerous recidivism or it has been committed by an errant or in fulfilment of a decision of an organised criminal group.

Crimes accompanying THB very often are the ones under Article 155-157: persuading another person into prostitution or as bawds for fornication or copulation, systematically providing premises for different persons for sexual intercourse or fornication.

### **Smuggling**

Smuggling is defined under Article 279 of the Penal Code which deals with persons who enter or exit the country without a permit of the respective bodies or, if in possession of a permit, at places not determined for that permit.

Article 280 of the Penal Code deals with persons who take individuals or groups across the border without a permit of the respective bodies or, if in possession of a permit, at places not determined for that permit.

The preparation for both crimes is also a punishable offence.

### **Organised crime as condition for THB**

Organised crime is an aggravating circumstance but no condition for a charge under Article 159c.

Article 93.20 of the Penal Code: an organised criminal group is a structured permanent association of 3 or more persons with the purpose of committing a crime in the country or abroad and which is subject to a punishment of imprisonment of more than 3 years, and through which the aim is to acquire property benefit. The association is structured without there being a formal distribution of functions between the participants, duration of the participation or developed structure.

Most cases are based on information provided by the victim, which is not sufficient for finding evidence of an organisation and not sufficient for finding all the perpetrators.

The method of investigation therefore has to be different.

## **Czech Republic**

### **THB**

THB is defined under Article 232a and includes sexual and economic exploitation.

Trafficking in organs is regarded as a distinct crime and described under Article 209a.

There is no condition of crossing borders under the definition and no provision regarding the nationality of the victim or the perpetrator. Force or coercion are conditions for bringing a charge under THB. It must however be proved that the perpetrator has been conscious of the fact that the victim could be used for some kind of exploitation.

Soliciting prostitution as an offence still exists under Article 204. The offender is the party profiting from and organising the prostitution (not the client).

### **Smuggling**

Smuggling is regulated by Section 171a of the Criminal Law concerning the illegal crossing of national borders as: a person who makes arrangements for another person with the purpose of the unlawful crossing of the national border or makes it possible for another person to cross the border unlawfully. Aggravating circumstances are if borders have been crossed with the intent of covering up or facilitating another crime, or if committed by a member of an organized group as defined under the provisions of Clause 2, resp. Letter a) and Letter c) of the act. For example if a driver does not know he drives for a smuggler he could be prosecuted only for the crossing of the borders.

Profit is not a condition for smuggling but is an aggravating circumstance as well. Profit from a victim of smuggling is not defined as THB but regarded as a distinct offence: to misuse the situation of a person. Helping a person to stay illegally can be interpreted as obstruction of the legal procedure.

### **Organised crime as condition for THB**

Organised crime is not a condition for a charge under Article 232a but is an aggravating circumstance and more so if a group is working in more states (new provision) which is difficult to prove. A group is defined as more than 2 persons and has to have a differentiation of tasks.

Section 163a of the Criminal Law defines the crime of setting up a felonious conspiracy, participation in such a conspiracy or the support of such. Organised crime may also be classified as felonious conspiracy pursuant to Section 89, Clause 17 of the Criminal Law. Not only membership is punishable but also profit from the criminal organisation. A criminal association can commit any type of criminal activity. It is difficult to prove the link between presence of a suspect and the activity itself, especially if the accused has a leading position. In any case proof has to be given that money is involved.

Both articles can be applied together. Punishment is according to the maximum sentence of the most severe offence.

## **Germany**

### **THB**

THB is defined under Article 232 and 233 and includes sexual (Article 232) as well as economic (Article 233) exploitation. Trafficking of organs, however, has its own legislation.

Force or coercion is not a condition for charging under THB. It is an aggravating circumstance if the coercing party is a foreigner. If he/she is a German citizen, this will be defined under pimping or other offences linked to prostitution and sexual self-determination. Nevertheless it is possible to apply THB to a German national in Germany. In that case force or coercion would be a condition because working within prostitution is not enough as this is a legal professional activity. Forced by conditions (abuse) is perceived as coercion as well. If a German is trafficked out of Germany, then the definition of THB would apply as well, as a victim staying in a foreign country is more vulnerable. German victims of trafficking are excluded from protection measures under THB, but benefit from regular assistance to nationals (NGO in red light districts). The idea is that a German prostitute is not as helpless as a foreigner. She is given the same opportunities as THB victims but assistance is given through different channels.

Regarding economic exploitation, as this is new within the definition of THB, not many cases have been started yet.

### **Smuggling**

Smuggling is defined under Section 96 AufenthG (smuggling of foreigners) and Section 97 AufenthG (smuggling resulting in death; professional and gang smuggling). It includes aid to illegal entry, stay and/or transit. Profit is not a condition but is an aggravating circumstance.

A third person who assists or incites a foreigner to enter or stay illegally in the country may be liable for punishment under the general rules for incitement and accessoryship.

In contrast, the independent offence of ‘smuggling’ in the sense of Section 96 AufenthG requires that the perpetrator not merely render aid or incite a foreigner to enter or remain in Germany illegally, but additionally fulfil an aggravating element. It is this aggravating element that upgrades an accessory act of aiding or inciting to the independent offence of smuggling. Such aggravating elements exist where the smuggler receives a pecuniary advantage, commits the offence repeatedly or acts for several foreigners.

### **Organised crime as condition for THB**

Organised crime is not a condition for charging under THB but is an aggravating circumstance. Membership of an organisation may be subject to prosecution but is difficult to prove. Membership is not as severe an offence as organised crime itself and usually dropped. To be defined as organised crime, the organisation has to have a clear structure and the aim of committing criminal activities.

## **Hungary**

THB and smuggling are defined in different chapters of the Criminal Code. Furthermore smuggling is sentenced by local courts while THB is sentenced by county courts as a more severe crime. Generally speaking, the judges in the county courts have more experience as they are in a more senior position in their career.

### **THB**

THB is defined under Article 175/B of the Criminal Code and is according to the Palermo protocol. It includes sexual and economic exploitation and trafficking of organs. It is not necessarily transnational as the victim and perpetrator can be of any nationality. The use of force or coercion is not relevant. The definition includes slavery. A condition specific to Hungary is that the organisation of prostitution is considered as THB even if the prostitutes involved are adult and consenting and of Hungarian nationality. The idea is that one can not consent to trafficking. The aim of THB (any person who sells, purchases, conveys or receives another person, or exchanges a person for another person, or recruits, transports, houses, hides or appropriates people for such purposes for another party) is the basis of the offence.

### **Smuggling**

Smuggling of human beings is regulated by Article 218 of the Criminal Code in the chapter containing “Crimes Against the Purity of State Administration, the Administration of Justice and Public Life”. Smuggling is committed by any person who acts as an accomplice in the crossing of state borders without legal authorisation or in an unauthorised manner. To fulfil the basic elements of the crime the perpetrator does not need to commit the act for pecuniary gain. However this is mostly the case and perpetration for profit is listed among the qualifying circumstances and is an aggravating circumstance.

Aid to illegal stay is a separate offence and is not defined as smuggling.

### **Organised crime as condition for THB**

Organised crime is not a condition but an aggravating circumstance in charges of THB if two or more committed the crime in an organised way or agreed to commit the crime.

A separate offence is membership of an organised group (punishment of 3 years or

more) for a longer period and work in a harmonised way and with the agreement to commit offences (punishment of 5 years or more). Since 1997, convictions have been few because of lack of evidence as most cases are based on the testimony of the victim.

## The Netherlands

### THB <sup>[5]</sup>

THB is defined under Article 273a CC, based on the Palermo protocol and includes sexual and economic exploitation and trafficking of organs. It also includes slavery but slave trade has a separate provision in the Penal Code which might include slavery (Article 274).

To be defined under THB, the victim has to deliver a service or undertake an activity (except for trafficking in organs).

Following the Framework decision of the European Union, the transnational aspect and/or proof of organised crime are not relevant.

Force or coercion are irrelevant if the victim is a minor but it has to be proven if the victim is an adult, except in cases of transnational exploitation for sexual exploitation as the Convention of Geneva of 1933 is still in force: the transnational recruitment, transport, and kidnapping of women of age with the purpose of bringing her into prostitution is a punishable offence, regardless of the person's consent. For economic exploitation force or coercion are conditions in any case.

### Smuggling

Smuggling is defined as aiding illegal entry, transit or stay in the Netherlands, under Article 197a CC. Proof of profit is necessary only for aiding a stay. For entry and transit there is no need to prove profit, which has to do with the subject of terrorism: illegal entry for purposes of terrorism is not linked to profit but can still be charged under smuggling.

Exploitation within smuggling (passive exploitation) can not be charged under THB as a victim does not perform an activity or deliver a service (e.g. aid to illegal stay by providing housing at exorbitant prices).

Theoretically a smuggled person forced to work under inhuman conditions (for the costs of transportation and entry) could fall under THB. As the broadening of the definition is new (1 January 2005) no cases are known yet.

### Organised crime as condition for THB

Organised crime is an aggravating circumstance but not a condition for charging under the definition of THB. Participation in an organisation with the aim of perpetrating criminal activities (Article 140) can be entered in the indictment separately. In prosecuting members in the higher levels of a criminal organisation, it is often difficult to prove they have actually committed the crime itself. Under Article 140 a person can be charged without committing the crime itself if the suspect was aware of the organisation's aim. The prosecution has to prove the organisation has a structure, continuous activity and a differentiation of tasks.

5] The new legislation on THB came into force on 1 January 2005. Until that date, THB was limited to sexual exploitation. However, what will exactly be defined as THB under the new legislation has still to be developed in the future. Therefore it must be noted that this review reflects the current state of affairs.

## Poland

### THB

The definition of THB is binding in Poland as part of the Palermo Protocol and therefore includes sexual and economic exploitation and trafficking of organs. A new legislative proposal will improve the regulation with a definition of THB as part of domestic criminal law. This will improve the assessment of the crime which is now specified in Polish law under Article 253, paragraph 1. The transnational aspect is not relevant.

Article 204 of the Criminal Code defining prostitution procurement, pandering, pimping, inducing minors to prostitution and abducting persons as offences, can be combined with THB. This is important concerning the level of punishment. A double qualification means a maximum sentence of 10 + 3 years.

Proof of force or coercion is not a condition in any case (minor or adult).

### Smuggling

Smuggling is defined under Article 264 of the Criminal Code. Smuggling concerns the facilitating of entering, stay and transit of people through the country and to neighbouring countries. The illegal entry, stay and transit are considered administrative offences. The smuggled person could be prosecuted for use of false documents but the prosecutor can choose to drop the case as the offence is minor compared to the smuggling itself.

Profit from smuggling or organised crime is an aggravating circumstance but not a condition.

### Organised crime as condition for THB

Organised crime is an aggravating circumstance but not a condition. Membership of a criminal organisation is defined under Article 258. In the indictment, offences under Article 258 can be separated from the crime of THB. Many cases concerning organised crime had successful indictments in the past year for membership of a criminal organisation without proof of the crime itself.



## II. Cooperation

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This chapter illustrates two types of cooperation. Firstly, as several countries are usually involved in trafficking cases, international cooperation in fighting THB becomes obvious. Establishing effective international cooperation has therefore been recommended by European institutions on many occasions. Two examples of good practice, Eurojust and cooperation in Bulgaria, will be given, followed by recommendations and potential obstacles.

Secondly, the fight against THB cannot be effective without cooperation among actors in the national field of THB. Good cooperation between police forces, prosecution, social workers, NGOs and such bodies as the labour inspectorate will be conducive to the prosecution of traffickers as well as the protection and reintegration of the victim, all the more since the broadening of the definition. Such cooperation exists in Belgium and the Netherlands.

### II.1 International cooperation

A case of THB includes recruitment, transport and exploitation which in most cases takes place in more than one country. These tasks are furthermore divided (in most cases) across more than one criminal organisation. Cooperation at an international level is a condition for tackling the problem, uncovering a complete chain of trafficking and rolling up an organisation instead of merely solving individual cases.

Fortunately, there is a clear tendency within the EU to make international cooperation easier. In general it can be said that most instruments on international cooperation can be used effectively, the exceptions being more and more limited. In addition police forces have easier access to other national territories to pursue the investigation. Generally speaking, no major problems are encountered once the international cooperation has been started. The problem lays in initiating the cooperation. Often the investigation stops when leads cross the national border as national authorities often feel that legal cooperation is too difficult to attain. Legal instruments are available, but cooperation in practice still depends on personal contacts.

#### Example: Eurojust

The purpose of Eurojust is to facilitate judicial cooperation between the Member States of the EU without the aim of harmonising national laws. It is concerned with a wide range of criminal offences and recognises THB as a serious international organised crime. Eurojust is composed of 25 National Members, one seconded from each member state in accordance with its legal system, being a prosecutor, judge or police officer of equivalent competence. Eurojust has to fulfil its tasks through one or more of the national members or acting as a body. The competences of the national members are subject to the national law of their Member States and the Member State will define the right of a national member to act in relation to foreign judicial authorities.

A number of committees were established as envisaged by Eurojust's Rules of Procedure. The committees deal with Casework, Communications, Strategy and Evaluation. Whilst National Members deal with individual cases, the Casework Committee works at a different level to establish good practice, policy and efficiency in the handling of cases, and to improve the effectiveness of cooperation and coordination meetings on cases and casework topics.

Eurojust is able to speed up procedures regarding requests for international cooperation. All national members are in the same building and can easily contact their EU colleagues. There are several examples of good cooperation.

For example, if a case occurs in Poland and the request through the formal channel is taking too long, the investigating authority can contact the national member for Poland at Eurojust. The member for Poland can present the case and discuss it directly with the members of the other countries involved in the case. The case is registered and with the request of the Polish authorities in hand, the members of, for example, Germany and the Czech Republic can contact their own colleagues in Germany and the Czech Republic. Practice shows that the information requested can be obtained in 1 or 2 weeks. There are also second and third level meetings if major problems occur. Second level meetings can be used, for example, for requests for house searches in other countries. The meetings can also be used to discuss how to coordinate the case. However, as in most organisations, when decisions have to be taken on higher levels, procedures do take time at Eurojust as well.

Parallel to sending a request through Eurojust, the formal procedures for international requests must of course always be followed.

#### Example: Bulgaria

In one of the cases of THB with a transnational character investigated in Bulgaria, there was extensive cooperation with the Netherlands. A good level of cooperation was attained through direct contacts. First of all, the requesting (Dutch) prosecutor made sure he knew which colleague was working on the case in Bulgaria. To this end he contacted the International Legal Assistance department of the Supreme Cassation Prosecutor's office in Sofia.

After receiving the request from the Netherlands, some of the items of evidence were frozen and seized (money and jewellery) as a preliminary measure according to the Bulgarian PPC. Permission by the court was given for the seizure and access to bank accounts. The items of evidence were sent to the Netherlands on the basis of the Rogatory letter and after the case had been heard were returned to Bulgaria under Article 6 paragraph 2 ECMLACM. When the Dutch authorities reached a final decision, it was sent to Bulgaria for the proceeds to be confiscated by the Bulgarian state. The procedure is now ongoing in Bulgaria in order for the Dutch decision on the confiscation of the proceeds from the crime to be recognised under the European Convention on the International Validity of Criminal Judgements and for them to be confiscated in favour of the Bulgarian state.

To speed up the execution of the Rogatory letter, items of evidence (taped material from interception of telephone conversations) were sent through carriers in parts and during the investigation, to avoid having to wait until the final decision and thus to speed up the pre-trial procedure in the Netherlands. To be sure the protocol required by the Dutch PPC was followed, the presence of Dutch authorities during the taping was requested and allowed on the basis of Article 4 ECMLACM. According to the Council of Europe, European Convention on Mutual Assistance in Criminal Matters, in agreement with the requesting countries the penal procedure of the requested country should be followed in order to deliver evidence in the correct and usable form to be valid before the Court.

In this case there was an agreement on the time to start a parallel pre-trial investigation in Bulgaria. In parallel pre-trial procedures, if initiated in both countries, direct contacts are needed to avoid obstructing each other. The leading opinion is that the first pre-trial has to be leading and this country has to discuss with the second country the right moment to start the second investigation.

A last item concerns the way of sending and receiving requests for international legal cooperation. Bulgaria has experience in sending and receiving requests by fax and this is done in parallel with the formal way, but saves time. This substantially speeds up procedures. Additionally, liaison officers can be very useful for getting the material from the execution. As representatives of the official authorities of the requesting country, they can assist in writing a protocol, which once signed by the representative of the Ministry of Justice in Bulgaria can be given to the liaison officer to be delivered to the authorities in the requested country.

### **Requests for international cooperation and mutual assistance**

#### **Recommendations**

- In Germany the request is drafted and sent by a prosecutor specialised in requests.
- The request forms used in the Netherlands are generated by a computer program with automatic search of translated provisions.
- In Hungary, there is some informal specialisation among judges that could make the procedures easier. The specialisations do not follow formal structures but follow personal interest, to enhance the chance of genuine involvement.
- Liaison officers can be very useful as they know the political and administrative sensitivities of the hosting country. It must be kept in mind, however, that liaison officers have mixed responsibilities as they are bound to the embassy and therefore to the Ministry of Foreign Affairs.
- For requests it is important to keep in mind that the formal required procedure must always be followed in parallel if a request is done in an informal way.

#### **Potential obstacles**

- A special feature of Hungary is that prosecutors are not allowed to have even informal contact without permission of the prosecutor general.
- Contact persons and informal entries are seen as very important for smooth cooperation. However, contact persons rotate regularly and therefore information has to be updated.
- One obstacle encountered in practice is the lack of a common language. Officers involved in a case often have an inadequate command of English, the language most frequently used for international contacts.

### **Three phases of THB**

#### **Recommendation**

- THB distinguishes three phases, namely recruitment, transportation and actual exploitation. To achieve good cooperation in different countries it would be useful for prosecutors to know which phase the perpetrator is involved in. Most countries have experience with one phase of THB. It would strengthen a case to have knowledge of all phases: for a case against recruiters for example, it would be useful to have information regarding the transporters.

## II.2 Cooperation among actors in the national field of THB

### Example: Belgium

In 1992 political events raised awareness of THB. A multidisciplinary group was set up to tackle the problem, with the Ministries of Interior, Justice, Employment, Foreign Affairs and Finance, together with services for aliens and NGOs. The Task Force was headed by the Prime Minister and was set up to coordinate prevention, protection and prosecution of THB. The definition of THB already included sexual and economic exploitation.

From that time on, Belgium developed a specific system of assistance and support to victims. It consists of a combination of measures, including a short-term residence permit, temporary work permits, reception and assistance by three specialised and recognised centres through which a wide range of specialised care is offered.

The support system is regulated through a Ministerial Circular of 1994 and two Ministerial Directives of 1997 and 2003. The two Directives offer concrete guidelines for all the services involved. Local and Federal Police and judicial services (the Prosecutor's offices, including the Federal Prosecutor's office) as well as Social Inspectorate, the Labour Inspectorate, the three specialised centres and the Immigration Service at the Federal Public Service of Interior are instructed to cooperate in a dynamic and coordinated way.

Most often, a victim of trafficking is discovered during activities in the field led by police or during inspections by Social Services or Labour Inspection Services. These are the actors who represent the front line of intervention and form the most crucial step in the application and success of victim assistance and protection. Every time the Police Services or Inspection Services find a possible or presumed victim of trafficking, they are instructed to provide him/her with an information leaflet about the specialised reception centres. These leaflets are available in several languages. Other services such as the Immigration Service and the General Commissioners Office for Refugees and Stateless Persons are instructed to do so as well.

When the Police Services or the Inspection Services deal with a potential victim of trafficking in human beings, they take the necessary measures to transfer the victim to the specialised centre and inform the Immigration Service of their initiative when it concerns a foreigner who is in either a precarious or illegal situation. Belgium works with three recognised centres for victims of trafficking: Payoke for the Flemish region, Sürya for the Walloon region and Pag-Asa for the Brussels region. The recognition implies not only the exclusive right to assist victims throughout the procedure but also the right to start civil proceedings against traffickers either in the name of the victim or in the name of the centre.

During the investigation the NGO/centre does its own intake for social and legal assistance and work permit application, to assess the victim's wishes and what the possibilities are. When the victim is interviewed by the police, a representative of the NGO is usually present. The NGO furthermore contacts the services for aliens on daily basis to check out the story of the victim (from the database). The police conduct the investigation and start a financial investigation as it is possible for the prosecution to separate the financial from the criminal investigation. This means that the criminal investigation will not be delayed by the financial one which is often long and complicated.

The police investigation will almost always involve the tax services (Ministry of Finance). There is also increasingly close cooperation with the local services: housing and labour (for economic exploitation) inspection, registry of citizens and properties: databases and searches or inspections can be combined with police inspections.

These local bodies and organisations are not directly represented in the Task Force but directives give the prosecution the option of formalizing the contacts if necessary. In this sense the efficacy of tackling trafficking in human beings is directly linked and even dependent on the development of a strong cooperative spirit shared by all relevant authorities and actors.

#### Example: The Netherlands

Cooperation between institutions involved in the sex industry is laid down in a national action plan which regulates the implementation of the new prostitution situation (since October 2000, pimping has been legalised). Within the broad definition of THB, an effort is made to bring all the institutions together that can pick up a signal in an early stage. A great number of institutions have a significant role to play but all have their own objectives. For example, the immigration services have the task of regulating migration, the border police for guarding the border. They should still try to avoid overlap but at the same time make sure from the outset what information is available and where.

