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Legislation and the Situation Concerning Trafficking in Human Beings for the Purpose of Sexual Exploitation in EU Member States

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Disclaimer

The content of this report is the sole responsibility of the authors. It does not necessarily reflect the views of the European Commission or the International Centre for Migration Policy Development.

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Foreword

As acknowledged in the *EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings*, a successful fight against trafficking in human beings must be built upon three pillars: prevention, protection of trafficked persons and prosecution of traffickers. These pillars must be supported by an appropriate legal and regulatory framework as well as improved research and data collection.

Much has been written on the issue of trafficking in human beings for the purpose of sexual exploitation, but the question regarding the factors triggering the “demand side” of the phenomenon is still being heavily discussed. This study aims at contributing to this debate by making a comparative analysis of national legislations and policies on trafficking in human beings. Firstly, it makes an attempt to provide a comprehensive overview of the selected Member States’ legal frameworks and procedures concerning trafficking for the purpose of sexual exploitation and, secondly, investigates possible correlations between these and the national legislations on prostitution.

Notably, the study pays special attention to the gaps in available data on trafficking in human beings for sexual exploitation and prostitution. It then analyses the external factors shaping demand and supply such as migration, labour and non-discrimination policy, gender equality, which might intervene in the effective implementation of certain policies, and produce side effects with a negative impact on trafficking for sexual exploitation at national or even EU level.

The study attempts to explore, in a politically/ideologically neutral manner, and subject to the data available, whether certain legal approaches to prostitution have an influence on the quantitative and qualitative dimension of trafficking in human beings.

The study aims at being a clear-cut tool for policy-makers by providing practice-oriented recommendations on how to formulate policies in order to address the issue of trafficking for the purpose of sexual exploitation comprehensively and in a multidisciplinary manner. Given its nature, we trust that the results of the study will also support the work of national law enforcement agencies and judicial authorities.

With the entry into force of the Lisbon Treaty, we hope that this study will be of assistance to the European Institutions and the EU Member States in the identification of legal instruments which should have an impact in the area of trafficking in human beings and sexual exploitation of women and children. Furthermore, we hope that the findings and recommendations of the study will provide the readers with the necessary information to develop and improve future initiatives in this area.



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Executive Summary

The report “Evaluation of Member States’ legislation and the situation concerning trafficking in human beings for the purpose of sexual exploitation” explores how EU Member States’ legislation and policies on trafficking in human beings for the purpose of sexual exploitation and other relevant areas such as prostitution, immigration and labour influence the situation concerning trafficking in human beings for the purpose of sexual exploitation. It provides the European Commission and the EU Member States with information on how to improve their future legal and programmatic actions in this area.

The report is structured as follows: Chapter 1 introduces the topic and methodology. Chapter 2 discusses the definition of trafficking in human beings and selected concepts related to trafficking in human beings for sexual exploitation. Chapter 3 reviews data on trafficking in human beings and their availability. Chapter 4 looks at criminalisation of trafficking in human beings for the purpose of sexual exploitation in the EU Member States. The focus of Chapter 5 is legislation on assistance to trafficked persons. Chapter 6 focuses on regulation of prostitution in the EU Member States as one of the factors that influence prevalence and patterns of trafficking in human beings for sexual exploitation. Chapter 7 looks into factors shaping demand and supply of sexual services provided by trafficked persons. The final chapter draws conclusions and recommendations for the EU Member States and institutions.

The report covers 17 EU Member States selected to ensure regional balance, representation of new EU Member States, size and location; and representation of various regimes regulating prostitution.

The applied methodology was qualitative. The authors collected and reviewed: (1) qualitative data and quantitative data on trafficking in human beings with a particular emphasis on trafficking in human beings for sexual exploitation (including 60 expert interviews); (2) national legal provisions and main policy documents on combating trafficking in human beings for sexual exploitation and on prostitution; (3) relevant academic literature. Importantly, since in most EU Member States the same legal provisions and policies cover trafficking in human beings for various forms of exploitation, it was not always possible to analyse trafficking in human beings for sexual exploitation independently of trafficking in human beings for other purposes.

Trends in trafficking in human beings

The available quantitative data on trafficking in human beings allows for the following tentative observations: (1) there is no clear increase in the *recorded* number of victims of trafficking or in the number of criminal cases of trafficking in human beings over time; (2) in most countries, the majority of *identified* victims of trafficking were trafficked for the

purpose of sexual exploitation; (3) in a number of countries the absolute number of identified victims of trafficking for labour exploitation has increased.

Experts interviewed for this research stressed that the trends discernible in the data on trafficking in human beings for sexual exploitation do not reflect changes in patterns of trafficking in human beings for sexual exploitation but rather changes in the visible prostitution market and law enforcement efforts.

The experts almost unanimously assessed that traffickers/exploiters use more subtle methods of coercion, such as manipulated debts; threatening denunciation to the migration authorities in cases where a person has an irregular migration status, and various threats against family members in the countries of origin rather than physical violence. Traffickers are also more likely to share a small part of the proceeds from prostitution with the persons engaged in prostitution in order to discourage them from complaining to the police. The courts are less likely to consider these 'softer' means of coercion as sufficient to prove coercion. Several experts pointed out that the level of violence or the modes of coercion vary depending on the nationality/ethnicity of the trafficked person and traffickers. Some experts suggested that when the residence status of the victim in the destination country is regular, the traffickers tend to use a more restricted degree of violence, possibly because a person with regular migration status is more likely to appeal to law enforcement agencies of the country of destination if subjected to violence.

Legislation and policies on trafficking in human beings in EU Member States

The EU countries' national legislations are increasingly reflecting the EU standards and requirements on trafficking in human beings. However, there are strong differences between the 17 studied countries, and numerous legislative gaps in compliance exist, especially when it comes to victim assistance. The research also indicates large discrepancies between the law and its implementation.

The Council Framework Decision of 19 July 2002 is not always fully transposed in domestic legislation. In some countries the definition of trafficking in human beings in the national legislation lacks clarity, while in other cases it does not cover all aspects of trafficking. This weakens law enforcement and prosecution, and it complicates the fight against traffickers and international co-operation.

The legislation, law enforcement and prosecution practices are not always coherent with each other. Many experts reported that the low number of trials for trafficking in human beings for sexual exploitation reflects the fact that only a proportion of these acts are actually prosecuted under the trafficking in human beings statutes. Practitioners often tend to use other offences such as pimping and forced prostitution, which are easier to prove or are perceived as such.

Many states, in compliance with the Council Directive of 29 April 2004, have tied residency status and assistance to the victims to their co-operation with investigation and the judiciary. However, the research showed that few countries comply in full with the Council Directive. The national legal provisions in most of the countries present some - at times significant - gaps in regulating the granting of adequate reflection periods, access

to residency permits and general assistance to the victims. The research shows that often the assistance is provided to the victims of trafficking by NGOs, whereas states are less active in the field of direct assistance. Although NGO networks and social service providers often bridge the gap, experts reported that many victims of trafficking do not have equal and effective access to adequate assistance. Some countries have issued unified and binding guidelines and criteria to identify and refer (presumed) victims of trafficking. Clearly, institutionalised co-operation between the state agencies and NGOs tends to facilitate equal and effective access to assistance for trafficked persons.

Some experts considered linking the provision of assistance to the granting of residency permit as an ineffective incentive for trafficked persons to co-operate with the law enforcement. Examination of the Italian model seems to indicate that where victims are unconditionally assisted and granted residence irrespective of their co-operation with the law enforcement, they tend to re-integrate better and contribute to judicial proceedings more readily.

Experts also pointed out that some victims of trafficking in human beings do not receive residency permits and assistance because the crime related to their particular case is not qualified as trafficking. Also trafficked persons, who are EU citizens, may not receive the specific assistance available to trafficked persons from third countries since this assistance tends to be tied to a residency permit, which they do not require.

Given the difficulties in proving trafficking in human beings, the participation of victims in the investigation and in judicial proceedings is of primary importance. An approach that aims at ensuring that victims have full access to their rights not only avoids conflict with law enforcement and prosecution, but is indispensable to successful prosecution and reintegration. There is evidence to prove that in those countries where policies on trafficking in human beings were specified in a National Action Plan (or a similar document) and where a National Co-ordinator was designated, the actual implementation of anti-trafficking measures and co-ordination and cooperation among various actors proceeds more smoothly.

Regulation of Prostitution in EU Member States

The legislation on prostitution to a large extent shapes the environment in which supply and demand for sexual services develop. This includes those services provided by trafficked persons. It influences the patterns and prevalence of trafficking in human beings for sexual exploitation and can promote or inhibit a human rights-based approach to the phenomenon. Sound empirical evidence about the links and relationships between the way sex markets are regulated and the prevalence and patterns of trafficking in human beings for sexual exploitation is lacking, but the limited research available suggests that there is no specific demand for sexual services provided by trafficked persons. Whether the demand for sexual services is met by trafficked persons/forced prostitutes or by consensual prostitutes depends on the relative cost of these services, which is influenced *inter alia* by the actions of the state (for example by criminalisation and strict law enforcement of forced prostitution and trafficking).

International law and the EU law do not take a position on the treatment of non-coerced (consensual) adult sex workers, and leave their treatment to the discretion of individual countries.

The 17 EU Member States studied can be broadly divided into four groups based on the way they regulate the exchange of sexual services between consenting adults for remuneration or the promise of remuneration: (1) countries in which the exchange of sexual services between consenting adults for remuneration is explicitly legal, i.e. considered work or 'professional activity' under state-specified conditions (Austria, Germany and the Netherlands); (2) countries in which engagement in prostitution (both offering and buying of sexual services) is criminalised (Romania), (3) countries in which purchasing sexual services is criminalised (Sweden) and (4) countries in which the sale of sex between consenting adults is not prohibited as such, but some related activities are criminalised either by invoking prostitution-specific legal provisions or by invoking legal provisions that are not prostitution-specific (all other countries in the sample).

In the EU Member States, prostitution remains a highly sensitive and divisive issue. Efforts to regulate prostitution have been motivated by various considerations such as concerns of morality, law and order, public health, efforts to counter gender discrimination and to empower persons engaged in prostitution. The existing legislation on prostitution is often unclear, and various acts such as pandering, exploiting others' prostitution or living off the proceeds of prostitution are ill defined and used interchangeably. Policies to regulate prostitution are often developed without a broad public discussion and without the input of persons involved in prostitution. Many aspects of prostitution remain under- or unregulated. Partial regulation of prostitution has been criticised for (1) failing to address effectively negative phenomena associated with prostitution such as forced prostitution, pimping, prostitution in public places, organised crime, including trafficking in human beings for sexual exploitation; (2) failing to empower persons involved in prostitution and to increase their ability to effectively uphold their rights including access to social and health insurance, and (3) failing to address public health concerns.

The current debate about the regulation of prostitution in the EU Member States is influenced by two models on regulating prostitution – legalisation of prostitution as work (in force in the Netherlands) and criminalisation of demand (in force in Sweden). More independent and methodologically sound research is needed to conclude authoritatively on the impacts of these types of legislative regimes, and inform policy makers. Ultimately, it depends on the actual implementation of the policy, including strict enforcement of legislation against forced prostitution and trafficking in human beings for sexual exploitation, whether the expected benefits of this policy will materialise.

The Swedish ban on the purchase of sexual services has (at least temporarily) contributed to a decrease in the prevalence of street prostitution. While some sources indicate at least part of the prostitution market has been driven underground, this statement is contested by others in the Swedish anti-trafficking community. It is not clear whether it has contributed to a decrease in the overall scale of prostitution and there are diametrically opposing opinions – but no hard facts – as to whether the regulation has contributed to a decrease in trafficking in human beings for sexual exploitation.

It is not clear whether legalisation of prostitution in the Netherlands has contributed to a growth or decrease in size of the sex industry and in the market (or market share) of services provided by trafficked persons. However, a policy that prioritises combating forced prostitution and trafficking in human beings in combination with empowerment of sex

workers, is likely to have contributed to the decrease in services provided by trafficked persons.

In general, the review of prostitution-related national legislations, academic literature and information from expert interviews, has showed that (1) the understanding of criminalised or regulated practices related to prostitution varies widely across the 17 EU Member States, (2) much is left to the law enforcement and the interpretation of the courts; and (3) in many cases the governments have refrained from comprehensive and coherent regulation of prostitution: they often address prostitution de facto by the application of legal provisions which were not necessarily originally intended to cover acts related to prostitution.

Factors influencing the supply of persons vulnerable to trafficking

The supply of services provided by trafficked persons is shaped by a number of root factors that influence the vulnerability of persons to trafficking. Among these factors are both the absolute and relative poverty in countries of origin as compared to the EU Member States, social hardship and exclusion in countries of origin and destination; restricted migration and legal employment opportunities in the EU; and various forms of discrimination in home countries and in the EU Member States. The fact that the EU Member States often fail to ensure the effective exercise of rights for all persons, including irregular migrants, is a particularly important factor increasing the vulnerability to trafficking and exploitation in countries of destination. In this context, migration and labour laws (access of migrants to the labour markets) or access to social and other services (e.g. health care) in the EU Member States are of fundamental importance. The more viable, acceptable options there are for potential (and actual) victims of trafficking either in their countries of origin or abroad, the more difficult it is for traffickers to recruit and to exploit them in their own countries or abroad.

Current responses of the EU Member States and ways forward

The policies and practices of EU Member States' on trafficking in human beings tend to continue prioritising organised crime and (irregular) migration aspects of the phenomenon.

The anti-trafficking legislation in force in EU Member States, whether it aims at punishing the traffickers or at assisting trafficked persons, remains heterogeneous and at times lacks harmonisation with EU standards. This hampers the efforts to address trafficking in human beings for sexual exploitation effectively.

Policies focused on prosecution of traffickers are indispensable and they should be pursued and better harmonised across the European Union. However, they alone are not sufficient to address the issue of trafficking in human beings. Identification of victims of exploitation and unconditional, adequate assistance to trafficked persons need to be entrenched in a rights-based approach as an integral part of the fight against trafficking. Prevention measures need to focus more on empowering both potential and actual victims of trafficking in human beings.

Anti-trafficking strategies should link closely with broader policies responding to and preventing exploitation in all its forms. The success of combating trafficking in human

beings hinges, to a high degree, on policy choices made in areas such as migration, labour law and policies, employment policies, anti-discrimination, income redistribution and international development. Empowering of the groups affected by and/or at risk of being affected by trafficking both in countries of origin and the countries of destination is a key to breaking the chain of trafficking.

Recommendations

Recommendations to EU Member States

1. EU Member States should adequately implement their commitments to combat trafficking in human beings. In particular, EU Member States should ensure full and unambiguous compliance with the European Council Framework Decision 2002/629/JHA and the European Council Directive 2004/81. They should ratify and implement the Council of Europe Convention on Action against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime.
2. EU Member States should mainstream the fight against trafficking in human beings into policies (such as prostitution, migration, social assistance and redistribution, employment, labour law, gender equality, poverty reduction and foreign aid, discrimination) affecting - directly or indirectly - the market for services provided by trafficked persons.
3. Policy makers should carefully assess the possible impact of policy and legislation choices on the various actors in the market for trafficking in human beings. They should especially ensure that presumed victims of trafficking cannot be prosecuted for offenses committed due to their situation as trafficked persons.
4. As a preventive measure, special empowerment strategies should be available for persons active in the sex industry to prevent them from falling victim to trafficking. Such programmes should address the issues of exploitation and other human rights abuses to make individuals aware of their rights, particularly their socio-economic rights, including the right to health care.
5. Member States should develop programmes offering persons active in the sex industry, who are potential victims of trafficking for sexual exploitation, alternative livelihood opportunities and programmes.
6. Whether demand for sexual services is criminalised or prostitution is either legalised or depenalised, the implementation of the regulatory framework should be prioritised and carefully monitored in order to prevent and address violations of the rights of persons in prostitution.
7. EU Member States should prioritise anti-trafficking strategies that empower the groups affected and/or at risk of trafficking in human beings, in particular regular and irregular migrants and persons engaged in prostitution and ensure adequate and equal standards of support for trafficked persons regardless of their participation in judicial proceedings.

8. It has to be acknowledged that it is, in general, difficult to distinguish between demand for services provided by trafficked or coerced persons and demand for services provided by consensual prostitutes. Information campaigns therefore should make more potential clients aware of the realities of human trafficking and the likelihood of (sexual) exploitation.
9. EU Member States should pay special attention to the rights of trafficked children and where necessary devise children-specific policies and assistance programmes, bearing in mind their specific rights, needs and vulnerabilities.
10. EU Member States should reinforce the capacities of law enforcement agencies to effectively enforce laws addressing trafficking in human beings and related fields, such as for example labour standard enforcement and policies regarding prostitution. Special focus in this regard should be given to identification procedures, asset seizure and victim compensation. A deepening of co-operation between law enforcement agencies and judicial authorities is necessary in all above mentioned instances, considering the significant burden of proof and the delicate balance between the contradictory principles inherent in cases of trafficking in human beings.
11. EU Member States should establish or improve national referral mechanisms in order to facilitate referral and assistance to trafficked persons. They should also improve or develop transnational referral mechanisms in order to protect the rights of the trafficked persons moving between EU Member States as well as between EU Member States and third countries for return, trial or resettlement reasons. This should include a formalisation of relations between the State and civil society organisations that provide services to trafficked persons.
12. Where it has not been done yet, EU Member States are urged, on the basis of all available data and through a process of consultation, to adopt a national policy against trafficking in human beings (e.g. National Strategy and Action Plan or equivalent documents). This policy should incorporate an explicit division of responsibilities among various agencies, provide for resource allocation and contain a monitoring and evaluation mechanism managed by an independent National Rapporteur.
13. EU Member States should collect reliable data and information on trafficking to inform decision-making. The Member States should make additional efforts to compile existing sources of information on trafficking in human beings that are available from various agencies (e.g. police, courts, service providers, labour inspection records). Where it has not been done yet, Member States should appoint an agency in charge of research, gathering and analysing data on all aspects of trafficking in human beings and monitoring the implementation of the policies to fight the phenomenon. This body should report, at least annually, on trafficking in human beings and the successes and shortfalls of the national laws and policies and their implementation.

Recommendations to the EU Institutions

1. Relevant European Institutions should periodically review the compliance of EU Member States with EU standards on trafficking in human beings. Special attention should be paid to monitoring of the implementation of the anti-trafficking measures and their impact.

2. The European Commission should work with the Member States to develop common parameters and guidelines for data collection and analysis. Data collection bodies should be trained in the practical application of the methodologies for data collection and analysis.
3. The European Commission should facilitate the establishment of a central repository of EU Member States, national legislation on trafficking in human beings and related areas and its translations.
4. The relevant European Institution should compile national-level data and reports into a periodic EU-wide report on the situation concerning trafficking in human beings.

1. Introduction

This report aims to analyse how Member States' legislation and policy on prostitution and other relevant areas influence the situation of trafficking in human beings for the purpose of sexual exploitation and to provide the European Commission and the EU Member States with the necessary information to improve their future proposals and policies in this area.¹

To this end, and as specified in the terms of reference and EC guidance, the study:

- (1) Provides an overview of existing quantitative and qualitative information on trafficking for the purpose of sexual exploitation, including references to number and characteristics of victims and criminal actors involved. By doing so, it takes into consideration an array of geographical, socio-economic, cultural and other factors that influence the situation concerning trafficking in human beings in individual EU Member States;
- (2) Provides a review and assessment of the existing legislation directly relevant to trafficking in human beings – bearing in mind that the legal frameworks in place rarely distinguish trafficking in human beings for sexual exploitation from other forms of trafficking;
- (3) Reviews national legal frameworks applicable to the marketing of sexual services – definitions of prostitution, provisions on the legal/ illegal character of the selling or buying of sexual services, legislation on various related activities such as pimping, living off the proceeds of prostitution, etc. – and develops considerations on how national legislations are being implemented in each Member State;
- (4) Identifies possible relations between national legislations on the market of sexual services and other factors, and situations of trafficking for sexual exploitation;
- (5) Presents recommendations with a view to assist the European Commission and EU Member States in meeting identified deficiencies and improving European and national policies and legal frameworks relevant to trafficking in human beings for sexual exploitation.

1.1. Structure of the Report

Following the introduction, the scope, methodology and terminology used in the report will be outlined. Chapter 2 discusses the definition of trafficking in human beings and selected concepts related to trafficking in human beings for sexual exploitation such as sexual exploitation and forced prostitution. Chapter 3 reviews the data on trafficking in

¹ This objective is in line with the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (2005/C 311/01).

human beings and their availability. It discusses the difficulties of collecting reliable quantitative data, currently available data on trafficking in human beings and presents tentative observations drawn from available quantitative data. It concludes with an overview of key trends reported in expert interviews. Chapter 4 looks at the criminalisation of trafficking in human beings for the purpose of sexual exploitation in selected EU Member States. It discusses the acts, means and purpose of trafficking in human beings in the national legislations; the criminalisation of attempts to commit trafficking in human beings; special provisions for trafficking in human beings in children; the punishments; models of criminal liability; extraterritorial jurisdiction; criminalisation of known use of services of trafficked persons, and it discusses also how the law facilitates law enforcement. It concludes with an overview of the main differences in legislation and its implementation in the EU Member States. The focus of Chapter 5 is legislation on assistance to trafficked persons. It reviews the means to facilitate victims' co-operation with prosecution, including assistance during temporary residence, after the trial and compensation. It concludes with a discussion of whether the law facilitates victims' extrication from exploitation situations. Chapter 6 provides a broad-brush picture of the factors influencing prevalence and patterns of trafficking in human beings and trafficking in human beings for sexual exploitation. It reviews the current knowledge on prostitution markets and provides an overview of regulatory regimes of prostitution in the EU Member States. It discusses in detail the regulation of prostitution in Sweden and the Netherlands and which regulation regime is more suited to contribute to combating trafficking in human beings. Chapter 7 looks into factors shaping demand and supply of sexual services provided by trafficked persons and the role of other actors such as the mediators (traffickers), criminal networks and law enforcement. The final chapter draws conclusions and recommendations for the EU and EU Member States.

In Annex I, country fact sheets provide a brief factual overview of legislation relevant to trafficking in human beings (for sexual exploitation), policies and their implementation and available quantitative data on trafficking in human beings. It also features expert opinions about *modi operandi* of organised crime and trends in trafficking in human beings. Annex II presents an overview of regulations of prostitution in 17 EU Member States.² Annex III consists of thematically organised excerpts from expert interviews. Annex IV presents terms used to describe legal frameworks on prostitution.

1.2. Scope and Methodology

The report covers 17 EU Member States (Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, the Netherlands, Poland, Romania, Spain, Sweden and the United Kingdom) selected to ensure regional balance, representation of new EU Member States, size and location; and representation of various regimes regulating prostitution.

The applied methodology was qualitative, reflecting the lack of quantitative data and the exploratory nature of the study, which was directed at developing a deeper understanding of the linkages between trafficking in human beings for sexual exploitation on one hand and prostitution and other policies on the other.

² No reliable quantitative data on prostitution was available in any of the 17 selected EU Member States.

For the 17 studied EU Member States, the authors collected, reviewed and analysed:

- (1) Quantitative data on trafficking in human beings for the years 2000 – 2008 (these are presented in Annex I - Country Fact Sheets);
- (2) Qualitative data on trafficking in human beings for sexual exploitation;
- (3) Main policy documents on combating trafficking in human beings such as National Strategies, Programmes and Action Plans;
- (4) National legal provisions relevant to trafficking in human beings for sexual exploitation. These were compared to the standards set in the European Council Framework Decision of 19 July 2002 on Combating trafficking in human beings (2002/629/JHA) and Council Directive of 29 April 2004 (2004/81/EC) on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who co-operate with the competent authorities.
- (5) Quantitative and qualitative data, national legislations and policy documents and reports on prostitution.

Wherever possible, the authors also collected and analysed information on implementation practices.

The main sources of information were:

- a. National legislation, policy documents and reports on trafficking in human beings (with special emphasis on trafficking in human beings for sexual exploitation);
- b. National legislation, policy documents and reports on prostitution;
- c. Academic literature and other reports on trafficking in human beings (with special emphasis on trafficking in human beings for sexual exploitation);
- d. Academic literature and other reports on prostitution;
- e. Consultations with representatives of National Rapporteurs or Equivalent Mechanisms; relevant state authorities (such as Ministries of Justice, law enforcement, judiciary etc.) and representatives of international organisations and non-governmental organisations;
- f. Semi-structured face-to-face or telephone interviews with one to six national experts per country.³ Excerpts from the interviews are thematically organised in Annex III.

Importantly, since in most EU Member States the same legal provisions and policies cover trafficking in human beings for various forms of exploitation, it was not always

³ The experts represented governmental structures and the non-state sector (either providers of services to trafficked persons, other NGOs or academia) dealing with the issue of trafficking. The authors of this report considered the respondents' views and perceptions relevant due to their professional experience. The main purpose of the interviews was to probe for trends and assessments of trafficking in human beings with particular emphasis on trafficking in human beings for sexual exploitation. The interviews lasted between 30 and 110 minutes. The framework of the questions was structured around the following themes: expert's assessment of trends in trafficking in human beings in his/her country; assessment of the development/trends of the phenomenon; assessment of national policies on trafficking in human beings; data collection and reporting on this issue; national policies on prostitution and other factors influencing the numbers of trafficked persons and patterns of trafficking in human beings with particular emphasis on trafficking in human beings for sexual exploitation. Experts were also asked to suggest recommendations for improvements. Interview material was manually coded.

possible to analyse trafficking in human beings for sexual exploitation independently of trafficking in human beings for other purposes. The scope of the study did not allow for treating the issue of forced pornography.

In some cases, the assessment of national legislation and its implementation and subsequent conclusions may be based on incomplete information because Member States have not shared relevant national legal acts and their implementing provisions in English with the authors of the study. In addition, official translations of national legislation were not available and all translations used were unofficial. Consequently, inaccuracies are possible.⁴ The authors reviewed legislation and other documents that were in force as of 30 June 2008.⁵

The acute lack of reliable empirical data on trafficking in human beings for sexual exploitation and related areas, in particular prostitution, has proven to be a decisive limitation of this study. It has prevented the authors from reaching authoritative, empirically substantiated conclusions on possible linkages between various policies and trafficking in human beings. To partially remedy this, the study relies to a significant degree on qualitative information from expert interviews and other sources.

Any missing information was either not available or not accessed by the project team.

1.3. Notes on terminology

International law does not specify what is to be considered 'prostitution'⁶ and there are lively debates among researchers, legislators, policy makers and activists as to which practices amount to prostitution. However, both the UN Trafficking Protocol and the Council Framework Decision 2002/629/JHA distinguish between trafficking and prostitution, whereby the purpose of trafficking for sexual exploitation is "the exploitation of the prostitution of others and other forms of sexual exploitation." There is no international consensus as to what is meant by 'exploitation of prostitution'.

In this report 'prostitution' is understood as 'exchange of sexual services among consenting adults against remuneration or the promise of remuneration'. The terms 'prostitute' and 'sex worker' are used interchangeably and without connoting any value judgment.

Similarly, the terms 'victim of trafficking' and 'trafficked person' are used interchangeably without prejudice either to their status of a victim at a given time or to the human rights of these persons as victims or to their agency understood as a power to make authentic choices.

Other key terms are used according to definitions given in international and European law and policy frameworks, and are explained as they come up in the report.

⁴ The contributors to this report worked, in addition to English, in the Czech, French, German and Spanish languages and they were supported for specific research tasks (mainly legislation and policy review) by research staff with knowledge of the Dutch, Italian, Polish and Swedish languages.

⁵ Whenever possible, the authors have also reviewed legislation and other documents adopted in the second half of 2008.

⁶ International law leaves it to the individual Member States to address voluntary, non-coerced prostitution in their respective domestic laws, but it states clearly that forced prostitution and prostitution of children should be eliminated. For more details refer to the next section in this report.

2. Definition of trafficking in human beings and selected related concepts

2.1. Trafficking in human beings

Prior to 2000, 'trafficking in human beings' was not defined, though various international legal documents used the term 'trafficking in women' (or 'traffic in women').⁷ By now, this omission has been partially remedied (Report of the EU Experts Group on Trafficking in Human Beings, 2004, p. 47).

In 2000, an international definition of trafficking in human beings was codified in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (also called the Palermo Protocol), an instrument intended to promote inter-State co-operation in combating transnational organised crime. According to the Palermo Protocol the crime of trafficking in persons is a crime against a person and it has three constituent parts: (1) The act (recruitment, transportation, transfer, harbouring or receipt of persons), (2) the means (the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person) and (3) the purpose of exploitation.⁸

The European Council Framework Decision of 19 July 2002 on Combating trafficking in human beings (2002/629/JHA) defines trafficking as "the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where: (a) use is made of coercion, force or threat, including abduction, or (b) use is made of deceit or fraud, or (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or (d) payments or benefits are given or received to achieve the consent of a person having control over another person – for the

⁷ For example, it was mentioned in the 1979 Convention on the Elimination of All Forms of Discrimination against Women or the 1993 Declaration on the Elimination of Violence against Women.

⁸ Article 3(a) of the Protocol, reads: "trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs." Article 3 (c) goes on to state that "the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in persons even if this does not involve any of the means set forth in subparagraph (a) of this article."

purpose of exploitation of that person's labour or services, including at least forced or compulsory labour or services, slavery or practices similar to slavery or servitude, or for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography". Article 2 specifies that "the consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth in paragraph 1 have been used," and Article 3 reads "when the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used"; Article 4 specifies that "for the purpose of this Framework Decision, "child" shall mean any person below 18 years of age".

According to the above definitions, it is not required for a trafficked person to be moved from one place to another.

2.2. Sexual exploitation, forced and consensual prostitution

Neither the Palermo Protocol nor the EC Framework Decision define 'exploitation', 'sexual exploitation', 'exploitation of the prostitution of others' nor do they specify the degree and/or nature of 'coercion', 'deceit' or 'abuse of authority' and 'abuse of position of vulnerability' to which a trafficked person must be subjected. These should be clarified in the respective national legislations.

The EU Experts Group on Trafficking in Human Beings concurs with this view: "From a human rights perspective, the primary concern is to combat the exploitation of human beings under forced labour or slavery like conditions, no matter whether such exploitation involves a victim of trafficking, a smuggled person, an illegal migrant or a lawful resident. In the application of the UN Trafficking Protocol, policies should therefore focus on the forced labour and slavery like outcomes of trafficking, rather than on the process through which people arrive in such conditions. Such an approach would solve much of the current confusion between smuggling and trafficking and between so called "innocent" and "guilty" victims" (Report of the EU Experts Group on Trafficking in Human Beings, 2004, p. 8).⁹

There is an ongoing discussion whether it is meaningful to make a distinction between consensual and coerced prostitution of adults. According to some interpretations, international instruments negotiated since 1970s increasingly differentiate between forced prostitution and trafficking on one side and consensual prostitution on the other.¹⁰ For example, during the preparations of the Convention on the Elimination of All Forms of

⁹ The Annotated Guide to the Complete UN Trafficking Protocol suggests that the definitions of 'sexual exploitation' and 'exploitation of the prostitution of others' create a greater focus on the use of force or coercion (including psychological coercion) to hold people against their will. According to the Annotated Guide to the Complete UN Trafficking Protocol (IHRIG, 2002, p. 6), the following definitions could be considered: "sexual exploitation" means "the participation by a person in prostitution, sexual servitude, or the production of pornographic materials as a result of being subjected to a threat, coercion, abduction, force, abuse of authority, debt bondage or fraud." "Exploitation of the prostitution of others" could be defined as "the obtaining by a person of any financial or other benefit from the sexual exploitation of another person". (IHRIG, 2002, p. 6).

¹⁰ According to another interpretation, post-1949 international law reflects only a consensus regarding combating trafficking in human beings and 'coerced' prostitution of adults, while it has remained silent on the issue of prostitution as such. The authors would like to thank to Barbara Havelkova for raising this issue.

Discrimination against Women (CEDAW), adopted in 1979, the emphasis was placed on combating trafficking and the exploitation of prostitution¹¹, while a proposal put forward by Morocco for the abolition of prostitution in all its forms was rejected (E/CN.4/2000/68, 2000, para. 28). The Vienna Declaration on the Elimination of Violence Against Women (1993) condemns forced prostitution and trafficking (Article 2b), and the UN Beijing Conference's Platform for Action (1995) calls for fighting sexual exploitation and forced prostitution (Article 39). This position is also reflected in the European Union's documents. For example, the EC Communication on trafficking in women for the purpose of sexual exploitation from 1996 states that "the communication does not seek to address the question of women who are not put under duress by a third party to travel to work as prostitutes over the borders" (COM(96) 567, p. 4).

Similarly, the 2007 report of the Committee on Equal Opportunities for Women and Men of the Parliamentary Assembly of the Council of Europe (PACE) entitled "Prostitution – which stance to take?" makes a distinction between consensual and forced prostitution. It defines consensual prostitution as prostitution exercised by adults that have freely chosen prostitution as a means to make a living. The report condemns forced prostitution, child prostitution and trafficking in human beings (PACE, Summary). While forced prostitution is considered a crime and has been dealt with under the International Labour Organization (ILO) Forced Labour Convention (No. 29), the ILO considers consensual prostitution of adults a form of work (Lim, 1998, p. v).