The ideal situation would be one database where everyone can check for relevant information. Such an initiative has now been started by the police with a centre of expertise for THB and smuggling. Participants are the border police, the social inspectorate, the immigration services and the national police. Still missing is the participation of the alien police and the labour inspection. All participants are located in one building to enhance personal contacts.

Privacy legislation hampers access to the databases of the different services. However, information can be exchanged at regular meetings. Already some cases have started with information from the immigration services. Such exchange is still on a case-to-case-basis as it is very new. The centralisation of information is still an unsolved issue. The focus now is to build networks from a central point. The Belgian system would be of interest since not all stakeholders will be able to be located in the same building. Regular meetings per district would involve stakeholders in other parts of the country.

#### Discussion:

- In Germany, judges and prosecutors have no means of cooperating in such a system. The need to cooperate is acknowledged by every party but to enhance cooperation, politicians should address the issue as their influence is more extensive.
- In Hungary, the raising of political awareness is only beginning. A society has to start somewhere and therefore it is important to obtain information from systems in other countries.
- In the Czech Republic no such discussions have been started. If information is needed, some contacts exist but not to the same extent as in the Dutch or Belgian situation. Such cooperation definitely needs to be considered but will probably be very difficult to realise.
- Bulgaria has achieved good communication and cooperation between government bodies, social care and NGOs. The coordination between the judicial authorities and NGOs already existed and functioned before the law on cooperation in THB was adopted. The main actors involved have a legal basis in the law on THB and all institutions and organisations involved have their own task defined within the framework of THB.
- The extensive cooperation between the banks and investigating police could be a problem in some countries regarding the secrecy code of banking.

## III. Protection of victims

Of particular importance in the context of raising awareness among the judiciary and public prosecution services on trafficking is the role of the victim in the criminal procedure, as the victim is most often the key to a successful prosecution of the traffickers. Therefore it is vitally important to examine and compare the ways victims are approached, the way of collecting evidence and information, the support and security guarantees provided.

In the prosecution of cases of THB, the judiciary/public prosecution services face various problems with specific regard to trafficking victims. Many victims are unwilling to cooperate with law enforcement agencies due to fear of retribution. This very often discourages victims from giving testimony and can affect the consistency of their statements and their presence during court proceedings. This has a major impact on the availability and reliability of proof and affects the planning and management of both the pre-trial investigation and court proceedings.

In this Chapter you will find an overview of the regulations regarding the assistance to the victim, the protection measures and the possibilities for compensation for damages in each of the countries involved.

This issue is the most discussed in the framework of the project. In the second part of this chapter, head topics linked to the dependence on the testimony of the victim will be illustrated by examples and discussions.

### III.1 Legislation and assistance

Summary table 2

	Belgium	Germany	Czech Republic	Bulgaria	Hungary	Poland	The Netherlands
Relevant provision for protection of THB victims (if applicable <sup>[6]</sup> )	-	Sec5 par4 AufenthG	-	10&11	-	-	B9 alien circular
Temporary residence permit	yes	yes	yes	yes	yes	visa	yes
Reflection period	yes	yes	no	yes	no	no	yes
Work permit	yes	yes	no	no	yes	no	yes
Protection of family members	no	yes	no	yes	yes	no	child
Assistance for returned victims	n/a	n/a	yes	yes	yes	yes	n/a
Social welfare during stay	yes	yes	yes	yes	no	no	yes
Special measures for minors	no	no	no	yes	no	no	no
Interview by specialised officer	yes	yes	yes	yes	yes	yes	yes
Inform victim about risks and procedure	yes	yes	no	yes	no	yes	yes
Possibility for compensation victim	yes	yes	yes	yes	yes	yes	yes

#### Belgium

THB victims can be given a residence permit as well as a work permit. The residence permit is conditional (except for minors): the victim has to cooperate with the authorities, accept to stay in a designated shelter and break contact with her exploiters. In

[6] All seven countries have legislation that provides for the protection of victims of a crime. Provisions mentioned here are specifically for protection of victims of THB.



exchange she gets a temporary residence permit, the possibility to work and follow courses and at the end of the procedure the opportunity to apply for a permanent residence permit. If a victim has proven to be useful in a trial, a permanent residence permit will usually (but not automatically) be granted. On the other hand if the accused is acquitted, the permanent permit will be refused. However, experience shows that the vast majority of victims want to return to the country of origin.

For reasons of protection or because of better provisions it is in some cases possible to relocate the victim in another country, under condition that he/she stays available for the procedure. The prosecution takes the decision, while IOM is often involved in the relocation.

### Compensation

Recognised centres/ NGOs can make a civil claim, either in name of the NGO or in name of the victim. The NGO is an interested party as it provides shelter. It can claim for the victim, for the NGO (for symbolic compensation) or both (which is a new option).

### Bulgaria

To be eligible for protection measures, the victim has the obligation to declare him/herself the victim of trafficking first. Within a period of 10 days a personal file is drawn up and the NGO responsible asks the victim if he/she wants to cooperate. After this period, the police together with the prosecution and an expert (psychiatrist) have to decide whether the case can be pursued as THB. If so, the period is extended to 30 days, during which the victim is explained that he/she will be given special status if he/she cooperates (reflection period). In this period the pre-trial is finalised and all information given by the victim goes to the police. At the end of the 30-day period, it must be clear if the investigation can be continued and if the victim is useful as a witness. If so, the consent between witness and police is formalised.

Protection of the victim is defined under Article 10 and 11 of The Act on Combating THB: the victim receives a residence permit for the duration of the trial, which does not come under migration law. Article 11 also provides for protection of the family if necessary. The shelter has to provide sanitary facilities, food, medical and psychological assistance, employment if wished and social reintegration. Victims can be relocated in other towns if necessary. The victim is not directly settled in work by the shelters and centres, but is helped by the social duty authorities in applying for an education or occupation.

Minor victims are protected under Article 21, 22 and 23. When a case is registered, the Child Protection Agency is informed, which takes care of the minor from then on. Minors are kept apart from adults in the shelter, and some towns even have separate buildings for them.

Most non-Bulgarian victims return home.

### Compensation

The victim can make a request for compensation. Within the penal procedure, no costs are attached to the proceedings. If the claim is within civil proceedings, the victim has to finance the proceedings himself/herself. If the victim is claiming in a civil court, this is not included in the criminal proceedings and the civil proceedings are conducted separately from the criminal proceedings. The victim may engage a lawyer to represent him/her in court. The presence of the victim in person as a civil claimant is not required.

## Czech Republic

In the Czech Republic it is felt that the first priority is to get the victim out of the trafficking environment. The second priority is to keep the victim inside the Czech Republic, for which a residence permit and shelter are provided. The victim will not be granted a work permit and the family of the victim is excluded from the possibility of obtaining residence permits. If the victim wishes to return to the country of origin, he/she will receive assistance with travel documents and with the criminal procedure. If the victims stay in the Czech Republic, additional resources are available.

New legislation is currently (spring 2005) being proposed which should give the victim the opportunity to stay longer (90 days) if this is necessary for the criminal procedure, with an extension to a maximum of two years if this is necessary for protection after the procedure has been closed. This is a costly measure which would also involve housing and job training courses, for example.

There is a special programme for Czech victims returning to the Czech Republic that incorporates measures for reintegration, under the responsibility of the Ministry of Interior.

There are no special measures for minors but they can make use of the programmes designed for THB victims.

## Compensation

The victim can make a claim for compensation in civil proceedings as well as in criminal proceedings. For a claim in criminal proceedings, the claimed damage must have occurred as a direct, not a mediated, consequence of the crime that is being tried.

## Germany

Germany has three levels of protection for victims of trafficking. The first level of protection focuses on strengthening the position of the victim by allowing legal advice, the presence of a counsel in court or representation by a lawyer, and secrecy of the victim's whereabouts. At this level, informal protection is given by means of moving from shelter to shelter to keep his/her location a secret, paying special attention to the suspected trafficker, escort to court etc.

The second level of protection is not under the responsibility of the prosecution. It focuses on assistance to the victim. The victim is eligible for a temporary residence permit with a reflection period of 1 month in which he/she cannot be expelled (new legislation). The residence permit for the victim is given for the time of the trial but there is a possibility to apply for a permanent permit on humanitarian grounds. With the residence permit, the victim can apply for a work permit but this is not compulsory as he/she can also apply for social welfare. If the trial lasts for several years, he/she will also get assistance for professional training. It is possible to extend a residence permit to the family of the victim if the threat is real and severe, but this is seldom used.

The third level of protection is under the responsibility of the police and the Ministry of Interior. It is meant for protection of future danger. A formal form of protection is the witness protection programme with a new identity, job and education assistance, cut off from his/her former life, under police control. This is rarely used as most are not willing or able to cope with it. The rules for participation are very strict as it is very extensive and costly.

## Compensation

The victim has a right to compensation but has to claim it. The victim has to sue and the charge is difficult to prove which means that the system does not work very well in practice. The judge can decide to confiscate assets. The assets can then be claimed



for the state or claimed for the victim. If the victim is present during the proceedings, the assets cannot be claimed for the state even if the victim does not present a claim her/himself. The assets can then be frozen by the state but after the procedure is closed they will return to the defendant. This is valid for damage claims as well as illegal gains. Under the Victims Compensation Act, the victim can in any case obtain financial assistance, for example for medical help.

## **Hungary**

There are no special provisions for protecting victims of THB as protection is laid down in general provisions. The protection includes the confidential processing of data, which is commonly used and a lower level of protection.

A higher level of protection is the witness protection programme. The special protection programme can only start during the investigation before the start of the trial. During the pre-trial phase, the investigation judge would hear the victim. After completion of the investigation, the use of the testimony of a special protected witness is put in the indictment, while in the file any trace that could lead to the identity of the victim is left out. The court may view a summary of the testimony and ask questions in writing. The use of special protection is not frequent, and even less in THB cases.

Protection in practice means a safe place and change of residence. This will also be the practice in the future.

There is no reflection period and there are no special provisions for minors. The victim is granted a temporary residence permit and he/she can apply for a work permit.

## **Compensation**

During criminal proceedings the victim can claim compensation for damages linked directly to the offence. For other damages, civil proceedings have to be started.

## **The Netherlands**

The protection of THB victims is called the 'B9' regulation which is laid down in the circular that regulates immigration. If the police suspect that a person is a victim of THB, it is obliged to inform this person of the B9 procedure and the reflection period of 3 months contained in it. The reflection period is not applicable to witnesses or victims who have already reported the crime. It is expected that victims of economic exploitation will benefit from the reflection period as well.

The victim is given a conditional temporary residence permit during the proceedings if she cooperates. She is allowed to work (new legislation) and can apply for psychological and legal assistance and shelter. The Organisation against Trafficking of Women (STV) officially coordinates the shelters and registers the cases. After the procedure is closed, the victim can apply for a permanent residence permit under migration law on humanitarian grounds.

The temporary permit is only valid until the decision in the first instance. It can be extended to appeal in special circumstances if the victim is still needed by the prosecution. In practice the victim will immediately be called as a witness by the defence in the appeal if the prosecution lets him/her go.

There is a possibility for a witness protection programme but this is rarely used as it is too drastic.

There are no special provisions for minors as the B9 applies to them as well. Informally, minors are housed separately. B9 provides for family reunification with children of the victim during the period of the trial. There are no provisions for the protection of other family members.

B9 is defined for non-Dutch citizens (as part of the immigration circular) but some

parts can be applied to Dutch victims although this is not explicitly mentioned. Victims of Dutch nationality are assisted through other channels.

The prosecution has direct connections with the immigration services. If the criminal procedure is ongoing the residence permit can not be withdrawn. When the period of the temporary permit expires, the victim can apply for a permanent residence permit on humanitarian grounds. Cooperation of the different departments makes it easier to form a file where sufficient evidence can be gathered for granting a permanent residence permit on humanitarian grounds. The file can be complemented by information of the Dutch Ministry of Foreign Affairs about the situation in the home country.

### Compensation

Compensation can be included as a civil part in the criminal procedure. Material compensation such as therapy can be given as well if this is directly linked to the crime. The compensation can be collected by the state through a bailiff which is easier for the victim. The compensation is then paid out to the victim by the state in order to avoid contact between victim and perpetrator and there is no slowing down of the procedure. If the case is complicated, a separate civil law suit can be opened independently of the amount claimed. The claim of the victim takes preference: if the claim is less than the profits, payment can be made to victim and state.

### Poland

A victim may only stay in Poland if he/she can obtain a special visa. There is no period for reflection and there is no financial support for temporary stay during the investigation. Generally, non-Polish victims have to leave the country.

The investigation is difficult for many reasons. Sometimes it is in fact easier to collect evidence against the victim, e.g. for illegally crossing the border, which happens a lot in practice.

During the investigation, options can be used to distance the witness by means of technical facilities. If a victim has been deported, the only solution is a video testimony as it is almost impossible to get a victim in Poland a second time. The legislation states that this form of testimony can be used concerning cases of international organised crime.

There is a special legislation on protection by hiding the victim's identity. This can be used for THB cases but it is rarely done.

### Compensation

There is a regulation for compensation during the criminal procedure. Confiscation of profits is possible for direct as well as indirect benefits (new legislation).

### Good practices

- In the Czech Republic, Germany and Poland, the victims are allowed to be present in the court room, have a lawyer and participate in the judicial proceedings as a party. It is beneficial to the victim to take an active part in the trial, instead of being just a witness. It works well for the prosecution as well.
- In Germany all future damages linked to the crime can be covered by compensation, which has to be claimed by the victim in civil proceedings. If the defendant is of the opinion that the amount asked for is too high, he/she has the opportunity to prove otherwise in civil proceedings.

### III.1.1 Assistance to victims of trafficking: the role of IOM

IOM was founded in 1951 by 15 European states and the United States of America with the aim to cope with the huge problems regarding transportation of refugees and displaced persons after World War II. IOM specialized at that time in transportation of refugees and displaced persons. IOM is now a worldwide intergovernmental organisation with more than 100 member states originating from all continents and with more than 200 operational offices worldwide.

#### Aim

The aim of IOM is to enhance orderly and humane migration to the benefit of all, governments and migrants. Although there are often conflicting interests between a government and the migrants residing in that country, or between governments of destination countries and governments of sending countries, the IOM tries to bridge this gap. This is realised mostly by operational projects where individual migrants are assisted to be able to travel in a safe and dignified way. The migrants who receive support of IOM can be internally displaced, refugees, asylum seekers, undocumented migrants, victims of trafficking highly qualified, family members of accepted refugees, or labour migrants.

The distinction between country of origin, transit and destination has become less sharp during the last few years. The cooperation and dialogue on migration management has received more attention and IOM has been increasingly facilitative in this respect. IOM is involved in research on various aspects of migration and technical cooperation programs. Regional migration dialogue initiatives and global migration dialogue are other important aspects of the work of IOM and during the annual council session all member states meet in order to discuss the way in which the organisation should proceed.

#### Service Areas

The headquarters of IOM are situated in Geneva. The respective national IOM missions run projects that are funded by the national governments, third country governments or other donors like the European Union. Globally, six service areas have been defined within which IOM missions are active:

- Assisted voluntary return and integration
- Migration and Health
- Technical cooperation
- Information and mass communication department
- Counter Trafficking
- Movements and operations/pre departure services

#### Counter Trafficking

IOM's counter-trafficking activities are geared toward the prevention of trafficking in persons, particularly women and children, and the protection of victims / migrant's rights and facilitation in the improvement of the prosecution. They include:

- Carrying out information campaigns for prevention.
- Providing counselling services.
- Conducting research on migrant trafficking.
- Providing safe and dignified return and reintegration assistance to victims of trafficking.
- Helping governments to improve their legal systems and technical capacities to counter trafficking.

IOM is contributing to the fight against trafficking in human beings by assisting individual victims of trafficking but also by coordinating projects like “Awareness raising of judicial authorities concerning trafficking in human beings”. Besides operational and training projects, IOM is involved in coordinating fora and conferences to stimulate changes on policy level. IOM has for example been the organiser of the European conference in 2002 for preventing and fighting THB, that resulted in the Brussels declaration and the Expert group on THB of the European Commission.

### **Individual assistance**

Possibilities for individual assistance to victims of trafficking vary per country. For the western countries which are mainly countries of destination, the most important activity of IOM is the assisted voluntary return program in which victims can be assisted in all phases of return to their country of origin. Other organisations are taking care of the shelters, the medical, psychological and legal assistance.

The Eastern countries being countries of origin, transit and increasingly also countries of destination, IOM tends to have more extensive programs. Besides having programs for voluntary return, IOM can assist victims with a place in a shelter, psychological and medical assistance, contacting the family, reorientation on possibilities for work or education. NGO's are often subcontracted by IOM and IOM has a coordinating role. Furthermore IOM is active in contacting NGO's as well as national authorities for awareness raising and prevention.

In all countries involved IOM is working closely with partners. IOM in The Netherlands signed a working agreement with STV (Organisation against Trafficking in Women), Novib/Oxfam, SRTV (Religious Organisation against Trafficking in Women), Humanitas (NGO) for a better cooperation in the Netherlands in assistance to victims of THB returning to the country of origin. One of the biggest advantages of the working agreement is the possibility to use each others international network for assistance, shelter and eventual reintegration.

IOM has elaborated a Code of conduct for the registering of data and exchange of information, in which the safety of the victim as well as IOM staff is taken into account. For example, regular returnees are given IOM bags to be recognisable by IOM staff upon arrival. For victims of trafficking different means of identification are used, to make the movement as anonymous as possible. Victims of trafficking asking for assistance fill in a standard IOM questionnaire, for several purposes. It is used for data collection, to make a first risk assessment upon arrival, to have a first inventory of the wishes of the victim for reintegration and to make a first assessment of the medical/psychological condition of the person.

### III.1.2 Assistance to victims of trafficking: the role of La Strada

#### La Strada

La Strada is an international NGO network that has been set up for the prevention of trafficking in human beings. It was launched in September 1995 with a bilateral exchange between the Dutch Foundation against Trafficking in Women (Stichting tegen Vrouwenhandel, STV) and two women's rights NGO's in Poland and the Czech Republic. Later, in January 1997 and June 1998, partners in Ukraine and Bulgaria respectively joined this network. In 2001 the La Strada network expanded with four new partners in Belarus, Bosnia-Herzegovina, Moldova and Macedonia. Including STV, the network currently consists of nine member organisations. The La Strada Program: Prevention of Trafficking in Women in Central and Eastern Europe aims to make trafficking in women visible. It wants to raise awareness among authorities, media and the general public about this violation of human rights. The program also aims to help victims contact support networks and informs women and girls about the possible dangers of trafficking. La Strada accomplishes its mission and policy by developing a multi-disciplinary approach: Information & Lobby, Prevention & Education and Social Assistance to victims of trafficking.

#### The Information & Lobby Campaign

The goal of the Information & Lobby Campaign is to present the problem of trafficking in women as a serious crime against human rights. Moreover it aims to stimulate governments to put the issue high on their political agenda and to take action. La Strada monitors both the national and international situation on trafficking, including the existing laws against trafficking in women.

##### Activities of the Information & Lobby Campaign

- running ongoing media campaigns, establishing media contacts, giving interviews, writing and publishing articles
- educating and raising awareness among groups of professionals, decision makers and the general public
- addressing members of parliament and governmental institutions
- organising seminars, conferences and workshops both for NGO's and GO's
- collecting information regarding the national laws on prostitution and trafficking, and monitoring the process of implementation of international standards
- developing National Action Plans against trafficking in women

#### The Prevention & Education Campaign

The goal of the Prevention and Education Campaign is to empower women to make independent decisions focusing on protecting their rights. In addition to targeting risk groups directly, the campaign focuses on the environment of groups at risk, by educating professionals (police and border police officers, teachers, school psychologists, school advisors, peer educators, street workers etc.) on how to prevent potential victims from falling prey to trafficking.

##### Activities of the Prevention & Education Campaign

- producing and distributing educational and informational material, aimed at different target groups - young women at schools, universities and orphanages, unemployed women, women with low income, sex workers etc.
- visiting schools, universities and other institutions and delivering lectures on prevention

- building up relationships and conducting training seminars for labour agencies, NGO's, street workers, embassies, police officers, teachers and all other parties who might be involved in prevention activities
- disseminating the telephone number of local La Strada Hotlines among (possible) victims of trafficking, so that young women seeking advice on jobs abroad, can be informed about the risks involved and the possible alternatives

### **Social Assistance Campaign**

The aim of the Social Assistance Campaign is to provide social and emotional support to survivors of trafficking. Within the La Strada Program, national and international networks are created for a safe return and support to survivors. La Strada develops the policies and strategies for meeting the needs of the survivors of trafficking. It combines direct victim support with lobbying at different levels in connection with specific cases.

#### Activities of the Social Assistance Campaign

- developing complete care programs for survivors of trafficking, including emotional and social support, accommodation, and medical and legal services
- operating local Helplines and providing anonymous consultations and advice in practical, medical, legal and social matters to victims, survivors and their relatives
- advocating on the special needs and interests of women survivors of trafficking and referring them to social support services
- developing international networks of NGO's and other institutions to ensure the women's safe return to their own countries
- establishing local and national networks of relevant services and institutions in support to survivors

### **A unique partnership**

La Strada is an international, East-East and East-West partnership on the issue of trafficking in women, with very close international co-operation on individual cases of victims support, well developed international communication systems and exchange of best practices. La Strada is a 'bottom-up' program, in which the direct contact with victims of trafficking provides invaluable experience, skills and information.