Neither international nor EU legislations take position on the treatment of consensual adult sex work/prostitution; this is left to the discretion of individual countries.

¹¹ Art. 6 of CEDAW calls upon State Parties to criminalise the exploitation of prostitution. Given that CEDAW has nearly universal ratification globally, this is an important position of international law against the exploitation of prostitution, but it does not define which practices amount to exploitation of prostitution.

3. Data on THB and its Availability

The need for reliable data on trafficking in human beings has been repeatedly acknowledged by the EU and the EU Member States,¹² but not much progress has been recorded as of today. The EU Member States currently produce data and analysis of varying quantity and quality, reflecting diverse levels of commitment and capacity. In this regard, the situation in 2008 has not dramatically improved since 2004, when the EU Experts Group concluded that “the lack of relevant data and/or the fragmented character of available data and the lack of exchange of information at national as well as at European and international level” are “at present a problem” (Report of the EU Experts Group on trafficking in human beings, 2004, p. 11).

3.1. Difficulties to collect reliable quantitative data on trafficking in human beings

Why is there no reliable quantitative data on trafficking in human beings? Firstly, data collection efforts are grossly complicated by the fact that trafficked persons and traffickers constitute a hidden population whose characteristics, including their number, are to a large extent unknown. Secondly, data collection efforts are held back by lack of clarity in the definition of trafficking in human beings. The transposition of the international definition into national legislation varies. This hinders international law enforcement co-operation and makes comparison across countries difficult. In practice instances of trafficking in human beings are at times recorded under pimping, smuggling or other crimes (and vice versa), which affects the reliability of existing data. Thirdly, data collection and analysis is resource intensive. Some EU countries have not yet designated a body responsible for data collection or provided it with sufficient human, technical and financial resources. This also explains at least partially why existing sources of information on trafficking in human beings and related crimes such as for example jurisprudence research or analysis of information from labour inspections are not always utilised to the degree possible.

Various initiatives are under way to address the gaps in data collection. Several EU Member States have established, and many more are in the process of establishing, a National Rapporteur or equivalent mechanism responsible for the collection, analysis and report-

¹² The Communication of the EC to the European Parliament and the Council on Fighting trafficking in human beings - an integrated approach and proposals for an action plan (COM (2005) 514 final) stresses the need for “a clear picture of the actual extent of the problem at EU and global level” to inform EU policy and notes that “precise figures are not available and law enforcement data, although important, are not sufficient”.

ing of data on trafficking in human beings.¹³ However, in some EU Member States no agency has been designated so far to centralise data collection.

3.2. Currently available data on trafficking in human beings

Currently, most of the available quantitative data comes either from crime statistics or from organisations that provide services to (presumed and/or identified) victims of trafficking. The data may reflect the number of investigations, indictments, convictions, indicted or convicted persons, trials, identified or assisted victims etc. It is rarely clear whether the figures provided are stock figures (measured at a point in time) or flow figures (measured over a period of time, usually twelve months).

In most countries data on trafficking in human beings is collected by various bodies such as the police, courts and providers of services to trafficked persons. Often, these actors apply different definitions and criteria for establishing whether a person is to be recorded as trafficked. Certain groups of trafficked persons (for example internally trafficked persons) may not be recognised and thus recorded as such. In some cases various bodies have access to different groups of persons that need assistance.¹⁴

Most of the quantitative data on trafficking in human beings shared with other bodies does not provide any characteristics about individual instances, i.e. the data is anonymous and generalised. This prevents the consolidation of data from various sources (such as crime statistics and service providers), because there might be multiple entries of the same case/instance, as mentioned by experts from Belgium, Bulgaria, Czech Republic, Denmark and Poland.

Generalised data does not facilitate identification of trends, sub-groups involved and their characteristics. The resulting heterogeneity of data (measuring different phenomena) renders it to a large extent incomparable across the units (usually countries) and across time periods.

In many countries the data collection schemes are being developed or upgraded. This is understandable inasmuch as our understanding of the crime of trafficking in human beings develops and data collection mechanisms need to be updated to reflect this. On the other hand, the relatively frequent changes and improvements and the fact that there is no EU-wide data collection standard make comparison of trafficking in human beings data across countries or over time virtually impossible.

The number of recorded trafficking in human beings cases varies greatly between countries. For example, in Sweden and Finland very few cases of trafficking in human beings are recorded, while in Austria, the Netherlands and Romania recorded cases are in the

¹³ Among other documents, the Communication of the EC to the European Parliament and the Council on Fighting trafficking in human beings - an integrated approach and proposals for an action plan (COM(2005) 514 final) stressed the need for independent institutions, e.g. National Rapporteurs or Equivalent Mechanisms, to systematically collect and analyse data on trafficking in human beings.

¹⁴ Service providers from civil society often assist trafficked persons who are citizens of the given state and who have been referred to them by their network partners from abroad. If these trafficked persons are not interested in pressing charges, they have in fact no motivation to contact the law enforcement agencies and thus they are not recorded in the official, state-run records on victims of trafficking. (Expert interview Czech Republic).

hundreds. There is a danger that countries which have invested in developing and implementing policies to counter trafficking in human beings and to collect, analyse and report trafficking in human beings data, appear to have the highest prevalence of trafficking cases, which is not necessarily a true reflection of reality.¹⁵ *“The fact that numbers of trafficking cases were increasing is due to the fact that the data collection system constantly improved.”* (Netherlands). *“Regarding the number of victims of trafficking it is rather stable throughout the years, we estimate about hundreds. But we try not to mention too many figures. The numbers depend on how efficient the police are. If we want to find victims of trafficking, we will. If we prioritize drugs, robberies, we will not find any [victims of trafficking]. It depends on the prioritization of the police.”* (Sweden).

Accordingly the variations in recorded numbers cannot be simply attributed to the prevalence of trafficking in human beings or changes in it. A host of other factors need to be considered: the amount of attention paid to trafficking in human beings and the quality of reporting, variations in definition of the crime of trafficking in the national legislation and judicial practices¹⁶, the specificities of law enforcement¹⁷, the level of awareness and capacity among various professional groups that may come into contact with trafficked persons (law enforcement, social services, labour inspectors, street workers), the availability, adequacy, quality and accessibility of services for trafficked persons and also the availability of alternatives for trafficked persons.

3.3. Tentative observations based on quantitative data on trafficking in human beings

Despite its serious limitations, the available quantitative data on trafficking in human beings, which is presented in Country Fact Sheets in Annex I, allows for the following tentative observations:

- The available quantitative data does not show a clear increase in the recorded number of victims of trafficking or in the number of criminal cases of trafficking in human beings over time. This comes somewhat as a surprise given the declared political priority assigned to combating trafficking in human beings, which could have been expected to translate into increased awareness and capacity among various actors and thus in an increase in the total number of criminal cases or identified victims of trafficking in human beings. On the other hand, as reported below, traffickers have adapted their strategies to the changes in the law and its

¹⁵ The Fifth Report of the Dutch National Rapporteur (Dettmeijer-Vermeulen et al., 2007, pp. 6-7) points out that users of global comparative studies on trafficking in human beings (such as for example the 2006 UNODC Global Report on Trafficking in Persons) often miss the nuances in methodologies and interpret the level of reporting on trafficking in human beings as being equivalent to the actual incidence of trafficking in human beings itself.

¹⁶ Those countries in which any instance of forced prostitution is considered trafficking in human beings, such as for example in the Netherlands or those countries in which the ‘means’ (coercion, deception etc.) were dropped from the definition, such as for example in Belgium, are likely to report more cases of trafficking in human beings than those countries where cases of trafficking for sexual exploitation are tried under other articles than trafficking in human beings. However this is largely dependent on the practice of law enforcement agencies and the courts.

¹⁷ *“It is very difficult to quantify THB, because the number of cases is very dependant on the enforcement efforts of the Police. In the past years there have been no major changes in terms of numbers.”* (Germany).

enforcement and it could be argued that today it is more difficult to identify and prosecute traffickers and to identify victims of trafficking.

- In most countries, the majority of identified victims of trafficking were trafficked for the purpose of sexual exploitation, but in a number of countries the absolute number of identified victims of trafficking for labour exploitation and in some countries also its share in the overall number of identified victims of trafficking have risen. This is due, among other things, to changes in legislations, which increasingly cover trafficking for labour exploitation, and raised awareness among professionals who come into contact with trafficked persons. Ultimately, there is a very low number of organ removal cases identified in the EU, and the priority that is given to the issue is proportional.¹⁸

3.4. Qualitative trends of trafficking in human beings reported in expert interviews

Civil society organisations' and research institutions' reports on trafficking in human beings sometimes provide qualitative data or quantitative data from small samples. This data as a rule draws on case studies of individual instances of trafficking (either linked to criminal cases or to individual trafficked persons) and provides valuable insights into various facets of trafficking in human beings, but this information cannot be generalised beyond the group of persons that have taken part in the research.

In the absence of reliable quantitative data on trafficking in human beings, the authors of this report had to rely extensively on information from interviews with national experts. The trends mentioned by the experts reflect their personal opinions and cannot be generalised or considered representative. Excerpts from interviews are presented in Annex III.

Most experts have explicitly indicated that the lack of reliable data prevents identification of any 'real' (i.e. verifiable, as opposed to perceived) trends in trafficking in human beings. What they indicated as a trend in trafficking in human beings reflects their perception and experience from either direct contact with trafficked persons who contacted the service-providers, from their involvement in investigation of trafficking in human beings crimes or from their involvement in data collection, analysis, and reporting.

For more information about trends in trafficking in human beings and modi operandi of traffickers in the 17 EU Member States please refer to Annex I.

3.4.1. Links between countries of origin and destination

Based on the rationale outlined above, the experts could not identify a clear evolution of trends concerning the countries of origin of identified trafficked persons. Among the countries that collect data on countries of origin of victims of trafficking or offenders, the recorded trends are unstable and reversible, often varying from one reporting cycle (usually a calendar year) to another, and not exceeding any measure of statistical

¹⁸ Two cases of trafficking in human beings for organ removal were reported in Bulgaria (expert interview) and five cases were reported in Belgium.

significance in terms of the overall aggregate. Many experts also stressed that the trends discernible in the data on trafficking in human beings for sexual exploitation do not reflect changes in patterns of trafficking in human beings, but rather changes in the visible prostitution market and the law enforcement efforts and attitudes vis-à-vis the market.

Based on interviews and reports, following the accession of Bulgaria and Romania to the EU, there has been an increase in the number of Bulgarian and Romanian women engaged in prostitution in Western Europe. It was suggested that they have displaced some non-EU country nationals from the visible (street) prostitution market. Some respondents suggested that there is a trend towards Nigerian prostitutes, and of prostitutes from other sub-Saharan countries who often transit through Nigeria to European countries of destination. Persons subjected to labour exploitation were reported to originate mainly from other countries than persons exploited in the sex business. According to experts there is a significant number of labour migrants (especially in the UK, Ireland, Spain and Italy) and among them are also trafficked or exploited persons from new EU Member States (Latvia, Lithuania, Poland, Romania).

In some cases, there are recognisable links between specific regions in the country of origin and in the destination country. For example, in the case of Bulgaria it seems that persons from Sliven are trafficked mainly to Belgium and the Netherlands. Persons from Pazardjik are more likely to end up in Italy, Austria and Spain. Those from Kurstandil are more likely to be exploited in Italy and Germany, while persons from Plovdiv are trafficked to Greece, Austria and Belgium. Over 450 Romanian trafficked persons were identified in Spain, predominantly in the Madrid, Zaragoza, Valencia, Castello and Barcelona regions. A similar number was identified in Italy in Lazio and Lombardia.

3.4.2. Criminal networks

Some interviewed experts suggested that over the past several years organised crime groups¹⁹ involved in trafficking in human beings have become better organised and more professional. Experts from Romania, Spain and the UK mentioned the presence of large organised crime syndicates with hierarchical structures and division of responsibilities. Experts from Estonia, France, Germany and the UK stressed that there is also a number of smaller ad hoc organised groups that should not necessarily be considered as organised crime syndicates due to the lack of hierarchical structure and lower complexity of their operations, and also in terms of the premeditation involved.

Clearly, the involvement of more effective organised crime groups presents the law enforcement agencies with particular challenges. Furthermore, from the perspective of the

¹⁹ According to the UN Convention Against Transnational Organized Crime, Article 2. (a): "Organized criminal group" shall mean 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 established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit. According to the Joint action 98/733/JHA on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, adopted by the Council on 21 December 1998, "a criminal organisation shall mean a structured association, established over a period of time, of more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities."

trafficked persons, as one expert from Belgium suggested, it is easier to escape from an individual than from an organised crime syndicate.

Regarding the involvement of criminal groups from various geographical areas, some experts reported that the groups from Albania, Lithuania, Bulgaria, and Romania have established a foothold in the old EU Member States and among pre-existing organised crime groups of old EU Member States. Experts suggested that at times criminal groups are drawing on ethnic kinship, while in other cases they integrate multiple nationalities and ethnic groups at all levels (UK, Bulgaria).

Monitoring and investigation involving ethnic communities are particularly challenging for law enforcement authorities, as mentioned by several experts (Germany, France, Czech Republic). This is mainly due to cultural barriers and the fact that investigations would have to be conducted in a foreign language, which is very resource-intensive.

3.4.3. Means of coercion used by traffickers

The experts almost unanimously assessed that the level of (physical) violence used to coerce a trafficked person into compliance has decreased, at least when it comes to visible (street) prostitution. The trend in off-the-street prostitution is difficult to monitor.

Kidnappings and physical coercion are perceived to be less frequent than in the 1990s and early 2000s. For instance, the Latvian Ministry of Interior reports that *"In the process of recruitment criminals try to avoid violence and threats. Besides recruitment takes place based on the principle of mutual benefit."*

The traffickers/exploiters use more subtle methods of coercion, such as manipulated debts, blackmailing, on the grounds of disclosing the fact that a person was engaged in prostitution to family and neighbours, threatening denunciation to the migration authorities in cases where a sexually exploited person has an irregular migration status, and various threats against family members in the countries of origin. According to some experts, traffickers/exploiters are today more likely to share the proceeds from prostitution with the persons engaged in prostitution in order to discourage them from complaining to the police. Some traffickers/exploiters operate at 'arm's-length', i.e. they organise the business from their home countries, which makes them less vulnerable to prosecution in the country of destination.

The courts are less likely to consider means of coercion such as blackmail or threats to be sufficient to prove coercion. Thus persons whose freedom of movement was not restrained, who were not physically coerced and who have possibly made some money from their engagement in prostitution may in practice face insurmountable difficulties to prove that they were exploited, which of course means that traffickers are more likely to avoid prosecution if they have 'only' used 'softer' means of coercion and shared the profits with the person in prostitution.

Several interviews pointed out that the level of violence or modes of coercion vary depending on the nationality/ethnicity of the trafficked person and traffickers. In this context, traffickers from Eastern Europe, especially those from Albania, Romania and Bulgaria, were mentioned as likely to be more violent than others and it was reported that Roma persons from these countries are subjected to the highest levels of violence. Within the Nigerian and sub-Saharan African communities traffickers may employ local

animist beliefs to bind the person through the use of a supernatural contract. In some cases the traffickers' hold on the trafficked person is facilitated by family members.

Some experts (Germany, Spain) suggested that the more regular the residence status of the victim in the destination country, the lower is the degree of violence that the traffickers use.²⁰ The most probable reason for this is that a person with regular migration status is more likely to appeal to the law enforcement agencies of the country of destination if subjected to violence, since the fear of deportation is non-existent. However, as the Swedish National Rapporteur on trafficking in human beings pointed out, once the immigration status of an identified trafficked person is regularised in a Schengen country, they may be easily re-trafficked to other Schengen area countries. (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009).

²⁰ As a German expert remarked in the context of the EU accession of Romania and Bulgaria: *"it would seem that the more rights a victim has in terms of remaining in the country of destination, the lower is the level of coercion that can be employed by the traffickers."* (Germany).

4. Criminalisation of trafficking in human beings for the purpose of sexual exploitation

Criminalising trafficking in human beings for the purpose of sexual exploitation – or in practice trafficking in human beings for any exploitative purpose – is an obvious first step in fighting this phenomenon: by arresting the traffickers, one decreases their number and dissuades others to engage in trafficking in human beings.

The 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (hereinafter the “Palermo Protocol”) and the Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA, hereinafter the Framework Decision) set a number of positive obligations for the states.²¹ In particular, both documents require the criminalisation of all acts constituting trafficking in human beings as respectively defined in these two documents. The EU Member States were obliged to incorporate the provisions of the Council Framework Decision into their national legislation by 1 August 2004.²²

This report does not cover forms of exploitation (labour exploitation, removal of organs, etc.) other than sexual exploitation. However, national legislations very rarely distinguish between the several purposes of trafficking in human beings. Therefore it was not always possible to isolate the offence of trafficking in human beings for sexual exploitation in the legislative analysis. This chapter analyses the legislation relevant to criminalisation of trafficking in human beings in the 17 countries (1) to assess whether, to what extent and through what legislative means the 17 selected Member States comply with their obligation to criminalise and prosecute trafficking in human beings for sexual exploitation under the Council Framework Decision; and (2) to discuss how far this legislation is likely to facilitate effective enforcement of criminalisation of trafficking in human beings. Wherever available information allowed for doing so, the legislation analysis is complemented by review of practices and possible gaps in implementation.

²¹ At the time of drafting this report, a proposed draft Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA (SEC(2009)358 and SEC(2009)359). This draft develops new, more precise provisions on Member States’ obligations with regards to the issues examined in Chapter 4 and Chapter 5 of this report.

²² The Council Framework Decision framework decision is legally binding for EU Member States, but does not entail direct effect. Pursuant to the “Pupino Case” (C-105/03, European Court of Justice), all national courts of the EU Member States are required to take into consideration all the rules of national law and interpret them, as far as possible, in the light of the wording and the purpose of the Framework Decision (<http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:62003J0105:EN:HTML>), accessed on 15 November 2008.

4.1. Acts, means and purpose of trafficking in human beings in national legislations

According to Art. 1(1) of the Council Framework Decision 2002/629/JHA, EU Member States are obligated to criminalise

“the recruitment, transportation, transfer, harbouring, subsequent reception of a person, including exchange or transfer of control over that person, where (a) use is made of coercion, force or threat, including abduction, or (b) use is made of deceit or fraud, or (c) there is an abuse of authority or of a position of vulnerability, which is such that the person has no real and acceptable alternative but to submit to the abuse involved, or (d) payment or benefits are given or received to achieve the consent of a person having control over another person for the purpose of exploitation of that person’s labour or services (...) for the purpose of the exploitation of the prostitution of others or other forms of sexual exploitation, including in pornography”.

The Framework Decision does not require the Member States to define trafficking, but rather to make all of its constitutive acts criminally punishable. It may be argued that acts not contained in the national definitions of trafficking in human beings are already punishable under the criminal law of these countries as, for example, abduction, kidnapping, unlawful detention, recruitment into prostitution (pimping) or enslavement. EU Member States often criminalise acts that are not unique to trafficking, regardless of the means used for committing them or of their purpose. In such cases, national legislations may go beyond the scope of the Framework Decision definition.

However, the national legislation might, in certain cases, fall short of criminalising certain specific acts constituting trafficking in human beings for the purpose of sexual exploitation. For instance, the act of handing over the control of a trafficked person within the same country might not be prosecutable. In addition, the articles that may be used to prosecute cases of trafficking in human beings usually define actions committed against the will or without the consent of the victim. As a result, certain situations falling under the scope of the Framework Decision might not be adequately covered by the EU Member States’ legislation.²³

Importantly, the crime of trafficking in human beings encompasses a chain of various criminal acts, which, when prosecuted separately are rarely punished at the same severity as the crime of trafficking.²⁴ Having these acts punished by lower sentences than trafficking as defined under domestic law may not violate the letter of the Framework Decision. However, it is not clear whether such situations are in line with the spirit of article 3.1 of the Framework Decision, which obligates the Member States to “take the necessary measures to ensure that an offence [of trafficking in human beings] is punishable by effective, proportionate and dissuasive criminal penalties”.

Some of the acts that fall under the definition of trafficking in human beings might be prosecuted as smuggling. However, ‘smuggling’ is defined under the Palermo Protocol as

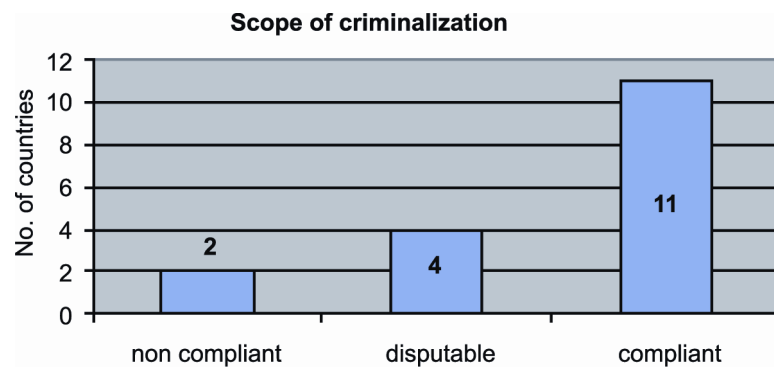
²³ For example, transporting or harbouring a trafficked person within a country using deceit to achieve the consent of that person may not fall under the definitions of abduction or unlawful detention and may thus be impossible to prosecute.

²⁴ For instance in Germany, pimping is punished with six months to five years imprisonment while trafficking in human beings for the purpose of sexual exploitation is punished by six months to ten years imprisonment (Art. 181a and Art. 232 CC of Germany). In Poland, non-aggravated trafficking in human beings is punished by no less than three years (Art. 253 Cc of Poland) while pimping is punished by up to three years (Art. 204 CC of Poland).

a crime against the state not against a person. Therefore, prosecution of trafficking offences under provisions of smuggling severely hampers victims' access to redress. Crucially for the victims and witnesses, special investigative and witness/victim protection measures are not necessarily available if the case is not tried under trafficking-specific articles. Also, cases charged under articles other than those on trafficking are not likely to be counted as trafficking cases. This has a negative effect on the collection of data on trafficking in human beings for the purpose of sexual exploitation and does not facilitate our understanding of the trafficking phenomenon.

Available information suggests that even in those EU Member States where the definition of trafficking in human beings complies with or goes beyond the Framework Decision requirements, cases of trafficking in human beings are often prosecuted and tried under articles other than those on trafficking in human beings. According to available information, this happens because prosecution finds it hard to prove certain elements of the crime of trafficking, in particular the existence of the purpose of sexual exploitation, or because prosecution cannot prove the whole 'chain' of acts that constitute trafficking, but could prove some acts criminalised under other articles.

Figure 1. Scope of Criminalisation of THB²⁵



4.1.1. Countries reproducing the Framework Decision's definition

A significant number of Member States (Austria, Bulgaria, Czech Republic, Denmark, Latvia, the Netherlands, Romania and Sweden) have chosen to criminalise trafficking in human beings for the purpose of sexual exploitation by reproducing, exactly or in substance, the above-quoted definition either by amending their Criminal Codes (CC) or in a separate law.

Austria²⁶, Bulgaria²⁷, Sweden²⁸ and the Netherlands²⁹ chose to amend a definition of trafficking in human beings very similar to the one provided by the Framework Decision into their respective Criminal Codes. The Czech Republic chose to reproduce all the ele-

²⁵ The assessment of compliance with the Framework Directive covers only the 17 Member States analysed in this study (Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Italy, Latvia, the Netherlands, Poland, Romania, Spain, Sweden and the UK) and not all the EU Member States.

²⁶ Art. 104a, CC of Austria

²⁷ Art. 159a CC of Bulgaria.

²⁸ Chapter 4, Section 1. (a) CC of Sweden.

²⁹ Art. 273. (f) CC of the Netherlands).

ments of the Framework Decision's definition in its Criminal Code.³⁰ Although worded in a complex fashion, the Danish Penal Code provides a definition which corresponds to the Framework Decision's definition.³¹ However, to assess compliance with any significant degree of certainty, a thorough review of legislation in Danish would be necessary.

Latvia represents a specific case of adaptation by the lawmaker to the phenomenon of trafficking and to EU obligations. Latvia reproduces the definition of the Framework Decision almost exactly into the Criminal Code³². But there is an additional provision which sets a separate offence of "sending a person with his or her consent for sexual exploitation", defining "sending" as "any action that encourages legal or illegal departure from the State or entry into the State, transit or residence in a foreign state."³³ The provisions related to "sending" seem to have chronologically preceded the articles criminalizing trafficking in human beings. The additional provision seems to be redundant, now that Latvia's Criminal Code has incorporated the definition similar to that of the Framework Decision. Experts suggest that in current form, this provision seems to have created certain confusion: *"At the beginning, some cases of trafficking in human beings with minor victims were erroneously classified as sending abroad for sexual exploitation. Now all cases with minor victims are trafficking in human beings."* (Latvia).

Romania chose to closely reproduce the Framework Decision's definition, though in a separate law.³⁴ This law defines trafficking in human beings with reference to "exploitation"³⁵, which in turn is defined in accordance with the Framework Decision.³⁶

4.1.2. Countries where means are not part of the definition

Some Member States (Belgium, Finland, France) have chosen not to include some or all the means (Art. 1 points (a), (b), (c), (d) of the Framework Decision) in their definition of trafficking, hence widening the scope of the definition.³⁷ The legislation is compliant with the Decision: it does ensure that all acts described by the Framework Decision are criminalised, but these countries have chosen to go beyond this obligation by

³⁰ Article 232a. of the Czech CC.

³¹ Section 262a of the Danish Penal Code. An expert indicated that the Danish definition of trafficking in human beings was modeled on the Palermo Protocol Definition.

³² Chapter XV, Section 154 CC of Latvia.

³³ Chapter XVI of the CC of Latvia, Sections 165.1 and 165.2.

³⁴ Law 678/2001 of Romania on Preventing and Combating Trafficking in Human Beings, subsequently amended in by Government's Executive Ordinances in 2002 and 2003.

³⁵ Chapter III, Section I, Article 12 of the Law 678/2001 of Romania on Preventing and Combating Trafficking in Human Beings, subsequently amended in by Government's Executive Ordinances in 2002 and 2003.

³⁶ Article 2 of of the Law 678/2001 of Romania on Preventing and Combating Trafficking in Human Beings, subsequently amended in by Government's Executive Ordinances in 2002 and 2003.

³⁷ In France and in Belgium for instance, the means listed by the Framework Decision are not part of the definition (Art. 225-4-1 CC of France amended in 2007; Art 433 quinquies CC of Belgium) but are rather included as aggravating circumstances (Art. 225-12-5 CC of France, created in 2003; Art. 433 sexies CC of Belgium, modified in 2005). Pursuant to these definitions, one of the listed acts (transfer, harbouring, transporting, etc), if performed for the purpose of sexual exploitation, would qualify and be punished as trafficking in human beings for the purpose of sexual exploitation regardless of the means used. In Finland, use of coercion, force or threat is not a part of the basic definition: the relevant Chapter 25, Section 3 of the Criminal Code, as amended in 2003, only lists abuse of the victim's "dependent status", deceit or abuse of the victim's "mistake", as well as remuneration or acceptance of remuneration to take over or hand over the control over the trafficked person. Use of "violence, threats or fraud (...) in addition or instead of the means referred to in Section 3" is an aggravating circumstance (Chapter 25, Section 3 (a) CC of Finland).

suppressing the means as the elements of the definition. The range of criminalised situations is wider than foreseen by the Framework Decision. Yet, interviewed experts found that these definitions may be problematic in practice: law enforcement and prosecution do not fully use the possibilities offered by these provisions.³⁸ In addition, in Belgium, the purpose envisaged for an act of trafficking for sexual exploitation is limited to prostitution, debauchery and pornography, and therefore is far too limited.³⁹

4.1.3. Countries with gaps in the definition

Some Member States (Germany, Italy, Spain, UK) have adopted definitions of trafficking in human beings that do not fully comply with the requirements of the Framework Decision, or which make compliance with the Framework Decision difficult to assess and/or disputable. Two countries, Estonia and Poland, do not define trafficking in human beings in their criminal legislation.

The Spanish CC, in its Article 318 bis amended in 2000, mentions – without defining it clearly – trafficking in human beings “from, transiting through or into Spain”. This definition creates confusion between trafficking in human beings and smuggling of persons.⁴⁰ It does not encompass trafficking in human beings in a domestic context, nor certain acts constituting trafficking in human beings, such as handing or taking over control over a trafficked person.⁴¹

³⁸ “We modified our legislation and the *modus operandi* (coercion) has been dropped, it is no longer a constitutive element. Some say now you can say that everything is trafficking. Police and prosecution welcome [that *modi operandi* were dropped from the definition]. In the field they still go on like earlier, there must be some elements before a case can be qualified as trafficking in human beings; there must be some sort of coercion.” (Belgium). In addition, one expert found that the absence of the means from the definition of trafficking in human beings was “detrimental to the perception of the seriousness of trafficking in human beings. People’s perception is that the crime as it is defined by the law does not constitute trafficking in human beings.” (Belgium). It should be noted that in Belgium, according to Article 3 of the Law of 15 February 1993 on the Creation of a Center for Equal Opportunities and Combating Racism, a case can be initiated upon charges raised by the Center for Equal Opportunity and Combating Racism, which is acting as a co-ordinator and national rapporteur on trafficking in human beings. This might contribute to complementing the action of the prosecution.

³⁹ Article 433quinquies CC indeed defines trafficking in human beings as an act committed “in order to enable the perpetration against [the trafficked person] of the offences foreseen in Articles 379(1), 380, paragraphs 1ter and 4(2), and 383bis, paragraph 1(3).” The mentioned articles refer to prostitution, debauchery and pornography. The Belgian Center for Equal Opportunities and Combating Racism, which is acting as a national rapporteur on trafficking in human beings, has raised serious concerns in this regard: “The Center has observed that limiting trafficking in human beings for sexual exploitation to the exploitation of prostitution and pornography might pose practical problems. This observation was made within the framework of two cases in which the Center was a claimant for the accusation side.” The Center examined one case of jurisprudence illustrating the legitimacy of this concern (Centre pour l’Egalité des Chances et la lutte contre le Racisme, Rapport Annuel 2008).

⁴⁰ As a Spanish expert stated: “In theory it should be easier to investigate, in practice it is very difficult because of the confusion there is in the Spanish legislation between trafficking and smuggling. The current definition of THB in Spain is a mix of trafficking and smuggling. Woman from Romania cannot be considered a VOT, because she did not enter the country illegally. If you are not smuggled you are not VOT. Trafficking is only an aggravating circumstance of smuggling.” (Spain).

⁴¹ Since Article 93 of the Spanish Constitution does not enable to apply international law directly but requires harmonization, it is unlikely that a court would refer to the definition of the Framework Decision to palliate this gap. An expert went as far as stating that: “there is no law on trafficking, this is really a problem. We wish to change this” (Spain).

Similarly, trafficking in human beings as defined by the UK Sexual Offences Act does not seem to cover cases where recruitment, harbouring or transfer of control over the trafficked person would happen without travel (either cross-border or within the UK).⁴²

The German CC defines trafficking in human beings for the purpose of sexual exploitation separately from other forms of exploitation (Art. 232). Under this article the act defined does not seem to encompass all the range of acts in the chain of trafficking, such as recruitment, transportation and harbouring.⁴³

The definition of trafficking under the Italian legislation does not seem to encompass the variety of acts covered by the Framework Definition, in particular transport and harbouring.⁴⁴

The Polish criminal code punishes "trade in humans", but it does not define it. However, Art. 9 of the Polish Constitution provides that international law is directly applicable in Poland. It is the responsibility of the prosecutors and the courts to identify cases of trafficking in human beings based on the Framework Decision's definition, but Polish experts have indicated that this is rarely or never the case.

Estonian criminal law does not define trafficking in human beings. However, chapter IX of the Estonian Constitution provides that "if laws or other regulations of Estonia are in conflict with international treaties ratified by the [Estonian Parliament], the provisions of the international treaties shall apply." It is not clear whether Estonian Courts, as a matter of practice, would refer to the Framework Decision to prosecute certain acts constituting trafficking in human beings for the purpose of sexual exploitation which are not punishable under Estonian legislation and if so, under which provisions of the Estonian criminal legislation such cases would be prosecuted. As earlier mentioned, under EU Treaties, framework decisions adopted under the third pillar have no direct effect.⁴⁵ The Estonian Ministry of Justice, contacted for this study, has clearly indicated that the situation contravenes the Framework Decision.⁴⁶

⁴² Trafficking in human beings is defined as intentionally arranging or facilitating the "arrival in or the entry into the United Kingdom of another person" (Section 57 of the UK Sexual Offences Act of 2003, as amended by the UK Border Act of 2007), "travel within the United Kingdom by another person" (Section 58, Sexual Offences Act of the UK) or "departure from the United Kingdom of another person", with the intention of committing a "relevant offence" or believing that a third person would commit a "relevant offence" against the trafficked person.

⁴³ Art 232 (1) CC of Germany reads: (1) Whoever brings another person, through the exploitation of a plight or helplessness linked to his/her stay in a foreign country, to take up or carry forward prostitution or other sexual activities by which this person is exploited, and to perform these activities with or in front of the offender or a third person, or to let a third person perform these activities on him/herself, has to be amerced to a prison sentence of six months up to ten years. Whoever brings a person under the age of twenty-one to take up or carry forward prostitution or any sexual activities as described in sentence 1 also has to be sentenced.