La Strada consists of independent NGO's whose priority and focus point lie with the women and girls involved. Their needs and problems are the red thread in La Strada's work and are decisive for (future) activities, strategies and goals. La Strada has a multi-disciplinary approach to victims of trafficking, addressing Information & Lobby; Prevention & Education and Social Assistance. La Strada aims at long term results. Women are not only informed of the risks through the Prevention & Education Campaigns, but they are also supported to build up a new life through the Social Assistance Campaigns. Moreover, the Information & Lobby Campaigns advocate their opportunities for reintegration into society as well as the acknowledgment that traffic in women is a severe violation of human rights and a serious criminal offence.

## III.2 Testimony of the victim

Testimonies of the victims are often key evidence in THB cases. This is a cause of many dilemmas for judiciaries as well as public prosecutors. Two main questions arise:

- as testimonies have to be detailed to be valid as evidence, how can protection be provided to the victim at the same time?
- how can dependence on testimony be reduced and other kinds of evidence be made available?

Matters of discussion also arise in relation to the protection and testimony of the victim, examples of which you will find below.

### Dependence on (anonymous) testimony

#### Example: Bulgaria

In Bulgaria the testimony of the victim is core evidence but not the only evidence. Gathering of other evidence is required. Some instruments have been introduced by the Dutch authorities in 2002-2003 in THB cases, evidence which was gathered with Rogatory letters to the Bulgarian judicial authorities. The first request of the Dutch authorities included only the interviewing of witnesses. As additional evidence was needed, the Dutch and Bulgarian authorities met and discussed the possibility to tap the mobiles and telephones of witnesses. The offenders were in prison at that moment. Interception and tapping was carried out after Court permission according to the Bulgarian PPC. Dutch representatives of the investigative police were allowed to be present as the activities were carried out, as requested in the Rogatory letter on the basis of Article 4 ECMLACM. The Dutch authorities asked to be present during the tapping. The Bulgarian Ministry of the Interior also authorised the presence of the Dutch investigative police officers during the interception of mobile and telephone conversations and the tapping of lines in Bulgaria. The additional requests were made by fax and could be granted immediately. This meant that, simultaneously with the interviews, the process of gathering evidence through tapping of telephones and surveillance of suspects could remain ongoing during the investigation in The Netherlands. A protected witness can testify anonymously (Article 97a PPC). The provision defines what devices register the personal data. These can be viewed only by the judiciary and prosecutors. It is not the practice for a defence lawyer to demand to see the witness in person. The person is interviewed in a different room in the court by the judges and the prosecutor only. If there are additional questions from the defence lawyer, they have to be delivered in writing. In the above-mentioned case, the interview of witnesses was done in the presence of the Dutch authorities.

A special provision (Article 25 of the Act on Combating THB) gives special status to the victims of THB who consent to cooperate with the investigating authorities, to protect them during the procedure.



### Discussion

- It should be taken into account that the defendant has rights as well. In Germany the witness does not appear in court but a proxy can be interviewed by the police. However it does not have the same value as it is very difficult in that case to assess if the witness is speaking the truth. This is especially true for the defence as they have to work based on a statement and the police presenting the results of the interviews.
- A distinction can be made between witnesses. A detailed testimony can be given by a witness with less fear. This testimony supports the one which is given anonymously and with fewer details. In some cases one testimony is preferable and can be chosen above another.
- In Belgium no case exists without material evidence, even if there are several detailed testimonies. The case is furthermore always a paper case as the witness never appears in court but can be represented if necessary. During the past 10 years, only one victim actually went to the court room because she insisted on it.
- Gathering evidence and the progress of the investigation depend on how the investigation started. The investigation can be started following information obtained or, and these are the most cases, by chance because a witness is caught (in which case the witness can also be a defendant) or a victim reports to the police. In the latter, it is more difficult to gather evidence as the perpetrator is aware of police attention and will be more careful in his/her activities. The case can only be independent of the testimony of the victim if the case has been built and evidence gathered beforehand. Most cases however start with a statement by the victim.

### Evidence versus protection

#### Example: Czech Republic

Special legislation exists for the protection of victims. One of the forms is to hide personal data in the file. This form of protection is used where the victim is in real danger. In cases with more additional evidence, the prosecution often uses the testimony from victims/witnesses who do not require special protection in their testimony. In cases where the testimony is crucial and the victim is in real danger, the data can be hidden. In those cases when one of the parties disagrees, the prosecutor decides upon the use of this protection measure, not the court.

It is also possible to interview the victim with only police officers present. In this case the defence has the right to ask questions in advance. In court the victim/witness may be interviewed using voice modulation. This is a new provision which is now mostly used in drug cases. Separate legislation on the recording of testimony states that only certain forms of recording can be used in court.

### Recommendations

- A testimony which is not available in full for the defence may not be useful in court. The defence may also subpoena witnesses. It could be recommended that in some cases a lower level of evidence should be accepted. Within international legal aid it should be possible to hide the data of the witness or to treat the data separately. It is important to keep in mind that upon request from another country, the requested country is not responsible for the safety of the witness.
- If the danger is serious and real, it should be considered not to use the testimony.



## Discussion

- Protection can be hampered by the fact that if a victim makes a statement, the document is added to the police file. It can not be left out and it can be used in court. In Germany, all statements are used in court unless there is an agreement of secrecy before the trial. In the Netherlands, only documents that are not relevant to the case may be left out of the file. The file is different when the investigation is started up based on gathered information. The investigation is then concealed and a mainframe can be built in advance. In any case, the testimony has to be taken but the way the victim is approached can be different.
- In the Netherlands, if the defence lawyer wants a hearing, the judge decides to grant the request or not. During the pre-trial, the witness can decide to have data protection. During the investigation, the judge decides if data protection is possible. No appeal against this decision is possible.
- If the defendant knows who to exert pressure on, mere fear is sufficient and moreover the hiding of data has no use. The threat to family is effective. In Belgium some cases are known of persons who infiltrated the shelter posing as victims. If the case is dropped this has serious consequences as the victim's community will instantly know that the police are no longer able to offer protection.
- Once the testimony is given, the witness has no influence on it anymore. Therefore the victim/witness should be duly informed of the procedures and risks before testifying. In first contact with the witness, it will be difficult to assess the risk. It is important however to mitigate the fear as much as possible by taking special precautions. In the Netherlands the police have an intake interview with the victim/witness before taking the statement, to inform him/her about the procedure and the risks. In the Czech Republic, informing the victim/witness before taking the statement depends on the expertise of the interviewing police officer.
- In Hungary, it is considered a risk for the police and prosecution to have an intake interview with the victim, during which information is given regarding the procedure and the risks of testifying. The defence could argue that the witness is influenced. The witness is obliged to testify, to the police and to testify at court. There is no obligation to warn him/her about the consequences, although there is an obligation to inform him/her about rights and procedures.

## Status of the testimony

### Example: Hungary

The cases studied for the country report show that most cases are started because the victims report to the police. Therefore the victim's testimony is often crucial. Under Hungarian law, the witness/victim has no choice in giving testimony as it is compulsory to give evidence. The dependence on the testimony of the victim often makes it difficult for the prosecution, especially if the victim withdraws or modifies his/her statement, and this happens often. The success of a prosecution also greatly depends on the judge. In one case the defendant was acquitted because the witness withdrew her statement and the judge concluded that with this withdrawal all the other evidence collapsed. Another judge might have decided differently.

### Discussion

- Most judges demand a very good reason for the withdrawal of the witness. If they are not satisfied by the reason given, judges can still choose to use the statement of the witness. Furthermore, variations exist between the statement given to the police and the testimony given at court. The judge has to choose on paper which version to use. Mostly changes or withdrawals are made by witnesses once they realise the consequences of giving evidence. It is rare that a witness actually lies.
- In the Netherlands if a testimony is withdrawn, this is immediately investigated. In some cases this is beneficial: if pressure on the witness is proved, the case of the prosecution will be much stronger. In Hungary, the practice is similar and applies not only to THB cases. Withdrawal is carefully examined before reaching a decision.
- In the Netherlands it is not obligatory to testify in court.
- In the Czech Republic the witness in principle has also an obligation to make a statement to the police and to testify in court but in some cases the witness has to know about his/her rights first. In some cases, due to the contents of the testimony, the witness is excluded from the obligation.
- In Germany, the witness is obliged to testify at court, but he/she can not be forced to remember anything. There are no means for forcing an answer. The obligation is regarded as a duty of the citizen, but if the witness is not willing, there are always means of avoiding it.
- In Bulgaria the witness has an obligation to make a statement to the investigating police officer and in court.

### Risk assessment

#### Discussion

- There seem to be relatively few known examples of threats actually being carried out. Several victims are known to have been intimidated (Romania, Bulgaria and Hungary) and in Germany one prosecutor is under protection after receiving threats from the traffickers. In the Czech Republic one Bulgarian male witness was killed by Bulgarian nationals but the relation with the THB case was never proved.
- Victims are often trafficked with the involvement of the family and are at risk of being trafficked again when returning.
- It is difficult to assess the actual risk at the beginning of an investigation, if the danger is real and the victim/witness should be granted full protection. Most victims are afraid but not in actual danger, only a small number are. The prosecutor can only form a good opinion after an investigation.

#### Recommendations

- It is difficult to judge how real the threat is as there are not enough specific contacts with the source countries, which are sometimes far away. International cooperation should therefore exist not only for gathering evidence in the criminal case but also for evidence with the purpose of granting a permit on humanitarian grounds.
- The family of the victim can be involved in the trafficking. Families can also become socially isolated because the daughter was involved in prostitution. In Belgium the police and NGOs specialised in THB are able to travel to the country of origin in order to assess the situation. During the pre-trial phase a risk assessment is made for the return of the victim to the country of origin.
- In most cases there are more examples of threat than of actual danger. Although not all risks are within the scope or responsibility of the judicial authorities, in every

case an assessment has to be made of the seriousness of the threat and/or actual danger. What can be done is to put together a file for the victim that includes specific information about risks in the country of origin. This could support a request of the victim for a residence permit on humanitarian grounds. The Dutch Ministry of Foreign Affairs has already been asked to include information about trafficking in their country reports.

- There is no standard procedure on how to approach the victim/witness. The relationship with the witness is a matter of establishing trust, for the duration of the case but also for the future. The NGOs have an important role in this as the prime objective of the prosecution is not to protect the victim but to prosecute, and means are limited. However the attitude of the police and prosecutor in a case is very important, in their advice to the victim and to the defence.

## Conditional cooperation

### Discussion

- In most countries, cooperation in criminal proceedings as a condition for protection produces an ambiguous situation: no cooperation means no place to stay and no financial means. In most cases, however, the victims decide to cooperate. Most countries allow witnesses to stay during procedures but not after the trial. In most of the cases the victims do not even want to stay during the procedure. They did not want to work as a prostitute in the first place and want to leave it behind them out of shame. However a reward is no guarantee for a good testimony. If a victim wants to testify, he/she does not need a reward.
- The reason why governments are reluctant to give permanent permits for testimony is that the reward would be too high. The defence lawyer could use it to influence the witness. A judge could argue that a strong interest of the victim could influence him/her and will be more careful with judging on the testimony. However, a judge must be able to assess that even if rewarded, the testimony can still be truthful and valid.

## Interviewing the victim

### Example: Belgium

In Belgium, during the first contact with the police the victim is given standard sheets about the procedure and immediately referred to the shelter. The first interview with the police is only taken after being settled in the shelter. It takes place at the shelter and not at the police station and a representative of the NGO/shelter is always present because the witness is mostly distrustful of the police. The files of the NGO are separate from the police files: the police may examine the files of the NGO but not the other way around. This way the story of the victim/witness can be double-checked. Belgium has three recognised centres, where only THB victims are assisted and no outsiders are allowed.

### Discussion

- In the Czech Republic there is clear cooperation between police officers and NGOs. If the police start an investigation, the role of the NGO stops.
- Hungary has a special department for THB at the national HQ. At the interview the victim has a right to have legal council which can be given by an NGO.
- In the Netherlands and Bulgaria the interview is always done by specially trained police officers.

- In Germany the investigation aims to be as independent from the victim as possible. The interview is done by trained police as THB is regarded as the priority. If the case is labelled as THB, the interview by the regular police stops and the special police comes in. Victims of THB cannot be classified in one category. If the case starts accidentally by apprehending the victim because of the use of a false passport, he/she is seen as an offender but this provides grounds for keeping him/her as a witness. If traumatised, a psychological approach is needed, informal and in good cooperation with NGO and police. The victim will be more inclined to trust an NGO than the police and it is best if he/she stays in a shelter.

#### Recommendation

- The best way to improve the willingness of a victim is to have legal assistance at a very early stage. In the Netherlands a project has been started in which every victim is assigned a legal adviser or pro deo lawyer who explains to him/her how procedure will go. It is an investment that pays off: many victims are perfectly willing to testify but are deterred by the unknown nature of the procedure. It is important however that the legal adviser remains the same during the whole procedure to ensure a relation of trust. In Belgium, for example, legal assistance to the victim is systematically given as the police are obliged to refer the victim to a specialised NGO, which has legal advisers.

## Start of the investigation

### Example: The Netherlands

Due to political discussion in some important drug cases, the Dutch authorities have decided that as a policy, police and prosecution should act upon an offence at the moment it is acknowledged. The reason for this is that no drugs should be allowed on the market when the state authorities have had the chance to prevent that. This means that smaller cases are investigated and charged straight away which entails the risk that more important actors in an organisation have all the time to disappear. In THB the practice is the same: ‘controlled deliveries’ are prohibited in trafficking cases<sup>[7]</sup>. If information gathered is detailed enough to assume that a trafficking case is going on, police and prosecution have to act. This is not always at the moment the investigation is finalised. To bring the investigation further and gather evidence, observation and surveillance of victim and suspects can only be planned as long as it is not the trafficking itself that is being observed.

Another problem encountered is that obvious investigative techniques such as house searches might destroy the case at that point. It is not possible in the Netherlands to carry out a fire inspection to cover up for a regular house search. To try to avoid drawing attention to an investigation, one tactic used at present is to refer part of the case to local police forces to be acted upon and continue another part of the investigation in order to try to get to the top of the organisation.

### Discussion

- In Germany, THB for sexual exploitation is always around the red light districts and there are information channels to the police. But if the police and prosecutor are sure of a criminal activity, they have to act. Then the case greatly depends on the testimony because otherwise the case will be difficult to prove. At the moment the focus is on sexual exploitation. Economic exploitation will be far more difficult to detect and to investigate.

[7] Rouvoet Motion, Kamerstukken II, 1998-1999, 25403, no. 30.

- In Bulgaria, sufficient information is needed through the collection of enough evidence of the crime in order to initiate the pre-trial investigation. The procedure is not immediately initiated, only when police and prosecution are convinced that there is enough evidence of a criminal activity. If the case involves the crossing of the border, facts can be checked with the border police, which gives a good basis.

## Enlargement of the EU

### Discussion

- The purpose of the EU framework decision is equal protection to all categories: third-country nationals, citizens of the new EU member states and nationals of the receiving country.  
In practice, the protection of a temporary residence permit applies only to third-country nationals. The other two categories can apply for a damage claim. Should a 'protection package' be recommended that applies to all victims, independently of their nationality, which should achieve the same protection results for all?

## Work in prostitution during the trial

### Discussion

- If a victim chooses to work as a prostitute after being freed of her traffickers, this should not be taken into account by the judge involved. The crime should be judged independently of the character of the persons involved, victim as well as perpetrator. In practice however, a victim working as a prostitute can be detrimental to the prosecution's case. Prostitutes are generally viewed as unreliable witnesses. Within the broadened definition however, there will probably be no difficulty in accepting that a victim of trafficking forced to work in agriculture, will go back to work in agriculture. Prostitution is still a question of morality in practice. Furthermore, some victims may have started in prostitution voluntarily but do not have the opportunity to get out of it.
- There is a task for the prosecutor to clarify the situation of a victim. What are the opportunities for earning a living in a country with high unemployment and will a victim go back to work in prostitution after the trial?
- In Belgium a victim can not formally work as a prostitute during the trial, at least if the victim was exploited as a prostitute.
- In the Czech Republic, the consequences of the crime are visible. Victims of THB will not want to go back to work in agriculture or in prostitution as trafficking happens under severe conditions. However, if the victim does go back to work in the sector he/she was trafficked in, the punishment imposed on the perpetrator will be lower.
- In Bulgaria, everything depends on the collected evidence. The economic situation may be one of the reasons why a woman may choose to work in prostitution. What a victim does during the trial is not especially relevant. In any case, a judge should follow the procedures and the provisions of the law.

## IV. Psychology of the victim [8]

by Prof. dr Ruud Bullens [9]

In cases of trafficking in human beings, the victim is often the main witness and delivering the main evidence. The role of the victim is therefore crucial in the prosecution of a case. Within the framework of 'awareness raising', understanding the motives underlying the behavior of a victim can be an important topic for the judiciary to be able to assess a case properly. This is particularly the case when the victims have been trafficked for sexual exploitation. Victims can withdraw their testimony or change the contents which will affect a case. A victim can also choose to work in prostitution after he/she has been freed out of her trafficking situation. Or a victim will not see him/herself as a victim, although all evidence points out to the fact that he/she has been trafficked.

For a better understanding of the motives of a victim of trafficking for sexual exploitation, several factors come into view as a victim can be made dependent of his/her exploiter in different ways. In this lecture the phases of recruitment, incorporation and maintenance of prostitution will be discussed. The lecture is based on results of a study conducted by R. Bullens and J. van Horn on female juvenile prostitution in the Netherlands [10].

### Recruitment processes

For purposes of recruitment, two main methods can be defined. The first, 'debt bonding' is a method particularly applied to foreign women who want to immigrate to another country. Traffickers provide these women with the necessary travelling requisites (e.g., visa, money, and tickets) and usually overcharge them. These women find themselves in a situation of unspecified, indefinite and uncontrollable debt. Subsequently, they are owned and forced into prostitution to repay their debt.

The second method is called 'lover boy method'. 'Lover boys' employ a different strategy: they seduce young and vulnerable women by making them feel special and overwhelm them with expensive gifts.

In 1998, the police in The Netherlands finished an investigation into the trafficking of juvenile Dutch and Moroccan young women by a group of pimps of Moroccan origin. The police placed all relevant records of these cases at the disposal of the first author to study the processes that underlie the trafficking of young women.

The pimps under investigation carefully selected their recruitment locations. They first started out to recruit new young women in schoolyards. When these locations turned out to be insufficient, they applied their recruitment activities in the pubs. The pimps also rented several houses to accommodate homeless young women.

New young women were not only recruited by the pimps; they were also brought in by friends and acquaintances of the pimp. Police records revealed that one of the prostitutes also recruited young women for the pimps. From the records, it did not become clear how many young women she had recruited, nor did the records indicate in what way this prostitute was related to the new young women she brought in.

Occasionally the pimps recruited new young women for each other. Initially, the young women had to work for the pimp that brought them in. After a short period, some were passed on to the next pimp. Of the 16 young women, six were working for a new pimp.

[8] The following is a summary of the lecture given by Prof. dr R. Bullens during the first training workshop on 29 September 2005.

[9] Prof. dr R. Bullens is Professor in child psychology and has extensive experience with interrogations by the police of juveniles involved in prostitution.

[10] Full text is given in: Ruud A.R. Bullens and Joan E. van Horn, Labour of love: Female juvenile prostitution in the Netherlands

All the young women stated that the pimps seem to have a sixth sense for vulnerable young women. They instantly recognized an easy and willing 'target'. Recruitment efforts ceased as soon as it became clear to the pimps that their efforts were futile. Once a pimp got hold of a new, apparently homeless, young woman he immediately offered her accommodation in one of his own houses.

The pimps applied various seduction tactics to make the young women fall in love with them. During a limited period (usually one month), these young women were flooded with expensive gifts (e.g., jewellery, and clothing). The pimps made them feel special and behaved as if they were their boyfriends.

## Grooming

In the literature on sexual abuse, the techniques the perpetrators use to seduce or bring their victims into their sphere of influence are referred to as 'grooming'. More specifically, grooming implies the perpetrator's activities directed at preparing and planning sexual abuse to satisfy their own sexual wishes.

Bullens (1996) uses the term 'grooming' in a broader context. That is, preparing and planning activities were aimed at prostituting young men to satisfy the sexual wishes of others. The 'lover boy'-recruitment tactics concur with this broader definition.

There is extensive evidence that sexually exploited (young) women may bond with their aggressor and that they are apt to continue the abusive relationship. Graham, Rawlings and Rimini (1988) refer to this phenomenon as the 'Stockholm syndrome': a survival strategy in which the victim identifies with the aggressor.

Evidence was found that Stockholm syndrome-like push and pull factors occurred among various 'hostage' groups, such as concentration camp prisoners, incest victims, cult members, battered women and procured prostitutes.

More specifically, the victim feels that she only can survive if she makes her abuser happy ('pull' factor). She becomes hypersensitive to his moods and needs. Ultimately, she (unconsciously) takes on the worldview and identity of her abuser.

At the same time, the victim feels angry, threatened and anxious ('push' factor).

However, she denies these feelings and eventually she experiences the situation through the eyes of her abuser. The victim projects the anger of her abuser onto the police and other 'outsiders'. The victim continues the abusive relationship because she is afraid to lose the only remaining 'positive' relationship available to her.

## Incorporation

Despite their initial protests, all the young women were eventually incorporated into prostitution. The pimps employed a wide range of tactics to persuade new young women to prostitute themselves. These techniques roughly consisted of techniques with (e.g., beating, rape) and without violence (e.g., psychological pressure, debt bonding, guilt).