⁴⁴ The definition (art. 600 CC of Italy, as amended in 2003 by the Law No. 228/2003 on "Measures against trafficking in persons") mainly comprises of the same elements in terms of purpose and means as the Framework Decision, however, it lists the following acts: exerting "on any other person powers and rights corresponding to ownership", placing or holding "any other person in conditions of continuous enslavement, sexually exploiting such person."

⁴⁵ However, in the "Pupino Case" (C-105/03, European Court of Justice), all national courts of the EU Member States are required to take into consideration all the rules of national law and interpret them, as far as possible, in the light of the wording and the purpose of the Framework Decision.

⁴⁶ An expert has indicated that "There is no clear definition of trafficking in the domestic legislation. The Penal code contains no specific article called trafficking in human beings. This is expected to change at the beginning of 2009." (Estonia).

4.2. Irrelevance of victims' consent to characterise the crime

The Council Framework Decision specifies that, for establishing that trafficking in human beings has been committed, “the consent of a victim of trafficking in human beings to the exploitation, intended or actual, shall be irrelevant where any of the means set forth (...) have been used” (Article 1.2).

Most of the national legislators surveyed in this report, with exception of Romania and Poland,⁴⁷ have left it to the courts to rule in accordance with this provision, in all likelihood considering that one does not need specific provisions to state the obvious.

However, interviews suggest that in practice the irrelevance of a victim's consent to sexual exploitation to qualifying the crime as trafficking in human beings is not always respected.⁴⁸

The means (deceit, including deceit regarding the line of work which awaits the person, coercion, etc.) listed under the Framework Convention relate to the acts in the chain of trafficking, such as recruiting, harbouring, transporting etc., rather than the purpose of sexual exploitation. This means that, provided one of the means mentioned is used, it is irrelevant if the person consented to the purpose of sexual exploitation but it does not prevent the court from qualifying the act as trafficking in human beings. In other words, if a victim is told for instance that s/he will be a waitress while s/he is meant to be sexually exploited (means of deceit were used), the act qualifies as trafficking in human beings. Likewise, if a victim knows that s/he will engage in prostitution but one of means of coercion has been used in the process of recruitment, the act will qualify as trafficking in human beings (Report of the EU Expert Group, 2004, p. 50-52).

4.3. Criminalisation of attempting to commit trafficking in human beings and facilitation of trafficking in human beings

The Council Framework Decision (Art. 2) creates the obligation for the EU Member States to criminalise “instigation of, aiding, abetting or attempt” to commit trafficking in human beings, as well as the facilitation of such acts.

This obligation, based on current information, is honoured by all Member States examined.⁴⁹ However, although *de jure* the relevant domestic legal provisions exist, in practice they are often very difficult to implement: proving the attempt to commit an act with a specific intent (purpose of sexual exploitation) is at best challenging.

⁴⁷ Exceptions to this rule are Romania, whose CC provides that “offenders are also liable to criminal charges in cases where victims of trafficking have consented” (Article 16 CC of Romania) and Poland with article 253 CC which punishes “trafficking in persons even with their consent”.

⁴⁸ The statement of a Finnish expert is telling: “*In fact most victims of trafficking know that they are going to work in prostitution but do not know about the conditions. In order to meet the requisites of trafficking in human beings, the engagement in prostitution must have been forced or at least the person must have been deceived about the nature of the work she was supposed to do after arrival in Finland.*”

⁴⁹ The authors of this study were not in a position to fully establish the compliance of the UK with the obligation to punish an attempt to commit trafficking in human beings for the purpose of sexual exploitation. The list of sexual offences for which an attempt is punishable, contained in Schedule 34A of the Criminal Justice and Immigration Act of 2008, does not include trafficking in human beings.

4.4. Trafficking in children for sexual exploitation: specific provisions

4.4.1. Means of coercion

The Framework Decision requires in Article 1 that the use of the mentioned means by the traffickers should be established for the listed acts to be punishable. Paragraph (d)-3 of article 1 however notes an exception to this rule: “When the conduct referred to in paragraph 1 involves a child, it shall be a punishable trafficking offence even if none of the means set forth in paragraph 1 have been used”.⁵⁰

Out of 17 studied countries 10 comply with this requirement (Austria⁵¹, Bulgaria⁵², Czech Republic⁵³, Denmark⁵⁴, Finland⁵⁵, Germany⁵⁶, Latvia⁵⁷, the Netherlands⁵⁸, Romania⁵⁹ and Sweden⁶⁰).

For France and Belgium, where the means are not part of the definition of trafficking in human beings for the purpose of exploitation, this provision is de facto respected: the acts listed are punishable regardless of the means used by the traffickers.

With the reservations expressed in the preceding chapter, the same may be said of the Spanish law⁶¹, and of the UK Sexual Offences Act of 2003 (Sections 58-59): these definitions do not make reference to any specific means but may not cover all acts of trafficking.

⁵⁰ At the time of drafting this report, a proposed draft Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA (SEC(2009)355 and SEC(2009)356) was being examined. This might impact Member States obligations in this area.

⁵¹ § 104a Austrian Criminal Code reads: “Trafficking in Human Beings” reads (1) Whoever recruits, shelters, accommodates, transports, offers the services of or passes on (1).An underage person (...) with the intention to exploit this person sexually, through organ removal or for its manpower has to be prosecuted with imprisonment of up to 3 years.

⁵² Article 159a of the Bulgarian CC provides that “the recruitment, transportation, concealment or acceptance of children for the purpose of exploitation shall be considered an act of trafficking in human beings regardless of whether they have been carried out with the means [listed].”

⁵³ Article 232.a of the Czech CC includes a first sub-section specifically defining trafficking in minors, which does not include any specific means.

⁵⁴ Denmark has adopted a subsection in its CC article on trafficking, which defines trafficking in human beings without recourse to any specific means when the victim is a minor (Section 262 (a) -subsection 2 CC of Denmark).

⁵⁵ Chapter 25 of Finland’s Criminal Code.

⁵⁶ Art. 232 (1) Criminal Code of Germany.

⁵⁷ The Latvian CC also states that “*the recruitment, conveyance, transfer, concealment or reception of minor persons for the purpose of exploitation shall be recognised as trafficking also in such cases if it is not connected with the utilisation of any of the means referred to in Paragraph one of this Section*” (section 154 CC of Latvia - paragraph 1, examined above, defines trafficking in human beings).

⁵⁸ The Dutch CC (Article 273(f)-2) specifically addresses this issue by defining children in the same way as trafficking in [adult] human beings but omitting the means.

⁵⁹ Romania address this issue in Article 12.2 of “Law on preventing and combating trafficking in human beings”, which together with a list of aggravating circumstances to trafficking in human beings states that “the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered an offence”.

⁶⁰ Chapter 4, section 1(a) of the Swedish CC offers an almost identical provision, explicitly excluding the means from the definition of trafficking where victims are under 18 years.

Throughout the Italian legislation there is no mention of trafficked persons who are minors. They are only mentioned in the list of aggravating circumstances, whereas the means, recruitment, transportation or exploitation should be irrelevant when dealing with minor victims.⁶² However, this legislation lists abuse of a position of authority or of a situation of vulnerability as one of the possible means that enable a qualification of the offence. One may argue that minor victims are in essence vulnerable and, therefore, the act committed against them automatically meets the criteria stipulated by this Article. However, cases where the domestic courts decide to interpret ‘vulnerability’ in accordance with the minimum requirement of the EC Council Framework Decision, this then only applies to persons under the age of sexual majority, rather than all minors.⁶³ In addition it is unclear whether such argument – already rather light – would hold in a case if the offender is also a minor, because it is difficult to defend that one minor is “naturally” in a position of superiority with regard to another minor.

The cases of Poland and Estonia cannot be examined under this section, as trafficking in human beings is not defined in their legislation (see above the chapter on Acts, means and purpose of trafficking in human beings in national legislations).

4.4.2. Minor victims and aggravating circumstances

Article 3.2 of the Council Framework Decision provides that

“Each Member State shall take the necessary measures to ensure that an offence referred to in Article 1 is punishable by terms of imprisonment with a maximum penalty that is no less than eight years where it has been committed in any of the following circumstances: (...) (b) the offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under the national law and the offence has been committed for the purpose of [sexual exploitation].”

To summarise, trafficking in human beings for sexual exploitation is considered aggravated where the victim is under the legal age of consent under the domestic law, and thus the traffickers should be punished by imprisonment with a maximum penalty of at least eight years.

Most Member States have chosen to meet this obligation by qualifying trafficking in minors under the age of 18 (that is, even above the legal age of consent) for sexual exploitation as aggravated trafficking, with maximum sentences above eight years of

⁶¹ Article 318bis of the Spanish CC, although not encompassing all the situations covered by the Framework Decision, makes no reference to means as a general rule (use of violence or exploitation of a situation of vulnerability, for instance, are part of aggravating circumstances). Therefore, the acts envisaged by this law as trafficking in human beings for sexual exploitation would be punishable when committed against children without the use of such means.

⁶² Article 600 CC of Italy as amended by the Law 228/2003 “On measures against trafficking in persons” making punishable the act of “placing or holding a person in a position of slavery”; “placement or maintenance in a position of slavery occurs when use is made of violence, threat, deceit, or abuse of power; or when anyone takes advantage of a situation of physical or mental inferiority and poverty.” Following the same argument as for Germany, a court might rule that a minor under the age of sexual majority might be *de facto* in a situation of inferiority.

⁶³ Article 3-2(b) of the Framework Decision states that “a victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under national law and the offence has been committed for the purpose of exploitation of the prostitution of others or other forms of sexual exploitation.”

imprisonment.⁶⁴ (For more details see section on punishments and aggravating circumstances).

4.5. The punishments

4.5.1. Non-aggravated trafficking in human beings

Article 3.1 of the Council Framework Decision provides that

“Each Member State shall take the necessary measures to ensure that an offence [of trafficking in human beings] is punishable by effective, proportionate and dissuasive criminal penalties (...)”

In all Member States where trafficking in human beings for sexual exploitation is defined – whether or not in compliance with the Framework Decision – it is punishable by criminal sentences.⁶⁵ In those countries where there are no provisions on trafficking in human beings, acts that may constitute trafficking in human beings are criminalised. However, the Framework Decision provision does not place clear obligations upon the Member States, as effectiveness, proportionality and dissuasiveness are not measurable. The range of sentences thus varies considerably, in terms of severity. There are also great differences between countries as to the range of sentencing available in each country, and therefore the margin is left to the courts. The sentences are presented in matrix No. 1 Criminalisation of trafficking in human beings. In the paragraphs below, Member States are listed based on the maximum foreseen sentence for non-aggravated trafficking – that is, based on what a trafficker risks if committing a non-aggravated offence of trafficking in human beings.

The countries with most severe maximum sentences for non-aggravated trafficking in human beings are Italy⁶⁶, UK⁶⁷, Romania⁶⁸, the Czech Republic⁶⁹, Germany⁷⁰, Sweden⁷¹, Latvia⁷², Bulgaria⁷³ and Denmark.⁷⁴

The Polish legislator has opted for giving the court a very large margin of appreciation.⁷⁵

⁶⁴ Article 600sexies of the Italian Law 228/2003 on Measures against trafficking in persons contains an unusual mitigating circumstance with regard to trafficking in children: “the penalty is reduced by a third to a half if the person has taken concrete measures to ensure that the minor is enabled to become self-reliant and independent”.

⁶⁵ The case of Poland is specific, with punishment of trafficking in human beings but no definition. However, as international law is directly applicable, the definition of the Framework Decision may apply.

⁶⁶ Italy has the most severe legislation, with imprisonment sentences for non-aggravated trafficking ranging from eight to 20 years (Art. 600 CC of Italy).

⁶⁷ UK also punishes trafficking in human beings with high sentences – up to 14 years of imprisonment, which leaves a large margin of appreciation to the court (Section 57, Sexual Offences Act 2003 of the UK).

⁶⁸ Sentences range from three to twelve years of imprisonment (Chapter 3, Section 1 Art. 12 CC of Romania).

⁶⁹ The Czech legislation foresees two to ten years of imprisonment (Section 232a.(3) and (4) CC of the Czech Republic for non-aggravated trafficking).

⁷⁰ The German CC in its Article 232, provides wide range of sentences, from six months to ten years of prison for what it defines as “trafficking in human beings for sexual exploitation.”

⁷¹ The Swedish law foresees two to ten years imprisonment (Chapter 4, Section 1.a CC of Sweden) for any type of trafficking in human beings.

⁷² The Latvian CC, in its Chapter XV, Section 154, provides sentences of three to eight years of imprisonment.

⁷³ The Bulgarian CC foresees two to eight years imprisonment plus 3,000 – 12,000 BGN fine (Art. 159.a (1) CC of Bulgaria).

⁷⁴ The Danish CC similarly punishes trafficking in human beings with up to eight years of imprisonment (Section 262a CC of Denmark).

The criminal laws in France⁷⁶, Belgium⁷⁷ and the Netherlands⁷⁸ foresee a combination of imprisonment sentences and high criminal fines.

The lowest sentences for non-aggravated trafficking in human beings are to be found in Austria with up to three years imprisonment⁷⁹ and in Finland with six months to six years imprisonment.⁸⁰

The Spanish case is more complex and thus difficult to compare with other Member States, as “illegal trafficking (...) in persons from through or into Spain, or to another country of the European Union” is punished with four to eight years imprisonment⁸¹, while the same act for the purpose of sexual exploitation is liable to five to ten years imprisonment.⁸²

The Estonian law does not define or refer to trafficking in human beings.⁸³

4.5.2. Aggravating circumstances

The Council Framework Decision, Article 3(2) requires that trafficking in human beings be punished by

“Terms of imprisonment with a maximum penalty that is no less than eight years where it has been committed under the following circumstances:

- (a) The offence has deliberately or by gross negligence endangered the life of the victim;
- (b) The offence has been committed against a victim who was particularly vulnerable. A victim shall be considered to have been particularly vulnerable at least when the victim was under the age of sexual majority under the national law and the offence has been committed for the purpose of [sexual exploitation];
- (c) The offence has been committed by use of serious violence or has caused particularly serious harm to the victim⁸⁴;
- (d) The offence has been committed within the framework of a criminal organisation⁸⁵.”

⁷⁵ The Polish Criminal Code provides sentence of at least three years imprisonment, without setting the ceiling of the term of imprisonment (Art. 253 CC of Poland).

⁷⁶ The sentence is seven years and 150,000 Euros in France (Art. 225.4.1 CC of France).

⁷⁷ The sentence is one to five years and 500 to 50,000 Euros in Belgium (433 quinquies CC of Belgium).

⁷⁸ The sentence is up to six years and 74,000 Euros in the Netherlands (Art. 273 CC of the Netherlands). On 9 June 2009, Parliament has approved a bill submitted by the Minister of Justice, which entails an increase of all maximum penalties. The basic sentence will become 8 years for non-aggravated trafficking. The aim is to apply these new maximum penalties as of 1 July 2009.

⁷⁹ Art. 104a CC of Austria foresees up to three years.

⁸⁰ Chapter 25, Section 3.a CC of Finland.

⁸¹ Art. 318 bis CC of Spain as modified in 2000.

⁸² At the same time, the Spanish CC foresees a sentence of two to eight years imprisonment for any person who “directly or indirectly, facilitates the entry to, stay in or exit from the national territory of persons, for the purpose of their sexual exploitation by using means of violence, intimidation or deceit, or by abusing a situation no superiority or of dependency or vulnerability of the victim” (Art 192 CC of Spain). The difference in substance between the two articles is difficult to determine, while the sentences vary considerably.

⁸³ The Estonian law refers to “enslavement”, punishable with one to five years of prison (Division 6, Art.133 CC), child stealing and disposing minors to engage in prostitution, both punishable with fine or imprisonment of up to three years (Division 1, Art. 172 and 175 CC of Estonia), sale or purchase of children liable to one to five years imprisonment (Division 1, Art. 173 CC of Estonia), and aiding prostitution involving minors, punished by fine or up to five years imprisonment.

⁸⁴ The Framework decision does not define what constitutes “serious violence” nor “serious harm”.

⁸⁵ Art. 3(2b) stipulates that, for the purpose of the Framework Decision, the definition of a “criminal organisation” is, as per the Joint Action 98/733/JHA, “a structured association, established over a period of time, of

This provision may be understood as a list of aggravating circumstances, which should be punished more severely. It is important to note that “use of serious violence” is not further defined, and left to the consideration of the Member States.

In Austria⁸⁶, Belgium⁸⁷, Finland⁸⁸ and France⁸⁹, domestic legislation reproduces the same set of aggravating circumstances. The sentences foreseen for aggravated trafficking in human beings are in the countries above the eight years of imprisonment required by the Framework Decision.

In the UK, Sweden, Italy and Denmark non-aggravated trafficking in human beings is punished by prison sentences with a maximum sentence reaching or going beyond eight years imprisonment: this obligation is thus met. However the law does not specify the list of aggravating circumstances.⁹⁰ While the basic positive obligation to ensure that these cases are punishable with imprisonment, and maximum sentences of at least eight years, it may be argued that the spirit of the Framework Decision is not respected, because the provisions fail to provide the courts with clear specifications as to which forms of trafficking in human beings are considered the most serious, and therefore punished

more than two persons, acting in concert with a view to committing offences which are punishable by deprivation of liberty or a detention order of a maximum of at least four years or a more serious penalty, whether such offences are an end in themselves or a means of obtaining material benefits and, where appropriate, of improperly influencing the operation of public authorities.”

⁸⁶ Article 104a(4) of the Austrian CC provides that “whoever commits [trafficking in human beings] against an underage person within a criminal organisation, using serious violence or in a way that the life of the person is endangered or that the crime causes serious prejudice to the person, will be punished with imprisonment of one to ten years”.

⁸⁷ The Belgian CC, Article 433septies, provides a long list of aggravating circumstances which includes perpetration of trafficking in human beings against minors, abuse of a person’s vulnerable situation, use of fraud, violence, threat or any other means of coercion, endangering the victim’s life deliberately or by gross negligence, and causing seemingly incurable disease, physical or mental permanent incapacity. That is, the Belgian legislation lists some of the classical means envisaged by the Framework Decision such as coercion, deceit or threat as aggravating circumstances, in addition to the aggravating circumstances envisaged by the Framework Decision. The same Article foresees a sentence of imprisonment of ten to 15 years for trafficking in human beings under these circumstances, which is compliant with the Framework Decision. Article 433octies raises this sentence to 15 to 20 years of deprivation of liberty when the crime has caused the death of the victim and when it has been committed within the framework of a criminal organisation.

⁸⁸ In Finland, Chapter 25 Section 3.a of the CC foresees a prison sentence of two to ten years for trafficking in human beings committed with use of violence, threat or deceitfulness, or having caused grievous bodily harm or mortal danger to the victim, as well as for trafficking in minors or vulnerable persons or in the framework of a criminal organisation.

⁸⁹ Article 225.4.2 of the French CC exposes traffickers to ten years imprisonment and a 1,500,000 Euros fine if the crime has been committed against a minor or a vulnerable person, against several persons, if the crime has exposed the victim to death or serious injuries or has been committed with the use of threat, coercion, violence or pain-inducing acts, or abuse of a position of authority, in case the author of the crime is an ascendant of the victim, or if the crime has entailed immigration of the victim to France. This Article also lists a more original aggravating circumstance, the use of advertisements as a means to enter in contact with the victim. Article 225.4.3 foresees 20 years imprisonment and 3,000,000 Euros of fine for trafficking in the framework of a criminal organisation, and Article 225.4.4 envisages life sentence and 3,000,000 Euros fine if the crime has been committed “with recourse to torture or barbaric acts.” The latter provision makes the French criminal law most severe against authors of aggravated trafficking in human beings. This list includes all elements required by the Framework Decision, and the prison sentences for aggravated trafficking are above eight years.

⁹⁰ In Denmark, the Travaux Préparatoires of Section 262a of the Criminal Code defining trafficking in human beings, specify the following aggravating circumstances: victim under 15 years of age and purpose of sexual exploitation.

with higher sentences. In addition, in the case of Italy and the UK, compliance of aggravating circumstances is also subject to reservations, as the definition of trafficking in human beings does not encompass all possible acts of trafficking.

In Bulgaria⁹¹, the Czech Republic⁹², Latvia⁹³, and Romania⁹⁴, the range of sentences for non-aggravated trafficking in human beings does go beyond eight years of imprisonment, which meets the basic requirements of the Framework Decision. Yet the aggravating circumstances listed by the legislator do not contain all elements specified in the Framework Decision and therefore its spirit is not fully reflected in the domestic legislations of these countries.

In Germany⁹⁵ and Spain⁹⁶ the list of aggravating circumstances corresponds to the requirements of the Framework Decision, and the sentence for both basic and aggravated

⁹¹ In Bulgaria, while non-aggravated trafficking is punished by two to eight years imprisonment and a fine of 3,000 – 12,000 BGN (Art. 159.a.1 CC of Bulgaria), Article 159.a.2 of the CC punishes trafficking in human beings by three to ten years of imprisonment and a fine of 10,000 – 20,000 BGN, when it is committed: “1. with regard to an individual who has not turned eighteen years of age; 2. through the use of coercion or by misleading the individual; 3. through kidnapping or illegal deprivation of liberty; 4. through abuse of a status of dependency; 5. through the abuse of power; 6. through promising, giving away or receiving benefits,.” Additionally “3) Where the act under par. 1 has been committed in respect to a pregnant woman with the purpose of selling her child, the punishment shall be deprivation of liberty of three to fifteen years and a fine from BGN twenty to fifty thousand.” The sentence reaches three to twelve years in cases of cross-border trafficking (Art. 159.b.1 CC of Bulgaria) with a fine of 10,000 – 12,000 BGN in case of cross-border trafficking under other aggravating circumstances (Art. 159.b.2 CC of Bulgaria), and five to 15 years of prison and a fine of 20,000 – 100,000 BGN. in case of recidivism or trafficking in human beings in the context of organised crime (Art. 159.d CC of Bulgaria). “Article 159c: An individual who uses a victim of trafficking in human beings for sexual activities, forceful labour, dispossession of bodily organs or holding them in forceful subjection, regardless of their consent, shall be punished by deprivation of liberty of three to ten years and a fine from BGN from ten to twenty thousand.” This list of aggravating circumstances does include the use of certain means that could be understood as serious violence (kidnapping, illegal deprivation of liberty) and organised crime, as required by the Framework Decision. The endangering of the victim’s life is omitted.

⁹² The situation in the Czech Republic is similar to that of Bulgaria: the sentence for non-aggravated trafficking in human beings exceeds eight years, and Sections 34, 232a (3) and 232a(4) list a number of aggravating circumstances. However, this list does not encompass trafficking in persons who are particularly vulnerable or under the age of sexual majority.

⁹³ The Latvian CC, in Chapter XV Section 14 only lists trafficking in minors, perpetrated “by a group of persons pursuant to prior agreement” which can be understood as a context of organised crime. The use of serious violence and the endangering of the victim’s life are omitted. Yet, as the basic sentence for trafficking in human beings is three to ten years imprisonment, the Latvian CC complies with the basic requirements of the Framework Decision. Once again, it may be challenged whether this situation is in line with the spirit of the Framework Decision.

⁹⁴ Romania’s Law on preventing and combating trafficking in human beings lists, in its Article 12.2, the following aggravating circumstances: grievous bodily or mentally harm, offence committed by a public servant while on duty, offence resulting in the victim’s death or suicide. Article 13 of the same Law adds use of means of threats and violence or other forms of coercion, kidnapping, fraud or deception, abuse of power, use of payments or benefits to achieve the consent of a person having authority over a minor. This extensive list omits endangering the victim’s life. However, the sentence for non-aggravated trafficking is up to 12 years, thus compliance with the letter of the Framework Decision is secured.

⁹⁵ In Germany, Article 232 of the CC, which foresees terms of imprisonment of up to 10 years both for basic trafficking in human beings and for aggravated trafficking, lists the following aggravating circumstances: “1. the victim of the offence is a child”, “2. the perpetrator seriously physically maltreats the victim through the act, or places the victim in danger of death through the act”, and “3. the perpetrator committed the offence on a commercial basis or as a member of a gang that has combined for the continued commission of such acts.”

trafficking in human beings is deprivation of liberty, with maximum length above ten years, which in return makes the domestic legislation compliant with the Framework Decision. However, compliance is subject to the reservations expressed in the section on Acts, means and purpose of trafficking in human beings in national legislations.

Estonia⁹⁷, the Netherlands⁹⁸ and Poland⁹⁹, on the other hand, do not satisfy the requirements of the Framework Decision when it comes to aggravated trafficking in human

⁹⁶ The Spanish CC provides the following aggravating circumstances: commission of a criminal act by “the ascendants, tutors, care-takers, guardians, masters or any other person having the charge de facto or de jure over a minor or an incapacitated person, who intervene as authors or accomplices in the commission [of the act]” (Art. 192 CC). To this provision, Art 318bis adds aggravating circumstances specific to trafficking in human beings:

“for the purpose of financial gain, through the use of violence, intimidation, deceit, or use of a victim’s situation of superiority or of particular vulnerability, or if the victim is a minor or incapacitated person, or while endangering the life, health or integrity of the persons”, as well as “when the offender belongs to an organisation or association, even of a temporary nature, which is devoted to the realisation of such activities.” This provision, added to the fact that basic trafficking is punished by up to eight years, would comply with the Framework Decision. However, compliance of the Spanish Criminal Code with the requirements of the Framework Decision is challenged by the fact that the definition of trafficking might not encompass all acts listed by the Framework Decision.

⁹⁷ As the Estonian Law does not define trafficking in human beings, compliance with the requirements of aggravating circumstances is very difficult to assess. The Estonian CC, Article 58, defines as general aggravating circumstances: 2) commission of the offence with peculiar cruelty, or degradation of the victim; 3) commission of the offence knowingly against a person who is less than 18 years of age, pregnant, in an advanced age, in a helpless situation or has a severe mental disorder; 10) commission of the offence by a group. Point 2) could correspond to use of severe violence, point 3) to perpetration against vulnerable persons, point 10) is equivalent to perpetration in the framework of organised crime. This list omits endangering of the victim’s life. In addition, this Article does not specify the consequences of these aggravating circumstances in terms of sentence. Each offence under the Estonian CC that could possibly constitute trafficking in human beings would thus need to analyse to determine compliance, bearing in mind the fact that certain forms of trafficking in human beings might not be covered at all by existing provisions. The closest offence to trafficking in human beings defined by the Estonian CC is enslavement, with sentences of fine or imprisonment up to five years (Division 6, Art. 134 CC of Estonia). The same Article lists perpetration against several persons or against minors as aggravating circumstances, which raises the foreseen sentence to imprisonment of two to ten years. Yet this article fails to list endangering of the victim’s life, use of serious violence and perpetration in the framework of organised crime as aggravating circumstances. In conclusion, the Estonian criminal law presents numerous gaps when it comes to punishment of aggravated trafficking in human beings.

⁹⁸ In the Netherlands, aggravated trafficking in human beings is regulated by Article 273 CC. Currently this article foresees a sentence of up to six years imprisonment and a fine. Aggravated trafficking includes perpetration “by two or more persons acting in concert” (Art. 273 .3.(a) CC of the Netherlands), which corresponds to organised crime with a sentence of up to eight years of prison and a fine; perpetration against “a person who is under the age of sixteen” (Art. 273 .3.(a) CC of the Netherlands), that is, under the legal age of consent, with sentence of eight years imprisonment and a fine; combination of organised crime and perpetration against a child under sixteen, with up to ten years and a fine; and crime that “results in serious physical injury or threatens the life” of the victim (Art 273.5 CC of the Netherlands) with twelve years and a fine. An additional aggravating circumstance is trafficking resulting in the death of the victim, punished with up to fifteen years and a fine. All criteria for compliance would thus be met, if it were not for the omission of use of severe violence. This omission creates a gap in the Dutch criminal law with regard to aggravated trafficking under the Framework Decision. Physical injury indeed does not necessarily imply the use of violence by the perpetrator, but might result from violence used by a client, for instance, or the conditions of exploitation such as for instance unprotected sex.

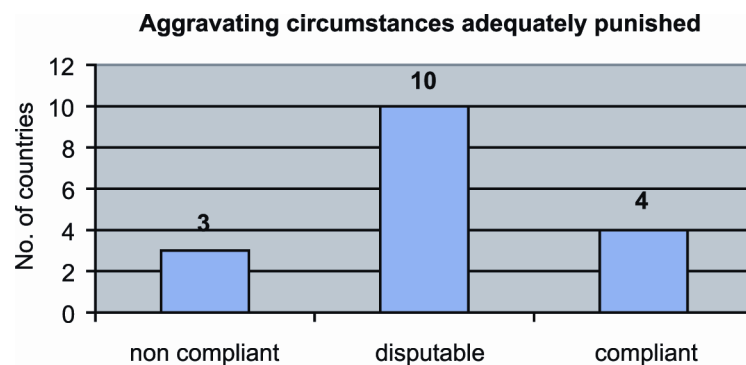
⁹⁹ The Polish law does not specify any particular aggravating circumstances to trafficking in human beings. Article 53 of the Criminal Code merely provides the courts with general guidance on what should be considered in sentencing. Since the foreseen sentence for non-aggravated trafficking in human beings is up to three years imprisonment, the Polish legislation in this area is clearly not complying with the Framework Decision.

beings. However, in the Netherlands the Parliament approved, on 9 June 2009, a bill submitted by the Minister of Justice which entails an increase of all maximum penalties, and which, based on current reports, entered into force on 1 July 2009. The sentence, under aggravating circumstances, will extend up to 18 years.

In Latvia, the law refers to “severe consequences” – without referring either to endangering of the victim’s life nor to the use of serious violence.¹⁰⁰ In Romania, trafficking in human beings is aggravated “in case the offence has resulted in the victim’s death or suicide”.¹⁰¹ In Estonia, “causing serious consequences” is listed as aggravating circumstance.¹⁰² These provisions do not secure full compliance, but they might not necessarily result in gaps in practice.

The issues of “severe violence” and “endangering the life of the victim” deserve closer examination. Endangering someone’s life is, in general criminalised in domestic legislation; therefore endangering the victim’s life clearly is as well. However it might prove difficult to establish in court. What constitutes ‘severe violence’ is less clear, which leaves its precise definition or the choice of defining it more closely to the Member States. Provisions which simply consider the result of an action (death or severe bodily or mental harm) rather than the process would be easier to implement.

Figure 2. Punishments in aggravating circumstances



4.5.3. Sanctions other than imprisonment or criminal fines

Art. 3.1 of the Framework Decision prescribes that Member States’ legislations needs to foresee “effective, proportionate and dissuasive criminal penalties”.

Compliance with this provision is difficult to check, since the Framework Decision does not define what is considered effective, proportionate or dissuasive. However, the Framework Decision, when exposing the necessity for severe legislation (preamble, para. 8), suggests that anti-trafficking instruments be comparable to, in particular, Council Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of the instrumentalities and the proceeds from crime. In this light, it is relevant to examine what sanctions other than imprisonment can be imposed upon traffickers.

Certain countries foresee various combinations of complementary sentences, ranging from confiscation of property or seizure of assets acquired through, or used for, the per-

¹⁰⁰ Chapter XV Section 154 CC of Latvia.

¹⁰¹ Art. 12.2.c(3), Romanian Law on preventing and combating trafficking in human beings.

¹⁰² Division 6, art 133 CC of Estonia punishing enslavement.

petration of the offence, to deprivation of civil and family rights, or a ban from occupying certain professions. These apply either specifically to trafficking offences, or generally for certain categories of crime. This report will list a few examples, bearing in mind that general provisions on this type of sanction are present in most of the Member States.

In Belgium¹⁰³, Denmark¹⁰⁴, Latvia¹⁰⁵, the Netherlands¹⁰⁶, Poland¹⁰⁷, Spain¹⁰⁸, Sweden¹⁰⁹, and the UK¹¹⁰, the legislation foresees a range of such sanctions for groups of criminal offences including trafficking in human beings.

In France the legislation contains sentences other than imprisonment specifically for the crime of trafficking in human beings.¹¹¹

Finally, in Romania there are both trafficking-specific sanctions other than imprisonment and general provisions on the issue.¹¹² The Romanian Law on Preventing and combating trafficking in human beings, Article 19, regulates seizure of assets used for committing trafficking in human beings and the proceeds of such crime. The Romanian CC also contains general provisions on the issue. In addition, the Romanian Law on preventing and combating organised crime contains provisions regarding international co-operation in the field of seizure of such assets. The Romanian criminal legislation also envisages limitations of civil rights.

In France¹¹³, Poland¹¹⁴, Romania¹¹⁵ and Sweden¹¹⁶, additionally to prison sentences and additional sentences, the legislation foresees deportation and/or a ban from the territory for

¹⁰³ The Belgian legislation contains trafficking-specific provisions for confiscation of property, ban from occupying civil service and judicial positions, deprivation of certain civil and political rights (for instance eligibility ban), liquidation of company (Art. 433novies CC of Belgium).