The pimps did not follow a standard procedure in applying these techniques.

Apparently, the techniques chosen depended on the circumstances and the pimp's personality characteristics (e.g., unpredictability and aggressiveness).



The following salient techniques were listed from police records:

- Deception

The young women agreed to prostitute themselves due to several misleading promises. For instance, the pimp promised them that they could keep their earnings for themselves or that they would buy a house for the two of them or they would spend the money on a vacation.

- Rape

The pimps typically subjected the women to sexual abuse as an expression of ownership or simply to satisfy their own sexual needs. All the young women stated that their pimps sexually abused them. Some of them felt that they were raped, but were also confused because of the feelings they had for their pimps.

- Blackmail

Their pimps blackmailed new young women who did not want to prostitute themselves. They threatened to bring the young women back to their family. The Moroccan young women in particular were very sensitive to this kind of threat.

## Maintenance by the young women themselves

Once incorporated, it became more difficult for the young women to escape from coercive conditions. The following manifestations of (abusive) conditions locked the young women into prostitution.

- Emotional dependency

Some of the young women felt a strong emotional bond with their pimps. Even if they managed to run away from their pimps, they soon felt lost and after a period returned to their abuser.

- Deception

Misled by their pimps, the young women believed that everything would change if they returned to their pimps. The young women were too naive and trusting to stay away. They were promised that they would never have to work again and that everything would be better.

Young women who encountered prostitute support agencies to end prostitution realised that they had few alternatives to provide for themselves and they felt forced to go back to their pimps. In addition, the pimps increased the psychological pressure on the young women who ran away and stayed in residential centres. In particular, young women with a naïve and trustful personality were vulnerable to this kind of psychological blackmail and returned to their pimps.

- Fear of violent reprisals

The vast majority of the young women feared violent reprisals to themselves and their family. They were confronted on a daily basis with violence if they did not live by the rules. Moreover, the young women did not undertake any action to escape because of the pimps' threats to disclose to women's parents that they were prostitutes.



- **Social isolation and lack of economic alternatives**

Because of their work as a prostitute, the young women felt socially isolated from the rest of society. Having lived their lives in the world of prostitution for quite some time, the young women lost all ties with their families and friends. Their social life was restricted to other prostitutes and pimps.

- **Shadow of pride**

By denying or concealing the fact that they had to hand over all their earnings to their pimps, the young women seem to look for a justification for being prostitutes. This way, they pretended to be better off than others and thought more highly of themselves. By working harder and making more money than other young women, they felt better about themselves.

- **Police as the enemy**

A prolonged period of forced prostitution affected the young women in a way that they began to see the police as their enemy. In particular, minor young women were very keen in avoiding police surveillance in the red light districts.

In sum, the young women could not escape from the abusive relationships with their pimps through a number of mutually reinforcing factors. The most salient factors derived from police records were: the young women's emotional dependency on their pimps, their fear of being physically abused, and the feeling of being socially isolated.

## **Maintenance by the pimps**

The controlling techniques can be classified into two broad categories. The first category typically involves actions to maintain their income and the second category refers to actions aimed at protecting the organisation.

The most effective actions the pimps undertook to guarantee their cash flow without too much effort typically consisted of comparing young women with each other and varying punishment and reward ("intermittent reinforcement") and beating up disobedient prostitutes in the presence of other prostitutes.

The pimps applied various techniques to protect the organisation from the inside (internal protection) and from the outside (external protection). Internal protection was targeted on controlling the young women whereas external protection was aimed at keeping outsiders (police, customers and other pimps) at a safe distance.

- **Internal protection**

Confiscating the young women's identity papers and/or passports and putting them under strict surveillance during work and spare-time minimized the chance that one of them could escape from prostitution. The pimps 'isolated' the young women by controlling where they went, whom they saw and what they did. The women also had to ask permission to go out and their handbags were checked for telephone numbers of other young men before they went out.

- **External protection**

The most effective protection against police interference was by moving the young women from one location to another. Another effective strategy was to brand the young women for life as their property.

## Conclusions

*Grooming.* Results show that the grooming activities typically involved a pre-selection of recruiting locations (e.g., pubs and schoolyards) and renting houses to accommodate the homeless young women.

*Incorporation and maintenance.* Results indicate that threats and the use of physical violence appeared to be the most effective technique to force new young women into prostitution.

Interventions to end prostitution typically require a holistic approach in which a wide range of social, emotional, health, accommodation, educational or employment problems are dealt with. Because, once the girls are incorporated into prostitution, they lack economic alternatives and show Stockholm-Syndrome like responses, which makes it extremely difficult to end the abusive relationship.

## V. Confiscation of assets and financial investigation

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by Andrea Kenéz

In principle, trafficking in human beings is one of the crimes against individuals, more precisely: a crime against personal freedom and human dignity (at least it is regulated by Hungarian Criminal Code among this kind of offences). In my opinion in broader sense THB is also an economic/financial crime, indirectly.

Let's remember the phrases we use in connecting with THB: *sex industry*, *labour market* e.g. (these words are relating to a kind of business, obviously). Referring to the introduction on the phenomenon of THB, it has always economic aspects. This means from the point of view of victims that they – typically – become victims of THB in hope of money, in hope of a better life, a higher standard of living, or in hope of escaping from poverty. On the other hand the economic aspects of THB from the point of view of perpetrators are their financial gains. Committing this crime for criminals means easy made huge amounts of money. Their 'investment costs' are minimal but maximum profits can be obtained.

In these circumstances we can say that THB – besides trafficking in drugs and weapons, smuggling of people, abuse of new technologies, fraud and laundering of proceeds of crime – is one of the forms of transnational organised crimes. The UN Convention against Transnational Organised Crimes (2000) defines the organised crime group as follows: „...a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences *in order to obtain, directly or indirectly, a financial or other material benefit.*” There is no doubt: the centre gravity of a transnational criminal organisation is its net profit and it is also obvious that the impact of transnational organised crimes includes increased violence, taxes and social decay that threatens the prosperity, security and quality of life. There are a lot of hidden THB-cases, there is a lot of (even more) hidden money, so we can only estimate the profit of this crime. The profit that – no doubt – finances other – serious – crimes and/or is subject to money laundering which means that finally it becomes part of the economy.

We could get an overview not only on different national provisions but on relevant international and EU legal instruments on THB. We could say that the national legislation meets the criteria of international standards: THB is regarded as a serious offence, it is punishable by deprivation of liberty, etc. Besides the necessity of effective, proportionate and dissuasive punishment it is also important to ensure that the national legislation and procedures on the confiscation of proceeds from a crime shall also allow for confiscation of property, the value of which corresponds to such proceeds. Both in purely domestic proceedings and in proceedings instituted at the request of another state, including orders. It is also a demand to ensure in national legislation a permission to the identification and tracing of suspected proceeds from crime at the request of another state where there is reasonable ground to suspect that a criminal offence has been committed.

Such legislation and procedures shall enable assistance to be given at the earliest possible stage in an investigation. To that end states should avoid restricting their use of the optional grounds for refusal in respect of other states. It is also important to give the same priority to all requests from other states which relate to asset identification tracing, freezing or seizing and confiscation as is given to such measures in domestic proceedings.

We could say that there are effective provisions in national laws for the speedy and effective freezing of criminal assets with a view to their later confiscation. Moreover, it is vital that such provisions should be made available for the benefit of other countries seeking judicial assistance in the criminal law area. This is also granted in principle.

Concerning the domestic measures the Dutch system could be mentioned as good practice for sufficient resources to identify the extent and whereabouts of assets which are subject to freezing or seizing. This financial criminal investigation – where specific attention is given to identifying the profits obtained through the crime and the way in which these could be confiscated – means also financial and administrative tools. There are designated experts on assets tracing, freezing and confiscation to provide specialised advice and expertise. This seems to be the proactive way to follow illicit money in order to deprive the criminals of the profit which is their main motivation for committing this kind of crime and so as to apply a really effective, proportionate and dissuasive measure.

# PART II



# THB specialised national departments within police and prosecutors office

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## Belgium

Federal Prosecution Office  
Rue des Quatre Bras 19  
1000 Brussels  
Tel: + 32 2 557 77 11  
Fax: + 32 2 557 77 90

### Contacts EJN at the Federal office

Mr Daniel Bernard, tel: + 32 2 557 77 39  
Ms Lieve Pellens, tel: + 32 2 557 77 31  
Ms Ann Fransen, tel: + 32 2 557 77 44  
Ms Isabelle van Heers, tel: + 32 2 557 77 35

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## Bulgaria

Within the Ministry of Interior there are two specialized services, dealing with THB. Both of them have specialized departments on THB on central and regional level:

- The National Service for Combating Organised Crime /NSCOC/ and;
- The National Border Police Service.

“Investigation” Directorate is set up in the Supreme Cassation Prosecution, consisting of *six specialised departments*, including departments in “Organised Crime and Terrorism” and “Crimes in the Office and Corruption”. Such departments exist in all 28 District Public Prosecutions in the country. These departments lead and supervise the pre-trial procedure investigations on THB as a part of the organised crime.

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## Czech Republic

There are two specialised points in the Czech Republic. Both are responsible for interception of THB victims and THB cases, as such.

- Organised Crime Investigation Unit of the Criminal Police and Investigation (UOOZ), which is responsible for investigation of the THB cases.  
Focal point of its specialised department of combating THB is Mr. Vavrda, tel.: +42 06 03191078
- National coordinator (first deputy of Ministry of Interior) and its secretarial services (Department of Criminality Prevention of the Ministry of Interior), which are responsible for collecting information and their dissemination within the institutionalised “Model” of support and protection of victims of trafficking in human beings. (The specialised department of UOOZ, as well as its headquarter Mr Vavrda, is involved into the “Model”.)  
Focal point of the national coordinator secretarial services (Department of Prevention of the Ministry of Interior of the Czech Republic) is Mrs Hana Snajdrova, tel.: + 42 09 47832255, fax: + 42 09 74833504, e-mail: sekropk@mvcr.cz

## Germany

### National contact Police

Bundeskriminalamt Wiesbaden

Department) A 37-5 Menschenhandel (S0 13 as of 01-12-2005)

Kriminalhauptkommissarin Heidemarie Rall

Tel: + 49 6115516320

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Deputy Kriminalhauptkommissarin Karin Schramm

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### Contacts prosecution (EJN)

Bundesministerium der Justiz

Adenauerallee 99-103

z. Hd. Herrn Ministerialrat

Jürgen Schnigula

53113 BONN

Generalbundesanwalt beim Bundes-Gerichtshof

Brauerstrasse 30

z. Hd. v. Frau Oberstaatsanwältin

Dr. Sigrid Hegmann

76137 KARLSRUHE

Staatsanwaltschaft bei dem Landgericht Hamburg

z. Hd. Herrn Oberstaatsanwalt

Dr. Ulf-Dietmar Gerhardt

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20355 HAMBURG

Generalstaatsanwaltschaft Dresden

Z. Hd. Herrn Oberstaatsanwalt

Wolfgang Klein

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01069 DRESDEN

Staatsanwaltschaft bei dem Oberlandesgericht Frankfurt am Main

z. Hd. Herrn Oberstaatsanwalt

Dr. Achim Thiel

Zeil 42

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Generalstaatsanwaltschaft Naumburg

z.Hd. Frau Oberstaatsanwältin  
Maria Ascheberg  
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Generalstaatsanwaltschaft Celle

z. Hd. Herrn Leitenden Oberstaatsanwalt  
Hans-Dieter Jeserich  
Schlossplatz 2  
29221 CELLE

Generalstaatsanwaltschaft Zweibrücken

z. Hd. Herrn Oberstaatsanwalt  
Zöcke  
Schlossplatz 7  
66482 ZWEIBRÜCKEN

Generalstaatsanwaltschaft Düsseldorf

z. Hd. V. Herrn Oberstaatsanwalt  
Jürgen Ludwig  
Sternwartstrasse 31  
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Generalstaatsanwaltschaft Stuttgart

z. Hd. Herrn Oberstaatsanwalt  
Egon Beck  
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Generalstaatsanwaltschaft des Landes Mecklenburg-Vorpommern

z. Hd. Herrn Oberstaatsanwalt  
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Generalstaatsanwaltschaft bei dem

Oberlandesgericht München  
z. Hd. Herrn Leitenden Oberstaatsanwalt Manfred Nötzel  
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80335 MÜNCHEN  
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Generalstaatsanwaltschaft Saarbrücken

z. Hd. Herrn Oberstaatsanwalt  
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Staatsanwaltschaft bei dem Kammergericht

z. Hd. Herrn Oberstaatsanwalt  
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Generalstaatsanwaltschaft Schleswig

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## Hungary

### National contact Police

National Police Headquarters  
National Bureau of Investigations  
Directorate Against Organised Crime  
Országos Rendőrfőkapitányság 1139  
Budapest, Teve u. 4-6.  
Tel/fax: + 36 1 443 5500

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## The Netherlands

### National contact Police

Centre of expertise (part of the National Investigation Service)  
P.O. Box 611,  
8000 AP Zwolle  
Tel: + 31 38 496 3555

### National contact prosecution service

National coordinating public prosecutor for Human smuggling and THB  
Secretariat  
Burg. Drijbersingel 23  
8021 DA Zwolle  
Tel: + 31 38 4962140

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## Poland

### The Intersectional Team of Suppressing and Preventing Trafficking in Human Beings

Tel: + 48 22 60 149 07  
Fax: + 48 22 60 144 53  
E-mail: [wmm.onz@mswia.gov.pl](mailto:wmm.onz@mswia.gov.pl)

The Team has been appointed by The Ordinance of the President of the Council of Ministers on 5th of March 2004. The team is being composed of the representatives of the Ministry of Internal Affairs and Administration (Undersecretary of State – Chairman), the Main Police Headquarters, the Main Border Guards' Headquarters, the Office for Repatriation and Foreigners, The Ministry of Justice, including the public prosecutor's and courts officers, the Government's Representative for Equal Status of Woman and Men, the Ministry of National Education and Sports, the Ministry of Economy, Labour and Social Welfare, Ministry of Foreign Affairs, Ministry of Health, the Office of the Committee for European Integration, non-governmental organisations (La Strada and others), with the possibility of cooperation with others experts (for example: financial forces).

The main tasks of the Team:

- monitoring the implementation of The National Program of Fighting And Prevention of Trafficking In Human Beings,
- collecting information and statistics data on the problem of trafficking in people and analysis thereof,
- preparing actions for institutions represented in the working team and others institutions of governmental administration, their subordinates or institutions supervised by them,
- transnational and international cooperating with foreign partners and institutions.

The National Prosecutor's Office

Tel: + 48 22 5212 215

Fax: + 48 22 627 22 89

E-mail: [napierski@ms.gov.pl](mailto:napierski@ms.gov.pl)

The team for coordination of action in preventing and combating trafficking in human beings in Police HQ

Tel: + 48 22 60 148 79

Fax: + 48 22 60 132 49

E-mail: [gabinetkgp@policja.gov.pl](mailto:gabinetkgp@policja.gov.pl)

The Team has been appointed under the decision no. 630 issued on 7th December 2004 by Chief of the Police. The Deputy of the Central Investigation Office is Chairman.

The main tasks of the Team:

- coordination and monitoring of all actions in regards to trafficking in human beings issues;
- coordination and supervising of actions in combating trafficking in human beings;
- conduction of prevention activities to minimize of trafficking phenomena;
- supervising of the special training' programmes for police officers;
- monitoring of the procedures in cases of fighting trafficking in human beings;
- cooperation with other institutions.

## National offices (prosecution or other) distributing requests for international cooperation

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### Belgium

Federal Prosecution Office  
Rue des Quatre Bras 19  
1000 Brussels  
Tel: + 32 2 557 77 11  
Fax: + 32 2 557 77 90

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### Bulgaria

Supreme Cassation Prosecutor's Office of the Republic of Bulgaria  
International Legal Assistance Department  
2, Vitosha blvd  
1061 Sofia

Ms Pavlina Nikolova  
Prosecutor  
Tel : + 359 2 987 65 06  
Fax : + 359 2 988 52 13  
sledstven\_gp@prb.bg

Ms Krassimira Medarova  
Judge  
Tel: + 359 2 85 71 (int. 336)  
Fax: + 359 2 981 37 40

Ms Ivanka Kotorova  
Head of International Legal Assistance Department  
Tel: + 359 2 921 93 30  
Fax: + 359 2 988 58 95  
E-mail: mpp\_vkp@prb.bg

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## Czech Republic

There are two specialised offices responsible for distributing requests for international cooperation

### Court Cooperation

International Department of the Ministry of Justice of the Czech Republic  
Secretarial services of the International Department

Tel: + 42 02 21997925

E-mail: om@msp.justice.cz

### Investigative Cooperation

International Department of the Supreme Public Prosecutor's Office of the Czech Republic

Focal point

Ms Klouckova

Tel: + 42 0542512330

Fax: +42 0542512350

E-mail: posta@nsz.brn.justice.cz

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## Germany

The responsibility for issuing a request is affected by the country which is requested. If the country is part of the Schengen treaty and the EU, in most cases the ordinary prosecution office will be the proper authority to distribute the request. But depending on the international treaties signed by a particular state, the General Prosecutor's Office could be involved as well as the Ministry of Justice of each regional state (Bundesländer).

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## Hungary

### During the investigation

Attorney General

Markó u. 16

1055 Budapest

Tel: + 36 1 354 5000

### During the trial

Ministry of Justice

International Criminal Division

Nemzetközi Büntetőjogi Főosztály

1055 Budapest, Kossuth tér 4.

Tel/fax: + 336 1 441 3003

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## The Netherlands

LIRC (Landelijk Internationaal Rechtshulp Centrum)

P.O. Box 891

2700 AW Zoetermeer

Tel: + 31 79 345 9988

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(LIRC acts under the authority of the National Prosecution Service in Rotterdam, tel: + 31 10 4966966)

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## Poland

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Tel: + 48 22 5212 206

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Police HQ

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Fax: + 48 22 60 132 49

E-mail: gabinetkgp@policja.gov.pl

Central Investigation Office

Tel: + 48 22 60 129 09

Fax: + 48 22 60 127 50

E-mail: wyd2cbs@policja.gov.pl

## National central offices for receipt of requests for international cooperation

### Belgium

Federal Prosecution Office  
Rue des Quatre Bras 19  
1000 Brussels  
Tel: + 32 2 557 77 11  
Fax: + 32 2 557 77 90

### Bulgaria

Channels of communication for sending, receiving and returning of requests  
Through central authorities:

According to the Bulgarian legislation the international legal assistance in the pre-trial proceedings is centralized. It is carried out by the prosecutors of the “International Legal Assistance” Department at the Supreme Cassation Public Prosecutor’s Office of the Republic of Bulgaria, which is the competent authority to organize the execution of the international legal assistance on the territory of the Republic of Bulgaria, assigning the execution of the investigative actions to the National Investigation Service (Department “International Legal Assistance”) by Prosecutor Ruling pursuant to Article 172a of the Bulgarian Criminal Procedural Code.

Supreme Cassation Prosecutor’s Office of the Republic of Bulgaria  
International Legal Assistance Department  
2, Vitosha blvd  
1061 Sofia  
E-mail address: mpp\_vkp@prb.bg

Ministry of Justice  
International Legal Assistance Department  
1, “Slavianska” str - BU  
1040 Sofia

### Experts

Convention	Name of official	Language	Telephone	Telefax	E-mail
A/T/E	Mrs. Vesselina Maleva Head of Department	E/F	+ 359 2 9806462 + 359 2 9237514	+ 359 2 9809222	maleva@mjeli.government.bg
A/T	Mr. Krassimir Voinov	G/E	+ 359 2 9237 545 + 359 2 980 92 22	+ 359 2 9809222	K_voinov@mjeli.government.bg
E/A	Mr. Borislav Petkov	S/E	+ 359 2 9809222 + 359 2 9237545	+ 359 2 9809222	b_petkov@mjeli.government.bg
E/A	Mrs. Margarita Dimova	E	+ 359 2 9809222 + 359 2 9237515	+ 359 2 9809222	m_dimova@mjeli.government.bg



### **Through diplomatic channels**

Diplomatic channels are recommended in order to avoid delays, when material carriers of evidences from an execution of Rogatory Letters have to be delivered to the requesting country.

The liaison officers of the requesting country are also used for this purpose in urgent cases.

### **Through direct contacts**

Prosecutor's General: through this channel only for pre-trial criminal investigation on the basis of art.24 of the ECMACM, 1959 and the Declaration contained in the instrument of ratification of the Second Additional Protocol to the Convention, deposited on 11 May 2004, according to which *"The Republic of Bulgaria declares that, for the purposes of the Convention, it defines to be judicial authorities the Courts, the public prosecutor's offices, the investigation authorities and the Ministry of Justice"*.

According to the provisions of the Second Additional Protocol to the ECMACM for urgent cases in pre-trial proceedings with the International Legal Assistance Department at the Supreme Cassation Prosecutor's Office – via Express Mail, Fax and all possible electronic means. The execution is returned through the Ministry of Justice according to art.15 para 2 ECMACM.