¹⁰⁴ Section 75 of the Danish CC, which has a general focus, foresees confiscation of assets and seizure of the proceeds of crime.

¹⁰⁵ In Latvia, Section 27 of the CC contains non-trafficking-specific provisions for seizure of proceeds of crime and confiscation of property.

¹⁰⁶ The CC of the Netherlands foresees professional bans and seizure of assets and proceeds of crimes, for trafficking in human beings and certain sexual offences.

¹⁰⁷ Poland, in Article 39 of its CC, foresees limitation of civil rights, confiscation of property and, interestingly, victim compensation for all crimes committed in the framework of criminal organisations.

¹⁰⁸ In Spain, Articles 192 and 194 CC provide for limitation of civil rights, ban from performing certain professions or exercising tutorship rights and seizure of proceeds of crime; this provision concerns a wide panel of crimes.

¹⁰⁹ In Sweden the CC foresees seizure of the assets used for perpetration of a range of crimes including trafficking in human beings.

¹¹⁰ The UK Proceeds of Crime Act foresees confiscation of assets and seizure of the proceeds of the crime, applicable to a wide range of crimes.

¹¹¹ Art. 225.20 CC of France foresees, specifically for trafficking and certain sexual offences, confiscation of property, seizure of assets used to proceeds of crime, limitation of parental rights, deprivation of certain civil and political rights, a ban from running establishments of a public nature (hotels for instance), a ban from holding positions of a social nature or performing voluntary work involving minors, and a travel ban.

¹¹² The Romanian Law on Preventing and combating trafficking in human beings, Article 19, regulates seizure of assets used for committing trafficking in human beings and the proceeds of such crime. The Romanian CC also contains general provisions on the issue. In addition, the Romanian Law on preventing and combating organised crime contains provisions regarding international co-operation in the field of seizure of such assets. The Romanian criminal legislation also envisages limitation of civil rights.

¹¹³ Art. 225.21 CC of France foresees expelling and banning from the French territory for foreign perpetrators of trafficking in human beings.

¹¹⁴ In Poland, the Aliens Act (Articles 88.1.9, 128.3.5 and 5(a)) envisages deportation of aliens sentenced for serious crimes after serving the sentence.

foreign perpetrators of trafficking in human beings specifically. In addition, in most of the Member States bans from the territory exist for all or certain categories of crimes.

Sanctions other than imprisonment or criminal fines require specific human resources in order to be implemented. This is particularly true of seizure of assets or of the proceeds of crime, which are often difficult to track down. Some experts have emphasised that *“The dilemma is that the organised crime unit of the presidium rarely has the right/opportunity to seize assets. There is a lack of individuals who are educated accordingly. This is desperately needed in order to reduce the economic viability of the crime. This is not a deficit of legislation but one of resources.”* (Germany).

Within this variety of provisions on sentences other than imprisonment or criminal fines, certain provisions link assets from traffickers to the fulfilment of some needs of the victims. However, implementation is weak, and therefore compensation does not happen – see Compensation. In France, Italy and Poland, assets confiscated from traffickers are, or may be used to compensate victims or assist victims’ return. In France, physical and legal persons who are guilty of, among other crimes, trafficking in human beings, are liable to reimburse the repatriation costs of the victim.¹¹⁷

Italy has established a fund for victims and other witness protection measures, which is financed by the assets seized from the traffickers.¹¹⁸ Similarly funded is the Italian “Revolving fund for the compensation of the victims of the mafia”, which enables to compensation for victims of organised crime. This is applicable to many victims of trafficking in human beings for sexual exploitation. In other countries, some experts showed appreciation for this model, and a wish for it to be adopted: *“We have a small fund for compensation, but it would be more efficient to confiscate assets or proceeds of crime and all direct these to a special fund for victims of trafficking. Otherwise with every case we need support of NGOs, donors from abroad.”* (Bulgaria). However, the implementation of this scheme in Italy proves difficult and incomplete, among other reasons due to the fact that traffickers and other organised criminals have developed extremely efficient strategies to hide their assets and the proceeds of the crime (Orfano & Bufo, 2008, p. 8-9).

4.6. Models of criminal liability

Criminalisation of acts of trafficking in human beings is obviously applicable to physical persons in all Member States. In addition, Article 4 of the Framework Decision provides that “[e]ach Member State shall take the necessary measures to ensure that legal persons can be held liable for an offence [of trafficking in human beings, an attempt, aiding, instigating or abetting to perpetrate such offence].”

The Member States who apply some form of criminal liability for legal entities present two different models. The first one is direct criminal liability. In other Member States, legal persons are not directly liable. However, persons acting on their behalf are, and if

¹¹⁵ Article 5(2) of the Romanian Law on Preventing and combating trafficking in human beings enables a ban to suspected traffickers from entering the Romanian territory.

¹¹⁶ Sweden (Chapter 8 Sections 8 and 9, Aliens Act of Sweden) foresees expelling of the foreign perpetrators of any crime punished by imprisonment.

¹¹⁷ Art 225.24 CC of France.

¹¹⁸ Law 228 of 2003 of Italy on Measures against trafficking in human beings.

these physical persons are prosecuted some punishments can also be applied to the legal entity they represent – for the purpose of this report this situation is referred to as “indirect” criminal liability of legal entities. Finally, in some cases no provision that would enable criminal punishment of legal entities could be identified.

4.6.1. Direct criminal liability of legal entities

In countries that apply this model, some apply it to all or several categories of criminal offences, while others possess particular trafficking-related provisions.

Direct criminal liability of legal entities is regulated by articles relevant to several or all criminal offences in Austria¹¹⁹, Belgium¹²⁰, Denmark¹²¹, Finland¹²², Germany¹²³, the Netherlands¹²⁴, and the United Kingdom.

This model is also applied in France, but the criminal legislation contains in addition to blanket provisions, trafficking-specific articles on direct criminal liability of legal entities.¹²⁵ Estonia also applies direct criminal liability of legal entities for all types of crimes¹²⁶, but specifies in addition criminal liability of legal entities for aiding prostitution involving minors. This legislation can also be applied to cases of trafficking in human beings for sexual exploitation.¹²⁷ The Swedish legislation provides for liability of legal persons that commit trafficking in human beings specifically.¹²⁸

4.6.2. “Indirect” criminal liability of legal persons

This model applies in Latvia and Spain, though with nuances.

In Latvia, a natural person who commits a crime on behalf of a legal person, in a matter related to that legal person, is criminally liable.¹²⁹ If a natural person is prosecuted under these conditions and for a number of crimes, including trafficking in human beings, then “coercive measures” may be imposed onto the relevant legal person.¹³⁰ These coercive measures including liquidation, limitation of rights, confiscation of property, fines, confiscation of property and an obligation to compensate for the damage caused.

¹¹⁹ Verbandsverantwortlichkeitsgesetz of Austria – BGBl/151/2005.

¹²⁰ Preliminary Title, CC of Belgium.

¹²¹ Section 306 CC of Denmark.

¹²² Section 10 CC of Finland.

¹²³ Art. 30 Ordnungswidrigkeitengesetz of Germany.

¹²⁴ Art. 51 CC of the Netherlands.

¹²⁵ Art. 225.4.6 CC of France.

¹²⁶ Articles 3 and 14 of the Estonian CC.

¹²⁷ Division 2 Art 176 CC of Estonia.

¹²⁸ Chapter 36, Section 7-10 a CC of Sweden.

¹²⁹ Section 12 of the CC of Latvia, amended in 2005, reads: “for legal persons who are not public law legal person, the coercive measures provided for in Chapter VIII of this Law may be applied”

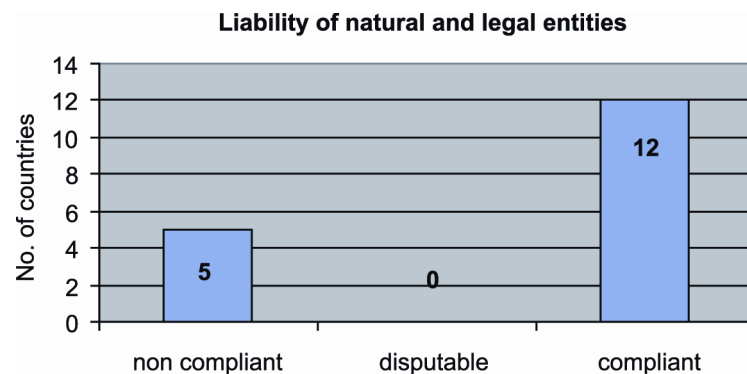
¹³⁰ Paragraphs (1) to (3), Chapter VIII CC of Latvia read: “(1) In determining coercive measures, a court shall take into account the nature of the criminal offence and the harm caused. (2) A court in applying coercive measures to a legal person shall observe the following conditions: 1) the actual actions of the legal person; 2) the status of the natural person in the institutions of the legal person; 3) the nature and consequences of the acts of the legal person; 4) measures, which the legal person has performed in order to prevent the committing of a new criminal offence; and 5) the size, type of activities and financial circumstances of the legal person. (3) The coercive measures provided for in this Law may be applied by a court to a legal person on the basis of a proposal from the Office of the Public prosecutor.” Chapter VIII applies to all criminal acts described in the Special Part of the CC, which encompasses trafficking in human beings.

In Spain, legal entities as such are not criminally liable, but legal entities may be subject to criminal fines, through the sentence pronounced against their representatives.¹³¹

4.6.3. Countries where no provision on criminal liability of legal entities was identified

No provisions could be identified on criminal liability of legal entities in the following countries, which therefore show incompliance with the Framework Decision in this field: Bulgaria, the Czech Republic¹³², Poland, Italy, and Romania. However, in some cases legal entities may be prosecuted by using legislative provisions not pertaining to the criminal legislation.

Figure 3. Liability of Natural and legal entities



4.7. Extraterritorial jurisdiction

Article 6 of the Framework Decision requires that:

“(1) Each Member State shall take the necessary measures to establish its jurisdiction over an offence referred to in Articles 1 and 2 where (...) (b) the offender is one of its nationals, or (c) the offence is committed for the benefit of a legal person established in the territory of that Member State.

(2) A Member State may decide that it will not apply or that it will apply only in specific cases or circumstances, the jurisdiction rules set out in paragraphs 1(b) and 1(c) as far as the offence is committed outside its territory.”

This means that the Framework Decision recommends extraterritorial jurisdictions, without making it a positive obligation.

All countries have determined rules for extraterritorial jurisdiction, although based on different models. One can make a distinction depending on whether extraterritorial jurisdiction provisions are general, or applicable to trafficking in human beings specifically. Extraterritorial jurisdiction may also be analysed based on whether extraterritorial jurisdiction applies to all citizens and residents of the country, or only to nationals. Finally, under some legislative frameworks, extraterritorial jurisdiction requires that the victim of the act be a national of the country in question.

¹³¹ Article 31.1 CC holds responsible “a person who acts as administrator de facto or de jure, of a legal person” for criminal acts or conducts perpetrated by the legal person. Paragraph 2 of the same Article provides that if a fine is imposed on the author of the acts, the legal person on behalf of whom the author of the crime has performed these acts shall be responsible for paying such fine.

¹³² The Czech Ministry of Interior has indicated an awareness that this situation is not in compliance with the Framework Decision, and has communicated that draft amendments are currently pending, which should correct the situation.

In this report, Member States' provisions on extraterritorial jurisdiction are presented based on whether such provisions apply, regardless of the law of the country where the acts were committed, or only if these acts were criminalised by the local legislation when they were committed. Indeed, when the act of trafficking in human beings is committed at an international level – which is often the case – such distinction is paramount to the prosecution, bearing in mind the differences and gaps in definitions of trafficking in human beings. However, for each country, if provisions exist concerning other distinctions, then this is specified.

4.7.1. Extraterritorial jurisdiction subject to the law of the crime scene and/or to international law

With regard to extraterritorial jurisdiction the following EU Member States require that the act to be prosecuted also be criminalised in the country where it was committed: Belgium¹³³, Estonia¹³⁴, Finland¹³⁵, Italy¹³⁶, and Poland with certain specificities¹³⁷, and Sweden.¹³⁸

For Belgium, this applies to citizens of any country regardless of their residence or nationality link with Belgium. This is analogous to the relevant articles of the Italian Penal Code, while in Estonia the legislation requires that the act be, in addition, committed by or against an Estonian citizen.¹³⁹ Finnish citizens and permanent residents in Finland are liable to the Finnish criminal law. Polish citizens are criminally liable abroad regardless of the local legislation, and non-Polish citizens are criminally liable abroad provided the crime was committed against a Polish citizen and the act is criminalised under the law of the country where it was committed. The situation is more unusual in Sweden: only Swedish citizens (whether they were citizens at the time of committing the crime or acquired the Swedish citizenship at a later time) and residents are subject to extraterritorial jurisdiction, with the exception of Danish, Finnish, Icelandic and Norwegian citizens, due to specific agreements between these countries.

4.7.2. Extraterritorial jurisdiction not subject to the law applicable on the crime scene

In the following Member States, extraterritorial jurisdiction applies regardless of the local legislation: Austria¹⁴⁰, Bulgaria¹⁴¹, the Czech Republic¹⁴², Latvia¹⁴³, the Netherlands¹⁴⁴, Romania¹⁴⁵, Spain¹⁴⁶ and the UK¹⁴⁷.

¹³³ Preliminary Title CC of Belgium.

¹³⁴ Art. 6 to 9 CC of Estonia.

¹³⁵ Chapter 1 Sections 6 and 7 CC of Finland. Extraterritorial jurisdiction applies provided the act is criminalised where it was committed (Chapter 1 Sections 6 and 7 CC of Finland), or if this act is punishable “under an international agreement binding on Finland” (Chapter 2 Section 7 CC of Finland), which would apply to trafficking in human beings.

¹³⁶ Art. 3 CC of Italy. In addition acts criminalised under international law (which includes trafficking in human beings) are also subject to extraterritorial jurisdiction.

¹³⁷ Chapter XIII Articles 109 to 111 CC.

¹³⁸ Chapter 2 Section 2 CC of Sweden.

¹³⁹ Art. 7 CC of Estonia.

¹⁴⁰ The Austrian CC lists among others “trafficking in human beings (Article 104a)” and “trafficking in human beings for the purpose of prostitution (Article 217)” as subject to extraterritorial jurisdiction, regardless of the local legislation or of the citizenship of the offender (Article 64(1) CC of Austria).

¹⁴¹ Article 4(1) CC of Bulgaria.

In Austria extraterritorial jurisdiction applies to all persons with regard to trafficking in human beings specifically. The Bulgarian CC is applicable abroad to Bulgarian citizens only. The Czech CC extends extraterritorial jurisdiction to Czech citizens, permanent and temporary residents regardless of the law of the place where the acts were committed. Latvian citizens and permanent residents are liable abroad under the Latvian CC, and so is any foreigner who committed a crime against a Latvian citizen. The Dutch CC creates an original situation: Dutch citizens (even if they have acquired Dutch citizenship after the perpetration of the acts), as well as permanent residents in the Netherlands are liable to the Dutch CC if the victim of the crime is a minor. This means that Dutch citizens and residents could be prosecuted in the Netherlands for trafficking in minors only. The Romanian criminal law applies to Romanian citizens regardless any other criteria, as well as to non-Romanian citizens who have committed a criminal act against a Romanian citizen. The Spanish legislation provides grounds for extraterritorial jurisdiction regardless of the local legislation or of the citizenship of the offender for a number of criminal acts including acts used to prosecute trafficking in human beings. In the UK, extraterritorial jurisdiction applies to trafficking in human beings specifically for sexual exploitation, regardless of the offender's citizenship.

4.7.3. Disputable cases

The cases of Germany and France are specific, and the legislation of these countries available to the project team did not make it possible to state whether trafficking in human beings is subject to extraterritorial jurisdiction.

In Germany a crime for which the perpetrator has been convicted in another country is to be considered as a crime committed on German territory, provided the same act is criminalised under the German Law. This provision is quite limited, as it only applies to cases which have already resulted in a sentence.¹⁴⁸

¹⁴² Sections 18, 20 and 20a Czech Republic CC.

¹⁴³ Section 4, CC of Latvia.

¹⁴⁴ Currently Articles 5 and 5a CC of the Netherlands. A further extension of extra-territorial jurisdiction is in preparation in order to implement the 2005 Council of Europe Convention on Action against Trafficking in Human Beings (Bill no. 31 391). Extra-territorial jurisdiction will be extended to include THB committed abroad by permanent residents (regardless of the age of the victim) when there is double criminality, THB committed abroad against Dutch nationals and THB committed by Dutch nationals or permanent residents outside of the jurisdiction of any state.

¹⁴⁵ Art. 3 to 5 CC of Romania.

¹⁴⁶ Article 1 of the Spanish Law on Modification of the Organic Law 6/1985 of 01 July on the Judicial Power states that "the Spanish jurisdiction shall be competent to take note of the acts perpetrated by Spanish citizens or aliens outside of the national territory and which could be characterised, under the Spanish criminal law, as one of the following offences:(...) (e) Offences related to prostitution and corruption of minors or incapacitated persons; (...) (g) Illegal trafficking or illegal migration of persons, whether or not these persons are workers." This provision is however to be considered within the limitations already demonstrated above, regarding the definition of trafficking in human beings under the Spanish criminal law.

¹⁴⁷ In the UK, the Sections 57 to 59 of the Sexual Offences Act of 2003 related to trafficking in human beings for sexual exploitation apply to anything done inside the United Kingdom or outside, if committed "by a body incorporated under the law of a part of the United Kingdom (...)" or by a British citizen, a British overseas territories citizen, a British National (Overseas), a British Overseas citizen, a person who is a British subject under the British Nationality Act 1981 (c. 61), a British protected person within the meaning given by section 50(1) of that Act (see Section 60, Interpretation and jurisdiction of Sections 57 to 59 of the Sexual Offences Act of 2003, as amended by the UK Border Act of 2007).

¹⁴⁸ Art. 176.6 CC of Germany.

The French CC provides extraterritorial jurisdiction over French citizens and residents for cases of aggravated pandering – some of which may cover certain trafficking acts. However this article clearly does not encompass all forms of trafficking in human beings for sexual exploitation.¹⁴⁹

4.8. Criminalising the known use of services of trafficked persons

Several EU Member States currently discuss whether criminalising the known use of services of a trafficked person would be a useful tool in combating trafficking in human beings.

Criminalising this act does not constitute an obligation under the Framework Decision or under the Council of Europe Convention on Action against trafficking in human beings. Under the CoE Convention on Action against trafficking in human beings, Article 19, Parties must consider criminalising the use of services which are the object of exploitation of a trafficked person. An important point is that Article 19 targets the use of services provided by a trafficked person, while trafficked persons are not criminalised for providing such services. Similarly, the provision is not concerned with using the services of a person in (consensual) prostitution as such (Council of Europe Convention on Action against trafficking in human beings Explanatory Memoranda, 2005, para. 233).

Proving “knowledge” may however be a difficult matter for the prosecution. Acknowledging the problems of collecting evidence, it was considered that this provision is in place to encourage Parties to adopt the measure, without making it a binding provision (Council of Europe Convention on Action against trafficking in human beings Explanatory Memoranda, 2005, para. 236).

Since October 2006 the Finnish CC, Chapter 20 Section 8 punishes with a criminal fine or imprisonment up to six months any person who knowingly uses the sexual services of a trafficked person or a procured prostitute.¹⁵⁰ While the mentioned provision constitutes an additional tool to combat trafficking in human beings, in Finland it has proven challenging to apply in practice, because it is difficult to prove that the user of sexual services was aware of the status of the person who provided the services.¹⁵¹

Apart from criminalizing the known use of services of a trafficked person, a person knowingly using such services could be charged as an accomplice in trafficking in human beings. This is possible for example in the Czech Republic.

¹⁴⁹ Art. 225.11.2 CC of France.

¹⁵⁰ This provision tends to assimilate pandering and trafficking, and to make an analogy between victims of trafficking and controlled prostitutes. A Finnish expert stated that “*there has been some confusion between the concepts of prostitution and trafficking. Trafficking has been used or sometimes misused in order to promote repressive policy [against prostitution].*” (Finland).

¹⁵¹ A Finnish expert explained: “*[the 2006 law] criminalises the purchase of sexual services from a victim of trafficking or from procured women, but we have no actual cases, it is difficult to prosecute because you would have to prove that the buyer knew he is buying from victim of trafficking/procured woman.*” (Finland). Another expert illustrated: “*In one case the buyer went to a brothel and paid the prostitute directly. Brothels are prohibited and it was obvious that the brothel was organised in some way. However, this was not considered a proof that the buyer knew that the seller of sex was a VOT or a procured prostitute. At the moment investigations for a large pandering case, including ca. 150 prostitutes is going on. For unknown reasons the police did not investigate the clients at all.*” (Finland).

4.9. Does the law facilitate law enforcement?

A trafficker's choice of a country of destination is based, beyond personal or organisational bonds, on the perceived risk of prosecution and the severity of sentences a prosecution would carry. The risk of prosecution depends on several factors including primarily the efficacy of law enforcement agencies, in particular their ability to present evidence.

Many aspects of trafficking in human beings for sexual exploitation are often difficult to prove. For instance, where the act is not completed, proving that there was an attempt to commit trafficking in human beings is extremely challenging – especially when it comes to proving that this attempt was made for the purpose of exploitation. Proving intent in the case of persons aiding or abetting trafficking in human beings (for instance by transporting or transferring victims) is also difficult. The means of coercion used by the traffickers against the victims have also evolved, and increasingly involve verbal threats, debt manipulation, and other means that are difficult to prove. The difficulty to gather evidence explains in part the relative rarity of tried cases of trafficking in human beings for sexual exploitation.

In many cases, perpetrators may not be tried or convicted at all due to lack of evidence. Often it is easier for the prosecution and the courts to invoke charges other than trafficking in human beings. However these charges usually carry a lesser sentence than trafficking in human beings for sexual exploitation. German experts cite the fact that prior to the adoption of a binding international legal instrument every option of the trafficking process was already illegal under German law. According to them, trafficking-specific legal provisions increase the burden of proof.

In this respect, law enforcement agencies in EU Member States are subject to various conditions and challenges. An expert from Bulgaria stated: *“when we talk about international cases of trafficking in human beings, it is much easier for my colleagues who work in country of destination – they have the victim, the exploiter there, they have the pimp, procurer, they can get much more evidence, we get usually only victim's testimony.”*

4.9.1. Special investigative measures

The criminal law itself influences implementation by providing more or less effective tools for its enforcement.

For the reasons stated above, it is often of key importance for the police and the prosecution to rely on the most efficient investigative techniques, including special investigative measures already at the earliest stages of investigation. This is not a requirement under the Framework Convention but it has an important impact on the efficiency of investigation, and on the likelihood of prosecution of trafficking acts. The investigators interviewed stressed that special investigative measures are crucial to their work: *“In 2004 police was allowed to use telecommunication interception to investigate aggravated pandering and THB cases. This is important, as pandering is often organised through telephone operators, allowing for stricter control of prostitutes.”* (Finland).

In most of the countries, blanket provisions on special investigative measures exist. In addition to these, Austria, Bulgaria, Denmark, France, Italy, the Netherlands, Romania, Sweden and the UK have adopted legislative provisions regulating special investigative

measures in the specific context of trafficking, or applicable to the most serious crimes including trafficking in human beings.

The Austrian investigators of trafficking in human beings may access all properties and premises where it is suspected that trafficking in human beings is being committed.¹⁵² Bulgaria provides investigators with the use of specific technical equipment, undercover investigation, use of electronic communications networks, opening of correspondence, entry and search of premises and special intelligence means.¹⁵³ In France, investigators may use entry and search of premises, preventive seizure and confiscation of assets including assets used to commit the suspected crime as well as the proceeds of the suspected crime, undercover investigation through electronic communications networks, and closure of premises.¹⁵⁴ Suspects in France may appeal against all measures related to preventive seizures or closures. The Italian legislation enables undercover investigation of suspected criminal cases.¹⁵⁵ The Netherlands also foresee a rather substantial range of special investigative measures: seizure of all relevant objects and assets, access to all places where certain criminal acts, including trafficking in human beings, are suspected to be committed¹⁵⁶, gathering and use of special police data.¹⁵⁷ In Romania the specific anti-trafficking law provides such measures, including wiretapping and undercover investigation.¹⁵⁸ In Sweden, the Code of Procedure enables wiretapping and bugging for certain severe crimes, including trafficking in human beings.¹⁵⁹ The UK Sexual Offences Act, in addition to a provision on entry and examination of home address¹⁶⁰, contains original and detailed articles on sexual offence prevention orders.¹⁶¹ These orders constitute measures taken against a suspect in order to prevent the perpetration of further sexual offences (including trafficking in human beings for sexual exploitation). They may be imposed before or during the trial phase even if the act has been committed abroad and falls under UK extraterritorial jurisdiction. Suspects may appeal against such orders.

4.9.2. Getting offenders to co-operate through offers of lower sentencing

From the investigation to the trial, testimonies and intelligence originating from arrested accomplices or traffickers are of great value to the law enforcement agencies and the judicial system. Most often, and particularly in adversarial systems, the need for such contributions is addressed by the criminal procedure codes or other legal acts, under general provisions regulating co-operation of offenders and the related advantages. These provisions are particularly relevant in countries applying a continental criminal law

¹⁵² Aliens Police Act, Article 36

¹⁵³ Art. 172 Criminal Procedure Code of Bulgaria and Special intelligence means act last amended in 2008.

¹⁵⁴ See Art. 706.34 to 706.39 Criminal Procedure Code of France, which contain extremely detailed procedural provisions. There remains a question as to the applicability of these articles to all cases of trafficking in human being: the title of this section of the Criminal Procedure Code refers to trafficking in human beings, while the body of these articles makes reference only to the crimes defined under Articles 225-5 to 225.12.4, which define pimping, use of sexual services and related offences.

¹⁵⁵ Law 228/2003 on Measures against trafficking in persons, Article 10.

¹⁵⁶ Art. 551 Criminal Procedure Code of the Netherlands

¹⁵⁷ Art. 3.2 Executive Order relating to police data of the Netherlands

¹⁵⁸ Law on 678/2001 on Preventing and combating trafficking in human beings, last amended in 2005, Chapter IV.

¹⁵⁹ Chapter 27 Section 18 of the Code of Procedure of Sweden.

¹⁶⁰ Section 96A Sexual Offences Act 2003.

¹⁶¹ Sections 104 to 109 Sexual Offences Act 2003.

system without plea bargaining. Such provisions are clearly not required by the Framework Decision, but they can be found in several of the studied 17 EU Member States. In the Czech Republic, France and Romania trafficking-specific provisions have been adopted.

In the Czech Republic, following an amendment of the Criminal Code in 2008,¹⁶² the court can now apply an exceptional reduction of a sentence of imprisonment for a co-operating offender, i.e. a sentence of imprisonment can now be shorter than the lowest limit of the sentence of imprisonment.¹⁶³

In France, whose criminal law system is also continental, Article 225.4.9 of the Criminal Code provides for reduction of sentences under certain circumstances: i.e. co-operation with the law enforcement or judicial authorities which has prevented the death of a victim, or prevented a criminal act or its completion, and identifying accomplices. In Romania, the Law on Preventing and combating trafficking in human beings, Article 20, provides reduction of sentence in case co-operation with authorities contributes to bringing offenders to court.

4.10. Main differences in legislation and implementation among the 17 EU Member States

In combating trafficking in human beings through criminal law, the EU Member States employ relatively similar types of measures: sentences, aggravating circumstances, provisions to facilitate investigation, extension of liability to legal persons, extraterritorial jurisdiction and so on.

The main differences reside in the content of these provisions: the range of sentences varies greatly, so does the extent of extraterritorial jurisdiction or the ways in which legal entities are made criminally liable. Differences also exist in the wording of these provisions.

The Member States that have joined the EU most recently, Romania and Bulgaria, present legal provisions whose elements and wording are the most similar to those of the Framework Decision. Some national legislators, in particular France and Romania, have developed complex and comprehensive legislative tools on the issue of trafficking in human beings for sexual exploitation.¹⁶⁴ Other countries have considered that many requirements of the Framework Decisions were in fact already accommodated through other provisions of their criminal legal system (for instance provisions on punishable attempt to commit a crime or criminal liability of legal entities) or through articles related to offences other than trafficking in human beings (such as pimping, abduction, enslavement, rape, etc).

¹⁶² This amendment was implemented in the Code of Criminal Procedure by Act No. 41/2009 Coll. on the amendment to some acts in relation to the adoption of the Criminal Code (new Sec. 178a of the Code of Criminal Procedure).

¹⁶³ Sec. 58 (4) of the new Criminal Code.

¹⁶⁴ It should be noted that France is a special case when it comes to the level of detail and the length of the law, as the French sources of legislation consolidate the regulatory framework in the available sources of laws.

Possibly, in the intention of these legislators the combination of the existing provisions, combined with some relatively short provisions on trafficking, are expected to cover all acts that may constitute trafficking in human beings – and therefore all acts constituting trafficking in human beings for the purpose of sexual exploitation. Some of the experts interviewed for this study emphasized that a strict definition of trafficking in human beings which has the ambition to be comprehensive might actually prevent the variety of situations of trafficking in human beings. Some experts have also noted the danger of adopting an ill-drafted law, and highlighted their preference for making fuller use of already existing criminal law and already listed criminal offences.

The range of sentences for trafficking in human beings in general – and specific sentences for trafficking in human beings for sexual exploitation where they exist - is wide across the 17 EU Member States studied: it goes from fines for non-aggravated trafficking, to life sentence for aggravated trafficking. In some individual countries, the combination of various types of sentences (imprisonment, criminal fines, deprivation of rights, seizure of assets and property, professional bans) offers a wide panel of options. The latter presents advantages for the courts that can deliver nuanced judgements taking full account of the multitude of forms and situations of trafficking in human beings for sexual exploitation. A number of experts have indicated that, in their opinion, the more precise, comprehensive and severe the law is, the more it discourages traffickers from opting for a specific country.

These differences in prescribed sentences might reflect the position of the Member States on the severity of this crime. In many cases however they might mainly reflect the differences between the various criminal law systems. The confidential report, published by the Council presidency on 21 May 2001, on the proposed Framework Decision, which refers to the obstacles in the way of approximation of laws on penalties arising from the different legal traditions of Member States and from their different sentencing systems, notes that: “when proposals for new EU legislation is put forward and discussed, the definition of the offences and the proposed level of sanctions needs to be assessed in relation to national legislations. It must also be born in mind that the sentencing systems vary – for instance some Member States do not have minimum penalties – and the time effectively served can be very different, depending on early release, probation etc. So the variation of the national systems and the fact that systems are not likely to be harmonised in this short and medium term has to be taken into account. Therefore a certain flexibility in relation to the consistency of the national systems is needed”¹⁶⁵ (Apap, Cullen, & Medved, 2001, fn 81).

In addition to the disparities in the sentences as provided for by the law, several experts noted varying court practices, including the use of provisions related to aggravated sentences.¹⁶⁶

¹⁶⁵ Council of the European Union Document 8599/1/01 REV 1 LIMITE DROIPEN 43 MIGR 41, Brussels, 21 May 2001.

¹⁶⁶ “It is difficult to get conviction on adequate grounds in the end. And then sentences are low, usually we talk for real cases of trafficking in human beings about 2, 3, 4 years. In the context of organised crime this may reach 5 to 7 years, I do not know whether there was a case with a sentence for more than 7 years. In Belgium, Netherlands the conviction is pronounced after six, seven months and the sentence is 5 to 7 years; I really want to have the same results in Bulgaria” (Bulgaria). Another expert stated: “as far as we have experienced, judges do not have a

The variety of definitions and sentences reduces the degree of harmonization of the criminal law responses to this crime. This reduces the possibility of international co-operation and offers room to manoeuvre to the traffickers. As one of the interviewed experts put it: *"While European co-operation is smooth in the field of drugs trafficking or terrorism, it encounters difficulties when it comes to fighting trafficking in human beings, particularly due to the disparities of criminal codes and to the various definitions of trafficking in human beings and pandering. The police services in European countries must thus sometimes make use of original tactics to dismantle transnational networks. For instance, acts committed in France might be criminal offences there, which they might not be an offence in Germany. However if the network is present in both countries, co-operation is necessary."* (France).

Yet, importantly, all these considerations are of little relevance if one considers the marginal utilisation of the relatively new articles that define and punish trafficking in human beings. In general, as demonstrated by the figures presented in the Country Fact Sheets (in Annex I), the absolute number of cases prosecuted under trafficking in human beings for sexual exploitation tends to be rather low, often reflecting a practice of addressing acts of trafficking in human beings through other provisions such as pandering.¹⁶⁷ This has a negative impact on the ability to investigate the entire trafficking network and on the sentences imposed on traffickers.¹⁶⁸

Finally, law enforcement takes time and experience to adjust.¹⁶⁹ Clearly, adequate training is a fundamental element of effective prosecution: *"trafficking in human beings is difficult to investigate because we lack training and professional capacity to identify and work with these cases."* (Spain).