Ministry of Justice,  
International Legal Assistance Department  
1,"Slavianska" str - BU  
1040 Sofia

Supreme Cassation Prosecutor's Office of the Republic of Bulgaria  
International Legal Assistance Department  
2, Vitosha blvd  
1061 Sofia  
E-mail address: [mpp\\_vkp@prb.bg](mailto:mpp_vkp@prb.bg)

#### Telephone numbers:

Tel/fax: + 359 2 988 58 95  
Tel: + 359 2 92 19 330  
+ 359 2 92 19 248  
+ 359 2 92 19 396  
+ 359 2 92 19 355  
+ 359 2 987 11 10

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## Czech Republic

There are two specialised offices responsible for receiving requests for international cooperation

### Court Cooperation

International Department of the Ministry of Justice of the Czech Republic  
Secretarial services of the International Department

Tel: + 42 02 21997925

E-mail: om@msp.justice.cz

### Investigative Cooperation

International Department of the Supreme Public Prosecutors Office of the Czech Republic

Focal point: Ms Klouckova

Tel: + 42 0542512330

Fax: +42 0542512350

E-mail: posta@nsz.brn.justice.cz

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## Germany

Due to the German constitutional situation there is no central national office for the receipt of requests for international legal assistance. Requests can be received by the Ministry of Foreign Affairs as well as a “front line” prosecution office. National experts of the requesting party is to be consulted.

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## Hungary

### During the investigation

Attorney General

Markó u. 16

1055 Budapest

Tel: + 36 1 354 5000

### During the trial

Ministry of Justice

International Criminal Division

Nemzetközi Büntetőjogi Főosztály

1055 Budapest, Kossuth tér 4

Tel/fax: + 36 1 441 3003

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## The Netherlands

LIRC (Landelijk Internationaal Rechtshulp Centrum)

P.O. Box 891

2700 AW Zoetermeer

Tel: + 31 79 345 9988

Fax: + 31 79 345 9980

(LIRC acts under the authority of the National Prosecution Service in Rotterdam, tel + 31 10 4966966)

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## Poland

Ministry of Justice

Tel: + 48 22 5212 206

Fax: + 48 22 621 49 86

E-mail: lukaszewicz@ms.gov.pl

National Prosecutor's Office

Tel: + 48 22 5212 215

Fax: + 48 22 627 22 89

E-mail: napierski@ms.gov.pl

Ministry of Interior and Administration - The Intersectional Team of Suppressing and Preventing Trafficking in Human Beings

Tel: + 48 22 60 149 07

Fax: + 48 22 60 144 53

E-mail: wwm.onz@mswia.gov.pl

Border Guards HQ

Tel: + 48 22 844 65 16

Fax: + 48 22 60 29 201

E-mail: gabinetkg@strazgraniczna.pl

Police HQ

Tel: + 48 22 60 148 79

Fax: + 48 22 60 132 49

E-mail: gabinetkqp@policja.gov.pl

Central Investigation Office

Tel: + 48 22 60 129 09

Fax: + 48 22 60 127 50

E-mail: wyd2cbs@policja.gov.pl

## Special investigation techniques

	Belgium	Bulgaria	Czech Republic	Germany	Hungary	The Netherlands	Poland
(Systematic) Observation	yes	yes	yes	yes	yes	yes	yes
Entering locked premises	yes	yes	yes	yes	yes	yes	yes
Requesting information concerning telecommunications	yes	yes	yes	yes	yes	yes	yes
Recording telecommunications (phone and email)	yes	yes	yes	yes	yes	yes	yes
Recording confidential communications	yes	no	yes	yes	yes	yes	yes
Systematic information gathering by an investigative officer	yes	yes	yes	yes	yes	yes	yes
(Systematic) information gathering by a civilian officer	no	yes	no	no	no	yes	no
Pseudo-purchase and pseudo-services by a police officer	yes	no	no	no	no	yes	no
Pseudo-purchase and pseudo-services by a civilian	no	no	no	no	no	yes	no
Infiltration by police officers	yes	no	no	yes	yes	yes	yes
Civilian infiltration	no	no	no	yes	no	no*	no
Financial investigation	yes	no	yes	yes	yes	yes	yes

\* The use of civilian infiltration is authorized but is not used in practice.

# Outline of the work of Eurojust with national members and contact data

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## What is the role of Eurojust?

Eurojust is the first permanent body for judicial cooperation in the European legal area. Its mission is to enhance the Europe-wide cooperation on concrete penal cases. The objective is for Eurojust to enhance the efficiency of the national investigating and prosecuting authorities – individually and collectively – when dealing with serious cross-border crime and more importantly to bring criminals to justice quickly and efficiently. Eurojust is concerned with a wide range of criminal offences, including terrorism, trafficking in human beings, narcotics offences and serious fraud. Eurojust is composed of representatives from the 25 EU Member States.

## How is Eurojust doing this?

Eurojust is unique in that it supports the national authorities in the Member States with coordination and assistance in concrete prosecutions and investigations inter alia by being able to:

- Request investigations or prosecutions in specific Member States,
- Request the coordination of and assist in cross-border investigations and prosecutions,
- Request and transmit all necessary information in criminal cases,
- Request the facilitation and speeding up of mutual legal assistance,
- Assist in Joint Investigation Teams,
- Advise on competing European Arrest Warrants.

In order to improve the cooperation and coordination in serious, transnational organized criminal cases, including also trafficking in human beings, Eurojust provides support when two or more Member States or also non-member states are involved.

Eurojust can receive request for assistance and support in these cases from judicial authorities (prosecution service) involved Member State through own National Member. Further steps are taken by appropriate National Member in contact with national authority.

## Who are we at Eurojust?

Eurojust works as a College consisting of 25 members, one from each member state, permanently working in The Hague. The national members are senior, experienced prosecutors or judges. Some national members are supported by deputies or assistants. The College is supported by an administrative organization.

The National Members are available by:

Tel: + 31 70 412 5000  
 Fax: + 31 70 412 5555  
 E-mail: [info@eurojust.eu.int](mailto:info@eurojust.eu.int)  
 P.O. Box 16183  
 2500 BD The Hague  
 The Netherlands

for more information visit :  
[www.eurojust.eu.int](http://www.eurojust.eu.int)

### National Members Eurojust

Belgium	Ms. Michèle CONINSX National Member for Belgium	Tel: + 31 70 412 51 20 Fax: + 31 70 412 51 21 Email: <a href="mailto:mconinsx@eurojust.eu.int">mconinsx@eurojust.eu.int</a>
Czech Republic	Mr. Pavel ZEMAN National Member for Czech Republic	Tel: + 31 70 412 52 70 Fax: + 31 70 412 52 71 Email: <a href="mailto:pzeman@eurojust.eu.int">pzeman@eurojust.eu.int</a>
Germany	Mr. Hermann VON LANGSDORFF National Member for Germany	Tel: + 31 70 412 51 30 Fax: + 31 70 412 51 31 Email: <a href="mailto:hvonlangsdorff@eurojust.eu.int">hvonlangsdorff@eurojust.eu.int</a>
Hungary	Ms. Ilona LEVAI National Member for Hungary	Tel: + 31 70 412 52 90 Fax: + 31 70 412 52 91 Email: <a href="mailto:ilevai@eurojust.eu.int">ilevai@eurojust.eu.int</a>
The Netherlands	Mr. Roelof Jan MANSCHOT National Member for The Netherlands	Tel: + 31 70 412 52 20 Fax: + 31 70 412 52 21 Email: <a href="mailto:rmanschot@eurojust.eu.int">rmanschot@eurojust.eu.int</a>
Poland	Mr Jerzy IWANICKI National Member for Poland	Tel: + 31 70 412 5330 Fax: + 31 70 412 5331 Email: <a href="mailto:jiwanicki@eurojust.eu.int">jiwanicki@eurojust.eu.int</a>

## Liaison officers (if available) in the involved countries

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### Belgium

Mr Guido Wouters  
Embassy of Belgium  
Lange Vijverberg  
2513 AC The Hague  
The Netherlands  
Tel: + 31 70 367 1167

Mr Luc Versonnen  
Bundeskriminalamt ZD31  
Postfach 1820  
D – 65173 Wiesbaden  
Germany  
Tel: + 49 611 5513790

Mr André Nys  
Embassy of Belgium  
Ul. Senatorska 34  
00-095 Warsaw  
Poland  
Tel: + 48 228 262470

Mr Ludo van der Stock (Liaison Officer for Bulgaria)  
Bucharest  
Tel: + 40 723605430

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### Bulgaria

Mr Anatoly Kossev  
Embassy of the Republic of Bulgaria  
Duinroosweg 9  
2597 KJ The Hague  
The Netherlands  
Tel: + 31 70 350 3051

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### Czech Republic

N.A.

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## Germany

Contact with liaison officers is coordinated by:  
Bundeskriminalamt Wiesbaden  
Department) A 37-5 Menschenhandel (S0 13 as of 01-12-2005)

Kriminalhauptkommissarin Heidemarie Rall  
Tel: + 49 6115516320  
E-mail: heidemarie.rall@bka.bund.de

Deputy Kriminalhauptkommissarin Karin Schramm  
Tel: + 49 6115515043  
E-mail: karin.schramml@bka.bund.de

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## Hungary

N.A.

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## The Netherlands

The department of the police that supports the liaison officers, within the Netherlands and abroad, is:

DIN  
P.O. Box 3016  
2700 KX Zoetermeer.  
Tel: + 31 79 345 9898 (24 hours service)

Mr Hans Maasdam  
Netherlands Embassy  
Oborishte 15  
1504 Sofia  
Bulgaria  
Tel: + 359 2 8160300

Mr Jan de Vis  
Netherlands Embassy  
Füge utca 5-7 (2e district)  
1022 Boedapest  
P.O. Box 56  
1388 Budapest  
Hungary  
Tel: + 36 1 3366300



Ms Marieke van der Ark  
Netherlands Embassy  
Ul. Kawalerii 10  
00-468 Warschau  
Poland  
Tel: + 48 22 5591200

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## **Poland**

Mr Wladyslaw Padlo  
Embassy of Poland  
Alexanderstraat 25  
2514 JM The Hague  
The Netherlands  
Tel: + 31 70 360 5814

## Assistance to victims of trafficking in each country

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### Belgium

Shelter available:	yes
Psychological/medical assistance available:	yes
Legal assistance available:	yes
Assisted Voluntary Return program for victims of trafficking:	yes
Reintegration assistance to Victims of trafficking:	yes

### Contact

In Belgium, there are three NGOs that are officially recognised as specialised victim support canthers, namely Payoke for the region of Flanders, Pag-asa for Brussels and Sürya for the region of Wallonia.

#### Payoke vzw

Leguit 4  
2000 Antwerpen  
Tel: + 32 32 01 16 90  
Fax: + 32 32 33 23 24

#### Pag-asa vzw/asbl

Cellebroersstraat 16b - Rue des Alexiens 16b  
1000 Brussel - Bruxelles  
Tel: + 32 25 11 64 64  
Fax: + 32 25 11 58 68

#### Sürya asbl

Rue Trappé 9  
4000 Liège  
Tel: + 32 42 32 40 30  
Fax: + 32 42 32 40 39

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### Bulgaria

Shelter available:	yes
Psychological/medical assistance available:	yes
Legal assistance available:	yes
Assisted voluntary return program for victims of trafficking:	yes
Reintegration assistance to victims of trafficking:	yes

### Contact

IOM  
IOM Sofia Operations  
Tel: + 359 2 981 63 65  
E-mail: iomsofiaops@iom.int

La Strada Bulgaria/Animus Association  
 P.O. Box 97  
 1408 Sofia  
 Tel: + 359 2 981 6740  
 Fax: + 359 2 981 6740  
 E-mail: [animus@animusassociation.org](mailto:animus@animusassociation.org)  
 Website: [www.animusassociation.org](http://www.animusassociation.org)

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## Czech Republic

Shelter available:	yes
Psychological/medical assistance available:	yes
Legal assistance available:	yes
Assisted voluntary return program for victims of trafficking:	yes
Reintegration assistance to victims of trafficking:	yes

### Contact

IOM  
 Dukelských hrdinů 692/35  
 170 00 Praha 7  
 00 420 233370160

La Strada Czech Republic, o.p.s.  
 P.O. Box 305  
 111 21 Praha 1  
 Czech Republic  
 Tel/fax: + 420 2 22721810  
 E-mail: [Lastrada@strada.cz](mailto:Lastrada@strada.cz)  
 Website: [www.strada.cz](http://www.strada.cz)

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## Germany

Shelter available:	yes
Psychological/medical assistance available:	yes
Legal assistance available:	yes
Assisted voluntary return program for victims of trafficking:	yes
Reintegration assistance to victims of trafficking:	yes

### Contact

IOM  
 Inselstrasse 12  
 10179 Berlin  
 Tel: + 49 30278778 - 0

IOM Germany does not assist victims of trafficking directly. Comprehensive assistance is provided by specialized NGOs, listed below (for the German country of Northrhine-Westphalia. For other countries, please contact IOM Berlin).

## NGO's

Dortmunder Mitternachtsmission  
Des Landes Brandenburg  
Dudenstrasse 2-4  
44137 DORTMUND  
tel: 02 31/14 44 91  
fax: 02 31/14 58 87

Agisra e.V.  
Steinberger Strasse 40  
50733 KÖLN  
tel: 02 21/12 40 19  
fax: 02 21/972 74 92

Migrantinnen beraten Migrantinnen  
Fachstelle für Opfer von Frauenhandel in  
der FBS Düsseldorf  
Ackerstrasse 144  
40233 DÜSSELDORF  
telefoon: 02 11/68 68 54  
telefax: 02 11/67 61 61

Beratungsstelle für Filipinos des  
Caritasverbandes für das Erzbistum  
Köln  
An Gross St. Martin 9-11  
50667 KÖLN  
telefoon: 02 21/2 72 89 – 27  
telefax: 02 21/2 72 89 – 3 94

SOLWODI  
Postfach 10 11 50  
47011 DUISBURG  
telefoon: 02 03/66 31 50  
telefax: 02 01/66 31 51

Frauenberatungsstelle Nachtfalter  
Segerothstrasse 110 a  
45141 ESSEN  
telefoon: 02 01 / 36 45 47

Frauen helfen Frauen e. V. Hagen  
Frauenberatungsstelle  
Bahnhofstrasse 41  
58095 HAGEN  
telefoon: 023 31/33 83 55  
telefax: 023 31/1 29 41

Frauenberatungsstelle für Opfer  
von Menschenhandel  
Nadeschda  
Hansastrasse 55  
32049 HERFORD  
telefoon: 052 21/84 02 00  
telefax: 052 21/98 85 44

Beratungs- und Infostelle für  
Migrantinnen  
Informationszentrum 3. Welt Kirchenkreis  
Herne  
Overwegstrasse 31  
44625 HERNE  
telefoon: 023 23/9 94 77 19  
telefax: 023 23/9 94 97 11

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## Hungary

Shelter available:	yes
Psychological/medical assistance available:	yes
Legal assistance available:	yes
Assistance Voluntary Return programme for victims of trafficking:	yes
Reintegration assistance to victims of trafficking:	yes

### Contact

IOM  
 Révay u. 12.  
 1065 Budapest  
 Tel: + 36 1 472 2500

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## The Netherlands

Shelter available:	yes
Psychological/medical assistance available:	yes
Legal assistance available:	yes
Assistance Voluntary Return programme for victims of trafficking:	yes
Reintegration assistance to victims of trafficking:	yes

### Contact

IOM  
 P.O. Box 10796  
 2501 HT The Hague  
 Tel: + 31 70 318 1500  
 E-mail: missionthehague@iom.int

### Foundation against Trafficking in Women (STV)

Johan van Oldebarneveltlaan 34-36  
 3818 HB Amersfoort  
 Tel: + 31 33 461 50 29  
 Fax: + 31 33 461 8064  
 E-mail: federatie@opvang.nl

### International La Strada Association

Wittenstaat 25  
 1025 AK Amsterdam  
 The Netherlands  
 Tel: + 31 20 688 14 14  
 E-mail: info@lastradainternational.org  
 Website: www.lastradainternational.org

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## Poland

Shelter available:	yes
Psychological/medical assistance available:	yes
Legal assistance available:	yes
Assistance Voluntary Return programme for victims of trafficking:	yes
Reintegration assistance to victims of trafficking:	yes

### Contact

IOM

ul. Mariensztat 8

00-302 Warszawa

Tel: + 48 22 538 9103

Fax: + 48 22 538 9140

E-mail: [iomwarsaw@iom.int](mailto:iomwarsaw@iom.int)

La Strada Foundation Against Trafficking in Women

P.O. Box 5

00-956 Warsaw 10

Tel/fax: + 48 22 622 19 85

E-mail: [strada@pol.pl](mailto:strada@pol.pl)

Website: <http://free.ngo.pl/lastrada>

# ANNEXES





# **ANNEX I • Programme of the pilot training workshop held on 28, 29 and 30 september 2005**

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## **Awaress-raising of judicial authorities concerning trafficking in human beings**

### **Programme training workshop 28, 29 and 30 September 2005**

#### **28 September**

- 10.00 – 10.15 Opening by Mr John van den Bergh, Acting Chief of Mission of IOM The Netherlands
- 10.15 – 11.15 Introduction on the phenomenon of THB by Mr Dagmar Koster of the National Rapporteur on THB
- 11.15 – 11.30 Short break
- 11.30 – 12.30 Overview legislation on THB per country by Ms Pavlina Nikolova
  
- 12.30-13.30 Afternoon lunch break
  
- 13.30 – 14.30 Overview legislation mutual assistance and European legal framework by Ms Conny Rijken and Mr Axel Stahl
- 14.30 – 14.45 Short break
- 14.45 – 16.45 Workshop on THB vs smuggling in connection with EU and national law by Mr Remco van Tooren and Ms Andrea Kenez
- 16.45 – 17.15 Evaluation of the training

#### **29 September**

- 09.00 – 11.00 Workshop international investigation: resolving cases by Mr Remco van Tooren and Mr Axel Stahl
- 11.15 – 11.30 Short break
- 11.30 – 12.30 Presentation Eurojust by Mr Jerzy Iwanicki of Eurojust
  
- 12.30 – 14.30 Afternoon lunch break
  
- 14.30 – 16.00 Psychology of the victim by Mr Ruud Bullens of Fora
- 16.00 – 16.15 Short break
- 16.15 – 17.00 Confiscation of assets and financial investigation by Ms Andrea Kenez
- 17.00 – 17.20 Evaluation of the training

### 30 September

- 09.00 – 09.30 Overview national legislation on protection of witness/victim by Mr Reinier van Zutphen and Mr Petr Vanecek
- 09.30 - 10.00 Overview position of the victim within the trial phase Mr Reinier van Zutphen and Mr Petr Vanecek
- 10.00 - 10.15 Short break
- 10.15 - 11.45 Workshop on the role of the victim during the procedure by Mr Reinier van Zutphen and Mr Petr Vanecek
- 
- 12.00 – 14.00 Afternoon lunch break
- 
- 14.00 – 14.30 The role of IOM in the assistance to victims of THB
- 14.30 – 15.00 The role of La Strada in the assistance to victims of THB by Ms Suzanne Hoff of La Strada International
- 15.00 – 15.15 Short break
- 15.15 – 15.45 Evaluation of the training and results
- 15.45 – 16.00 Closing of the training workshop by Mr John van den Bergh, Acting Chief of Mission of IOM The Netherlands

## ANNEX II • Provisions on THB <sup>[1]</sup>

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### Bulgaria

#### Law on Trafficking in Human Beings

Promulgated, The State Gazette, No. 46/20.05.2003

**Chapter One (For the full text please consult the country report on [www.iom-nederland.nl](http://www.iom-nederland.nl))**

#### General provisions

##### Article 1

(1) This Law shall provide for:

1. The powers and objectives of the state authorities involved in combating trafficking in human beings, as well as the relations between them;
2. The status and objectives of the shelters, centres and commissions established under this Act for protection and support of the victims of human trafficking;
3. The measures to prevent and defy trafficking in human beings;
4. The measures aimed at protecting and supporting the victims of human trafficking, especially women and children;
5. Placing trafficking victims who collaborate with the investigation under special protection.

(2) This Act is intended to ensure co-operation and co-ordination between the bodies of state and the municipalities, as well as between them and the non-governmental organisations (NGOs), with a view to preventing and defying trafficking in human beings, and developing the national policy in that area.

##### Article 2

The following units shall be set up to accomplish the activities and objectives in Article 1:

1. National and local commissions for combating trafficking in human beings;
2. Shelters for temporary housing of victims of trafficking;
3. Centres for protection and support of victims of trafficking.

##### Article 3

- (1) The Council of Ministers shall allocate resources in the national budget for establishment and maintenance of the shelters, centres and commissions in Article 2.
- (2) NGOs may assist the activity in Paragraph 1 within their available resources.

##### Penal code

Prom. SG. 26/2 Apr 1968, corr. SG. 29/12 Apr 1968 last amendment. SG. 45/30 Apr 2002, amend. SG. 92/27 Sep 2002, amend. SG. 26/30 Mar 2004, amend. SG. 103/23 Nov 2004, amend. SG. 24/22 Mar 2005

[1] The text of the Belgian provision on THB was not available in English at time of publication.

## Chapter Two

### Offences against the person, Section IX

#### Traffic of people (New, SG 92/02)

##### Art. 159a. (New, SG 92/02)

- (1) Who gathers, transports, hides or receives individuals or groups of people in order to be used for vicious practice, involuntary servitude, seizure of body organs or to be kept under compulsory submission regardless of their consent, shall be punished by imprisonment of one to eight years and a fine of up to eight thousand levs.
- (2) When the act under par. 1 is committed:
  1. regarding a person under eighteen years of age;
  2. by compulsion or by deceiving the person;
  3. by kidnapping or illegal deprivation of freedom;
  4. by using a state of dependence;
  5. by malfeasance;
  6. by promising, providing or obtaining benefit,
 the punishment shall be imprisonment of two to ten years and a fine of up to ten thousand levs.

##### Art. 159b. (New, SG 92/02)

- (1) Who gathers, transports, hides or receives individuals or groups of people and transfers them through the border of the country with the purpose under art. 159a, par. 1 shall be punished by imprisonment of three to eight years and a fine of up to ten thousand levs.
- (2) If the act under par. 1 is committed under the conditions of art. 159a, par. 2 the punishment shall be imprisonment of five to ten years and a fine of up to fifteen thousand levs.

##### Art. 159c. (New, SG 92/02)

When the act under art. 159a and 159b represents a dangerous recidivism or it has been committed by an errand or in fulfillment of a decision of an organized criminal group the punishment shall be imprisonment of five to fifteen years and a fine of up to twenty thousand levs, as the court can also rule confiscation of a part or of the entire property of the offender.

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## Czech Republic

The facts of the crime of human trafficking according to Section 232a of the Criminal Law, as it is part of the effective wording of the Criminal Law from October 22, 2004.

### Section 232a

#### Trafficking in human beings

- 1) One who makes, organises, hires, entices, hides, keeps or delivers another person under the age of eighteen to be exploited for
  - a) sexual intercourse or other forms of sexual harassment or abuse,
  - b) slavery or servitude, or
  - c) forced labour or other forms of exploitation,
 will be punished with imprisonment of from two to ten years.

- 2) One who makes, organises, hires, entices, hides, keeps or delivers another person with the use of force, threatened force or trick or abuse of the person's mistake, duress or dependence to be exploited for
    - a) sexual intercourse or other forms of sexual harassment or abuse,
    - b) slavery or servitude, or
  - c) forced labour or other forms of exploitation, will be punished identically.
  
  - 3) The wrongdoer will be punished with from five to twelve years' imprisonment,
    - a) if s/he commits the act stated in paragraph 1 or 2 as a member of an organised group,
    - b) if s/he places another person in danger of serious bodily injury or death by such an act,
    - b) if s/he commits such an act with the intention of obtaining significant gains
    - c) if s/he commits such an act against a person under the age of eighteen, or
    - d) if s/he commits such an act with the intention of exploiting the other person for prostitution.
  
  - 4) The wrongdoer will be punished with from eight to fifteen years' imprisonment,
    - a) if s/he causes, by the act stated in paragraph 1 or 2, serious bodily injury, death or another particularly grave consequence, or
    - c) if s/he commits such an act with the intention of obtaining large-scale gains, or
    - d) if s/he commits such an act in association with an organised group operating in other countries.
- 

## Germany

### Sec. 232 StGB

#### Trafficking in Human Beings for the purpose of sexual exploitation

- (1) Whoever, by taking advantage of a predicament or helplessness associated with the person's stay in a foreign country, brings another person to take up or continue prostitution or to carry out sexual acts that exploit the person on or in front of the perpetrator or a third person or have such acts committed by the perpetrator or a third person on him/ herself shall be punished with imprisonment for six months to ten years. Whoever brings a person under the age of 21 years to take up or continue prostitution or to one of the other sexual acts described in the 1st sentence shall be punished in a like manner.
- (2) An attempt is punishable.
- (3) The punishment shall be imprisonment for one year to ten years if
  1. the victim of the act is a child (Sec. 176 par. 1),
  2. the delinquent severely maltreats the victim physically whilst committing the act or through the act exposes her/ him to a danger of death or
  3. commits the offence professionally or as a member of a gang that has banded together to continually commit such acts.

- (4) Whoever
1. by means of force, threat of appreciable harm or trickery induces another person to take up or continue prostitution or to allow the other sexual acts described in par. one, 1st sentence, or
  2. seizes a human being by force, threat of appreciable harm or trickery, in order to bring him to take up or continue prostitution or to permit the other sexual acts described in par. 1, 1st sentence, will also be punished in accordance with par. 3.
- (5) In less serious cases under par. 1 the punishment shall be imprisonment for three months to five years, in less serious cases under paragraphs 3 and 4 the punishment shall be imprisonment for six months to five years.

### **Sec. 233 StGB**

#### **Trafficking in human beings for the purpose of exploiting labour**

- (1) Whoever, by taking advantage of a predicament or helplessness associated with the person's stay in a foreign country, places another person in slavery or bondage, or brings him to take up or continue an employment with him or a third person under working conditions that show a crass disparity to the working conditions of other employees performing the same or comparable tasks, shall be punished with imprisonment for six months to ten years. Whoever places a person under the age of 21 years in slavery or bondage, or brings him to take up or continue an employment as described in the 1st sentence shall be punished in a like manner.
- (2) An attempt shall be punishable.
- (3) Sec. 232 paragraphs 3 to 5 shall apply.

### **Sec. 233a StGB**

- (1) Whoever by recruiting, transporting, transferring, harbouring or receiving another person abets an instance of trafficking of human beings, shall be punished with imprisonment of three months to five years.
- (2) The punishment shall be imprisonment for six months to ten years, if
1. the victim is a child (Sec. 176 par. 1),
  2. the delinquent severely maltreats the victim physically whilst committing the act or through the act exposes her/ him to a danger of death or
  3. the delinquent commits the act by force or threat of appreciable harm, or professionally, or as a member of a gang that has banded together to continually commit such acts.
- (3) An attempt shall be punishable.

## **Hungary**

### **Section 175/B**

- (1) Any person who sells, purchases, conveys or receives another person or exchanges a person for another person, or appropriates one for such purpose for another party, commits a felony offense and shall be punishable with imprisonment of up to three years.
- (2) The punishment shall be imprisonment between one to five years if the criminal act is committed
- a) against a person deprived of personal freedom,
  - b) against a person under the age of eighteen,
  - c) for the purpose of forced labor,

- d) for the purpose or sodomy or sexual intercourse, or to involuntarily engage in such with another person.
  - (3) The punishment shall be imprisonment between two to eight years if the criminal act
    - a) involves two of the cases described in Subsection (2), or if the criminal act is committed
    - b) as part of a criminal organization,
    - c) against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator.
  - (4) The punishment shall be imprisonment between five to ten years of the criminal act
    - a) involves three of the cases described in Subsection (2), or if the criminal act is committed
    - b) against a person deprived of personal freedom, as part of a criminal organization,
    - c) against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom.
  - (5) The punishment shall be imprisonment between ten to fifteen years or life imprisonment if the criminal act is committed for the purpose of forced labor and sodomy or sexual intercourse, or to involuntarily engage in such with another person
    - a) against a person deprived of personal freedom, as part of a criminal organization,
    - b) against a person under the tutelage, guardianship, supervision or medical treatment of the perpetrator, and deprived of personal freedom.
  - (6) Any person making preparations to engage in trafficking in human beings commits a misdemeanor offense and shall punishable with imprisonment of up to two years.
- 

## The Netherlands

Until 1 January 2005: Article 250a (non-official, English translation of 1 October 2002) of the Criminal Code

### Paragraph 1

Any person who:

1. by force or some other physical act, by threats of violence or of any other physical act, by misuse of authority arising from the actual state of affairs or by deception, induces another person to make him/herself available for the performance of sexual acts with or for a third party for remuneration or, under the said circumstances, takes any action which he or she knows or may reasonably be expected to know will result in that other person's making him/herself available for performing those acts;
2. recruits, takes with him or her or abducts a person with a view to inducing that person to make him/herself available for performing sexual acts with or for a third party for remuneration in another country;
3. induces another person to make him/herself available for performing sexual acts with or for a third party for remuneration or takes any action which he or she knows or may reasonably be expected to know will result in that other person making him/herself available for performing those acts when the other person is a minor;

4. wilfully profits from sexual acts of another person with or for a third party for remuneration, while he or she knows or must reasonably assume that that other person is making him/herself available for performing those acts under the circumstances referred to in subparagraph 1;
5. wilfully profits from sexual acts of another person with or for a third party for a remuneration, if the other person is a minor;
6. forces another person by violence or some other physical act or threat of violence or other physical act or by misuse of authority arising from the actual state of affairs or by deception to benefit him or her from the proceeds of his or her sexual acts with or for a third party.

shall be guilty of trafficking in persons and as such liable to a term of imprisonment not exceeding six years and a fifth category fine\*, or either of these penalties.

## Paragraph 2

The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine\* or either of these penalties:

1. trafficking in persons by two or more persons acting in concert;
2. trafficking in persons in respect of a person who is under the age of sixteen;
3. trafficking in persons if force or some other physical act as referred to in subparagraph 1 results in serious physical injury.

## Paragraph 3

Trafficking in persons by two or more persons acting in concert under the circumstances referred to in paragraph 2, subparagraph 2 or 3, shall be punishable by a term of imprisonment not exceeding ten years and a fifth category fine\* or either of these penalties.

Since 1 January 2005: Article 273a (non-official, English translation of 1 January 2005) of the Criminal Code

### 1. Any person who:

- (a) by force, violence or other act, by the threat of violence or other act, by extortion, fraud, deception or the misuse of authority arising from the actual state of affairs, by the misuse of a vulnerable position or by giving or receiving remuneration or benefits in order to obtain the consent of a person who has control over this other person recruits, transports, moves, accommodates or shelters another person, with the intention of exploiting this other person or removing his or her organs;
- (b) recruits, transports, moves, accommodates or shelters a person with the intention of exploiting that other person or removing his or her organs, when that person has not yet reached the age of eighteen years;
- (c) recruits, takes with him or abducts a person with the intention of inducing that person to make himself/herself available for performing sexual acts with or for a third party for remuneration in another country;
- (d) forces or induces another person by the means referred to under (a) to make himself/herself available for performing work or services or making his/her organs available or takes any action in the circumstances referred to under (a) which he knows or may reasonably be expected to know will result in that other person mak-



- ing himself/herself available for performing labour or services or making his/her organs available;
- (e) induces another person to make himself/herself available for performing sexual acts with or for a third party for remuneration or to make his/her organs available for remuneration or takes any action towards another person which he knows or may reasonably be expected to know that this will result in that other person making himself/herself available for performing these acts or making his/her organs available for remuneration, when that other person has not yet reached the age of eighteen years;
  - (f) wilfully profits from the exploitation of another person;
  - (g) wilfully profits from the removal of organs from another person, while he knows or may reasonably be expected to know that the organs of that person have been removed under the circumstances referred to under (a);
  - (h) wilfully profits from the sexual acts of another person with or for a third party for remuneration or the removal of that person's organs for remuneration, when this other person has not yet reached the age of eighteen years;
  - (i) forces or induces another person by the means referred to under (a) to provide him with the proceeds of that person's sexual acts with or for a third party or of the removal of that person's organs;

shall be guilty of trafficking in human beings and as such liable to a term of imprisonment not exceeding six years and a fifth category fine\*, or either of these penalties:

2. Exploitation comprises at least the exploitation of another person in prostitution, other forms of sexual exploitation, forced or compulsory labour or services, slavery, slavery like practices or servitude.
  3. The following offences shall be punishable with a term of imprisonment not exceeding eight years and a fifth category fine\*, or either of these penalties:
    - (a) offences as described in the first paragraph if they are committed by two or more persons acting in concert;
    - (b) offences as described in the first paragraph if such offences are committed in respect of a person who is under the age of sixteen.
  4. The offences as described in the first paragraph, committed by two or more persons acting in concert under the circumstance referred to in paragraph 3 under (b), shall be punishable with a term of imprisonment not exceeding ten years and a fifth category fine\*, or either of these penalties.
  5. If one of the offences described in the first paragraph results in serious physical injury or threatens the life of another person, it shall be punishable with a term of imprisonment not exceeding twelve years and a fifth category fine\*, or either of these penalties.
  6. If one of the offences referred to in the first paragraph results in death, it shall be punishable with a term of imprisonment not exceeding fifteen years and a fifth category fine\*, or either of these penalties.
  7. Article 251 is applicable mutatis mutandis.
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\* A fifth category fine is a fine of maximum € 45,000,-.

## Poland

### Article 204

- § 1. Whoever, in order to derive a material benefit, induces another person to practice prostitution or facilitates it, shall be subject to the penalty of deprivation of liberty for up to 3 years.
- § 2. Whoever derives material benefits from prostitution practiced by another person shall be subject to the penalty specified in § 1.
- § 3. If the person specified in § 1 or 2 is a minor, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.
- § 4. The punishment specified in § 3 should be imposed on anyone who entices or abducts another person with the aim of having him/her engage in prostitution abroad.

### THB Provision

### Article 253.

- § 1. Whoever conducts white slavery (trade in humans) even with their consent shall be subject to the penalty of deprivation of liberty for a minimum term of 3 years.
- § 2. Whoever, in order to gain material benefits, organises the adoption of children in violation of the law, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

### Smuggling

### Article 264.

- § 1. Whoever crosses the border of the Republic of Poland in violation of the relevant regulations shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to 2 years.
- § 2. Whoever commits the act specified in § 1, with the use of violence, threats or deceit or in co-operation with other persons shall be subject to the penalty of deprivation of liberty for up to 3 years.
- § 3. Whoever organises the crossing of the border of the Republic of Poland for other persons, in violation of the relevant regulations shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

## ANNEX III • Council of Europe

# European convention on mutual assistance in criminal matters

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European Treaty Series - No. 30

Strasbourg, 20.IV.1959

### Preamble

The governments signatory hereto, being members of the Council of Europe,  
Considering that the aim of the Council of Europe is to achieve greater unity among its members;

Believing that the adoption of common rules in the field of mutual assistance in criminal matters will contribute to the attainment of this aim;

Considering that such mutual assistance is related to the question of extradition, which has already formed the subject of a Convention signed on 13th December 1957,

Have agreed as follows:

### Chapter I – General provisions

#### Article 1

- 1 The Contracting Parties undertake to afford each other, in accordance with the provisions of this Convention, the widest measure of mutual assistance in proceedings in respect of offences the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting Party.
- 2 This Convention does not apply to arrests, the enforcement of verdicts or offences under military law which are not offences under ordinary criminal law.

#### Article 2

Assistance may be refused:

- a if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence;
- b if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, ordre public or other essential interests of its country.

## Chapter II – Letters rogatory

### Article 3

- 1 The requested Party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting Party for the purpose of procuring evidence or transmitting articles to be produced in evidence, records or documents.
- 2 If the requesting Party desires witnesses or experts to give evidence on oath, it shall expressly so request, and the requested Party shall comply with the request if the law of its country does not prohibit it.
- 3 The requested Party may transmit certified copies or certified photostat copies of records or documents requested, unless the requesting Party expressly requests the transmission of originals, in which case the requested Party shall make every effort to comply with the request.

### Article 4

On the express request of the requesting Party the requested Party shall state the date and place of execution of the letters rogatory. Officials and interested persons may be present if the requested Party consents.

### Article 5

- 1 Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, reserve the right to make the execution of letters rogatory for search or seizure of property dependent on one or more of the following conditions:
  - a that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the requested Party;
  - b that the offence motivating the letters rogatory is an extraditable offence in the requested country;
  - c that execution of the letters rogatory is consistent with the law of the requested Party.
- 2 Where a Contracting Party makes a declaration in accordance with paragraph 1 of this article, any other Party may apply reciprocity.

### Article 6

- 1 The requested Party may delay the handing over of any property, records or documents requested, if it requires the said property, records or documents in connection with pending criminal proceedings.
- 2 Any property, as well as original records or documents, handed over in execution of letters rogatory shall be returned by the requesting Party to the requested Party as soon as possible unless the latter Party waives the return thereof.

## Chapter III – Service of writs and records of judicial verdicts - Appearance of witnesses, experts and prosecuted persons

### Article 7

- 1 The requested Party shall effect service of writs and records of judicial verdicts which are transmitted to it for this purpose by the requesting Party. Service may be effected by simple transmission of the writ or record to the person to be served. If the requesting Party expressly so requests, service shall be effected by the requested Party in the manner provided for the service of analogous documents under its own law or in a special manner consistent with such law.
- 2 Proof of service shall be given by means of a receipt dated and signed by the person served or by means of a declaration made by the requested Party that service has been effected and stating the form and date of such service. One or other of these documents shall be sent immediately to the requesting Party. The requested Party shall, if the requesting Party so requests, state whether service has been effected in accordance with the law of the requested Party. If service cannot be effected, the reasons shall be communicated immediately by the requested Party to the requesting Party.
- 3 Any Contracting Party may, by a declaration addressed to the Secretary General of the Council of Europe, when signing this Convention or depositing its instrument of ratification or accession, request that service of a summons on an accused person who is in its territory be transmitted to its authorities by a certain time before the date set for appearance. This time shall be specified in the aforesaid declaration and shall not exceed 50 days.  
This time shall be taken into account when the date of appearance is being fixed and when the summons is being transmitted.

### Article 8

A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned.

### Article 9

The allowances, including subsistence, to be paid and the travelling expenses to be refunded to a witness or expert by the requesting Party shall be calculated as from his place of residence and shall be at rates at least equal to those provided for in the scales and rules in force in the country where the hearing is intended to take place.

### Article 10

- 1 If the requesting Party considers the personal appearance of a witness or expert before its judicial authorities especially necessary, it shall so mention in its request for service of the summons and the requested Party shall invite the witness or expert to appear.  
The requested Party shall inform the requesting Party of the reply of the witness or expert.
- 2 In the case provided for under paragraph 1 of this article the request or the summons shall indicate the approximate allowances payable and the travelling and subsistence expenses refundable.

- 3 If a specific request is made, the requested Party may grant the witness or expert an advance. The amount of the advance shall be endorsed on the summons and shall be refunded by the requesting Party.

#### Article 11

- 1 A person in custody whose personal appearance as a witness or for purposes of confrontation is applied for by the requesting Party shall be temporarily transferred to the territory where the hearing is intended to take place, provided that he shall be sent back within the period stipulated by the requested Party and subject to the provisions of Article 12 in so far as these are applicable.  
Transfer may be refused:
  - a if the person in custody does not consent,
  - b if his presence is necessary at criminal proceedings pending in the territory of the requested Party,
  - c if transfer is liable to prolong his detention, or
  - d if there are other overriding grounds for not transferring him to the territory of the requesting Party.
- 2 Subject to the provisions of Article 2, in a case coming within the immediately preceding paragraph, transit of the person in custody through the territory of a third State, Party to this Convention, shall be granted on application, accompanied by all necessary documents, addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the Party through whose territory transit is requested.  
A Contracting Party may refuse to grant transit to its own nationals.
- 3 The transferred person shall remain in custody in the territory of the requesting Party and, where applicable, in the territory of the Party through which transit is requested, unless the Party from whom transfer is requested applies for his release.

#### Article 12

- 1 A witness or expert, whatever his nationality, appearing on a summons before the judicial authorities of the requesting Party shall not be prosecuted or detained or subjected to any other restriction of his personal liberty in the territory of that Party in respect of acts or convictions anterior to his departure from the territory of the requested Party.
- 2 A person, whatever his nationality, summoned before the judicial authorities of the requesting Party to answer for acts forming the subject of proceedings against him, shall not be prosecuted or detained or subjected to any other restriction of his personal liberty for acts or convictions anterior to his departure from the territory of the requested Party and not specified in the summons.
- 3 The immunity provided for in this article shall cease when the witness or expert or prosecuted person, having had for a period of fifteen consecutive days from the date when his presence is no longer required by the judicial authorities an opportunity of leaving, has nevertheless remained in the territory, or having left it, has returned.

## Chapter IV – Judicial records

### Article 13

- 1 A requested Party shall communicate extracts from and information relating to judicial records, requested from it by the judicial authorities of a Contracting Party and needed in a criminal matter, to the same extent that these may be made available to its own judicial authorities in like case.
- 2 In any case other than that provided for in paragraph 1 of this article the request shall be complied with in accordance with the conditions provided for by the law, regulations or practice of the requested Party.

## Chapter V – Procedure

### Article 14

- 1 Requests for mutual assistance shall indicate as follows:
  - a the authority making the request,
  - b the object of and the reason for the request,
  - c where possible, the identity and the nationality of the person concerned, and
  - d where necessary, the name and address of the person to be served.
- 2 Letters rogatory referred to in Articles 3, 4 and 5 shall, in addition, state the offence and contain a summary of the facts.

### Article 15

- 1 Letters rogatory referred to in Articles 3, 4 and 5 as well as the applications referred to in Article 11 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party and shall be returned through the same channels.
- 2 In case of urgency, letters rogatory may be addressed directly by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. They shall be returned together with the relevant documents through the channels stipulated in paragraph 1 of this article.
- 3 Requests provided for in paragraph 1 of Article 13 may be addressed directly by the judicial authorities concerned to the appropriate authorities of the requested Party, and the replies may be returned directly by those authorities. Requests provided for in paragraph 2 of Article 13 shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party.
- 4 Requests for mutual assistance, other than those provided for in paragraphs 1 and 3 of this article and, in particular, requests for investigation preliminary to prosecution, may be communicated directly between the judicial authorities.
- 5 In cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).
- 6 A Contracting Party may, when signing this Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, give notice that some or all requests for assistance shall be sent to it through channels other than those provided for in this article, or require that, in a case provided for in paragraph 2 of this article, a copy of the letters rogatory shall be transmitted at the same time to its Ministry of Justice.
- 7 The provisions of this article are without prejudice to those of bilateral agreements or arrangements in force between Contracting Parties which provide for the direct transmission of requests for assistance between their respective authorities.