It has been argued that cases of trafficking in human beings for sexual exploitation are, as mentioned, difficult to investigate and to prove - which explains partly why law enforcement agencies and the judicial system often use other charges. This is due, among other reasons, to the complexity of the definition of the crime. It is challenging to prove the means used by traffickers in cases where coercion is not evident, or to prove the pur-

developed understanding. Often the punishments are relatively low. Sometimes for the same crime/content, various judges will make different judgments (6 years versus 3 years)." (Latvia). Regarding the use of aggravated sentences: "Few of the traffickers are punished as members of organised crime group. Hence they get lighter sentences. So far, there have been: 5-10 years-6 sentences; up to 5 years-38 cases; suspended sentences -41 cases, fines - 35 cases" (Bulgaria). Another example: "in our last case, the crime was done against a minor, this imprisonment was given very low - it was even lower than the prosecution demanded, 4 years." (Latvia).

¹⁶⁷ France for instance has one of the most severe, detailed and comprehensive anti-trafficking legislations. Nevertheless since the relevant articles of the criminal code were adopted in 2003, only one sentence has been pronounced for trafficking in human beings, and this case does not concern sexual exploitation. *"Even though all relevant ministries (Justice, Social Affairs, Interior) are now increasingly involved into the fight against trafficking, and despite a stronger discourse on the issue, contradictions are patent. Legal provisions are comprehensive, but hardly implemented. There is no clear and asserted policy that would be tailored to the needs at implementation level."* (France).

¹⁶⁸ *"Pimping is making money out of the immoral activities, trafficking in human beings is defined as the EC Framework decision, and carries much heavier penalty. If one looks at the chain of trafficking, one can identify various operators. Since it is very difficult to provide evidence throughout this chain, cases of trafficking are treated through the use of articles on pimping. In this case, the chain in the country of origin, is rarely investigated."* (Sweden).

¹⁶⁹ As a Belgian expert put it, *"in 2005, there was a different law, the description of the crime has changed, maybe the tactics [of organised crime] will now change too."*

pose especially in instances where exploitation has not as yet taken place. It is also extremely difficult to identify and charge the leaders of a trafficking network when they are not involved personally in committing the most obvious acts of trafficking such as transfer, transportation or harbouring.

Table 1: Trafficking in human beings legislation matrix No. 1 Criminalisation of trafficking in human beings

	Definition of THB for sexual exploitation		Investigation, prosecution and conviction of traffickers				
	Scope: compliance with Council Framework Decision	Applicability	Jurisdiction	THB-specific special investigative and preventive measures	THB-specific provisions to encourage offenders to cooperate	Sentences	Aggravating circumstances
Austria	Compliant	A, NP, LP	XTJ general provision	Entry/search of premises	No	- THB: <3Y - ATHB: 6 months-5Y/1-10Y/10-20Y	Compliant
Belgium	Compliant +	A, NP, LP	XTJ general provision: for acts criminalised in local legislation	No THB-specific provision	No	- THB: 1-5Y+500-50.000E - ATHB: 5-10Y=750-75.000E/10-15Y+1.000-100.000E/15-20Y+1.000-150.000E - Confiscation of property, professional ban, liquidation of company	Compliant
Bulgaria	Compliant	A, NP (2006 amendments not available)	XTJ general provision: for Bulg. citizens	Use of specific technical equipment, undercover investigation, use of electronic communications, opening of correspondence, entry/search of premises	No	- THB: 1-8Y+8.000BGN - ATHB: 2-10Y+10.000BGN/<10Y+10.000BGN/5-10Y+10.000BGN/5-15+20.000BGN	Compliant – basic sentence up to 8Y, aggravating circumstances do not include endangering victim's life
Czech Rep	Compliant	A, NP	XTJ THB-specific: for CZ citizens, residents, temporary residents	No THB-specific provision	No	- THB: 2-10Y - ATHB: 5-12Y/8-15Y - Combination of other sentences (deprivation of rights...)	Compliant (basic sentence >10Y) but aggravating circumstances do not include commission against vulnerable persons/children and use of serious violence
Denmark	Compliant	AP, NP, LP	Not specified	No THB-specific provision	No	- THB: <8Y - Confiscation of assets, seizure of proceeds of crime	Compliant (basic sentence up to 8Y) but aggravating circumstances not specified
Estonia	Incompliant	A, NP, LP	XTJ general provision: if act criminalised in local legislation and committed by/against EST. citizen	No THB-specific provision	No	- Enslavement: 1-5Y/3-12Y - Abduction: 2-10Y - Minor kidnapping/sexual exploitation: <3Y/1-5Y/<5Y/fine/<1Y	Incompliant
Finland	Compliant +	A, NP, LP	XTJ on THB for NP and LP regardless of local legislation	No THB-specific provision	No	- THB: 4 months-6Y - ATHB: 2-10Y	Compliant
France	Compliant +	A, NP, LP	XTJ THB-specific: for Fr. citizens and residents – applicability to THB unclear	Entry and search of premises, preventive seizure/confiscation of assets and means for/proceeds of crime, internet investigations, closure of premises (hotel, restaurant, bar... - suspect may appeal)	Exemption from sentences if testimony enabled to prevent the crime; 50% of foreseen sentence if testimony enabled to suspend crime/prevent death	- THB: 7Y+150.000 E - ATHB: 10Y+1.5 million/20Y+3million/life sentence+4.5 million - Confiscation of property, seizure of means/proceeds of crime, limitation of civil/parental rights, professional/trading ban, travel ban. Ban from territory/expulsion (aliens)	Compliant

	Definition of THB for sexual exploitation		Investigation, prosecution and conviction of traffickers				
	Scope: compliance with Council Framework Decision	Applicability	Jurisdiction	THB-specific special investigative and preventive measures	THB-specific provisions to encourage offenders to cooperate	Sentences	Aggravating circumstances
Germany	Incompliant	A, LP, NP	XTJ THB-specific provision: regardless of local legislation	No THB-specific provision	No	- THB: 6 months-10Y - ATHB: 1-10Y	Compliant (basic sentence >8 years and list of aggravating circumstances complete) but coverage of all THB acts disputable
Italy	Incompliant	A, NP	XTJ general provision: for It citizens and foreigners if act criminalised in local legislation/in international law	Undercover investigations	Provisions on offenders from OC cooperating with the justice may be used for THB	- THB: 8-20Y - ATHB: +one third to half/+another third to half - Confiscation of property (fund for victims)	Compliant (basic sentence >8Y) but aggravating circumstances not listed and coverage of all THB acts disputable
Latvia	Compliant	A, NP, LPR	XTJ general provision: for Lat citizens and permanent residents, and to foreigners having committed serious crimes against Lat citizens	No THB-specific provision	No	- THB: 3-8Y - ATHB: 5-12Y/10-15Y - Seizure of proceeds of crime, confiscation of property	Compliant (basic sentence >8 years) but aggravating circumstances do not include endangering victim's life and use of serious violence
Netherlands	Compliant	A, NP, LP	XTJ general provision: for NL citizens and permanent residents if victim is a minor	Seizure of assets, entry/search of premises, collecting data on suspects	No	- THB: <6Y+74.000E - ATHB: <8Y+up to 74.000E/<10Y+up to 74.000E/<12Y+ up to 74.000E/<15Y+74.000R - Professional ban, fines	Incompliant: sentences for aggravating circumstances >8 years, but aggravating circumstances do not include use of serious violence and basic sentence <8 years
Poland	Incompliant – but international law directly applicable	A, NP	XTJ general provision: for Pol. citizens; foreigners having committed a crime against Pol. Citizens, if act criminalised in local legislation	No THB-specific provision	No	- THB: <3Y - Limitation of civil rights, confiscation of property, victim compensation, fine	Incompliant: aggravating circumstances not specified and basic sentence <8Y)
Romania	Compliant	A, NP	XTJ general provision: for Rom. citizens; foreigners having committed a crime against Rom. citizens	Wiretapping, undercover investigations	Cooperation in proceedings grants mitigating circumstances	- THB: 3-12Y - ATHB: 5-15Y/7-18Y/10-20Y/15-25Y - Seizure of means/proceeds of crime including premises, limitation of civil rights, ban from territory.	Compliant (basic sentence >8Y) but aggravating circumstances do not include endangering victim's life
Spain	Incompliant	A, NP, LPR	XTJ THB-specific: for Spanish citizens and residents	No THB-specific provision	No	- THB: 4-8Y - ATHB: 5-10Y - Limitation of civil rights, professional ban, seizure of proceeds of crime	Compliant (basic sentence up to 8Y and list of aggravating circumstances complete) but coverage of all THB acts disputable
Sweden	Compliant	A, NP, LP	XTJ general provision: for Swed. Citizens and residents if act criminalised under local legislation	Wiretapping, bugging	No	- THB: 2-10Y - Seizure of means and proceeds of crime. Expulsion (aliens)	Compliant (basic sentence >8Y) but aggravating circumstances not listed
UK	Incompliant	A, NP, LP	XTJ THB-specific: for UK citizens and	Entry/search of premises, sexual offence preven-	No	- THB: <14Y - Confiscation of assets	Compliant (basic sentence >8Y) but aggravating circum-

	Definition of THB for sexual exploitation		Investigation, prosecution and conviction of traffickers				
	Scope: compliance with Council Framework Decision	Applicability	Jurisdiction	THB-specific special investigative and preventive measures	THB-specific provisions to encourage offenders to cooperate	Sentences	Aggravating circumstances
			residents	tive orders (suspect banned from certain actions – suspect may appeal), preventive arrest without warrant			stances not listed and coverage of all acts of THB disputable

A: attempt

NP: natural person

LP: legal person

XTJ: Extra-territorial Jurisdiction

VOT: victim of trafficking

NGOs: Non-governmental organisations

OC: organised crime

Y: years of imprisonment

N/A: non applicable

Y: year(s) of imprisonment

THB: trafficking in human beings



Partial compliance/ compliance disputable with Council Framework Decision 2002/629/JHA

Incompliance/ non-compliance in major aspects with Council Framework Decision 2002/629/JHA

5. Legislation on assistance to trafficked persons

5.1. Victim co-operation as a means to fight trafficking in human beings

Taking into account the difficulties in prosecuting trafficking in human beings discussed above, the testimony of the victim is often a crucial element for the investigation, the indictment and the trial.

Under the domestic legal frameworks examined, complaints or testimonies of the victims are not necessary to initiate a procedure against traffickers. This is in compliance with Article 7.1 of the Framework Decision, which states that “Member States shall establish that investigations into or prosecution of offences [of trafficking in human beings] shall not be dependent on the report or accusation made by a person subjected to the offence, at least [when the offence is committed on the member state’s territory]”.

However in practice, as one of the experts stated, *“trafficking in human beings investigation is among the most difficult criminal investigations. They are dependant upon testimony given in person in court. This means that the burden of proof in trafficking cases is often only satisfied if a victim is willing to testify.”* (Germany).

This does not go without problems for victims of trafficking: reporting to the police, assisting the investigation or testifying before a court exposes trafficked persons and possibly their family to the risk of reprisal from traffickers and their associates. Testifying is also often difficult psychologically. One expert from Bulgaria stated that *“judges often want to hear the witness’s story more than once, which can lead to further trauma.”* Victims may also fear, rightfully or not, to face charges for prostitution in public places etc., or charges for violations of migration laws when they are in an irregular situation: *“Victims must co-operate in the investigation, but this has never occurred, no victim of trafficking has testified. This is because they are often intimidated and do not trust the system and do not believe that anyone can help.”* (Estonia).

5.1.1. Protection measures

Anti-trafficking actors in the field of trafficking in human beings for sexual exploitation usually concur to say that guarantees need to be given to the victims in order to secure their co-operation. In addition, protection of victims who are granted a reflection period or a residency status for the purpose of their co-operation with competent authorities is a requirement under the Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration and who co-operate with the competent authorities.

For these reasons, the following paragraph examines victim and witness protection measures available in the 17 EU Member States examined, though such measures are not explicitly required under the Directive.

The criminal legislation of Member States contains as a rule a general provision regarding witness and/or victim protection. However some experts have noted that a general witness protection scheme might not be adequate to victims of trafficking for sexual exploitation: *“If a victim of trafficking wants to testify, we have a protection scheme for witnesses, but the law is very general and does not treat this phenomenon specifically. You cannot treat victim of trafficking for sexual exploitation in the same way as a person who has been trafficking drugs and then decided to testify.”* (Spain).

France and Romania have in addition adopted trafficking-specific provisions foreseeing special protection for victims of trafficking. In Romania this protection is not subject to victim’s testimony, contrary to what is the practice in most countries examined.¹⁷⁰ In France, an unusual mode of victim protection has been established through an agreement with a group of NGOs:¹⁷¹ the security of the victims is ensured through re-settling in a different region of France with the assistance of authorised NGOs.¹⁷²

5.1.2. Anonymous testimony and protection of identity

Another frequently used measure to guarantee the security of victims/witnesses during the legal proceedings is the protection of the victim’s identity during the judicial proceedings. Such a measure is not required under the EU legal framework. However, several experts have considered it necessary both from a victim/witness security perspective and from a psychological point of view.¹⁷³

In Austria, the Czech Republic¹⁷⁴, France¹⁷⁵, the Netherlands¹⁷⁶, Poland¹⁷⁷, and Spain¹⁷⁸ general provisions exist to ensure anonymity of victims who participate in judicial proceedings against the offenders.

¹⁷⁰ Articles 26 of the Law 678/2001 of Romania on Preventing and combating trafficking in human beings.

¹⁷¹ Chapter VI Art. R316.8 of the French Entry and stay of aliens and asylum Code regulates that “if his/her security necessitates a change of place of residence, the foreigner may be oriented to the national victims mechanism for victims of trafficking in human beings and pandering, implemented through a convention between the minister in charge of social affairs and the association ensuring the co-ordination of this mechanism.”

¹⁷² Interview with the national co-ordinating NGO.

¹⁷³ *“Traffickers may be present in the room, this is traumatic. There is an idea to amend the law so that video testimony would be allowed.”* (Bulgaria).

¹⁷⁴ The Czech Criminal Procedure Code, Articles 55(2), 183.a (4) and 200(1) contain detailed provisions about anonymity of all threatened witnesses.

¹⁷⁵ The French Criminal Procedure Code possesses very detailed provisions on protection of the identity of persons testifying in a trafficking case, provided “there exist no plausible reason to suppose that these [these persons] have committed any offence, and provided that they are supposed to be in a position to share relevant evidence” (Art. 706.57 to 706.59 Criminal Procedure Code of France). These criteria might be rather descriptive.

¹⁷⁶ Article 226 of the Dutch Criminal Procedure code states that *“the prosecuting judge may decide to grant the anonymity on his own motion or at the request of the witness, the prosecutor or the suspect.”* Article 226(b) makes such decision appealable by the suspect. In Austria, Article 54(a) of the Security Police Act permits public authorities to create false documents related to a trial in order to obscure the identity of a witness whose safety might be endangered.

¹⁷⁷ Article 184 of the Criminal Procedure Code of Poland regulates anonymous testimony, which the defendant may appeal.

Romania and Bulgaria have additionally adopted trafficking-specific provisions. Bulgaria regulates protection of identity for victims of trafficking and their kin.¹⁷⁹ Romanian law protects “the privacy and identity of victims of trafficking in persons.”¹⁸⁰

In some countries, anonymity of testifying witnesses is not possible. This is the case for instance in Sweden: while anonymity of victims is generally protected under the Swedish Secrecy Act, their identity has to be revealed if they testify. This might be considered a deterrent for victims to take part in the judicial proceedings. This is an example of the challenge that is posed when balancing the interests of the accused against those of a potential victim. Some Swedish experts emphasise the fact that the right to face one’s accuser, i.e. the Contradictory Principle, forms an integral part of the liberal democratic law and order state. On the other hand the trauma the potential victim would be exposed to must be weighted against this principle.

5.1.3. Non-criminalisation of victims of trafficking in human beings for sexual exploitation

Most countries have adopted in their criminal law general provisions ensuring that persons forced to commit a crime while being trafficked shall not be prosecuted for this crime. In certain Member States (Austria¹⁸¹, Finland¹⁸² and Spain¹⁸³) trafficking-specific articles exist with regard to non-criminalisation of victims for violations of immigration laws. In Romania, where prostitution is criminalised, non-criminalisation of victims of trafficking in human beings applies to offences related to prostitution and begging.¹⁸⁴

On the whole, the implementation of the existing regulation in this field still poses problems: “the protection of victims from prosecution or criminal sanctions for offences committed as a consequence of their situation as trafficked persons appears to be insufficient” (European Commission Working Document: Evaluation and Monitoring of the implementation of the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, 2008, p. 3) This shortfall was also noted by some interviewed experts.¹⁸⁵

¹⁷⁸ Organic Law of Spain 19/1994 on Witness protection, Article 2, enables anonymous testimony including protection from visual identification during the trial.

¹⁷⁹ Criminal procedure Code of Bulgaria, Art. 123. The Bulgarian Combating Trafficking in human beings Act of Bulgaria, Article 20, confirms this provision by stating that “victims of trafficking shall be guaranteed confidentiality and protection of personal data”, although without specifying whether this applies to judicial proceedings.

¹⁸⁰ Law 678/2001 of Romania on Preventing and combating trafficking in human beings last amended in 2005, Art. 26(2). According to Art 24 of the same Law trials for trafficking in human beings are closed to the public and based on Art 25 of the same Law the court may upon the victim’s request order a closed-door session.

¹⁸¹ Art. 104.7 Aliens Act of Austria.

¹⁸² Section 7 (2) on Border Offences of the Criminal Code of Finland.

¹⁸³ Art. 59 Organic Law of Spain 4/2000 on the rights and freedoms of aliens in Spain and on their social integration.

¹⁸⁴ Art. 20.1 Law 678/2001 on Preventing and combating trafficking in human beings.

¹⁸⁵ “Criminalisation of victims continues to be an issue. For example – a fine imposed in an administrative process will be changed into execution order after several notifications were not delivered to the client. The police, especially community police who usually issue these fines, are often not capable of identifying a person who has been forced into prostitution. There are also cases of fraudulent credit which carry with them prison terms despite exemplary co-operation with the police.” (Czech Republic).

5.2. Assistance to victims through provision of temporary residency status

In 2004 the Directive significantly widened the scope of 'obligations of results' for the EU Member States in the area of victim protection and assistance¹⁸⁶ in order to make their co-operation with the law enforcement more effective.¹⁸⁷

This Directive is considered by some to be an incentive for trafficked persons to co-operate with the competent law enforcement and judicial authorities and as a necessary complement to basic witness protection measures, which alone do not suffice to ensure that victims testify. Most importantly, the Directive sets new obligations for EU Member States and constitutes a step in the protection and assistance to victims of trafficking from non-EU countries who co-operate with the law enforcement.¹⁸⁸

It is important to note that in accordance with paragraphs 21 and 22 of the Directive's Expose of Motives, the United Kingdom, Denmark (as well as Ireland, which is not covered by this study) have decided not to take part in the adoption of this Directive and are not bound by it or subject to its application.¹⁸⁹

5.2.1. Reflection period: criteria, duration and termination

The Directive sets an obligation for the Member States to grant "residence permits of limited duration, linked to the length of the relevant national proceedings, to third-country nationals who co-operate in the fight against trafficking in human beings".¹⁹⁰ The Member States are obliged to apply this measure to the concerned persons "even if they have illegally entered the territory of the Member States".¹⁹¹

Before deciding upon the granting of such residence permit, EU Member States are required to inform the concerned persons of this opportunity and to grant him or her a reflection period. This reflection period is meant to allow the victim time to decide upon his/her collaboration with law enforcement or judicial authorities.¹⁹²

During the reflection period, the concerned person is required to sever all relations with traffickers. In case the person resumes such contacts voluntarily, the reflection period may be terminated and the concerned person in return is exposed to forceful expulsion unless s/he has other grounds for staying in the territory.¹⁹³

¹⁸⁶ The Palermo Protocol lists a number of programmatic obligations, which require the States to adopt certain conducts and consider certain measures, but it does not make achievement of specific results mandatory.

¹⁸⁷ Art. 11 of the Directive.

¹⁸⁸ Council Directive 2004/81/EC of 29 April 2004. "Third-country nationals" refers to citizens of non-EU countries (Art. 2 (a) of the Directive).

¹⁸⁹ This is with reference to, respectively, Articles 1 and 2 of the Protocol on the position of UK and Ireland annexed to the EU Treaty, and Articles 1 and 2 of the Protocol on the position of Denmark annexed to the EU Treaty.

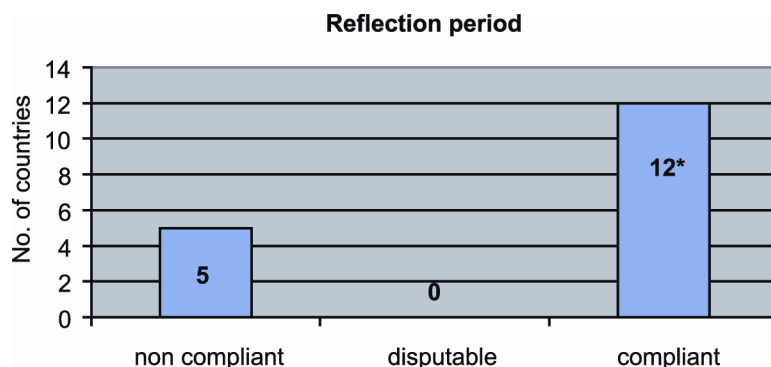
¹⁹⁰ Art. 1 of the Directive.

¹⁹¹ Art. 3.1 of the Directive.

¹⁹² Art. 6 of the Directive.

¹⁹³ Art. 6.4 of the Directive.

Figure 4. Reflection period.



* Ten countries are compliant; Denmark and the UK are not bound by relevant provisions.

5.2.2. Member States where the criteria for granting the reflection period are compliant

Just over half of the 17 EU Member States studied (Bulgaria, Estonia, Finland, France, Germany, the Netherlands, Poland, Romania and Sweden) have adopted provisions that comply with the requirement regarding the granting of the reflection period. The duration of this reflection period varies considerably. This paragraph presents these countries in ascending order of length of reflection period.

The majority of compliant countries (Bulgaria, Estonia, France, Germany and Sweden) grant reflection periods of the minimum duration foreseen by the Decision. In Bulgaria the reflection period is of 30 days, and may be prolonged for up to two months in the case of the victim being a child.¹⁹⁴ The same article specifies the obligation to inform the victim to avail themselves of the opportunity to receive a residence permit based on their decision to collaborate, which is compliant with the Directive. The Estonian Aliens Act, as amended in 2007, similarly regulates the reflection period, which is of 30 days but may be prolonged up to 60 days.¹⁹⁵ The French legislation provides for a 30 days reflection period¹⁹⁶, and specifies detailed obligations of information to the victims on the residence permit and all corresponding rights and entitlement.¹⁹⁷ In Germany, the Foreigners authority is required to grant presumed victims of trafficking a one-month deadline to leave the country or decide to co-operate with competent authorities.¹⁹⁸ In Sweden the law provides that a temporary residence permit of 30 days shall be granted to a victim upon application filed by the person in charge of preliminary investigation.¹⁹⁹

Poland, the Netherlands and Finland offer reflection periods ranging from one to six months. In Poland, a residence visa of two months is granted as a reflection period to suspected victims of trafficking.²⁰⁰ The Dutch legislation provides for a reflection period

¹⁹⁴ Art. 26 Combating Trafficking in Human Beings Act of Bulgaria.

¹⁹⁵ Art. 14 Aliens Act of Estonia.

¹⁹⁶ Chapter VI Article R316.2 of the French Entry and stay of aliens and asylum rights Code, created by decree in 2007. This Article belongs to the Regulative Part of this Code – as opposed to the Legislative Part.

¹⁹⁷ Chapter VI Art. R316 of the French Entry and stay of aliens and asylum rights Code, created by decree in 2007. This Article belongs to the Regulative Part of this Code – as opposed to the Legislative Part.

¹⁹⁸ Chapter 5 Part 1 Section 50 of the German Residence Act of 2004.

¹⁹⁹ Chapter 5 Section 15 of the Aliens Act of Sweden.

²⁰⁰ Article 33(1) (5) of the Law of 16 February 2007 amending the Law on social assistance.

of 30 days to three months.²⁰¹ In Finland the criteria for granting the reflection period are also compliant, and the reflection period of 30 days minimum may be extended up to six months.²⁰²

The case of Romania is slightly more specific as the reflection period is of 90 days, but a "tolerance regime" may be granted to presumed victims of trafficking regardless of co-operation with competent authorities (see below the paragraph on Residence permits: criteria and duration).²⁰³

5.2.3. Member States where a reflection period is not applicable

In Italy, the Directive's provisions concerning the reflection period are not relevant, as the residence permit granted to a trafficked person is not subject to co-operation with the law enforcement or judiciary (see below the section on Residence permits: criteria and duration).

5.2.4. Member States where the criteria for reflection period are not compliant

In Austria the 2008 National Report on Trafficking in Human beings mentions a 30 days "recovery" period, but no legal provisions could be identified and it is unclear whether such period is explicitly linked to the granting of a residency permit. According to an expert interviewed, a Ministry of Interior Directive, which refers directly to the Council of Europe Convention on action against trafficking in human beings, prevents the enforcing of orders for repatriation of victims during a certain period for the sake of recovery. In addition the consulted experts informed us that in practice, although victims are usually granted this recovery period, the competent authorities are not expected to inform them of the opportunity to use this period in order to decide upon their co-operation with relevant authorities, or of the possibility of receiving a residency permit in the event of co-operation. Under these circumstances, the Austrian law does not comply with the requirements of the Directive.²⁰⁴

In Belgium the reflection period is 45 days.²⁰⁵ It is granted through the delivery of an order to leave the territory with a 45 days deadline. The reflection period is conditional upon the severance of contacts with the traffickers, but also upon the severance of links with the "environment that made [the victims] enter trafficking in human beings." In the case of trafficking in human beings for sexual exploitation, this may be interpreted as an obligation to discontinue prostitution and to sever links with prostitutes or other traf-

²⁰¹ Section B9 of the Vreemdelingencirculaire of the Netherlands, adopted in application of the Aliens Act.

²⁰² Art. 52b of the Finnish Aliens Act of 2004. The Article has been adopted in 2006. Article 52b of the Finnish Aliens Act also regulates obligation to inform the victim.

²⁰³ Art 39 (1) of the Law of Romania on preventing and combating trafficking in human beings.

²⁰⁴ The Austrian Ministry of Interior informed the research team that "[the Ministry of interior has issued a ministerial directive (internal order) so that there are no measure to end the residence in Austria in a case a person has said that they are victims of trafficking. If a person claims s/he is a victim of trafficking, then s/he can get a residency on humanitarian grounds." However, the Ministry of Interior of Austria has declined sharing this document with the research team. Still according to the Ministry of Interior of Austria, "There is a decision of Constitutional Court – regulating the humanitarian residence, so that all persons can apply for it, there is now a new draft legislation prepared to amend the residence legislation accordingly."

²⁰⁵ Art. 1 of the Belgian Circulaire du 7 juillet 1994 concernant la délivrance de titres de séjour et des autorisations d'occupation à des victimes étrangères, victimes de la traite des êtres humains.

ficked victims.²⁰⁶ This provision is more restrictive than the criteria contained in the Directive, and thus in violation of the Directive. Finally, the 45 days deadline to leave the territory is only available to the persons “who approach a specialised in-taking service.”²⁰⁷ While the Directive does authorise the Member States to render the delivery of a residence permit conditional upon the participation in some specialised programme or scheme, no such provision exists concerning the reflection period. In this area too, the Belgian legislation is incompliant with the Directive.

The Czech Republic does not comply with the requirements of the Directive concerning the reflection period.²⁰⁸ The article that sets the criteria for granting a reflection period provides, strictly speaking, that co-operation with the competent authorities is a condition in obtaining the reflection period, which annuls the purpose of the reflection period and contravenes the Directive. Experts from the civil society as well as other experts confirmed that this article is implemented strictly. The Czech Ministry of Interior, when consulted, maintained that in practice, co-operation with the relevant authorities is not required in order to receive a reflection period.²⁰⁹

The Latvian legislation provides for a 30 days reflection period.²¹⁰ However, in order to be granted a reflection period, the victim would already have to disclose some information, which is a form of co-operation with competent authorities for the prosecution of the offenders.²¹¹ This annuls the purpose of the reflection period, and contravenes the Directive.

In Spain the law that regulates residence permits granted to trafficked persons who cooperate with authorities does not mention any reflection period.²¹² This constitutes a

²⁰⁶ The conditions for granting a reflection period in Belgium bring the question of whether a person trafficked for labour exploitation in, for instance, agriculture, is required to sever links with the agriculture sector.

²⁰⁷ Art. 1 of the Belgian Circulaire du 7 juillet 1994 concernant la délivrance de titres de séjour et des autorisations d'occupation à des victimes étrangères, victimes de la traite des êtres humains reads: “The certificate from the specialised in-taking center (Payoke-Saralek, Le Mouvement du Nid or Espace-P) proving the service provision, is compulsory”.

²⁰⁸ The Aliens Residence Act, Article 42 (e) regulates the reflection period as follows:“(1) The long-term residence permit for the purpose of protection shall be issued by the Ministry [of Interior] to a foreigner upon his/her request provided s/he is (a) likely to [be a victim of trafficking in human beings], or (b)[a person illegally smuggled to the Czech Republic], if his/her testimony is relevant to the prosecution, upon the condition that this person co-operates with the authorities competent for the prosecution. (2) The foreigner referred to in paragraph (1) must be informed of his/her right to request the long term residency permit. From the day when this information was delivered, the foreigner benefits from a period of one month to decide upon his/her co-operation.”

²⁰⁹ Currently there is an on-going discussion in the Czech Republic regarding this provision, namely in the sense that there should be a minimum co-operation from the part of the victim in order for it to receive the status of potential victim of THB.

²¹⁰ Chapter I – General Provisions of the Immigration Law of Latvia establishes the reflection period. The 30 days length and the criteria for the reflection is Section 4 are regulated by the Law on Residence of victim of trafficking in human beings in the Republic of Latvia, adopted in 2007.

²¹¹ Section 3 of the Latvian Law on Residence of victim of trafficking in human beings in the Republic of Latvia states that “if a third-country national provides information that possibly might aid in the disclosure and elimination of trafficking in human beings, but it is not sufficient in order to decide the matter regarding commencement of criminal proceedings or in order to decide, within the framework of a commenced criminal case, [on his/her being a victim of trafficking], [the competent authorities] shall inform in writing such third country national of the possibility to be granted a reflection period.”

²¹² Organic Law of Spain No. 4/2000 of 11 January on rights and freedoms of aliens in Spain and their social integration.

clear breach of the obligations set by the Decision. Interviewed experts from Spain confirmed this fact, one of them stating: *“At the moment, the main instrument for victims of trafficking to have some residency permit is to collaborate. There is no reflection period yet, it is supposed to be included in the future national action plan, trafficked victims are only considered as such if they are victims of organised networks or if they have enough information for the police. A legal instrument is required for reflection period to be established and in force.”* (Spain).²¹³

5.2.5. Member States not bound by the Directive

Denmark is not bound by the Directive, and has no legal provisions related to a reflection period. However, third country victims of trafficking are granted a 30 to 100 days travel deadline to decide upon their co-operation with the relevant authorities and/or to prepare their return, while EU citizens are allowed three months.²¹⁴

The UK is not bound by the Directive, yet its legislation foresees a reflection and recovery period, referring to the Council of Europe Convention on action against trafficking in human beings.²¹⁵

5.2.6. Residence permits: criteria, duration and termination

After expiration of the reflection period, the competent authorities must issue, providing the concerned person fulfils the necessary criteria, a residence permit whose duration shall be “linked to the length of the relevant national proceedings”²¹⁶, but with a minimum of six months.²¹⁷ The criteria to grant such permits to trafficked persons are as follows:

- The person must be a victim of trafficking having reached the age of majority;²¹⁸
- The person must show clear intention to co-operate with the competent authorities;²¹⁹

²¹³ The Comprehensive Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation 2009-2012 of the Government of Spain, in force since 01 January 2009, foresees, in its Area III, Objective 5, Action 3, the “transposition of the Council of 29 April Council Directive 2004/81/CE on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities”. Action 4 of the same Area and Objective foresees the “recognition of a reflection period of, at least, thirty days, so that the victims may decide upon their collaboration with the administrative, law enforcement and judicial authorities.” The latter action is envisaged to be placed under the responsibility of the ministries of Justice, Labour and Immigration, and Interior.

²¹⁴ Section 14, Paragraph 33 Aliens Act of Denmark. Action Plan to Combat Trafficking in Human beings 2007–2010: Denmark, 2007, p. 7: “Anyone who is a victim of human trafficking will, upon request, normally be granted a travel deadline of 30 days, with an option to further extend the travel deadline upon request. This is done so that support and counseling can be provided to the individuals in question. Victims who are EU nationals may, as a starting point, stay for up to 3 months in Denmark. This reflection period will be extended so that human trafficking victims, who collaborate on a prepared return, may be granted a travel deadline of up to 100 days.”

²¹⁵ National Health Service (charges to overseas visitors) (amendments) Regulations of 2008, for England, Wales, Scotland and Northern Ireland.

²¹⁶ Art. 1 of the Directive.

²¹⁷ Art. 8.3 of the Directive.