**Article 16**

- 1 Subject to paragraph 2 of this article, translations of requests and annexed documents shall not be required.
- 2 Each Contracting Party may, when signing or depositing its instrument of ratification or accession, by means of a declaration addressed to the Secretary General of the Council of Europe, reserve the right to stipulate that requests and annexed documents shall be addressed to it accompanied by a translation into its own language or into either of the official languages of the Council of Europe or into one of the latter languages, specified by it. The other Contracting Parties may apply reciprocity.
- 3 This article is without prejudice to the provisions concerning the translation of requests or annexed documents contained in the agreements or arrangements in force or to be made between two or more Contracting Parties.

**Article 17**

Evidence or documents transmitted pursuant to this Convention shall not require any form of authentication.

**Article 18**

Where the authority which receives a request for mutual assistance has no jurisdiction to comply therewith, it shall, ex officio, transmit the request to the competent authority of its country and shall so inform the requesting Party through the direct channels, if the request has been addressed through such channels.

**Article 19**

Reasons shall be given for any refusal of mutual assistance.

**Article 20**

Subject to the provisions of Article 10, paragraph 3, execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody carried out under Article 11.

**Chapter VI – Laying of information in connection with proceedings****Article 21**

- 1 Information laid by one Contracting Party with a view to proceedings in the courts of another Party shall be transmitted between the Ministries of Justice concerned unless a Contracting Party avails itself of the option provided for in paragraph 6 of Article 15.
- 2 The requested Party shall notify the requesting Party of any action taken on such information and shall forward a copy of the record of any verdict pronounced.
- 3 The provisions of Article 16 shall apply to information laid under paragraph 1 of this article.



## Chapter VII – Exchange of information from judicial records

### Article 22

Each Contracting Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Ministries of Justice shall communicate such information to one another at least once a year. Where the person concerned is considered a national of two or more other Contracting Parties, the information shall be given to each of these Parties, unless the person is a national of the Party in the territory of which he was convicted.

## Chapter VIII – Final provisions

### Article 23

- 1 Any Contracting Party may, when signing this Convention or when depositing its instrument of ratification or accession, make a reservation in respect of any provision or provisions of the Convention.
- 2 Any Contracting Party which has made a reservation shall withdraw it as soon as circumstances permit. Such withdrawal shall be made by notification to the Secretary General of the Council of Europe.
- 3 A Contracting Party which has made a reservation in respect of a provision of the Convention may not claim application of the said provision by another Party save in so far as it has itself accepted the provision.

### Article 24

A Contracting Party may, when signing the Convention or depositing its instrument of ratification or accession, by a declaration addressed to the Secretary General of the Council of Europe, define what authorities it will, for the purpose of the Convention, deem judicial authorities.

### Article 25

- 1 This Convention shall apply to the metropolitan territories of the Contracting Parties.
- 2 In respect of France, it shall also apply to Algeria and to the overseas Departments, and, in respect of Italy, it shall also apply to the territory of Somaliland under Italian administration.
- 3 The Federal Republic of Germany may extend the application of this Convention to the Land of Berlin by notice addressed to the Secretary General of the Council of Europe.
- 4 In respect of the Kingdom of the Netherlands, the Convention shall apply to its European territory. The Netherlands may extend the application of this Convention to the Netherlands Antilles, Surinam and Netherlands New Guinea by notice addressed to the Secretary General of the Council of Europe.
- 5 By direct arrangement between two or more Contracting Parties and subject to the conditions laid down in the arrangement, the application of this Convention may be extended to any territory, other than the territories mentioned in paragraphs 1, 2, 3 and 4 of this article, of one of these Parties, for the international relations of which any such Party is responsible.

**Article 26**

- 1 Subject to the provisions of Article 15, paragraph 7, and Article 16, paragraph 3, this Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two Contracting Parties.
- 2 This Convention shall not affect obligations incurred under the terms of any other bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given field.
- 3 The Contracting Parties may conclude between themselves bilateral or multilateral agreements on mutual assistance in criminal matters only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein.
- 4 Where, as between two or more Contracting Parties, mutual assistance in criminal matters is practised on the basis of uniform legislation or of a special system providing for the reciprocal application in their respective territories of measures of mutual assistance, these Parties shall, notwithstanding the provisions of this Convention, be free to regulate their mutual relations in this field exclusively in accordance with such legislation or system. Contracting Parties which, in accordance with this paragraph, exclude as between themselves the application of this Convention shall notify the Secretary General of the Council of Europe accordingly.

**Article 27**

- 1 This Convention shall be open to signature by the members of the Council of Europe. It shall be ratified. The instruments of ratification shall be deposited with the Secretary General of the Council.
- 2 The Convention shall come into force 90 days after the date of deposit of the third instrument of ratification.
- 3 As regards any signatory ratifying subsequently the Convention shall come into force 90 days after the date of the deposit of its instrument of ratification.

**Article 28**

- 1 The Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, provided that the resolution containing such invitation obtains the unanimous agreement of the members of the Council who have ratified the Convention.
- 2 Accession shall be by deposit with the Secretary General of the Council of an instrument of accession which shall take effect 90 days after the date of its deposit.

**Article 29**

Any Contracting Party may denounce this Convention in so far as it is concerned by giving notice to the Secretary General of the Council of Europe. Denunciation shall take effect six months after the date when the Secretary General of the Council received such notification.

**Article 30**

The Secretary General of the Council of Europe shall notify the members of the Council and the government of any State which has acceded to this Convention of:

- a the names of the signatories and the deposit of any instrument of ratification or accession;
- b the date of entry into force of this Convention;

- c any notification received in accordance with the provisions of Article 5 – paragraph 1, Article 7 – paragraph 3, Article 15 – paragraph 6, Article 16 – paragraph 2, Article 24, Article 25 – paragraphs 3 and 4, Article 26 – paragraph 4;
- d any reservation made in accordance with Article 23, paragraph 1;
- e the withdrawal of any reservation in accordance with Article 23, paragraph 2;
- f any notification of denunciation received in accordance with the provisions of Article 29 and the date on which such denunciation will take effect.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 20th day of April 1959, in English and French, both texts being equally authoritative, in a single copy which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the signatory and acceding governments.



## ANNEX IV • European Union

# Convention on mutual assistance in criminal matters between the member states of the European Union <sup>[11]</sup>

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### 12.7.2000 EN C 197 Official Journal of the European Communities

(Acts adopted pursuant to Title VI of the Treaty on European Union)

### Council Act

of 29 May 2000

establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(a) and 34(2)(d) thereof,

Having regard to the initiative of the Member States,

Having regard to the opinion of the European Parliament <sup>[12]</sup>,

Whereas:

- (1) For the purposes of achieving the objectives of the Union the rules on mutual assistance in criminal matters between the Member States of the European Union should be improved and a Convention, as set out in the Annex hereto, should be established to that end.
- (2) Some of the provisions of the Convention fall within the scope of Article 1 of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* <sup>[13]</sup>.
- (3) This is the case with Articles 3, 5, 6, 7, 12 and 23, and, to the extent relevant to Article 12, with Articles 15 and 16, and, to the extent relevant to the Articles referred to, with Article 1.
- (4) The procedures set out in the Agreement concluded by the Council of the European Union with the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* <sup>[14]</sup> have been observed in respect of these provisions.
- (5) When the adoption of this Act is notified to the Republic of Iceland and the Kingdom of Norway in accordance with Article 8(2)(a) of the aforementioned Agreement, those two States will be informed in particular of the contents of Article

[11] The list of countries having ratified the Convention on Mutual Assistance can be found on: [http://ue.eu.int/cms3\\_Applications/applications/Accords/details.asp?cmsid=3D245&id=3D2000023&lang=3DEN&doclang=3DEN](http://ue.eu.int/cms3_Applications/applications/Accords/details.asp?cmsid=3D245&id=3D2000023&lang=3DEN&doclang=3DEN)

[12] Opinion delivered on 17 February 2000 (not yet published in the Official Journal).

[13] OJ L 176, 10.7.1999, p. 31.

[14] OJ L 176, 10.7.1999, p. 36.

29 on entry into force for Iceland and Norway and will be invited to submit, at the time they inform the Council and the Commission of the fulfilment of their constitutional requirements, the relevant statements under Article 24 of the Convention,

HAS DECIDED that the Convention, the text of which is given in the Annex and which has been signed today by the Representatives of the Governments of the Member States of the Union, is hereby established,

RECOMMENDS that it be adopted by the Member States in accordance with their respective constitutional requirements,

INVITES the Member States to begin the procedures applicable for that purpose before 1 January 2001.

Done at Brussels, 29 May 2000.

For the Council  
The President  
A. COSTA

## ANNEX

### Convention

established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union

THE HIGH CONTRACTING PARTIES to this Convention, Member States of the European Union,  
REFERRING to the Council Act establishing the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union,  
WISHING to improve judicial cooperation in criminal matters between the Member States of the Union, without prejudice to the rules protecting individual freedom,  
POINTING OUT the Member States' common interest in ensuring that mutual assistance between the Member States is provided in a fast and efficient manner compatible with the basic principles of their national law, and in compliance with the individual rights and principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950,  
EXPRESSING their confidence in the structure and functioning of their legal systems and in the ability of all Member States to guarantee a fair trial,  
RESOLVED to supplement the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 and other Conventions in force in this area, by a Convention of the European Union,  
RECOGNISING that the provisions of those Conventions remain applicable for all matters not covered by this Convention,  
CONSIDERING that the Member States attach importance to strengthening judicial cooperation, while continuing to apply the principle of proportionality,  
RECALLING that this Convention regulates mutual assistance in criminal matters, based on the principles of the Convention of 20 April 1959,  
WHEREAS, however, Article 20 of this Convention covers certain specific situations concerning interception of telecommunications, without having any implications with regard to other such situations outside the scope of the Convention,  
WHEREAS the general principles of international law apply in situations which are not covered by this Convention,  
RECOGNISING that this Convention does not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security, and that it is a matter for each Member State to determine, in accordance with Article 33 of the Treaty on European Union, under which conditions it will maintain law and order and safeguard internal security,

HAVE AGREED ON THE FOLLOWING PROVISIONS:

## TITLE I

### General provisions

#### Article 1

##### Relationship to other conventions on mutual assistance

1. The purpose of this Convention is to supplement the provisions and facilitate the application between the Member States of the European Union, of:
  - (a) the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, hereinafter referred to as the 'European Mutual Assistance Convention';
  - (b) the Additional Protocol of 17 March 1978 to the European Mutual Assistance Convention;
  - (c) the provisions on mutual assistance in criminal matters of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders (hereinafter referred to as the 'Schengen Implementation Convention') which are not repealed pursuant to Article 2(2);
  - (d) Chapter 2 of the Treaty on Extradition and Mutual Assistance in Criminal Matters between the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands of 27 June 1962, as amended by the Protocol of 11 May 1974, (hereinafter referred to as the 'Benelux Treaty'), in the context of relations between the Member States of the Benelux Economic Union.
2. This Convention shall not affect the application of more favourable provisions in bilateral or multilateral agreements between Member States or, as provided for in Article 26(4) of the European Mutual Assistance Convention, arrangements in the field of mutual assistance in criminal matters agreed on the basis of uniform legislation or of a special system providing for the reciprocal application of measures of mutual assistance in their respective territories.

#### Article 2

##### Provisions relating to the Schengen *acquis*

1. The provisions of Articles 3, 5, 6, 7, 12 and 23 and, to the extent relevant to Article 12, of Articles 15 and 16, to the extent relevant to the Articles referred to, of Article 1 constitute measures amending or building upon the provisions referred to in Annex A to the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis*<sup>1</sup>.
2. The provisions of Articles 49(a), 52, 53 and 73 of the Schengen Implementation Convention are hereby repealed.

#### Article 3

##### Proceedings in connection with which mutual assistance is also to be afforded

1. Mutual assistance shall also be afforded in proceedings brought by the administrative authorities in respect of acts which are punishable under the national law of the requesting or the requested Member State, or both, by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters.



2. Mutual assistance shall also be afforded in connection with criminal proceedings and proceedings as referred to in paragraph 1 which relate to offences or infringements for which a legal person may be held liable in the requesting Member State.

#### **Article 4**

##### Formalities and procedures in the execution of requests for mutual assistance

1. Where mutual assistance is afforded, the requested Member State shall comply with the formalities and procedures expressly indicated by the requesting Member State, unless otherwise provided in this Convention and provided that such formalities and procedures are not contrary to the fundamental principles of law in the requested Member State.
2. The requested Member State shall execute the request for assistance as soon as possible, taking as full account as possible of the procedural deadlines and other deadlines indicated by the requesting Member State. The requesting Member State shall explain the reasons for the deadline.
3. If the request cannot, or cannot fully, be executed in accordance with the requirements set by the requesting Member State, the authorities of the requested Member State shall promptly inform the authorities of the requesting Member State and indicate the conditions under which it might be possible to execute the request. The authorities of the requesting and the requested Member State may subsequently agree on further action to be taken concerning the request, where necessary by making such action subject to the fulfilment of those conditions.
4. If it is foreseeable that the deadline set by the requesting Member State for executing its request cannot be met, and if the reasons referred to in paragraph 2, second sentence, indicate explicitly that any delay will lead to substantial impairment of the proceedings being conducted in the requesting Member State, the authorities of the requested Member State shall promptly indicate the estimated time needed for execution of the request. The authorities of the requesting Member State shall promptly indicate whether the request is to be upheld nonetheless. The authorities of the requesting and requested Member States may subsequently agree on further action to be taken concerning the request.

#### **Article 5**

##### Sending and service of procedural documents

1. Each Member State shall send procedural documents intended for persons who are in the territory of another Member State to them directly by post.
2. Procedural documents may be sent via the competent authorities of the requested Member State only if:
  - (a) the address of the person for whom the document is intended is unknown or uncertain; or
  - (b) the relevant procedural law of the requesting Member State requires proof of service of the document on the addressee, other than proof that can be obtained by post; or
  - (c) it has not been possible to serve the document by post; or
  - (d) the requesting Member State has justified reasons for considering that dispatch by post will be ineffective or is inappropriate.
3. Where there is reason to believe that the addressee does not understand the language in which the document is drawn up, the document, or at least the important passages thereof, must be translated into (one of) the language(s) of the Member State in the territory of which the addressee is staying. If the authority by which the procedural document was issued knows that the addressee understands only

some other language, the document, or at least the important passages thereof, must be translated into that other language.

4. All procedural documents shall be accompanied by a report stating that the addressee may obtain information from the authority by which the document was issued or from other authorities in that Member State regarding his or her rights and obligations concerning the document. Paragraph 3 shall also apply to that report.
5. This Article shall not affect the application of Articles 8, 9 and 12 of the European Mutual Assistance Convention and Articles 32, 34 and 35 of the Benelux Treaty.

## Article 6

### Transmission of requests for mutual assistance

1. Requests for mutual assistance and spontaneous exchanges of information referred to in Article 7 shall be made in writing, or by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity. Such requests shall be made directly between judicial authorities with territorial competence for initiating and executing them, and shall be returned through the same channels unless otherwise specified in this Article. Any information laid by a Member State with a view to proceedings before the courts of another Member State within the meaning of Article 21 of the European Mutual Assistance Convention and Article 42 of the Benelux Treaty may be the subject of direct communications between the competent judicial authorities.
2. Paragraph 1 shall not prejudice the possibility of requests being sent or returned in specific cases:
  - (a) between a central authority of a Member State and a central authority of another Member State; or
  - (b) between a judicial authority of one Member State and a central authority of another Member State.
3. Notwithstanding paragraph 1, the United Kingdom and Ireland, respectively, may, when giving the notification provided for in Article 27(2), declare that requests and communications to it, as specified in the declaration, must be sent via its central authority. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them. Any Member State may apply the principle of reciprocity in relation to the declarations referred to above.
4. Any request for mutual assistance may, in case of urgency, be made via the International Criminal Police Organisation (Interpol) or any body competent under provisions adopted pursuant to the Treaty on European Union.
5. Where, in respect of requests pursuant to Articles 12, 13 or 14, the competent authority is a judicial authority or a central authority in one Member State and a police or customs authority in the other Member State, requests may be made and answered directly between these authorities. Paragraph 4 shall apply to these contacts.
6. Where, in respect of requests for mutual assistance in relation to proceedings as envisaged in Article 3(1), the competent authority is a judicial authority or a central authority in one Member State and an administrative authority in the other Member State, requests may be made and answered directly between these authorities.
7. Any Member State may declare, when giving the notification provided for in Article 27(2), that it is not bound by the first sentence of paragraph 5 or by paragraph 6 of this Article, or both or that it will apply those provisions only under certain condi-

tions which it shall specify. Such a declaration may be withdrawn or amended at any time.

8. The following requests or communications shall be made through the central authorities of the Member States:
  - (a) requests for temporary transfer or transit of persons held in custody as referred to in Article 9 of this Convention, in Article 11 of the European Mutual Assistance Convention and in Article 33 of the Benelux Treaty;
  - (b) notices of information from judicial records as referred to in Article 22 of the European Mutual Assistance Convention and Article 43 of the Benelux Treaty. However, requests for copies of convictions and measures as referred to in Article 4 of the Additional Protocol to the European Mutual Assistance Convention may be made directly to the competent authorities.

### **Article 7**

#### Spontaneous exchange of information

1. Within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences and the infringements of rules of law referred to in Article 3(1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.
2. The providing authority may, pursuant to its national law, impose conditions on the use of such information by the receiving authority.
3. The receiving authority shall be bound by those conditions.

## **TITLE II**

### **Request for certain specific forms of mutual assistance**

#### **Article 8**

##### Restitution

1. At the request of the requesting Member State and without prejudice to the rights of bona fide third parties, the requested Member State may place articles obtained by criminal means at the disposal of the requesting State with a view to their return to their rightful owners.
2. In applying Articles 3 and 6 of the European Mutual Assistance Convention and Articles 24(2) and 29 of the Benelux Treaty, the requested Member State may waive the return of articles either before or after handing them over to the requesting Member State if the restitution of such articles to the rightful owner may be facilitated thereby. The rights of bona fide third parties shall not be affected.
3. In the event of a waiver before handing over the articles to the requesting Member State, the requested Member State shall exercise no security right or other right of recourse under tax or customs legislation in respect of these articles. A waiver as referred to in paragraph 2 shall be without prejudice to the right of the requested Member State to collect taxes or duties from the rightful owner.

#### **Article 9**

##### Temporary transfer of persons held in custody for purpose of investigation

1. Where there is agreement between the competent authorities of the Member States concerned, a Member State which has requested an investigation for which the presence of the person held in custody on its own territory is required may

temporarily transfer that person to the territory of the Member State in which the investigation is to take place.

2. The agreement shall cover the arrangements for the temporary transfer of the person and the date by which he or she must be returned to the territory of the requesting Member State.
3. Where consent to the transfer is required from the person concerned, a statement of consent or a copy thereof shall be provided promptly to the requested Member State.
4. The period of custody in the territory of the requested Member State shall be deducted from the period of detention which the person concerned is or will be obliged to undergo in the territory of the requesting Member State.
5. The provisions of Articles 11(2) and (3), 12 and 20 of the European Mutual Assistance Convention shall apply *mutatis mutandis* to this Article.
6. When giving the notification provided for in Article 27(2), each Member State may declare that, before an agreement is reached under paragraph 1 of this Article, the consent referred to in paragraph 3 of this Article will be required or will be required under certain conditions indicated in the declaration.

## Article 10

### Hearing by videoconference

1. If a person is in one Member State's territory and has to be heard as a witness or expert by the judicial authorities of another Member State, the latter may, where it is not desirable or possible for the person to be heard to appear in its territory in person, request that the hearing take place by videoconference, as provided for in paragraphs 2 to 8.
2. The requested Member State shall agree to the hearing by videoconference provided that the use of the videoconference is not contrary to fundamental principles of its law and on condition that it has the technical means to carry out the hearing. If the requested Member State has no access to the technical means for videoconferencing, such means may be made available to it by the requesting Member State by mutual agreement.
3. Requests for a hearing by videoconference shall contain, in addition to the information referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the reason why it is not desirable or possible for the witness or expert to attend in person, the name of the judicial authority and of the persons who will be conducting the hearing.
4. The judicial authority of the requested Member State shall summon the person concerned to appear in accordance with the forms laid down by its law.
5. With reference to hearing by videoconference, the following rules shall apply:
  - (a) a judicial authority of the requested Member State shall be present during the hearing, where necessary assisted by an interpreter, and shall also be responsible for ensuring both the identification of the person to be heard and respect for the fundamental principles of the law of the requested Member State. If the judicial authority of the requested Member State is of the view that during the hearing the fundamental principles of the law of the requested Member State are being infringed, it shall immediately take the necessary measures to ensure that the hearing continues in accordance with the said principles;
  - (b) measures for the protection of the person to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States;

- (c) the hearing shall be conducted directly by, or under the direction of, the judicial authority of the requesting Member State in accordance with its own laws;
  - (d) at the request of the requesting Member State or the person to be heard the requested Member State shall ensure that the person to be heard is assisted by an interpreter, if necessary;
  - (e) the person to be heard may claim the right not to testify which would accrue to him or her under the law of either the requested or the requesting Member State.
6. Without prejudice to any measures agreed for the protection of the persons, the judicial authority of the requested Member State shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place.  
The document shall be forwarded by the competent authority of the requested Member State to the competent authority of the requesting Member State.
7. The cost of establishing the video link, costs related to the servicing of the video link in the requested Member State, the remuneration of interpreters provided by it and allowances to witnesses and experts and their travelling expenses in the requested Member State shall be refunded by the requesting Member State to the requested Member State, unless the latter waives the refunding of all or some of these expenses.
8. Each Member State shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory in accordance with this Article and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure.
9. Member States may at their discretion also apply the provisions of this Article, where appropriate and with the agreement of their competent judicial authorities, to hearings by videoconference involving an accused person. In this case, the decision to hold the videoconference, and the manner in which the videoconference shall be carried out, shall be subject to agreement between the Member States concerned, in accordance with their national law and relevant international instruments, including the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms.  
Any Member State may, when giving its notification pursuant to Article 27(2), declare that it will not apply the first subparagraph. Such a declaration may be withdrawn at any time.  
Hearings shall only be carried out with the consent of the accused person. Such rules as may prove to be necessary, with a view to the protection of the rights of accused persons, shall be adopted by the Council in a legally binding instrument.