²¹⁸ Art.3 of the Directive. By way of derogation, Member States may decide to apply the Directive to minors (Art. 3.3 of the Directive)

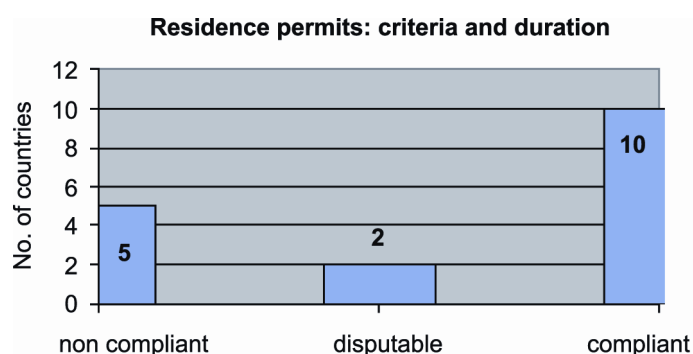
²¹⁹ Art. 1 and 8.1 (b) of the Directive.

- The competent authorities consider this co-operation opportune for the investigation or the judicial proceedings,²²⁰
- The person must sever relations with the suspects.²²¹

Member States may decide to extend such residence permit to minor victims.²²²

The permit of stay may be withdrawn if the above conditions cease to be observed, as well as if the victim's co-operation proves fraudulent, or if it affects public policy and national security concerns.²²³ Withdrawal and non-renewal of the residency permit are allowed in cases where the relevant proceedings are terminated or discontinued.²²⁴

Figure 5. Compliance with the criteria and duration for receiving residence permits



5.2.7. Member States where the criteria for residence permit are compliant

Bulgaria, the Czech Republic, Finland, France, Germany, Latvia, and Sweden have complied with these obligations in terms of legislative measures:

Under the Bulgarian legislation, the residency permit is part of a larger trafficking victim protection and care scheme, and meets the obligations set by the Directive.²²⁵ Denial of the special protection status may be appealed by the victim.²²⁶ The duration of long-stay permits is of one year, which is over the minimum period foreseen by the Directive.²²⁷ The Bulgarian Act on Combating trafficking does not specify any criteria but co-operation with competent authorities; however these may be deduced from the grounds for termination of the permit of stay: re-establishment of contact with the perpetrators, co-operation found "fictitious" by the competent authority, victim representing a threat to public order and national security.²²⁸ In addition victims need to either

²²⁰ Art. 8.1 (a) of the Directive.

²²¹ Art. 8.1(c) of the Directive.

²²² Residence permit for minors: Belgium, Bulgaria, Estonia, France, Italy, Latvia and Romania have adopted provisions enabling the granting of such residence permits to minors. In the case of Latvia and Italy, this only concerns minors accompanying victims who were granted a residence permit. In the case of France, this concerns minors over 16 years old who have a professional or educational project in France.

²²³ Art. 14 of the Directive.

²²⁴ Art. 13 and 14 of the Directive.

²²⁵ Combating Trafficking Act of Bulgaria, Article 25, provides, for "individual who have become victims of trafficking and have declared their willingness to collaborate for disclosure of the trafficking offenders (...) special protection status for the time of the criminal proceedings, including: (1) permission to foreign nationals for long-term stay in the country."

²²⁶ Art. 27, Combating trafficking Act of Bulgaria.

²²⁷ Art. 23 (3), Law for the Foreigners in the Republic of Bulgaria.

²²⁸ Art. 31 Combating trafficking Act of Bulgaria.

possess an identity document or co-operate with the competent authorities to establish their identity, which does not contravene the Decision, inasmuch as co-operation regarding one's identity is indispensable to the relevant proceedings.²²⁹ The Bulgarian legislation is therefore in compliance with the Directive, both for granting and for termination of the permit of stay.

In the Czech Republic the law foresees a long-term permit of residence for the purpose of protection. The criteria are compliant with the requirements of the Directive, so are the grounds for termination of the residence permit.²³⁰

In Finland the Aliens Act foresees the granting of a residence permit for victims who co-operate with the relevant authorities, and for their family members.²³¹ The relevant Article also provides that "co-operation will not be required, however, of victims in a particularly vulnerable position".²³² Although no particular indication is given as to what is meant by "particularly vulnerable position", this Article might open the possibility for victims to receive a residence permit without co-operating – although for a limited period of time. However, since this Article does not give victims who do not co-operate a positive right to such permit, it cannot be said that the Finnish legislation goes beyond the requirements of the Decision. The same Act indeed specifies that the duration of the residence permit is six months to one year.²³³

In France, the "Entry and stay of aliens and asylum Code" foresees a temporary stay permit on "family and personal life grounds" to be issued to a foreigner who files a lawsuit against a person for trafficking in human beings for sexual exploitation, or for pandering, or who testifies in a trial for such offences, provided the victim does not constitute a menace to public order.²³⁴ These provisions are compliant with the Directive. The same Code provides details about conditions of delivery of the permit, and the obligation for the law enforcement agency that presumes that a person is a potential trafficked victim, to inform him/her of the right to apply for the residency permit.²³⁵ The conditions for renewal or termination of the residence permit closely correspond to the Directive.²³⁶ It is necessary to note that all the provisions related to victims of trafficking, concerning residency permits, are also applicable to victims of pandering.²³⁷

²²⁹ Art. 28 Combating trafficking Act of Bulgaria.

²³⁰ Act 326/1999 of the Law of the Czech Republic on the Residence of Aliens, as amended in 2006: Section 42 (e) (2) specifies the conditions; Section 44 (5) specifies that the minimum duration of residence permit is six months.

²³¹ Chapter 4 Section 52a, Aliens Act of Finland. Notably, Chapter 4 Section 52 A of the same Act specifically prevents from granting residence permits to the family members of the victims who live abroad.

²³² Art. 52b.2, Aliens Act of Finland.

²³³ Chapter 4 Section 53 (6), Aliens Act of Finland.

²³⁴ Chapter VI Article L316.1 of the Entry and stay of aliens and asylum Code of France.

²³⁵ Article R316 Regulatory part of the Entry and stay of aliens and asylum Code of France.

²³⁶ Article R316.3 of the Regulatory part of the Entry and stay of aliens and asylum Code of France.

²³⁷ As there has not been a single court case of trafficking in human beings for sexual exploitation so far in France, the figures shown in the Country Fact Sheet of France in annex, mostly relate to suspected victims of trafficking in human beings for sexual exploitation who received a residence permit as victims of pandering.

Germany, in its Residence Act of 2004, reproduces the criteria of the Directive for the granting of the residence permit.²³⁸ This Act sets the duration of such a permit at six months, and regulates the renewal and termination in accordance with the Directive.²³⁹

Latvia regulates the criteria and conditions for issuing a residence permit of no less than six months for victims of trafficking, along the lines of the Directive.²⁴⁰ This residence permit extends to the minors accompanying the victim.

In Sweden, the Aliens Act similarly specifies the grounds for granting a temporary residence permit to victims of trafficking reproducing the terms of the Directive and sets the duration of this permit at a minimum of six months, which is compliant with the Directive.²⁴¹

5.2.8. Member States going beyond the requirements of the Directive regarding residence permits

The situation in Italy is exceptional, as the granting of a residence permit to victims of trafficking is not dependent upon their co-operation with law enforcement or judicial authorities, and this has been the case since 1998. The Legislative Decree 286/1998, Article 18, rules that at the occasion of trafficking-related investigations or judicial proceedings, the law enforcement or judicial authorities shall request a special permit of stay “for reasons of social protection” to allow the victim to escape the coercive situation or the pressure sustained. The duration of this permit is six months, renewable, and subject to the victim's participation to a trafficking-specific social program. The latter condition is compliant with the Directive.²⁴² From this stage, “there is provision for two ‘paths’ — one involving the justice system (with the victim reporting the person or persons exploiting him or her) and the other of a social nature (which is available even without the victim reporting the trafficker, solely by demonstrating the fact of exploitation and the associated danger)”. (OSCE, 2007, p. 1).

5.2.9. Member States presenting gaps in regulations on the residence permit

In Austria, Belgium, Estonia, the Netherlands, Poland, Romania and Spain there are gaps in the criteria to grant and/or to terminate the residence permit and/or in the duration of this permit.

In Austria, the provisions of the Settlement and Residence Act regulating the residence permit appear to be compliant with the Directive, both in duration and in terms of criteria. In addition, these provisions also relate to civil claims, which may cover claims for compensation raised against traffickers (see below the section on Compensation of vic-

²³⁸ Chapter 2 Part 5, Section 25, Paragraph 4(a) of the Residence Act of 2004 of Germany bears that “a foreigner who has been the victim of a criminal offence of [trafficking in human beings for sexual exploitation] may also be granted a residence permit for a temporary stay.”

²³⁹ Chapter 2 Part 5, Section 26 of the Residence Act of 2004 of Germany.

²⁴⁰ Section 6 of the Law on Residence of victim of trafficking in human beings in the Republic of Latvia.

²⁴¹ Chapter 5, Section 15, Aliens Act of Sweden.

²⁴² Article 12.2 of the Directive states that “where a Member State decides to introduce and implement the programmes or schemes referred to in Paragraph 1, it may make the issue of a residence permit or its renewal conditional upon the participation in the said programmes or schemes.”

tims).²⁴³ However, under the same Act, residence permits for humanitarian reasons cannot be requested by a person: there is no application procedure. Amendments to the Settlement and residence Act are pending to remedy this. Grounds for termination are not mentioned in the Act.

In Belgium, residence permits for victims of trafficking in human beings are regulated by the “Circulaire du 7 Juillet 1994”. Under this Circulaire the criteria for granting the residence permit include the filing of a law suit or testimony against the exploiters, and additionally the criteria of severance of contacts with the offenders and the “environment” that led them into trafficking (see above the paragraph on Reflection Period). The duration of the residence permit granted poses some additional questions as to its compliance with the Directive: under the same article, following the deadline for leaving the territory and the filing of a lawsuit, the victims only receive a “declaration of arrival” valid for three months.²⁴⁴ During the lapse of this “declaration of arrival”, if the prosecution decides to pursue the judicial proceedings, a permit of stay of at least three months may be granted.²⁴⁵ The Circulaire also requires participation in specialised programs of civil society service providers approved by the Government for those victims who file a lawsuit or who testify immediately after their identification (i.e. those who do not make use of the reflection period)²⁴⁶. This is compliant with Article 12.2 of the Directive.

In Estonia, the Aliens Act foresees a residence permit of up to one year for victims of trafficking who co-operate with relevant authorities for the purpose of criminal proceedings along the criteria provided by the Directive.²⁴⁷ The minimum length of the residence permit is not specified, which is not compliant with the Directive.

The Dutch legislation regulates the residence permit through a number of legislative acts. The “Vreemdelingencirculaire” details the granting of a residence permit before and during trial, to victims of trafficking who co-operate with the law enforcement or the judiciary.²⁴⁸ The “Dutch Aliens Act Executive Order” lists the criteria for the granting of such a permit, in line with the Directive.²⁴⁹ The Aliens Act regulates, in compliance with the Directive, that extension of such a permit can be refused in cases where the circumstances that gave ground to its issueing have ceased to exist.²⁵⁰ However the same Act,

²⁴³ Settlement and residence Act of Austria, Article 72(2): “a permit of residence for humanitarian reasons can be granted to aliens, especially witnesses or victims of trafficking in human beings or trafficking in prostitution, for the time required yet for a minimal period of six months, on the grounds that their presence is necessary to the criminal procedures (...) or for pressing charges and prosecuting civil claims in relation to such actions’.

²⁴⁴ Article 2, Circulaire du 7 Juillet 1994 of Belgium.

²⁴⁵ Art. 2-3, Circulaire du 7 Juillet 1994 of Belgium. This Article states that “in general, a permit of stay is granted for a duration of six months”, however this does not have any binding character upon the responsible agencies. The permit of stay may have an open deadline “when the complaint or the declaration of the concerned person is considered to be significant for the procedure”, which is very vague. In case of prolongation of the permit of stay “the permit is, in general, renewed for a period of six months”, without any binding character.

²⁴⁶ Article 2 of the Circulaire du 7 Juillet 1994 of Belgium.

²⁴⁷ Article 14, Aliens Act of Estonia, as amended in 2007.

²⁴⁸ Section B9 Part 7, Vreemdelingencirculaire of the Netherlands.

²⁴⁹ Article 3.48, Aliens Act Executive Order of the Netherlands.

²⁵⁰ Chapter 3.1, Article 18, Aliens Act of the Netherlands.

while specifying the duration of the residence permit, fails to provide a minimum duration for the residence permit.²⁵¹

In Poland, the duration of the residence permit for presumed victims of trafficking corresponds to the requirements of the Directive. The Polish legislation reproduces the criteria for granting a residence permit of six months, but adds a condition of a minimum duration of residency on the Polish territory for at least three months.²⁵² This last condition makes the criteria under the Polish legislation narrower than those foreseen by the Directive, which is in violation of the Directive.

The Romanian legislation transposes the requirements of the Directive through a Government Emergency Ordinance, which regulates a tolerance regime of up to six months to aliens who are presumed trafficked persons.²⁵³ The granting of the first permit of stay in the form of a “tolerance regime” is not subject to co-operation with the law enforcement or judiciary, but its renewal is.²⁵⁴ The fact that no minimum duration is specified for this tolerance regime constitutes a gap. The tolerance regime is only valid within the territorial jurisdiction of the specific Aliens Authority that granted it.²⁵⁵ Although not in contravention with the Directive, the resulting restriction of travel within Romania might pose severe obstacles to the realisation of the victims’ civil, economic and social rights.

In Spain, an adequate framework to grant residence permits for trafficked persons is absent, as highlighted by several respondents.²⁵⁶ Currently, trafficked persons who denounce the traffickers may receive a non-execution of the expelling order for the duration of the trial proceedings.²⁵⁷ This measure does not amount to granting a residence permit. In addition no minimum length is specified, in violation of the Directive.

5.2.10. Countries not bound by the Directive

Denmark, which is not bound by the Directive, foresees a 100 days travel deadline for victims of trafficking in general.²⁵⁸

No specific provisions were identified in the UK.

²⁵¹ Chapter 3.1, Article 8 of the Aliens Act of the Netherlands foresees legal residency “during the period in which the alien is enabled by our Minister to bring a complaint about [an offence of trafficking in human beings].” Article 14 of this Act sets the maximum length of such residency permit for limited duration at five years, without specifying a minimum, which constitutes a gap.

²⁵² Art. 53 (10) (15), Law of 16 February 2007 of Poland, amending the Law on Social assistance.

²⁵³ Article 99 (1) (e), Emergency Ordinance 194/2002 on the regime of aliens in Romania, approved with modifications by Law 357/2003 entered into force in 2003.

²⁵⁴ Art. 100 (5), Emergency Ordinance 357/2002 of the Government of Romania on the Regime of aliens in Romania provides that the tolerance regime might be renewed upon court order or prosecutor's ordinance “if the presence of the persons is necessary for a good procedure of the penal trial.”

²⁵⁵ Art. 100 (7), Emergency Ordinance 357/2002 of the Government of Romania on the Regime of aliens in Romania “to the competence area of the group of the Authority for Aliens which granted it and any travel outside such area shall be allowed only with previous approval.”

²⁵⁶ “Sometimes we need the testimony and we cannot get it because there is nothing we can offer to the victim. It is not fair to them – we cannot offer anything.” (Spain). “We use these articles for immigration crime related persons.” (Spain).

²⁵⁷ Articles 3 and 4, Law 4/2000 of Spain on the Rights and freedoms of aliens in Spain and their social integration.

²⁵⁸ P 17 Danish National Action Plan, and Section 14, Paragraph 33 Aliens Act of Denmark.

5.2.11. Reported gaps in implementation of the granting of reflection periods and residence permits

The review of the different legislations shows a wide disparity, and a significant number of gaps in the requirements of the Directive. This is interpreted by some experts as symptomatic of the reluctance of the legislators when it comes to granting residency and other rights to victims of trafficking.

As pointed out by some experts, incomplete transposition of the Directive is compounded by poor implementation.²⁵⁹ As indicated by numerous experts and reports, the implementation of the existing provisions is often hindered by practices which do not fully implement the national legislation itself, and which create a yet greater gap in practice.²⁶⁰ “The reflection period still seems to remain to be implemented in most countries. This may well imply that the majority of identified victims are immediately deported, which is inconsistent with human rights standards, implies that an important source of evidence is lost, and constitutes a clear breach of the Directive.” (European Commission Working Document – Evaluation and Monitoring of the implementation of the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings, p. 4, 17 October 2008).

Several experts blamed the gaps in implementation on the attitude of law enforcement²⁶¹ and other state authorities, who might perceive that some persons are not victims of trafficking but rather irregular migrants or prostitutes, who pretend to be victims of trafficking in order to obtain a residence permit.²⁶²

Gaps in the legislation and poor implementation reinforce the circle of fear and mistrust that prevents victims of trafficking from contributing to the law enforcement and prosecution efforts.²⁶³

²⁵⁹ “One weakness is that residence permits for victims of trafficking are not very tempting as they are obliged to co-operate with authorities, and because they are only temporary (6-12 months). There is no possibility of family reunification. District police and border guards grant the reflection period, but victims already have to tell something to get the reflection period, which should not be the case as it is the purpose of the reflection period to allow victims to consider whether they want to co-operate with authorities.” (Finland).

²⁶⁰ “Delays caused by investigations that drag on or in the judicial system lead to victims being returned before they have testified in trials, often they do not return to testify for the trial and thus the accused is not found guilty, German law stipulates and “imminent appearance before the court”, therefore victims must appear in person.” (Germany). “There is a reflection period of 30 days, which is not enough, in almost all cases they are deported afterwards, I am not aware of any case where the stay was longer. The overall spirit of the legislation regarding 3rd countries nationals is so exclusionary, not to allow them to come, not to allow them to stay longer than 30 days.” (Latvia).

²⁶¹ “In some countries there is a complete lack of interest, I have been told by some colleagues “we have good laws but it is not a problem, the real problem is the attitude.” In other words, the law enforcement and other persons that have to combat the crime need to be persuaded that the policy, the law is worth enforcing. They say: “these women are happy to do it”. I can accept that some women do engage in prostitution voluntarily, but by definition you cannot be trafficked voluntarily. If people do not believe the policy is worth enforcing, they will not pursue it the right way, no matter how much money there will be for it.” (UK).

²⁶² “There are hardly any victims of trafficking for sexual exploitation in the official assistance system as most victims of trafficking for sexual exploitation are considered procured prostitutes. This might have something to do with ethnic origin of the concerned women; it may be that they would be treated differently if they were Finnish nationals.” (Finland). “Some women who prostitute voluntarily or who belong to mafia-like networks, are presenting themselves as victims, and are deceiving authorities. This results in a negative vision of the victims.” (Spain).

²⁶³ “Currently we cannot do anything for a presumed victim of trafficking, we are arresting them and deporting them. We are waiting for the new Action Plan. (...) In this moment, we treat them as illegal immigrants. That adds to their fear of exploiters. And, even if you have the legal tools, it is difficult to overcome the fear.” (Spain).

5.2.12. Assistance to be granted under the reflection period and the residence permit

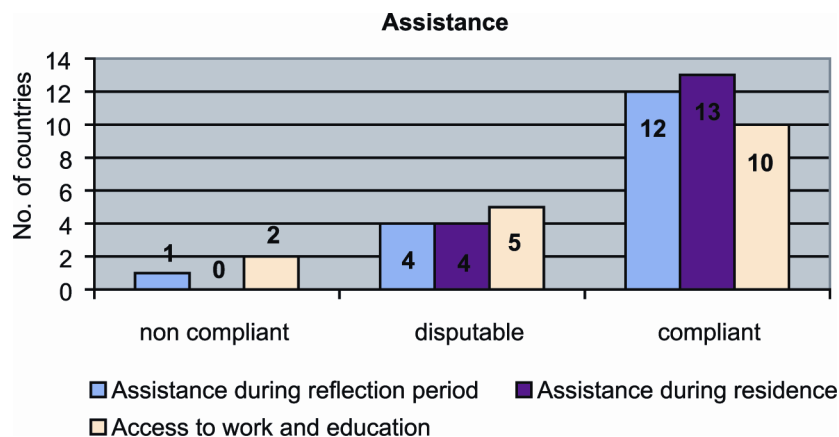
The European Commission has assessed that “[t]here seems to be a correlation between the level of development of the system of assistance for trafficked persons and the number of identified victims and investigated/prosecuted cases. There is a plausible link between the better is the assistance provided to the victim, the more likely there is to be a criminal case. Also, the more criminal cases with trafficked persons, the more likely organisations providing services to them are to advocate for a comprehensive system of assistance. (...) Figures show that in countries where there is a significant number of assisted victims, statistics on criminal proceedings are higher. This implies that a human rights-centred approach is needed not only to protect victims’ rights but also in the interest of justice.” ((COM 2008) 657 final. Commission Working Document, 2008, p. 6).

The Directive defines assistance that is accessible to victims of trafficking during the reflection period and during the duration of the residency permit.²⁶⁴ These include:

- Sufficient standards of living for persons who do not have sufficient resources or have special needs;
- Attendance to special needs of the most vulnerable;
- Safety and protection;
- Translation and interpreting services where appropriate (during reflection period and afterwards for those not having sufficient resources);
- Emergency medical treatment, as well as medical or other assistance for those not having sufficient resources;
- Access to the labour market, to vocational training and education for holders of a residence permit under rules to be defined by the Member States;
- For holders of a residence permit, access to existing programmes or schemes if any, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the respective authorities, for the purpose of recovery and normal social life.

Assessing the compliance of the assistance measures was extremely challenging due to the fact that various legal acts and by-laws regulating it were not provided by the EU Member States.

Figure 6 Victim’s entitlements



²⁶⁴ Article 6.2 and Chapter III of the Directive.

5.2.13. Member States where the assistance granted is compliant

In Bulgaria, the Czech Republic, France, the Netherlands and Spain the legal provisions concerning the provision of assistance to trafficked persons for the duration of the reflection period and the residence permit in connection with victims' co-operation with relevant authorities are compliant with the Directive (with reservation to the gaps identified concerning the criteria or duration of the reflection period or the residence permit, in the case of the Czech Republic, the Netherlands and Spain).

In Bulgaria victims are entitled to temporary housing in specialised shelters from the moment of identification for up to ten days, with possible extension of another 30 days.²⁶⁵ These shelters are responsible for providing accommodation, food and medication, emergency medical and psychological services, and assistance in contacting the victim's family members.²⁶⁶ These provisions put the Bulgarian legislation in line with the Directive when it comes to the scope of assistance delivered – however, this is subject to reservation as the 30 days extension is not a given. Assistance and accommodation provided by the specialised shelters may then be extended for the length of the judicial proceedings – that is, for the duration of the residency permit until conclusion of the trial.²⁶⁷ In addition, victim holders of a residence permit have the right to work and training.²⁶⁸ Victims of various crimes including trafficking are also entitled to receive medical treatment in emergency situations, psychological counselling and 'practical help' which is not defined in the legislation.²⁶⁹

In the Czech Republic, presumed victims who were granted the reflection period or residence permit are entitled to accommodation.²⁷⁰ They have access to health insurance if required, to training, education and the labour market.²⁷¹

In France basic medical and social assistance are granted during the reflection period.²⁷² Once the residence permit is granted, victims are entitled to shelter, accommodation, temporary housing and social care and social reintegration assistance.²⁷³ This residence permit also gives the right to work or enrol in professional training.²⁷⁴ Victims whose security is threatened may be referred to the national mechanism for trafficked and pandered victims, which entails reintegration in a different region of France with the

²⁶⁵ Article 9, Combating trafficking in human beings Act of Bulgaria.

²⁶⁶ Article 10, Combating trafficking in human beings Act of Bulgaria.

²⁶⁷ Art. 28, Combating trafficking in human beings Act of Bulgaria.

²⁶⁸ Article 28(2), Combating trafficking in human beings of Romania Act gives grant trafficked persons who hold a residence permit the "rights of permanent residents in the country" within the meaning of the Foreigners in the Republic of Bulgaria Act, which includes right to work and right to receive professional training.

²⁶⁹ Article 3(3) and Article 8, Crime victim assistance and compensation Act of Bulgaria. This provision seems to apply to all trafficked persons without necessity to participate in investigation or judicial proceedings.

²⁷⁰ Sections 42 (e) and 48 (b) of the Act 326/1999 of the Czech Republic on the Residence of Aliens.

²⁷¹ Section 48 of the Act 326/1999 of the Czech Republic on the Residence of Aliens and Section 98 of the Law on Employment of the Czech Republic.

²⁷² Chapter VI Art. R316.6 Entry and stay of aliens and asylum Code of France.

²⁷³ Chapter VI Art. R316.8 Entry and stay of aliens and asylum Code of France. Victims who have not taken part in the investigations or judicial proceedings are covered by basic medical assistance for themselves and their family members: Chapter 1 Article L251.1 of the Social action and families Code of France provides this right to any foreigner who has been residing in France continuously for over three months, regardless of his/her immigration status.

²⁷⁴ Chapter VI Art. R316.3 Entry and stay of aliens and asylum Code of France.

assistance of an NGO or social care centre.²⁷⁵ These provisions make the French legislation compliant with the requirements of the Directive.

In the Netherlands, victims have access to “services, assistance and financial aid” during the reflection period and while holding a residence permit.²⁷⁶ They are also entitled to accommodation organised by the Trafficking Co-ordination Centre.²⁷⁷ During the reflection period, presumed victims are entitled to healthcare and medical check-up, and to basic financial assistance.²⁷⁸ For the duration of the residence permit, they have a right to receive social security grants²⁷⁹, education²⁸⁰, and to engage in professional activity.²⁸¹ Victims may also receive education stipends.²⁸² These provisions cover the entire range of assistance rendered obligatory by the Directive.

In Spain, an umbrella provision gives migrants, regardless of their migration status, access to basic social services and subventions.²⁸³ Foreigners against whom administrative charges in relation to violation of immigration laws were not pressed earlier may choose to remain in Spain. They may then benefit from the right to work and assistance, for the purpose of their social integration.²⁸⁴ Since the same article prevents the bringing of immigration law charges against trafficked persons who co-operate with the law enforcement or the judiciary, these provisions apply to victims of trafficking whose expulsion was suspended in connection with investigation or judicial proceedings. These provisions are compliant with the requirements of the Directive. However, it should be remembered that Spain does not foresee a reflection period or residence status.

In Sweden the Social Service Law contains a blanket provision entitling persons who cannot cover their own basic needs to in-kind and financial assistance.²⁸⁵ This social service law is compliant with the basic assistance requirements of the Directive. Individuals who have been granted temporary residence permits in accordance with Aliens Act Chapter 5, Section 15 are exempt from work permit requirements, and may work and study in Sweden.

5.2.14. Member States where the assistance and rights granted goes beyond the requirements of the Directive

In Italy the granting of a residency permit is not subject to co-operation with the relevant authorities and in Romania the tolerance regime is available to particularly vulnerable

²⁷⁵ It should be noted that the NGOs and social centers involved in the mechanism are not specialised in trafficking in human beings: “*the victims of trafficking in human beings are accommodated together with other persons with specific social needs, and have a choice to communicate regarding their particular situation or not.*” (France).

²⁷⁶ Article 11 (2), Aliens Act of the Netherlands.

²⁷⁷ Sections 3.2.7 and 4.2, Vreemdelingendecret of the Netherlands.

²⁷⁸ Sections 3.2.8, 3.2.9 and 3.2.8, Vreemdelingendecret of the Netherlands.

²⁷⁹ These grants are calculated on the basis of number of persons in the household and age of the beneficiary

²⁸⁰ Articles 3(1)(a)(4) of the Executive Order of 2000 following the Law on the financing of studying.

²⁸¹ Article 1 of the Executive Order on the Law on Employment of aliens, as amended in 2005.

²⁸² Article 3(1)(d) of the Executive order relating to the Law on assistance in meeting educational and schooling costs for persons older than 18.

²⁸³ Art.14 Organic Law 4/2000 on the rights and freedoms of aliens in Spain and their social integration.

²⁸⁴ Art.59 Organic Law 4/2000 on the rights and freedoms of aliens in Spain and their social integration

²⁸⁵ Chapter 4 Section 1, Social services Law of Sweden states: “a person who cannot satisfy his/her needs (...) has the right to assistance of the Social Welfare Board.”

trafficked persons regardless of such co-operation. Therefore their legislative provisions on assistance to victims of trafficking go beyond the Directive requirements as they cover a wider range of trafficked persons than strictly required under the Directive.

In Italy the assistance scheme is rather comprehensive. It includes access to work, welfare and health care, reintegration assistance including assistance in job placement.²⁸⁶ This scheme is implemented through the agreements of competent ministries with specialised NGOs. Italy has established a “Special Fund” for a programme of assistance which guarantees, on a temporary basis, adequate conditions of lodgings, food and assistance for persons who have been reduced to or kept in a condition of slavery or servitude or who are victims of trafficking in human beings.²⁸⁷

In Romania, accommodation and assistance in specialised centres for a period of ten days is mandated. This may be extended to three months, which corresponds to the length of the reflection period.²⁸⁸ Specialised Centres are responsible for providing housing, personal hygiene, food, psychological and medical assistance.²⁸⁹ The situation after the end of the reflection period is less clear: Romanian legislation does not foresee a residence permit. In practice what has emerged is a tolerance regime for victims who co-operate with the law enforcement officials or the judiciary.²⁹⁰ Victims of certain crimes, including trafficking in human beings, have access to job placement services and vocational training, as well as psychological and medical assistance. If victims become subjects of the tolerance regime, they are covered by this provision.²⁹¹ In these cases, job placement services imply that victims who co-operate with the relevant authorities have access to the domestic labour market. Victims of trafficking who have applied for special protection may also be accommodated and assisted in specialised centres. The programmes offered to them may exceed the mandated reflection period.²⁹² Accordingly assistance and, by inference, access to the labour market are contingent upon the victim’s application to a special protection scheme, and the success of the application.²⁹³ This combination of provisions under various legal provisions brings Romania into compliance with the Directive.

5.2.15. Member States with legislative gaps in the assistance and rights granted

Austria, Belgium, Estonia, Germany, Finland, Latvia, Poland and Sweden present gaps in compliance with the Directive, either in terms of the assistance granted to victims of trafficking in human beings during the reflection period or the residence permit, or in terms of right to work and training and education. The authors of the present study

²⁸⁶ Legislative Decree 286 of 1998 of Italy.

²⁸⁷ Article 13 of Law No. 228/2003 on Measures to Combat Trafficking in Persons.

²⁸⁸ Art. 32 Law of Romania on Preventing and combating trafficking in human beings.

²⁸⁹ Government Decision 1238/2007 of Romania further specifies the services thus provided to victims. This document aims at standardising and improving such assistance. It is however not currently available in the English language.

²⁹⁰ Under Article 10(2) of the Law 705/2001 of Romania concerning the national social assistance system, holders of temporary residence permits are entitled to social benefits. However, this provision is unlikely to apply to the tolerance regime.

²⁹¹ Articles 35 and 38, Law 221/2004 of Romania on Measures to ensure the protection of victims of crime.

²⁹² Article 38(2) of the Law of Romania on Preventing and combating trafficking in human beings.

²⁹³ This would be in compliance with Article 12.2 of the Directive.

could not assess with certainty the compliance of Austria, Estonia, Finland and Germany regarding assistance, as there is a lack of any specific, publicly available provisions. The section below summarises the information available to the authors.

In Austria, no legislative provisions specifically regulating social, medical and other assistance to trafficked persons have been identified. No provisions were identified either regarding access to education or work for victims of trafficking who would have received a residence permit on the basis of co-operation. In certain cases certain officials seem to be authorised to grant residence permits; the granting of such permits is mentioned in official reports.²⁹⁴ According to interviewed experts, the residence permit on humanitarian grounds does not entail obligations for the State to provide specific assistance for trafficked persons. NGOs are the main providers of assistance to trafficked persons. Neither does this type of residence permit carry access to the labour market. The same experts explained that, once the residence permit is granted, victims would have to apply for a work permit, which is a difficult and uncertain procedure (in particular it would appear that having already found a job is a condition for receiving such a permit). Considering the above, Austrian legislation does not comply with the requirements of the Directive.²⁹⁵ Possibly internal procedural directives of relevant offices in Austria close this gap in practice; however the authors were not granted access to such internal procedures – which indicates that the requirement for such permits might not be known, either by the victims themselves or by the service providers.

In Belgium victims are entitled to social assistance in a special care centre during the second and third phase of the procedure (see above Residence permit: criteria, duration and termination), not during the reflection period.²⁹⁶ However, the granting of the reflection period is subject to participation in a specialised NGO centre.²⁹⁷ One can thus infer that such assistance is provided through NGOs, although no legal provisions could be identified regarding the medical assistance provided during this period. It is therefore not possible to assess the compliance of the Belgian legislation with the Directive in the field of assistance to victims. Access to the labour market is denied during the reflection period – which does comply with the Directive.²⁹⁸ During the two next phases (three months ‘declaration of arrival’ and residency permit once the prosecution has confirmed the charges against traffickers), victims have “temporary” access to the labour market.

²⁹⁴ Article 49a of the Criminal Procedure Code only foresees psychological assistance to victims of violent crimes or victims who have been affected in their sexual integrity, which would include trafficking in human beings for sexual exploitation.