## Article 11

### Hearing of witnesses and experts by telephone conference

1. If a person is one Member State's territory and has to be heard as a witness or expert by judicial authorities of another Member State, the latter may, where its national law so provides, request assistance of the former Member State to enable the hearing to take place by telephone conference, as provided for in paragraphs 2 to 5.
2. A hearing may be conducted by telephone conference only if the witness or expert agrees that the hearing take place by that method.

3. The requested Member State shall agree to the hearing by telephone conference where this is not contrary to fundamental principles of its law.
4. A request for a hearing by telephone conference shall contain, in addition to the information referred to in Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, the name of the judicial authority and of the persons who will be conducting the hearing and an indication that the witness or expert is willing to take part in a hearing by telephone conference.
5. The practical arrangements regarding the hearing shall be agreed between the Member States concerned.  
When agreeing such arrangements, the requested Member State shall undertake to:
  - (a) notify the witness or expert concerned of the time and the venue of the hearing;
  - (b) ensure the identification of the witness or expert;
  - (c) verify that the witness or expert agrees to the hearing by telephone conference.

The requested Member State may make its agreement subject, fully or in part, to the relevant provisions of Article 10(5) and (8). Unless otherwise agreed, the provisions of Article 10(7) shall apply *mutatis mutandis*.

## Article 12

### Controlled deliveries

1. Each Member State shall undertake to ensure that, at the request of another Member State, controlled deliveries may be permitted on its territory in the framework of criminal investigations into extraditable offences.
2. The decision to carry out controlled deliveries shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.
3. Controlled deliveries shall take place in accordance with the procedures of the requested Member State. The right to act and to direct and control operations shall lie with the competent authorities of that Member State.

## Article 13

### Joint investigation teams

1. By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team. The composition of the team shall be set out in the agreement.  
A joint investigation team may, in particular, be set up where:
  - (a) a Member State's investigations into criminal offences require difficult and demanding investigations having links with other Member States;
  - (b) a number of Member States are conducting investigations into criminal offences in which the circumstances of the case necessitate coordinated, concerted action in the Member States involved.
 A request for the setting up of a joint investigation team may be made by any of the Member States concerned. The team shall be set up in one of the Member States in which the investigations are expected to be carried out.
2. In addition to the information referred to in the relevant provisions of Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests for the setting up of a joint investigation team shall include proposals for the composition of the team.



3. A joint investigation team shall operate in the territory of the Member States setting up the team under the following general conditions:
  - (a) the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Member State in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
  - (b) the team shall carry out its operations in accordance with the law of the Member State in which it operates. The members of the team shall carry out their tasks under the leadership of the person referred to in subparagraph (a), taking into account the conditions set by their own authorities in the agreement on setting up the team;
  - (c) the Member State in which the team operates shall make the necessary organisational arrangements for it to do so.
4. In this Article, members of the joint investigation team from Member States other than the Member State in which the team operates are referred to as being 'seconded' to the team.
5. Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Member State of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Member State where the team operates, decide otherwise.
6. Seconded members of the joint investigation team may, in accordance with the law of the Member State where the team operates, be entrusted by the leader of the team with the task of taking certain investigative measures where this has been approved by the competent authorities of the Member State of operation and the seconding Member State.
7. Where the joint investigation team needs investigative measures to be taken in one of the Member States setting up the team, members seconded to the team by that Member State may request their own competent authorities to take those measures. Those measures shall be considered in that Member State under the conditions which would apply if they were requested in a national investigation.
8. Where the joint investigation team needs assistance from a Member State other than those which have set up the team, or from a third State, the request for assistance may be made by the competent authorities of the State of operations to the competent authorities of the other State concerned in accordance with the relevant instruments or arrangements.
9. A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the team.
10. Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Member States concerned may be used for the following purposes:
  - (a) for the purposes for which the team has been set up;
  - (b) subject to the prior consent of the Member State where the information became available, for detecting, investigation and prosecuting other criminal offences. Such consent may be withheld only in cases where such use would endanger criminal investigations in the Member State concerned or in respect of which that Member State could refuse mutual assistance;
  - (c) for preventing an immediate and serious threat to public security, and without prejudice to subparagraph (b) if subsequently a criminal investigation is opened;

(d) for other purposes to the extent that this is agreed between Member States setting up the team.

11. This Article shall be without prejudice to any other existing provisions or arrangements on the setting up or operation of joint investigation teams.
12. To the extent that the laws of the Member States concerned or the provisions of any legal instrument applicable between them permit, arrangements may be agreed for persons other than representatives of the competent authorities of the Member States setting up the joint investigation team to take part in the activities of the team. Such persons may, for example, include officials of bodies set up pursuant to the Treaty on European Union.  
The rights conferred upon the members or seconded members of the team by virtue of this Article shall not apply to these persons unless the agreement expressly states otherwise.

## Article 14

### Covert investigations

1. The requesting and the requested Member State may agree to assist one another in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).
2. The decision on the request is taken in each individual case by the competent authorities of the requested Member State with due regard to its national law and procedures. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the Member States with due regard to their national law and procedures.
3. Covert investigations shall take place in accordance with the national law and procedures of the Member States on the territory of which the covert investigation takes place. The Member States involved shall cooperate to ensure that the covert investigation is prepared and supervised and to make arrangements for the security of the officers acting under covert or false identity.
4. When giving the notification provided for in Article 27(2), any Member State may declare that it is not bound by this Article. Such a declaration may be withdrawn at any time.

## Article 15

### Criminal liability regarding officials

During the operations referred to in Articles 12, 13 and 14, officials from a Member State other than the Member State of operation shall be regarded as officials of the Member State of operation with respect of offences committed against them or by them.

## Article 16

### Civil liability regarding officials

1. Where, in accordance with Articles 12, 13 and 14, officials of a Member State are operating in another Member State, the first Member State shall be liable for any damage caused by them during their operations, in accordance with the law of the Member State in whose territory they are operating.
2. The Member State in whose territory the damage referred to in paragraph 1 was caused shall make good such damage under the conditions applicable to damage caused by its own officials.



3. The Member State whose officials have caused damage to any person in the territory of another Member State shall reimburse the latter in full any sums it has paid to the victims or persons entitled on their behalf.
4. Without prejudice to the exercise of its rights vis-à-vis third parties and with the exception of paragraph 3, each Member State shall refrain in the case provided for in paragraph 1 from requesting reimbursement of damages it has sustained from another Member State.

## TITLE III

### Interception of telecommunications

#### Article 17

##### Authorities competent to order interception of telecommunications

For the purpose of the application of the provisions of Articles 18, 19 and 20, 'competent authority' shall mean a judicial authority, or, where judicial authorities have no competence in the area covered by those provisions, an equivalent competent authority, specified pursuant to Article 24(1)(e) and acting for the purpose of a criminal investigation.

#### Article 18

##### Requests for interception of telecommunications

1. For the purpose of a criminal investigation, a competent authority in the requesting Member State may, in accordance with the requirements of its national law, make a request to a competent authority in the requested Member State for:
  - (a) the interception and immediate transmission to the requesting Member State of telecommunications; or
  - (b) the interception, recording and subsequent transmission to the requesting Member State of the recording of telecommunications.
2. Requests under paragraph 1 may be made in relation to the use of means of telecommunications by the subject of the interception, if this subject is present in:
  - (a) the requesting Member State and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications;
  - (b) the requesting Member State and his or her communications can be intercepted in that Member State;
  - (c) a third Member State which has been informed pursuant to Article 20(2)(a) and the requesting Member State needs the technical assistance of the requested Member State to intercept his or her communications.
3. By way of derogation from Article 14 of the European Mutual Assistance Convention and Article 37 of the Benelux Treaty, requests under this Article shall include the following:
  - (a) an indication of the authority making the request;
  - (b) confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation;
  - (c) information for the purpose of identifying the subject of this interception;
  - (d) an indication of the criminal conduct under investigation;
  - (e) the desired duration of the interception; and
  - (f) if possible, the provision of sufficient technical data, in particular the relevant network connection number, to ensure that the request can be met.

4. In the case of a request pursuant to paragraph 2(b), a request shall also include a summary of the facts. The requested Member State may require any further information to enable it to decide whether the requested measure would be taken by it in a similar national case.
5. The requested Member State shall undertake to comply with requests under paragraph 1(a):
  - (a) in the case of a request pursuant to paragraph 2(a) and 2(c), on being provided with the information in paragraph 3. The requested Member State may allow the interception to proceed without further formality;
  - (b) in the case of a request pursuant to paragraph 2(b), on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any conditions which would have to be observed in a similar national case.
6. Where immediate transmission is not possible, the requested Member State shall undertake to comply with requests under paragraph 1(b) on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested Member State may make its consent subject to any condition which would have to be observed in a similar national case.
7. When giving the notification provided for in Article 27(2), any Member State may declare that it is bound by paragraph 6 only when it is unable to provide immediate transmission. In this case the other Member State may apply the principle of reciprocity.
8. When making a request under paragraph 1(b), the requesting Member State may, where it has a particular reason to do so, also request a transcription of the recording. The requested Member State shall consider such requests in accordance with its national law and procedures.
9. The Member State receiving the information provided under paragraphs 3 and 4 shall keep that information confidential in accordance with its national law.

## Article 19

### Interceptions of telecommunications on national territory by the use of service providers

1. Member States shall ensure that systems of telecommunications services operated via a gateway on their territory, which for the lawful interception of the communications of a subject present in another Member State are not directly accessible on the territory of the latter, may be made directly accessible for the lawful interception by that Member State through the intermediary of a designated service provider present on its territory.
2. In the case referred to in paragraph 1, the competent authorities of a Member State shall be entitled, for the purposes of a criminal investigation and in accordance with applicable national law and provided that the subject of the interception is present in that Member State, to carry out the interception through the intermediary of a designated service provider present on its territory without involving the Member State on whose territory the gateway is located.
3. Paragraph 2 shall also apply where the interception is carried out upon a request made pursuant to Article 18(2)(b).

4. Nothing in this Article shall prevent a Member State from making a request to the Member State on whose territory the gateway is located for the lawful interception of telecommunications in accordance with Article 18, in particular where there is no intermediary in the requesting Member State.

## Article 20

### Interception of telecommunications without the technical assistance of another Member State

1. Without prejudice to the general principles of international law as well as to the provisions of Article 18(2)(c), the obligations under this Article shall apply to interception orders made or authorised by the competent authority of one Member State in the course of criminal investigations which present the characteristics of being an investigation following the commission of a specific criminal offence, including attempts in so far as they are criminalised under national law, in order to identify and arrest, charge, prosecute or deliver judgment on those responsible.
2. Where for the purpose of a criminal investigation, the interception of telecommunications is authorised by the competent authority of one Member State (the 'intercepting Member State'), and the telecommunication address of the subject specified in the interception order is being used on the territory of another Member State (the 'notified Member State') from which no technical assistance is needed to carry out the interception, the intercepting Member State shall inform the notified Member State of the interception:
  - (a) prior to the interception in cases where it knows when ordering the interception that the subject is on the territory of the notified Member State;
  - (b) in other cases, immediately after it becomes aware that the subject of the interception is on the territory of the notified Member State.
3. The information to be notified by the intercepting Member State shall include:
  - (a) an indication of the authority ordering the interception;
  - (b) confirmation that a lawful interception order has been issued in connection with a criminal investigation;
  - (c) information for the purpose of identifying the subject of the interception;
  - (d) an indication of the criminal conduct under investigation; and
  - (e) the expected duration of the interception.
4. The following shall apply where a Member State is notified pursuant to paragraphs 2 and 3:
  - (a) Upon receipt of the information provided under paragraph 3 the competent authority of the notified Member State shall, without delay, and at the latest within 96 hours, reply to the intercepting Member State, with a view to:
    - (i) allowing the interception to be carried out or to be continued. The notified Member State may make its consent subject to any conditions which would have to be observed in a similar national case;
    - (ii) requiring the interception not to be carried out or to be terminated where the interception would not be permissible pursuant to the national law of the notified Member State, or for the reasons specified in Article 2 of the European Mutual Assistance Convention. Where the notified Member State imposes such a requirement, it shall give reasons for its decision in writing;
    - (iii) in cases referred to in point (ii), requiring that any material already intercepted while the subject was on its territory may not be used, or may only be used under conditions which it shall specify. The notified Member State shall inform the intercepting Member State of the reasons justifying the said conditions;

- (iv) requiring a short extension, of up to a maximum period of eight days, to the original 96-hour deadline, to be agreed with the intercepting Member State, in order to carry out internal procedures under its national law. The notified Member State shall communicate, in writing, to the intercepting Member State, the conditions which, pursuant to its national law, justify the requested extension of the deadline.
  - (b) Until a decision has been taken by the notified Member State pursuant to points (i) or (ii) of subparagraph (a), the intercepting Member State:
    - (i) may continue the interception; and
    - (ii) may not use the material already intercepted, except:
      - if otherwise agreed between the Member States concerned; or
      - for taking urgent measures to prevent an immediate and serious threat to public security. The notified Member State shall be informed of any such use and the reasons justifying it.
  - (c) The notified Member State may request a summary of the facts of the case and any further information necessary to enable it to decide whether interception would be authorised in a similar national case. Such a request does not affect the application of subparagraph (b), unless otherwise agreed between the notified Member State and the intercepting Member State.
  - (d) The Member States shall take the necessary measures to ensure that a reply can be given within the 96-hour period. To this end they shall designate contact points, on duty twenty-four hours a day, and include them in their statements under Article 24(1)(e).
5. The notified Member State shall keep the information provided under paragraph 3 confidential in accordance with its national law.
  6. Where the intercepting Member State is of the opinion that the information to be provided under paragraph 3 is of a particularly sensitive nature, it may be transmitted to the competent authority through a specific authority where that has been agreed on a bilateral basis between the Member States concerned.
  7. When giving its notification under Article 27(2), or at any time thereafter, any Member State may declare that it will not be necessary to provide it with information on interceptions as envisaged in this Article.

## Article 21

### Responsibility for charges made by telecommunications operators

Costs which are incurred by telecommunications operators or service providers in executing requests pursuant to Article 18 shall be borne by the requesting Member State.

## Article 22

### Bilateral arrangements

Nothing in this Title shall preclude any bilateral or multilateral arrangements between Member States for the purpose of facilitating the exploitation of present and future technical possibilities regarding the lawful interception of telecommunications.

## TITLE IV

### Article 23

#### Personal data protection

1. Personal data communicated under this Convention may be used by the Member State to which they have been transferred:
  - (a) for the purpose of proceedings to which this Convention applies;
  - (b) for other judicial and administrative proceedings directly related to proceedings referred to under point (a);
  - (c) for preventing an immediate and serious threat to public security;
  - (d) for any other purpose, only with the prior consent of the communicating Member State, unless the Member State concerned has obtained the consent of the data subject.
2. This Article shall also apply to personal data not communicated but obtained otherwise under this Convention.
3. In the circumstances of the particular case, the communicating Member State may require the Member State to which the personal data have been transferred to give information on the use made of the data.
4. Where conditions on the use of personal data have been imposed pursuant to Articles 7(2), 18(5)(b), 18(6) or 20(4), these conditions shall prevail. Where no such conditions have been imposed, this Article shall apply.
5. The provisions of Article 13(10) shall take precedence over this Article regarding information obtained under Article 13.
6. This Article does not apply to personal data obtained by a Member State under this Convention and originating from that Member State.
7. Luxembourg may, when signing the Convention, declare that where personal data are communicated by Luxembourg under this Convention to another Member State, the following applies:

Luxembourg may, subject to paragraph 1(c), in the circumstances of a particular case require that unless that Member State concerned has obtained the consent of the data subject, the personal data may only be used for the purposes referred to in paragraph 1(a) and (b) with the prior consent of Luxembourg in respect of proceedings for which Luxembourg could have refused or limited the transmission or use of the personal data in accordance with the provisions of this Convention or the instruments referred to in Article 1. If, in a particular case, Luxembourg refuses to give its consent to a request from a Member State pursuant to the provisions of paragraph 1, it must give reasons for its decision in writing.

## TITLE V

### Final provisions

#### Article 24

##### Statements

1. When giving the notification referred to in Article 27(2), each Member State shall make a statement naming the authorities which, in addition to those already indicated in the European Mutual Assistance Convention and the Benelux Treaty, are competent for the application of this Convention and the application between the Member States of the provisions on mutual assistance in criminal matters of the instruments referred to in Article 1(1), including in particular:

- (a) the competent administrative authorities within the meaning of Article 3(1), if any;
  - (b) one or more central authorities for the purposes of applying Article 6 as well as the authorities competent to deal with the requests referred to in Article 6(8);
  - (c) the police or customs authorities competent for the purpose of Article 6(5), if any;
  - (d) the administrative authorities competent for the purposes of Article 6(6), if any; and
  - (e) the authority or authorities competent for the purposes of the application of Articles 18 and 19 and Article 20(1) to (5).
2. Statements made in accordance with paragraph 1 may be amended in whole or in part at any time by the same procedure.

### **Article 25**

#### Reservations

No reservations may be entered in respect of this Convention, other than those for which it makes express provision.

### **Article 26**

#### Territorial application

The application of this Convention to Gibraltar will take effect upon extension of the European Mutual Assistance Convention to Gibraltar.

The United Kingdom shall notify in writing the President of the Council when it wishes to apply the Convention to the Channel Islands and the Isle of Man following extension of the European Mutual Assistance Convention to those territories. A decision on this request shall be taken by the Council acting with the unanimity of its members.

### **Article 27**

#### Entry into force

1. This Convention shall be subject to adoption by the Member States in accordance with their respective constitutional requirements.
2. Member States shall notify the Secretary-General of the Council of the European Union of the completion of the constitutional procedures for the adoption of this Convention.
3. This Convention shall, 90 days after the notification referred to in paragraph 2 by the State, member of the European Union at the time of adoption by the Council of the Act establishing this Convention, which is the eighth to complete this formality, enter into force for the eight Member States concerned.
4. Any notification by a Member State subsequent to the receipt of the eighth notification referred to in paragraph 2 shall have the effect that, 90 days after the subsequent notification, this Convention shall enter into force as between this Member State and those Member States for which the Convention has already entered into force.
5. Before the Convention has entered into force pursuant to paragraph 3, any Member State may, when giving the notification referred to in paragraph 2 or at any time thereafter, declare that it will apply this Convention in its relations with Member States which have made the same declaration. Such declarations shall take effect 90 days after the date of deposit thereof.
6. This Convention shall apply to mutual assistance initiated after the date on which it has entered into force, or is applied pursuant to paragraph 5, between the Member States concerned.

**Article 28****Accession of new Member States**

1. This Convention shall be open to accession by any State which becomes a member of the European Union.
2. The text of this Convention in the language of the acceding State, drawn up by the Council of the European Union, shall be authentic.
3. The instruments of accession shall be deposited with the depositary.
4. This Convention shall enter into force with respect to any State which accedes to it 90 days after the deposit of its instrument of accession or on the date of entry into force of this Convention if it has not already entered into force at the time of expiry of the said period of 90 days.
5. Where this Convention is not yet in force at the time of the deposit of their instrument of accession, Article 27(5) shall apply to acceding Member States.

**Article 29****Entry into force for Iceland and Norway**

1. Without prejudice to Article 8 of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* (the 'Association Agreement'), the provisions referred to in Article 2(1) shall enter into force for Iceland and Norway 90 days after the receipt by the Council and the Commission of the information pursuant to Article 8(2) of the Association Agreement upon fulfilment of their constitutional requirements, in their mutual relations with any Member State for which this Convention has already entered into force pursuant to Article 27(3) or (4).
2. Any entry into force of this Convention for a Member State after the date of entry into force of the provisions referred to in Article 2(1) for Iceland and Norway, shall render these provisions also applicable in the mutual relations between that Member State and Iceland and Norway.
3. The provisions referred to in Article 2(1) shall in any event not become binding on Iceland and Norway before the date to be fixed pursuant to Article 15(4) of the Association Agreement.
4. Without prejudice to paragraphs 1, 2 and 3 above, the provisions referred to in Article 2(1) shall enter into force for Iceland and Norway not later than on the date of entry into force of this Convention for the fifteenth State, being a member of the European Union at the time of the adoption by the Council of the Act establishing this Convention.

**Article 30****Depositary**

1. The Secretary-General of the Council of the European Union shall act as depositary of this Convention.
2. The depositary shall publish in the *Official Journal of the European Communities* information on the progress of adoptions and accessions, statements and reservations and also any other notification concerning this Convention.

Done at Brussels on the twenty-ninth day of May in the year two thousand in a single original in the Danish, Dutch, English, Finnish, French, German, Greek, Irish, Italian, Portuguese, Spanish and Swedish languages, all texts being equally authentic, such original being deposited in the archives of the General Secretariat of the Council of the European Union. The Secretary-General shall forward a certified copy thereof to each Member State.



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