²⁹⁵ An expert suggested that there exists a debate about the issue in Austria: *“Institutionalization of assistance is connected to many problematic points, for instance the needs to be taken into consideration, the fact that trafficked women should not be stigmatized by specialised regulations. We are asking for more institutionalization, but we have to act very cautiously doing so. The current practice sometimes might be better than some possible regulations.”* (Austria).

²⁹⁶ Article 9 of the Belgian Directives of 13 January 1997 to the Office for Foreigners, to the Prosecution Offices, to the Police services, to the social laws inspection services and social inspection services, amended in 2003, provide that “as soon as a victim of trafficking in human beings obtains a temporary residence permit (...)s/h may benefit from social assistance from the CPAS or through a specialised care center”.

²⁹⁷ Article 1 of the Belgian Circulaire of 7 July 1994 on granting permits of stay and work permits to foreign victims of trafficking in human beings.

²⁹⁸ Article 1 of the Belgian Circulaire of 7 July 1994 regulates that “the persons who have received a 45 days order to leave the country do not have a right to be put at work”.

However this supposes certain procedural obligations for the employer.²⁹⁹ No specific provisions were identified as to training and education. This constitutes another gap in compliance with the Directive.

Compliance of the Finnish legislation could not be assessed in the absence of identified relevant provisions regarding assistance to victims. Only the right to engage in gainful employment is specified by the law.³⁰⁰ Expert interviews highlight patterns similar to what seems to be the case in Germany: *“The victims’ assistance system was incorporated into the refugee assistance system. As they are different groups with different needs this doesn’t work.”* (Finland).

In Estonia, the law grants social assistance for victims of trafficking in human beings under the aegis of the Ministry of Social Affairs, both during the reflection period and continuing for the duration of the residence permit.³⁰¹ However, no provisions were identified that define the nature and extent of such assistance. In these circumstances, it was not possible to assess the compliance of the Estonian law with the assistance requirements of the Directive. Victims holding a residence permit are however entitled to work.³⁰² No provisions were identified regarding the right to education or training.

Germany, with no trafficking-specific provisions identified, is in a situation similar to Finland. Some expert interviews suggested that, whether in law or in practice, trafficking-specific assistance is not sufficient: *“The necessary medical care for victims of THB should be guaranteed, services designed for Asylum-seekers are not sufficient, and do not meet the specific needs of victims of trafficking in human beings.”* (Germany).

The Latvian law grants the same rights during the reflection period as during the length of the residence permit to the victims of trafficking in human beings and minors who accompany them.³⁰³ These include accommodation, basic medical coverage and a right to training and education.³⁰⁴ In addition Social Service Boards may grant to victims who co-operate access to rehabilitation services procured by service-provider NGOs and financed by the state, based on the statement of a service-provider NGO.³⁰⁵ No legislative provisions have been identified regarding the access to the labour market, which might point to a breach of the Directive.

Poland introduced in 2007 social assistance entitlements including financial support, crisis intervention, board and lodging and necessary clothing for victims of trafficking

²⁹⁹ Articles 2 and 3 of the Belgian Circulaire of 7 July 1994.

³⁰⁰ Chapter 5 Section 79 of the Aliens Act of Finland specifies that “aliens who have been issued a temporary residence permit [in relation with proceedings on trafficking in human beings] have the right to gainful employment.” This provision does not inform us on right to education and training.

³⁰¹ Articles 14 and 17 of Chapter IV of the Aliens Act of Estonia as amended in 2007.

³⁰² Article 14 of the Chapter IV of the Aliens Act of Estonia.

³⁰³ Article 4(8), Law of Latvia on Residence of a victim of trafficking in human beings in the Republic of Latvia.

³⁰⁴ Article 7, Law of Latvia on Residence of a victim of trafficking in human beings in the Republic of Latvia, with reference to Chapter II Section 13 of the Law on Social services and social assistance, provides the following rehabilitation entitlements to victims who co-operate and minors who accompany them: shelter and accommodation, first aid, psychological consultations, medical practitioner or specialist consultation, emergency medical treatment, access to training and educational programs.

³⁰⁵ Article 10.2, Latvian Ministers Cabinet Regulation No. 889 of 31 October 2006 Regarding the procedures by which victims of trafficking in human beings receive social rehabilitation services, and the criteria for the recognition of a person as a victim of trafficking in human beings.

during the reflection period,³⁰⁶ and for the duration of the residence permit.³⁰⁷ Shelter is provided by a crisis intervention centre specialised in trafficking in human beings. These provisions comply with the requirements of the Directive concerning basic assistance. However, victims of trafficking who hold residency permits do not have access to the labour market, which is not compliant with the Directive.

5.2.16. Countries not bound by the Directive

Denmark has not adopted any specific legal provision with regard to assistance to victims.

In the UK, victims of trafficking in human beings are entitled to free basic healthcare.³⁰⁸

5.2.17. Legal aid and legal assistance

In addition to other forms of assistance, Member States may make free legal aid accessible to victims.³⁰⁹ This provision does not constitute a positive obligation under the Directive.

Free legal aid for victims of trafficking is foreseen in Austria³¹⁰, in Belgium through specialised NGOs and with the specialised services of the Prosecutor's Office³¹¹, in Bulgaria³¹², in the Czech Republic³¹³, in Estonia, France³¹⁴, in Latvia with the dedication of a lawyer³¹⁵, in the Netherlands³¹⁶, Romania³¹⁷ and Sweden.³¹⁸ In other countries, such services are usually provided by NGOs specialised in victim assistance.

Denmark and the UK are not bound by the Directive. In Denmark, legal assistance is available to victims of crime in general.³¹⁹

5.3. Assistance after the trial

The Directive does not specify what treatment is to be given to the victims who have co-operated with the law enforcement or the judiciary once the legal proceedings have been concluded.

³⁰⁶ Art. 33(1) (5) of the Law of Poland of 16 February 2007 amending the Law on social assistance.

³⁰⁷ Art. 53(1)(15) of the Law of 16 February 2007 amending the Law on social assistance.

³⁰⁸ The Provision of Health Services to persons not ordinarily resident Regulation amendments of 2008 for Northern Ireland (Art. 3), as well as the National Health Service (Charges to overseas visitors) (Amendments) Regulations for England (Art 1 and 2), Wales (Art. 2) and Scotland (Art. 4), foresee free access to basic healthcare for potential victims of trafficking during the reflection period, or for identified victims of trafficking within the meaning of Article 4 of the Council of Europe Convention on Action against trafficking in human beings.

³⁰⁹ Article 7 of the Directive.

³¹⁰ Art. 49a Criminal procedure Code of Austria.

³¹¹ Belgian Directives of 13 January 1997 to the Office for Foreigners, to the Prosecution Offices, to the Police services, to the social laws inspection services and social inspection services, amended in 2003.

³¹² Art. 8 and 10 of the Crime Victim assistance and financial compensation Act of 2006 of Bulgaria, amended in 2007 and Art. 11 of the Combating Trafficking in human beings Act of Romania.

³¹³ Art. 48 (b) of the Act 326/1999 of the Czech Republic on the Residence of aliens makes free legal aid a possibility, not an entitlement.

³¹⁴ Art. R316(3), Entry and stay of aliens ad asylum Code of France.

³¹⁵ Art. 7 Law on Residence of a victim of trafficking in human beings in the Republic of Latvia.

³¹⁶ Legal assistance during the reflection period is regulated by Section 3.2.9 of the Dutch Vreemdelingen-circulaire B9.

³¹⁷ Art. 44 of the Law of Romania on Preventing and combating trafficking in human beings.

³¹⁸ Section 1, Aggrieved party counsel Act of Sweden.

³¹⁹ Chapter 66 A, Administration of Justice Act of Denmark.

However, as stated earlier, sustainable (re-)integration of victims of trafficking is an important factor in the fight against trafficking in human beings. In this view have the authors of this study considered it relevant to examine the legislative provisions that some Member States have adopted regarding assistance for victims' reintegration after the end of the relevant legal proceedings.³²⁰

Experts often indicated that victims who have received residence permits in connection with legal proceedings are rarely offered the possibility of remaining in the country of destination after the end of these proceedings.³²¹ In a few instances, longer permits of stay or extension of the current permit of stay may be issued, for example in France,³²² or in Finland.³²³

Certain countries, for example Denmark³²⁴ or the Netherlands³²⁵ foresee special assistance with repatriation when victims do not wish to co-operate with the law enforcement or after the end of the judicial proceedings.³²⁶ France has adopted specific provisions for trafficked persons who hold residence permits: they may benefit from return assistance financed by the National Agency for the Reception of Foreigners and for Migrations (Agence nationale de l'accueil des étrangers et des migration)³²⁷ or by the offender.³²⁸ Poland does not have any specific legislation on the issue, but rather a repatriation programme in co-operation with NGOs. In Romania, facilitation of repatriation takes place at administrative and diplomatic level, while victims themselves are not legally entitled to return assistance.³²⁹ The same types of provision exists in Bulgaria.³³⁰

³²⁰ For Italy, where residence permit and assistance are not conditioned to participation in legal proceedings, these considerations are not relevant.

³²¹ *"The victims are often returned immediately after the trial."* (Germany).

³²² In France, in case of final condemnation of the perpetrator, a resident card may be issued to victims who have testified or filed a complaint against the perpetrators based on Article L316.1 of the Entry and Stay of aliens and asylum Code of France.

³²³ In Finland a continuous residence permit after the conclusion of the trial may be issued, subject to strict conditions: under Chapter 4 Section 54 of the Aliens Act of Finland such residence permit may be issued "after a continuous residence of two years in the country if the circumstances on the basis of which the alien was issued the previous fixed-term permit persist." This provision is unclear: it would transpire that the co-operation with authorities remains a condition for extended stay after conclusion of the trial, which does not seem to have been the intention of the legislator. This rather seems to relate to the threats posed to the victim in case of return to the country of origin.

³²⁴ *"We now have a practice so that victims of trafficking are offered a prepared return. We have an agreement with International Organization for Migration (IOM) who will implement a pilot project that will support the creation of a framework for assisted voluntary return of vulnerable migrants from Denmark through a) Individualised information provision for migrants and Danish Immigration Service (DIS) b) Individualised return arrangements and reintegration assistance; c) Stakeholder co-ordination and co-operation."* (Denmark).

³²⁵ Chapter II Article 3, Netherlands Regulation designating aliens for reasons of residence for a temporary aim foresees comprehensive financial assistance for return to the country of origin.

³²⁶ Where state authorities do not provide specific assistance for return, victims of trafficking are often referred to service providers in countries of origin by NGOs.

³²⁷ Article R316.9, Entry and stay and asylum Code of France.

³²⁸ Regardless of the granting of the residence permit to the victims, sentenced perpetrators are also liable to cover the price of repatriation of the victims of trafficking (Art. 225.24 CC of France).

³²⁹ Articles 29, 30, 37 and 39 Law on Preventing and combating trafficking in human beings.

³³⁰ Art. 16 and 17 Combating trafficking in human beings Act of Bulgaria.

Some countries of origin, for instance Romania, Bulgaria or Estonia, have also established mechanisms for reintegration of returned trafficked persons. These operate with varying success.³³¹

5.4. Compensation

Compensation of victims of trafficking in human beings is not a requirement under the Directive. However, it is considered by many experts to be crucial to the victims' sustainable extrication from the exploitative situation, both psychologically and economically.

In the EU Member States, compensation of victims of trafficking in human beings continues to be a serious challenge. "While the right to compensation is ensured by legislative measures, and many countries even have a public fund for compensation (AT, BE, BG, CZ, DK, FI, FR, HU, LV, LU, MT, NL, PT, SK, SE, UK), the only available figures show that the number of victims of trafficking who have received compensation is very low" ((COM 2008) 657 final, 2008, p. 3).

In the countries of destination, there are multiple obstacles to compensation claims for the victims. After return to the country of origin, it is also extremely difficult for victims to access compensation from the country where victims were trafficked.³³²

Among the Member States covered by this study Belgium, Bulgaria, the Czech Republic, France, Italy, the Netherlands, Romania, Spain and the UK possess national compensation schemes that are specific to certain types of crimes or to trafficking in human beings in particular, used with varying success.

Belgium has established a financial assistance scheme for victims of certain criminal offences including trafficking in human beings.³³³ According to a Belgian expert, the implementation of this scheme, slow at its inception, is currently improving.³³⁴

³³¹ "Three shelters have been opened under the Nordic Baltic Pilot Project and they serviced only 6 victims returned from abroad. The NBPP will run out in 2008." (Estonia).

³³² This is illustrated for instance by the difficulties encountered in such situations by the UK "Poppy Project" implemented with the UK Criminal Injuries Compensation Authority (CICA). "As of May 2007, the Poppy Project had referred 12 potential cases of compensation claims to lawyers. Seven had been submitted for a claim and were awaiting adjudication. In July 2007 the CICA granted the first successful claim to victims of trafficking; in December 2007 it was reported that the CICA would change the interpretation of their guidelines to enable victims of forced prostitution and false imprisonment to ensure compensation claims are more accessible to trafficked persons who have been sexually exploited" (OSCE/ODIHR, 2008, p. 114).

³³³ Article 3 of the Law of Belgium of 17 March, 2001.

³³⁴ "There is a commission for the Assistance to Victims of Intentional Violence, in this law there is also an article on victims of trafficking. Judicial practice – when they pronounce confiscation on property of perpetrators they also say that the money from this can go to the victims. It is not systematic, but it occurs more often now. There is also compensation for material damages and moral damages, but this is more rarely used." (Belgium). "You really have to be inventive in a legal way to get compensation. Suspects are often foreigners, do not have financial means in Belgium. It is very difficult to get compensation, there is a compensation fund, but it is difficult to get access to it. You have to prove that there was violence applied. On the other hand we try to get access to funds that were seized during investigation so that the seized funds would be given to the injured party. The judge decides based on written file, testimonies during the trial by the victim are not necessary, a legal representative can ask for a compensation. This is quite an advantage in comparison with other countries. Courts, in cases there are seized funds, will often award the money to the victim." (Belgium).

In Bulgaria³³⁵ and the Czech Republic³³⁶, according to the information received, the victims hardly ever, if at all, make use of the compensation scheme.

In France, a compensation scheme was created in 1990 for victims of international violent offences and their dependents. In order to claim compensation a victim must have reported the crime to the police and it is not necessary for an offender to have been identified or convicted. While this aspect increases victims' access to compensation, several sources highlight that fact that the fund is not commensurate with the specific situation of trafficked persons.³³⁷

In the Netherlands, a Victim Support Agency was created, which is in charge of processing compensation claims, including those from victims of trafficking. In addition the police force and the Public Prosecution Service are tasked with mediating in damages settlements.³³⁸ The Victim Support Agency concluded that this scheme was implemented in an insufficient and non-harmonised fashion, with a number of obstacles for the victims.³³⁹

³³⁵ *"There is a law on financial compensation – unfortunately, there were no claims so far, the law is in force since 2007. Maybe victims are still afraid, they do not believe they can receive a compensation. The police is obliged to advise about this possibility, it is difficult to monitor this."* (Bulgaria).

³³⁶ *"One of the problems is that it is not possible to ask for compensation in the regime of confidential witness."* (Czech Republic). *"Another problem is the high cost of civil law procedure on compensation. The party that has lost the case has to pay the court expenses. Clients do not have the means to pay and we [a service provider] do not have the means either."* (Czech Republic).

³³⁷ *"Since 6 July 1990 the victims of intentional violent offences (or their dependents) have enjoyed a special status and are eligible for "national solidarity" in the form of compensation payments made by the Guarantee Fund for Victims of Acts of Terrorism and other Offences, Fonds de Garantie des victimes des actes de terrorisme et d'autres infractions (FGTI). These are administered by the Commission on Compensation for Victims of Crime (Commissions d'Indemnisation des Victimes d'Infraction — CIVI). (...) In order to claim compensation a victim must have reported the crime to the police. However, it is not necessary for an offender to have been identified or convicted. Where criminal proceedings are ongoing it is not necessary for them to have been finalised. It is also not necessary to pursue a civil claim against the offender. (...) Problems can occur in the application of this scheme to victims of trafficking. A case not prosecuted as human trafficking (Art. 225-4 Criminal Code) would not automatically qualify for full compensation. Such cases would only be eligible for this scheme if the applicant is capable of proving he or she suffered of violence carrying death, permanent incapacity or incapacity for work for more than a month. This research has found no cases of victims of human trafficking who have been compensated by the scheme as trafficking victims. (...) Additional problems that may be faced by a victim of trafficking include the need to be "lawfully resident" in France. (...) France has well-developed schemes of claiming compensation from the state and from the defendant and has some positive examples of good practice in this regard. Legal aid is available and there are a wide range of active and experienced NGOs. However, the schemes have not been tailored to the needs of trafficking victims and the prosecution of the offence of trafficking is almost non-existent. This means that access to compensation is, in practice, restricted." (OSCE/ODIHR, 2008, p. 66) As an expert put it: *"The victim compensation Commissions are legally accessible to most trafficked persons. However the condition for this access is the existence of a criminal procedure under the articles on trafficking in human beings. Since there has been no procedure under these article (on sexual exploitation) until now, victims generally and practically do not have access to compensation."* (France).*

³³⁸ Victim Care Instructions of 2004 of the Netherlands.

³³⁹ *"There is ambiguity between the police and the Public Prosecution Service for settling damages. The settling of damages is organised differently everywhere and in the various police regions and district public prosecutor's offices the conditions, on top of the conditions in the Aanwijzing Slachtofferzorg 2004 (the Victim Support Instructions 2004), that are put on the settling of damages vary a lot. For this reason a lot of victims do not undertake any attempt at settling damages. There is also ambiguity with claims by the injured party. In some court districts the claims are handled more formally than in other court districts. Also the court districts vary in the amount of replacement detention given if the compensation regulation is*

In Romania, compensation is available to Romanian citizens or residents in Romania upon request and provided that the offence was committed on Romanian territory.³⁴⁰ The compensation provisions apply to victims of “serious crimes”, which include crimes of violence and sexual crimes.³⁴¹ This would apply to certain cases of trafficking in human beings for sexual exploitation. However, imperfections in the criminal law make this scheme difficult to apply (OSCE/ODIHR, 2008).³⁴²

In Spain the law foresees compensation and assistance for victims of sexual offences, which might apply to victims of trafficking in human beings for sexual exploitation specifically. However this law concerns only Spanish or EU citizens, and the criteria are rather restrictive.³⁴³

In the UK, a fund exists to compensate for injuries “which are not purely minor” the victims of violent crimes – which would cover some cases of trafficking in human beings. This fund is administered by the Criminal Injuries Compensation Authority (CICA). For a successful claim a criminal conviction is not required. However, a victim is required to have reported the matter to the police in a timely manner and to have medical evidence. They should also be prepared to co-operate and assist the investigation and prosecution.³⁴⁴ Access to this fund is rarely available to, or exercised by, the victims.³⁴⁵

imposed jointly on more than one offender. Besides this it appears that judges vary on how they think about items that qualify for compensation, the amount for damages, the absence of proof documentation and the suspect’s objections.” (Victim Support Agency, “Schadevergoeding voor slachtoffers van misdrijven in de praktijk”, 2007)

³⁴⁰ Article 21, Law 221/2004 of Romania on Measures to ensure the protection of victims of crime, recently amended.

³⁴¹ Government Emergency Order no 211/2004 of Romania on Protection of Victims of Crime.

³⁴² “In order for the recently established scheme to be of tangible benefit to trafficking victims it is likely that damages provisions would have to be reviewed to include a moral damages element. The current restriction on the types of damages available as well as the obligation to become a civil claimant in criminal proceedings means that victims of trafficking have to pursue two avenues for compensation. Where a victim cannot identify the perpetrator they are entitled only to material losses. The other eligibility criteria, in particular the requirement for violence and the time lines, may also impact negatively on a trafficked person.” (OSCE/ODIHR, 2008, p. 89).

³⁴³ Law 35/1995 of Spain on Help and assistance to the victims of violent offences and offences against sexual freedom.

³⁴⁴ In 2004 and 2005, 30 per cent of claims were refused for a delay in reporting or “failure to cooperate” (OSCE/ODIHR, 2008, p. 110).

³⁴⁵ “The criterion that demands a victim must have been subject to violent crime causing more than minor injury can create a barrier to eligibility for trafficked victims if they were only subject to psychological violence. The restrictions placed on eligibility have already been used against victims of labour exploitation (also being presumed victims of trafficking) due to the finding that they voluntarily engaged in an unlawful act though their illegal entry into the UK and hence they failed the eligibility test on “character grounds” Additionally, the CICA may refuse or reduce the amount if the victim has been involved in criminal activity or if the victim provoked the violence by behaving aggressively or starting a fight (in 2004/5, just under 21 per cent of claims were refused for these reasons). The other restrictive criteria which may affect trafficking victims is the fact that a victim should not be living with or associated with the perpetrator at the time of the application unless the perpetrator is actually convicted of a crime. The rationale for this is to prevent the perpetrator from benefiting from the award.” (OSCE/ODIHR, 2008, p. 111). Also, as an expert stated: “There are certain moral considerations, which often impede victims of trafficking from claiming compensation, because it requires legal status in the UK.” (UK). This points out once more the necessity of protecting victims of trafficking from charges of immigration laws violation.

Where no trafficking-specific scheme has been adopted, or where access to it is difficult, victims could in theory recourse to claims for unpaid wages. However, this is extremely difficult, especially in cases of sexual exploitation, because in most EU Member States provision of sexual services is not considered a form of work.³⁴⁶

In countries where prostitution is regulated as a form of work, whether at national or at local level (for instance in the Netherlands or Germany), victims of trafficking for sexual exploitation can sue their traffickers to claim unpaid wages. However this might be complicated in cases where the victims are illegally staying on the territory at the time when the exploitation takes place. Also, experts suggest that even in legal systems where both labour and civil claims for compensation may be filed, victims rarely use or benefit from it.³⁴⁷

5.5. Does the law and its implementation facilitate victims' extrication from the exploitative situation?

Assistance to victims of trafficking is not only a human rights issue, it is also necessary in order to enable the victims' extrication from the trafficking networks. This in turn reduces the number of victims and increases the risks for the perpetrators to be prosecuted. As an Italian expert put it, *"Opportunities for referral and care, for protection and for re-integration of victims are a major factor for the extent and nature of trafficking in human beings, as well as for efficiency of the fight against trafficking. The higher are these opportunities, the more chances there are for the victims to extricate from the exploitative situation and to report the offenders – and the higher the risks are for the offenders."*

However, are the existing systems of assistance, rehabilitation and reintegration effective?

5.5.1. Weaknesses of implementation

Many experts have repeatedly stressed insufficient and weak implementation of the existing frameworks for assistance, rehabilitation and (re-)integration of victims of trafficking.

One of the key reasons is the insufficient implementation of the existing systems of assistance, rehabilitation and reintegration. In many cases, lack of awareness and training in the government agencies, especially law enforcement representatives³⁴⁸, who identify

³⁴⁶ *"With prostitution specifically, the problem with compensation is that because it is not regulated [as work] the courts do not want to accept claims for foregone wages. And in criminal proceedings the courts decline to consider the compensation claims because a monetary value cannot be attach to it. In many cases only material damages can be claimed (clothes etc). In one case, when the client is as a result of trafficking infertile and suffers pains in sexual intercourse, the court expert could claim only 100 000 CZK (equivalent of 3 500 Euro)."* (Czech Republic). Another Czech expert indicated: *"We are not aware about a single successful case of compensation."* *"Except maybe in rare cases, compensation does not take place. It would necessitate for the victims to file civil lawsuits against perpetrators, which is very unusual."* (Italy).

³⁴⁷ *"Compensation cases are extremely rare, though the legislative framework is sound. In practice many requests are denied, often emotional damages are not considered valid, the process is long and arduous, and the victims are returned [to their countries of origin] before the compensation procedure can be completed."* (Germany).

³⁴⁸ *"Officially trafficking in human beings is being combated. However, in reality, victims' access to protection measures is complex and difficult. Assistance to victims depends on their participation in denunciation or investigation. In order to be protected, the victim needs to demonstrate the threat or the deceit, which are difficult to*

victims and assess their compliance with conditions for assistance prevents presumed and actual victims of trafficking from benefiting from the existing schemes.

Another major reason behind the weakness of victim assistance is the lack of resources. This is difficult to verify as there is no mechanism to check whether the Member States do affect the relevant resources to the implementation of the transposed Directive.³⁴⁹ The research shows high disparity in this regard among the various Member States.³⁵⁰

5.5.2. Weaknesses in the design of existing systems

According to many experts, the basic principles underlying the existing victim assistance system are inadequate.

The very fact that the current assistance schemes mostly depend on co-operation from the victims, as well as the temporary nature of the permit and other restrictions, were consistently commented on as being suboptimal to efficiently fight trafficking in human beings by facilitating the victim's extrication.³⁵¹ The Italian model, which was assessed positively in Italy³⁵², was recommended by several experts. However, even this model remains weak when it comes to sustainable extrication and social reintegration of the victims.³⁵³ Some experts stated that, for assistance and reintegration through work to deliver sufficient and durable results, there is a need to do more in fighting discrimination towards migrants, which limits the trafficked persons' ability to find a job.

demonstrate. In reality, when a victim denounces a criminal network, the police at least detains her and launches an expelling procedure." (Spain). "Policemen and Gendarmes in charge of trafficking cases lack training. Problems appear in the field of information to victims. Victim identification is not adequately done either. This Decree [on residency permit and reflection period] is thus not implemented in practice." (France).

³⁴⁹ *"Regarding social services, the legislation is satisfactory in terms of services provision, but infrastructure of safe housing and medical care is not very developed. This is a resources issue." (Latvia).*

³⁵⁰ *"Previously, victims were not likely to seek out NGO if they knew there are no services. Now there is some funding and awareness-raising campaigns have achieved some measure of success and thus more victims are seeking out NGOs." (Estonia).*

³⁵¹ *"We recommend a legal right for victims of trafficking to be granted residence permit (now the Ministry may grant and does usually grant this permit, but need not necessarily do so, and there is no right to appeal)." (Austria). "Victim assistance is subject to their contribution to the proceedings. The victims are under pressure to co-operate with the police (which implies huge risks for them and their families), and are somehow evaluated based on their "social performance". They are placed in a precarious situation, and maintained in this status through the delivery of short term permits of stay, which make any employment practically impossible. Basic material assistance is provided, but durable perspectives are direly missing. NGOs are compelled to palliate these gaps and to act around incoherent situations." (France). "EU Directive on Witness Protection has not been fully implemented. TRPs (Aufenthaltstitel) are issued contingent on testimony, and are not unlimited in temporal scope, and do not guarantee sufficient personal protection. A permanent residence permit would be recommended." (Germany).*

³⁵² *"In Italy, victims' co-operation in the inquiry or the judicial proceedings is not a condition for their protection and care. Ideally, unconditional protection for victims and their families, both in the country of origin and in the country of destination, certainly is a factor for reduction of trafficking in human beings." (Italy). "While it is not yet possible to take stock of the implementation of Article 13 (which is still in the preliminary application stage), regarding Article 18 some data are available indicating its relevance and effectiveness." (OSCE PC.DEL/874/07, p. 2, quoting Alessandra Barberi, Technical Office for the implementation of Article 18 of the Department for Rights and Equal Opportunities under the Presidency of the Council, *Dati e riflessioni sui progetti di protezione sociale ex art. 18 dal 2000 al 2006*, Rome, March 2007).*

³⁵³ *"Even in cases where victims benefit from Articles 13 and 18, their fate in the long run remains problematic. The residence permit on the grounds of social protection and professional integration, foreseen by Article 18, remains a short term permit. In order to transform this precarious status into a long term residence permit the victims must find a job." (Italy).*

Some experts have also questioned the appropriateness of the assistance provided to victims under the systems in place, as well as the “standardisation” of this assistance.³⁵⁴ Some experts have commented, for instance, on the insufficient assistance to victims with special needs or victims who are also drug users.

Often, victims of trafficking do not have access to relevant and reliable information about assistance offered. In some cases, the organisation and conditions attached to provision of assistance prevent a trafficked person from accepting it; in other cases victims of trafficking are afraid that accepting assistance would be seen by their traffickers as co-operation with the authorities and thus would put them and/or their families at risk (Brunovskis & Surtees, 2007, p. 8-9).

More generally, the reintegration of victims seems to remain an unmet challenge. As an expert summarized it: “reintegration is a huge challenge, the society is not tolerant, victims are considered prostitutes, stigmatized. Many victims of trafficking were abused by their neighbours.” (Bulgaria).

5.5.3. Victims from EU countries

Several experts (France, Germany, Spain, and Italy) have pointed to the fact that nationals of the country where the exploitation takes place, as well as EU citizens are not covered by the domestic legislation provisions transposing the Directive. These victims, who are legally present in the country of exploitation and thus do not need to be issued a residence permit, are often expected by the responsible authorities to have access to some kind of social assistance (provided by health and social services either in the country of destination or from the country of origin). Even where this is the case, this kind of assistance does not include trafficking-specific services. As a result, these victims tend to fall through the cracks of the assistance systems.³⁵⁵ This does not constitute a breach of the Directive, but it points out to a weakness of several current systems of victims’ assistance. Some countries have taken steps to remedy this situation, for instance Belgium³⁵⁶ and Sweden.³⁵⁷ The scope of this study did not allow for a detailed exploration of this phenomenon, which warrants further research.

³⁵⁴ “What victims have in common is precisely the fact that they were granted the status of victims of trafficking, nothing else. They have different needs, different ideas about their future life. Therefore they need a wide range of customised services.” (Czech Republic).

³⁵⁵ “There are some gaps in the immigration and residence laws and access to social services, especially for EU citizens, who fall into a sort of gap in the legislation, which may vary drastically based on local procedures of the service providing entity, those services provided are not sufficient, additional costs are not covered, e.g. travel to service providers, and counselling.” (Germany). “French victims receive other forms of social subsidies, EU citizens do not fall under any assistance framework. The status of EU citizen thus practically excludes these victims from assistance measures, since these measures are linked to the granting of a residence permit which is not necessary to EU citizens.” (France).

³⁵⁶ Exposé des motifs, Doc. Parl., Chambre, 2005-2006, 51- 2478/001.

³⁵⁷ Ordinance 2002:1118 concerning compensation for asylum seekers and other paid to municipalities and county councils by the state.

Table 2: THB legislation Matrix No. 2 Victim oriented legislation

	Reflection period	Assistance granted during reflection period	Criteria for granting of residence permit	Coverage of minors by THB-specific residence permit	Duration	Personal security: VOT-specific provisions
Austria	Incompliant: no legal provision available	No legal provisions identified	Incompliant (criteria compliant but grounds for termination not specified, no application procedure)	No	Compliant	No- general witness protection scheme
Belgium	Incompliant – 45 days but additional criteria incompliant with the Directive	No legal provisions identified	Compliance disputable – obligation to severe links with the "milieu" having led to THB	No	Incompliant (3 months minimum)	No- general witness protection scheme
Bulgaria	Compliant – 30 days	Emergency accommodation, health assistance, compensation	Compliant	Yes	Compliant + (1 year duration)	Yes
Czech Rep	Incompliant: criteria for granting reflection period include co-operation with Police/Judiciary	Accommodation, health insurance, social assistance	Compliant	No	Compliant	No-general witness protection scheme
Denmark Not bound	Not bound by Directive. 30 to 100 days travel deadline	No legal provisions identified – see NAP (health assistance, social and psychological assistance)	Not bound by Directive. Humanitarian grounds/asylum/100 days travel deadline	No	Compliant	No
Estonia	Compliant – 30 days	Yes – type of assistance not specified	Compliant	Yes	Incompliant (no minimum duration)	No
Finland	Compliant – 45 days	No legal provisions identified	Compliant + (particularly vulnerable victims may be granted permit without requirements)	No	Compliant	No
France	Compliant – 30 days	Basic medical and social assistance	Compliant	Yes if > 16 years old and professional/educational personal project	Compliant	Yes
Germany	Compliant – 1 month	No legal provisions identified	Compliant	No	Compliant	No
Italy	N/A – residence permit not subject to co-operation with Police/Judiciary: reflection period irrelevant	N/A	Compliant + (no requirements but VOT status)	Minors accompanying adult victims	Compliant	Yes
Latvia	Incompliant: criteria for granting reflection period include co-operation with Police/Judiciary	Accommodation, health-care, training and education, psychological assistance	Compliant	Yes, for children accompanying a VOT	Compliant	Yes
Netherlands	Compliant – up to 3 months	Health coverage, legal assistance, accommodation, daily care, financial aid	Compliant + (no requirements to severe ties with suspects/offenders)	Yes	Compliance disputable – up to 6 months but no minimum identified	No– general witness protection scheme
Poland	Compliant – 2 months	"Crisis intervention", shelter, meal, necessary clothing and designated benefit	Incompliant – additional criteria incompliant with Directive	No	Compliant	Yes
Romania	Compliant – 90 days. In addition "tolerance regime may apply to VOTs who do not co-operate with authorities"	Temporary accommodation, social services, compensation	Compliant	Yes, in specialised centres	Incompliant (up to 6 months, no minimum)	No– general witness protection scheme
Spain	Incompliant: no reflection period	N/A	Incompliant: only suspension of expulsion order.	No	Incompliant (no minimum specified)	Yes
Sweden	Compliant – 30 days	In-kind assistance, social assistance	Compliant	No	Compliant	No– general witness protection scheme
UK Not bound	Not bound by the Directive, yet compliant.	Not bound. Provision of health services	Not bound by the Directive	No	Compliant	No– general witness protection scheme

	Legal aid	Access to labour market/training with residence permit	Assistance once residence permit issued	Assistance programme participation	Grounds for extension/termination	Assistance to return
Austria	Yes if co-operation with authorities – not THB-specific	No provisions identified	No legal provisions identified	Optional	No legal provisions identified	Not specified
Belgium	Provided by licensed NGOs' specialized centres and specialized services of Prosecutors' Office	Yes	Accommodation, temporary work permit, social assistance	Signing in NGO-implemented assistance programmes is compulsory	Compliant	Yes
Bulgaria	Yes	Yes	Accommodation, board, psychological and medical assistance, work permit	Optional	Compliant	No – only facilitation through communication with Embassies/Consular offices)
Czech Rep	Yes	Yes + training	Accommodation, health insurance, social assistance	Optional	Compliant	Not specified
Denmark Not bound	Yes (general provision)	No THB-specific provisions but not bound by the directive	N/A	Optional	No legal provisions identified but not bound by the Directive	Yes
Estonia	Yes	Access to labour – no provisions re training or education	Yes – type of assistance not specified	Optional	No legal provisions identified	Yes – see NAP
Finland	No	Access to labour – no provisions re training or education	No legal provisions identified	Optional	Compliant	Not specified
France	Yes, if co-operation with authorities	Yes	Accommodation, social assistance, financial assistance, assistance in re-settlement in different region, medical assistance	Optional	Compliant	Financial assistance (offenders' confiscated assets may cover the costs)
Germany	No	No legal provisions identified	Not specified	Optional	No legal provisions identified	Not specified
Italy	No	Yes	In-kind assistance, accommodation, healthcare	Signing in assistance scheme is a condition for residence permit	Compliant	Not specified
Latvia	Yes	Training/education – no THB-specific provision on right to work	Rehabilitation assistance, accommodation, healthcare, psychological assistance	Optional	Compliant	Not specified
Netherlands	Provided by State during reflection period	Education and training accessible, possible stipends. Access to labour market	Social services, financial aid	Optional	Compliant	Yes
Poland	No	No	Social assistance, accommodation in specialized centre	Optional	No legal provisions identified	Yes
Romania	Provided to all VOTs regardless of co-operation with authorities	Compliant, but no THB-specific provisions	Job-seeking assistance, psychiatric and health care, social assistance	Optional	No legal provisions identified	Issuance of IDs, transportation to border
Spain	No	Compliant, but no THB-specific provisions	Rights to basic social services/assistance regardless of immigration status	Optional	N/A	Facilitation
Sweden	Yes	No legal provisions identified	Compliant: In-kind assistance, social assistance, social insurance, but not THB-specific	Optional	Compliant	No
UK Not bound	No	No THB-specific provisions but not bound by the Directive	Free healthcare	Optional	No legal provisions identified but not bound by the Directive	Not specified

A: attempt
NP: natural person
LP: legal person

XTJ: Extra-territorial Jurisdiction
VOT: victim of trafficking
NGOs: Non-governmental organisations

OC: organised crime
Y: years of imprisonment
N/A: non applicable

Y: year(s) of imprisonment
THB: trafficking in human beings

 Compliance with European Council Directive 2004/81/EC disputable

 Incompliance with European Council Directive 2004/81/EC

5.5.4. Co-ordination and institutionalisation of co-operation between state and non-state actors

As outlined above, numerous gaps exist between the Member States' obligations towards victims under the Directive and the entitlements that victims can effectively access, because of gaps (1) between the Member States' obligations under the Directive and the domestic legal provisions specifying victims' entitlements; and/or (2) between domestic legal provisions on victims' entitlements and their implementation (i.e. the entitlements that victims can effectively access).

In some countries, civil society organisations have bridged some of these gaps. Their role is therefore often recognised as crucial in addressing the needs of trafficked persons, which does not exonerate the Member States from their obligations and responsibility in this domain. The Directive mentions, without making it an obligation, the possibility for the Member States to share or delegate some of their responsibilities towards victims to civil society organisations.

The Directive does not specify which agencies or organisations should perform identifications, which enables a wide range of actors to identify possible victims of trafficking. Domestic legal frameworks do not systematically specify which agencies bear the duty to identify, register, refer or assist the victims at the stage of the initial victim's identification. In practice, the police, the prosecutors' offices or the foreigners' offices, the state social or medical services, and to a very large extent, civil society actors, identify possible victims of trafficking. In this context, some experts highlighted that *"There is a need to develop practical definition who is a victim of trafficking and who can enter the referral system; there have been confusions."* (Finland). Good practices in this domain exist for example in Belgium³⁵⁸ and the Netherlands³⁵⁹, where guidelines for identification of the victims have been issued for the law enforcement and the judiciary.

The Directive addresses the role civil society organisations may play immediately after the initial identification of a presumed victim of trafficking. Article 5 of the Directive, which obliges the Member States to inform supposed victims of trafficking of the possibility of being granted a reflection period and a residence permit under the conditions specified above, states that "Member States may decide that such information may also be provided by a non-governmental organisation or an association specifically appointed by the Member State concerned." The last words of the Article suggest that, in the cases of Member States availing themselves of this opportunity, they do so in a way which is specific and formalised.

At the following stages of victim assistance, Article 12 (1) of the Directive (1) obliges the Member States to guarantee that victims falling under the scope of the Directive have

³⁵⁸ Ministry of Justice Directive COL 01/07 (1 February 2007) designed for judges, prosecutors and the Police. An expert commented: *"There are good initiatives – in a directive, there is a list of indicators, by these indicators police can recognize a victim of trafficking, which helps the police to charge the crime. There is a multidisciplinary procedure for co-operation to establish the status of victim, it is new and clearly written, the purpose is that every actor who comes into contact with victim knows what to do, it is meant also for ordinary actors, not only for specialised units, not yet published."* (Belgium).

³⁵⁹ Policy guidelines on investigating trafficking in human beings have been issued for prosecutors in 2006. Not only do these guidelines define victims of trafficking, they also list a number of clues that point at a potential victim.

access to basic minimum assistance (examined in the preceding chapters) without specifying whether such basic treatment could be provided by civil society actors and under which conditions, and (2) obliges the Member States to guarantee that, where 'additional' assistance programs exist, they should guarantee access for victims falling under the scope of the Directive, (3) recognises that this 'additional' assistance may be performed by civil society organisations, but (4) only obliges the Member States to guarantee access to 'additional assistance' provided by civil society where formal agreements between the state and civil society service providers exist.³⁶⁰

These two Articles of the Directive raise two questions. Firstly, are civil society actors best placed to address the needs of trafficked persons? Secondly, when civil society actors address the needs of victims of trafficking, does the state have the responsibility to regulate the role of civil society organisations and formalise state/civil society co-operation in this area?

Many experts are of the opinion that civil society actors are better placed to interact with victims of trafficking than state actors. It is often believed that trafficked persons tend to trust civil society representatives more, and that they are less likely to demand their rights than when their sole point of contact is a state actor. However, some EU Member States have decided to assist trafficked persons through public social services only.³⁶¹ The project team did not gain access to any research that assessed which service provision may be more likely to prove adequate.

Where civil society actors are involved in addressing the needs of trafficked persons, there are strong reasons to indicate why the state is in a position to formalise co-operation with these actors. Firstly, formalisation may address important issues related to the quality of assistance and equal treatment of trafficked persons, for example by setting minimum standards. In general, formal agreements specifying the respective responsibilities of the civil society actors and of the state (for example financial contribution or facilitation of certain procedures for victims to access such assistance) also limit the room for the state to rely on civil society actors for fulfilling responsibilities more properly belonging to the state. Some interviewed experts from the civil society were in favour of increased formalisation of co-operation between non-state services providers and the state authorities (especially where the state adopted new legal provisions on victims' entitlements, which some experts felt would be best implemented by NGOs).³⁶²

³⁶⁰ Article 12 (1) of the Directive provides that "The third-country nationals concerned shall be granted access to existing programmes or schemes, provided by the Member States or by non-governmental organisations or associations which have specific agreements with the Member States, aimed at their recovery of a normal social life, including, where appropriate, courses designed to improve their professional skills, or preparation of their assisted return to their country of origin."

³⁶¹ "The referral system is quite new – it has been functioning since the summer of 2006. It is coordinated by two asylum seeker centers – services for the victims are provided in the area where the victim is identified. The fact that the asylum centers coordinate the services and the services are provided locally requires functioning networks - therefore multidisciplinary trainings are needed; to facilitate the co-operation between the local service providers and the asylum centers in cities of Joutseno and Oulu (far from eg. capital Helsinki). So far the co-ordination has had some difficulties – it will be evaluated in 2009." (Finland).

³⁶² "Due to the evaluation of the former plan of action, an important part of our work in Danish Centre Against Human Trafficking is to improve the co-operation between state authorities and non-state authorities." (Denmark). "In the beginning (2005) co-operation between authorities and NGO was quite good but it has changed for the worse lately. NGOs do not think that the new amendments providing for reflection period and residence

In other cases, interviewed experts from the civil society considered that advocating for formalisation of the current practices might result in more restrictive conditions and a de-facto regression in the actual assistance provided.

In practice, some Member States have codified co-operation between the state and civil society in the legislation or in by-laws; others have addressed this question in programmatic documents; in other Member States these partnerships are not formalised and the form and degree of co-operation depends on the established practice or on circumstantial relations between civil society actors and state representatives.³⁶³ Where formal partnerships exist, the formats vary widely and so does the responsibility undertaken by the states towards their civil society partners. Where there is no legal or programmatic basis for co-operation, experts have reported significant obstacles in co-operation between the civil society and the state authorities.³⁶⁴

The success of inter-agency and state/civil society partnerships also relies largely on the existence of anti-trafficking national programmatic documents.³⁶⁵ These are important in order to process information from multiple sources into policy-making, detailed programmatic measures, and for specifying the duty bearers of each of these measures. Where national programmatic documents are in place, they usually lead to an increase in transparency, co-ordination, monitoring and evaluation of the responses to trafficking in human beings. As the table below shows, national programmatic documents have not yet been adopted in all the Member States examined. Neither have trafficking-specialised agencies been created everywhere.

permit are actually beneficial to victims of trafficking. (...) A better solution might be to let some specifically authorized NGOs or other authorities than the police and border guard issue the reflection periods.” (Finland).

³⁶³ Some experts highlighted the role of international organisations and the EU in promoting partnerships between governmental authorities and NGOs. *“Compared with the past, victim assistance has been implemented in the best way, it has to do a lot with a good co-operation with ICMPD and pressure of the EC. There are now Memorandums of Understanding between state and non-state authorities. In the past this has never led to a fruitful co-operation, but now it is working very well. NRM is being prepared by Animus association and the National Coordination Council on trafficking in human beings, and it is a good model.” (Bulgaria).*

³⁶⁴ *“When the Plan is implemented in early 2009, then the Plan would assign some tasks to some NGOs. The police will in the future refer the presumed victims. Now NGOs are not allowed to talk to victims, now it is not allowed, we do not have the legal room for allowing this. We would be violating the rules for investigation. Only the lawyer and prosecutor can talk to the victim now.” (Spain).*

³⁶⁵ A part of, or a complement to national programmatic documents, National Referral Mechanisms are often recommended as, among other things, a means to frame the responsibilities of each state or non-state agency and facilitate their cooperation to the benefit of trafficked persons. *“A National Referral Mechanism (NRM) is a co-operative framework through which state actors fulfil their obligations to protect and promote the human rights of trafficked persons, co-ordinating their efforts in a strategic partnership with civil society. The basic aims of an NRM are to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services. In addition, NRMs can work to help improve national policy and procedures on a broad range of victim-related issues such as residence and repatriation regulations, victim compensation, and witness protection.” (OSCE/ODIHR, 2004, p. 15).*

	National Action Plan/Period	Generation	Agency
Austria	National Action Plan Against THB March 2007 to May 2008	First	Task Force on Human Trafficking National Co-ordinator against THB
Belgium	No Action Plan Ministerial Directive concerning the investigation and prosecution of trafficking in human beings, called Col 01/2007. The Directive entered into force on 1 February 2007.	N/A	National Rapporteur (within the Centre for Equal Opportunities and Opposition to Racism) Interdepartmental Co-ordination Unit for the Fight against Trafficking and Smuggling in human beings
Bulgaria	National Program for Prevention and Combating of Trafficking in Human Beings and Assistance to Victims 2008 (annual)	Fourth	National Commission to Combat Trafficking in Persons
Czech Rep	National strategy to combat trafficking in human beings 2008-2011	Third	Ministry of Interior
Denmark	The National Action Plan for Combating Trafficking 2007 to 2010	Second	Danish Centre against Human Trafficking (Center mod Menneskehandel - CMM) – outreach, information, training, co-ordination of social assistance Inter-Ministerial Working Group – co-ordination
Estonia	Development Plan for Combating Trafficking in Human Beings 2006–2009	First	Ministry of Justice – co-ordination Ministry of Interior – identification of victims
Finland	FINNISH MINISTRY OF THE INTERIOR'S ACTION PLAN AGAINST TRAFFICKING IN HUMAN BEINGS 2005 (Mol working group proposed to specify the plan in Dec 2007)	First	Ministry of Interior
France	None	N/A	L'Office Central pour la Répression de la Traite des Etres Humains (O.C.R.T.E.H.)
Germany	None (Draft Action Plan for Combating Racism, Xenophobia, etc., including trafficking was drafted in 2007, but not yet adopted)	N/A	The Federal Criminal Police Office
Italy	None	N/A	Comitato di coordinamento delle azioni di governo contro la tratta di esseri umani (est. 21 March 2007, registered 5 July 2007), under the Ministry of Equal Opportunities
Latvia	State program for the elimination of trafficking in human beings 2004-2008	First	Ministry of Interior
Netherlands	National Action Plan on (Combating) Human Trafficking [Nationaal Actieplan Mensenhandel (NAM)] (December 2004) Supplementary measures for the National Action Plan against Trafficking in Human Beings (2006)	First+	National Public Prosecutor National Rapporteur on Trafficking in Human Beings (issues annual reports since 2002) Human Trafficking task Force (since 2007)
Poland	National Programme for Combating and Preventing Trafficking in Human Beings 2007–2008	Second	Central Team for Combating Trafficking (est. 2006) at the Polish General Police Headquarters
Romania	NATIONAL STRATEGY AGAINST TRAFFICKING IN PERSONS 2006-2010 NATIONAL ACTION PLAN 2006-2007 For implementing the National Strategy against Trafficking in Persons 2006-2010	Third	National Agency Against Trafficking in Persons http://anitp.mai.gov.ro/en/
Spain	National Integral Plan to Combat Trafficking in Human Beings for the Purpose of Sexual Exploitation 2009-2012	First	Interministerial Coordination Group chaired by the Ministry for Equality (Ministry of Foreign Affairs and Cooperation, Ministry of Justice, Ministry of Interior, Ministry of Education, Social Policy and Sports, Ministry of Labour and Immigration, Ministry of Health and Consumption)
Sweden	2008 Action Plan against Prostitution and Human Trafficking for Sexual Purposes		National Criminal Investigation Department (publishes annual situation reports since 1999) National Rapporteur on Trafficking in Human Beings
UK	UK Action Plan on Tackling Human Trafficking 2007, updated 2008	First+	UK Human Trafficking Centre (UKHTC)

6. Factors influencing prevalence and patterns of trafficking in human beings and trafficking in human beings for sexual exploitation

The literature on trafficking in human beings abounds in examples of varied and complex factors that influence the prevalence and patterns of trafficking in human beings: “they range from globalisation, employment, trade and migration policies, humanitarian and environmental disasters and poverty to gender and ethnic discrimination, violence against women, lack of opportunities in countries of origin and the increasing demand for cheap, unskilled and easy to exploit labour and services in countries of destination” (Report of the EU Experts Group, 2004, p. 12).

The available data does not allow for an evidence-based identification of specific relevant factors. It is therefore not possible to analyse how exactly they influence the phenomenon of trafficking in human beings in general, and that of trafficking in human beings for sexual exploitation in particular. However, it is generally agreed that the factors influencing trafficking in human beings can be subsumed into two groups – factors shaping the demand (also called ‘pull’ factors) for services, including sexual services, provided by trafficked persons and factors determining the supply (also called ‘push’ factors) of trafficked persons.

Before considering some of the ways in which the demand and supply of sexual services of trafficked persons are shaped, the setting in which this interaction takes place at the national level will be examined, i.e. the choices of the state regarding the regulation of markets, including criminalisation of certain acts.

Many experts share the opinion that the regulation of the sex service market influences both the demand and the supply of services provided by trafficked persons, and therefore that it influences the patterns and prevalence of trafficking in human beings for sexual exploitation. Nonetheless, there are strong divergences in the explanations of how precisely this happens and what would be the most appropriate course for policy making.

6.1. Debate and research on regulating prostitution

In the EU Member States, prostitution remains a highly sensitive and divisive issue. Efforts to regulate prostitution have been motivated by various considerations, such as concerns of morality, law and order, public health, gender discrimination and empowerment of persons engaged in prostitution. In response to the issue of trafficking in human beings for sexual exploitation, which has over the past decades gained an unprecedented international attention, some EU Member States have re-opened the issue of regulation of prostitution. According to Hubbard, Matthews and Scoular (2008),

in many countries the views on prostitution coalesced around the opinion that female prostitution is rarely voluntary, and often a consequence of sex trafficking.³⁶⁶

An active debate thus exists in several EU Member States about the advantages and disadvantages of various regimes regulating prostitution.³⁶⁷ The degree to which proposed changes to the legislation are subjected to public debate and to which different stakeholders are involved in the subsequent decision making process varies greatly across the EU. For instance, in many of the countries covered by this report collectives of sex workers have expressed concerns that their views on how the prostitution market can be appropriately regulated are not sufficiently taken into consideration.

The regulation of sex markets can perpetuate or deepen the stigmatisation and marginalisation of prostitution and prostitutes, or it can contribute to their empowerment (Zatz, 1997, p. 291 qtd. in Weitzer, 2005, p. 214; Phoenix, 2008). It can also influence the size and the visibility of the sex market.

As Weitzer (2005) points out, our knowledge of several aspects of sex markets is notably sparing, including indoor prostitution (in brothels, saunas, massage parlours, escort services and so on); male and especially female customers; male and trans-gender persons engaged in prostitution; and managers (be it pimps or the managers and owners of sex establishments). Generally, information on any segment of the prostitution market tends to be limited due to the inherent difficulties in studying a stigmatised phenomenon. Information comes mostly from one-off, small-scale qualitative research.

Research on the prostitution markets typically points towards a segmentation between indoor and outdoor prostitution, with outdoor prostitution being associated with the lowest stratum of the market and strongest stigmatisation, and with independent 'call-girls' forming the highest stratum (Weitzer, 2005 and 2007). This stratification has implications for working conditions, workers' self-esteem and the impact of prostitution on the surrounding community. According to literature reviewed by Weitzer, control over working conditions is generally lowest in street prostitution, where the risk of assaults, robbery and rape is higher than among off-street workers, and persons engaged in street prostitution are also more likely than off-street sex workers or the general population to exhibit psychological disorders and assess their work negatively. On the other hand, an overwhelming majority (97 per cent) of call girls, who usually represent the highest strata of the prostitution market, have reported positive experiences, such as an increase in self-esteem after they began working as prostitutes, compared with 50 per cent of brothel workers and 8 per cent of street prostitutes (Prince, 1986 qtd. in Weitzer, 2005, p. 218). Also, HIV rates vary markedly among groups of persons in prostitution, with the highest incidence among drug-injecting street sex workers (Weitzer, 2005, p. 217). Weitzer concludes that the research provides strong evidence that negative phenomena ascribed to prostitution are not universal (Weitzer, 2005, p. 219).

³⁶⁶ Hubbard, Matthews and Scoular (2008) argue that there is now a shared preoccupation with the repressing spaces of street prostitution and that the state and law may intervene in sex work markets with the intention of tackling gender injustice, but in fact are merely perpetuating geographies of exception and abandonment.

³⁶⁷ For more expert opinions on the advantages and disadvantages of different models regulating prostitution, see annex III.

The findings on street prostitution, the most visible and discussed segment of the market, are often presented as typical for sex work *per se*, despite the fact that in many countries, including for example Denmark, the Netherlands and the UK, the majority of persons engaged in prostitution work in off-street establishments. The more 'up-market' the prostitution, the more unreliable and scarce is the available information.

As some of the experts interviewed for this study pointed out, advances in modern communication technologies (mobile phones, internet) facilitate the 'less visible' sex markets. Some of the concerns expressed were that, especially when paired with a lack of capacity and insufficient law enforcement resources to ensure adequate responses, off-street prostitution is becoming more difficult to monitor, and that it may be associated with equal or even higher risks than street prostitution.

Regarding the customers of sexual services, they represent a demographically diverse group. Relatively little is known about their motivations, attitudes and behaviour patterns. Research shows that the majority are "regular citizens who have professional jobs and are in relationships" Sanders (2008). Further literature indicates that customers use the services of prostitutes because they desire certain types of sexual experiences or more variation in their sexual experiences; they desire sex with a person of a certain image or with specific physical attributes; they find this illicit and risky conduct thrilling; they wish to avoid the obligations or emotional attachment involved in a conventional relationship; they have difficulty finding someone for a conventional relationship (Weitzer, 2005 and 2007). A review of internet discussion fora and interviews with clients suggests that many are looking for much more than sex; they place a premium on the provider being friendly, conversational, generous with time and providing what has come to be known as a "girlfriend experience," with elements of romance and intimacy. Some clients report good experiences; others, however, report largely negative experiences including feelings of shame and stigma for engaging in this disreputable behaviour (Weitzer, 2005, pp. 223 – 225). Research by Monto (2000 and 2004 qtd. in Weitzer, 2005, p. 213) conducted on a sample of 2300 customers arrested in the US for solicitation concludes that "there is no reason to believe that most customers are violent" and that "a relatively small proportion of clients may be responsible for most of the violence against prostitutes".

Importantly, "at present, there is a fundamental gap in research knowledge on the demand for trafficked prostitution" (Di Nicola et al., 2009, p. 5). One of the reasons for this gap in knowledge is that it is difficult to distinguish between demand for services provided by trafficked persons and services provided by consensual prostitutes. The results of the studies presented in Di Nicola et al (2009) highlight the fact that the vast majority of buyers of sexual services prefer 'free' women, i.e. there is no specific demand for sexual services provided by trafficked persons. At the same time, the buyers are interested in services provided at a reasonable (i.e. cheap) price and are to a degree aware of the exploitation that may be present in prostitution (pp. 232-3).

One of the least studied aspects of prostitution is the involvement of 'third parties' – pimps, brothel owners, operators of sex premises etc. (Weitzer, 2005, pp. 227 - 229).

In general, findings about the 'visible' segment of the prostitution market (street prostitution, window-prostitution, in some cases brothels) are often generalised to the whole

prostitution market and the existing research and debates on regulation of prostitution neglect the fact that the prostitution market is diverse and segmented.

6.2. Spectrum of regulatory regimes in the EU

Until about a decade ago, most Western European countries followed in broad patterns the spirit of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, which calls for the criminalisation of the exploitation of prostitution by third parties and criminalises a number of related activities (such as soliciting, kerb-crawling, advertisements for sexual services), but does not criminalise the offer of sexual service per se. Prostitution was criminalised prior to the change of regime in the formerly socialist countries.

In the late 1990s and early 2000s, the regulatory regimes in the EU countries began to vary greatly. The changes were driven by differences in framing the issue of the prostitution/sex business. They have resulted in differing policy goals and choices of instruments to achieve them. Legislative approaches to prostitution have moved away from prohibition towards legalisation and decriminalisation on one side and towards partial (Finland) or full (Sweden) criminalisation of the demand for sexual services on the other side.

There is no international guidance as to how the EU Member States regulate the prostitution market. The EU Experts Group on Trafficking in Human Beings reiterates that international law makes “a clear distinction between trafficking [in human beings] and prostitution as such” and that it leaves to individual Member States to address consensual, non-coerced prostitution in their respective domestic laws (Report of the EU Experts Group on Trafficking in Human Beings, 2004, p. 6).

Purchasing sexual services from, or procuring sexual services from persons below 18 years of age and forcing somebody into prostitution (forced prostitution) are always criminalised in the EU Member States. Any act related to the exploitation or facilitation of the prostitution of minors would fall under the definition of trafficking in human beings under the Framework Decision, as would all forms of coerced prostitution. For this reason, this aspect of prostitution regulation is not discussed as an integral part of this chapter, which will only analyse the exchange of sexual services between consenting adults for remuneration or for the promise of remuneration.

Most of the 17 EU Member States regulate prostitution by a set of partial, incomprehensive legal provisions, which leave many aspects unregulated or under-regulated. In addition, national legislations often propose unclear definitions of the various criminal acts they punish in relation to prostitution. Of the 17 studied countries, only Austria and the UK define in their legislation what is meant by ‘prostitution’.³⁶⁸ In the studied countries,

³⁶⁸ In Austria the Criminal Code, §74 (1) (...) (9) defines prostitution as: the execution of sexual practices on one’s own body for money with the intention to ensure a continuous income for oneself or a third person by this recurrent execution or toleration. In the UK, “prostitute” means a person who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly. “Payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount. (Sexual Offences Act 2003, Section 51(2), Interpretation of Sections 48 to 50).

various acts are criminalised under one and the same heading, and the same act is sometimes criminalised under several headings.

The 17 studied EU Member States can be broadly divided into four groups based on the way they regulate the exchange of sexual services between consenting adults for remuneration or the promise of remuneration (see fig. 7):³⁶⁹

- 1) Countries in which the exchange of sexual services between consenting adults for remuneration is explicitly legal, i.e. considered work or 'professional activity' under state-specified conditions. This is the case in parts of Austria, Germany and the Netherlands.
- 2) Countries in which the sale of sex between consenting adults is not prohibited as such, but some related activities (such as for example soliciting in public places, procurement, kerb-crawling, pimping, profiting from prostitution of another person, brothel-keeping) are criminalised either by invoking prostitution-specific legal provisions or by invoking legal provisions that are not prostitution-specific (such as disturbance of public order, 'hooliganism'). This is the case in Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Italy, Latvia, Poland, Spain and the UK.
- 3) Countries in which purchasing sexual services is criminalised such as in Sweden.
- 4) Countries in which engagement in prostitution (both offering and buying of sexual services) is criminalised such as in Romania.³⁷⁰

The suggested categorisation is necessarily open to criticism because some may consider that the criteria do not take into account some of the differences between countries grouped into one category.³⁷¹

In this context, it is useful to refine the analysis by distinguishing the legislative provisions regulating, from legalisation to criminalisation, acts performed by (1) third parties (this appellation covers a complex reality as third parties in the exchange of sexual services range from pimps to mediators or owners of premises used for prostitution); (2) prostitutes; (3) clients.

A variety of acts performed by third parties with regard to someone else's prostitution are criminalised in most of the studied countries. In some, any sort of involvement from 'third parties' is criminalised (this is the case for example in France, Sweden, the UK). In others such acts are criminalised under certain circumstances such as the use of coercion (Spain). In the Netherlands third parties' involvement is legalised if performed in accor-

³⁶⁹ The study refrains from using some of the terminologies used to denote a particular regulation of the prostitution market, because these do not distinguish precisely what activities or actors in prostitution (prostitutes/sex workers, clients or 'third parties' such as pimps, operators of brothels etc.) are criminalised, unregulated, regulated (controlled, but not explicitly legalised) or permitted (legalised) and the same terms are used by various authors to describe different sets of legal frameworks. For illustrative comparison of the meanings implied in some of the definitions by various authors see Annex IV.

³⁷⁰ However, Art. 20 of the Law 678/2001 on Preventing and Combating Trafficking in Human Beings stipulates that a person subjected to human trafficking who has committed the offence of prostitution will not be punished for this offence if, before the criminal investigation for trafficking in persons began, he/she alerted the relevant authorities about it or if, after the investigation began or after the offenders have been identified, he/she eased their arrest.

³⁷¹ For more details on different legislations and practices regarding the prostitution regulation regimes in the 17 Member States, see annex II.

dance with the law. However the acts performed by third parties are rarely clearly defined in the law and cannot always be distinguished from one another. Where these acts are criminalised, they are at times criminalised regardless of whether the provider of sexual services consents, and/or of whether the act entails financial gain for the ‘third party’ involved. For example, in some Member States ‘pandering’ encompasses forcing into prostitution, while in other legislations it refers to promoting or mediating prostitution or procuring in prostitution. Under some legislative systems, the same acts would be called ‘pimping’ or ‘engaging somebody else in prostitution’ or ‘procuring’. ‘Exploitation of other persons’ prostitution’ is sometimes defined separately, although the definition might relate, depending on the legislation in question, to pandering without coercion or to forcing into prostitution. Sentences for all these acts, however defined, vary greatly.

Prostitutes/sex workers are criminalised in some countries (Romania), while in others the provision of sexual services in compliance with the law is considered explicitly legal and a form of work with attached labour rights (the Netherlands). In most EU Member States, prostitution is not considered work and prostitutes cannot take part in health and social insurance schemes as these are often linked to the performance of ‘professional activity’ or ‘work’.³⁷² In most countries, however, income from prostitution is taxable (PACE, 2007, par 13).³⁷³

The clients are criminalised in some countries (Sweden) and on the other end of the spectrum clients might be considered customers in their act of purchasing sex services (however, no instance of “customer protection” in the area of sex services was identified.)

A detailed study of all aspects of regulation of the sex markets in the 17 EU Member States was beyond the scope of this report, but available information indicates that significant differences exist among the 17 EU Member States, presented in the Matrix on the national-level legislation regulating prostitution of adults (see table table below).

Table 3: National-level legislation regulating prostitution of adults

	Provider of sex services		Procurer in sex services			User of sex services	
	Is there a specific national level uniform legislation on the treatment of prostitution?	Is there a specific national level uniform legislation on provision of sex services in public places/soliciting?	Is pandering/pimping/enticing into prostitution criminalised at national level?	Is exploitation of others’ prostitution criminalised at national level?	Is coerced prostitution criminalised at national level?	Is there national level uniform legislation on using sex services?	Is knowingly using services of victim of sex trafficking/sex trade criminalised at national level?
Austria	Not in place	Not in place	Criminalised <2Y	Criminalised <1Y Aggravated: <2 or <3 Y	Criminalised 6M-5Y	Not criminalised	Not criminalised
Belgium	Not in place	Criminalised 8 days to 3M + fine	Criminalised 1-5 Y + fine	Criminalised 1-5 Y + fine	Criminalised through THB provisions fine + 1 – 5 Y (Aggravated THB fine + 5 - 20 Y) /as pandering 1-5 Y + fine	Not criminalised	Not criminalised

³⁷² Prostitution is considered a form of work in the Netherlands and Germany and a sex worker can enter the social protection system. In most countries sex workers would qualify for the basic social coverage, which is granted irrespectively of the type of commercial activity.

³⁷³ The scope of this study did not allow for researching these topics in more detail.

	Provider of sex services		Procurer in sex services			User of sex services	
	Is there a specific national level uniform legislation on the treatment of prostitution?	Is there a specific national level uniform legislation on provision of sex services in public places/soliciting?	Is pandering/pimping/enticing into prostitution criminalised at national level?	Is exploitation of others' prostitution criminalised at national level?	Is coerced prostitution criminalised at national level?	Is there national level uniform legislation on using sex services?	Is knowingly using services of victim of sex trafficking/sex trade criminalised at national level?
Bulgaria	Not in place	Not in place	Criminalised <3 Y + fine Aggravated: < 6 Y + fine	Criminalised as aggravated pandering < 6 Y + fine	Criminalised through THB provisions 1 – 8 Y. (Aggravated THB Fine + 2 – 15 Y) /as pandering < 6 Y + fine	Not criminalised	Not criminalised
Czech Rep	Not in place ³⁷⁴	Not in place Though in general Sec. 202 of Penal Code can be applied	Criminalised 0-3 Y Aggravated: 1-5 Y 2-8 Y	Criminalised as aggravated Pandering 1-5 Y	Criminalised as aggravated Pandering 1-5 Y	Not criminalised	Not criminalised Knowingly using said services can be used to charge a person as an accomplice
Denmark	Not in place	Not in place	Criminalised < 3 Y/< 4 Y	Criminalised through Pandering < 3 Y/< 4 Y	Criminalised through THB provisions < 8 Y /as pandering < 3 Y/< 4 Y	Not criminalised	Not criminalised
Estonia	Not in place	Not in place	Criminalised Fine/ 0-12 Y	Criminalised as pandering Fine/ 0-12 Y	Criminalised as pandering Fine/ 0-12 Y Also Enslavement 1 – 12 Y	Not criminalised	Not criminalised ³⁷⁵
Finland	Criminalised as breach of public order Fine	Criminalised as breach of public order Fine	Criminalised Fine/< 3 Y Aggravated: 4 M – 6 Y	Criminalised as aggravated pandering Fine/< 3 Y / 4 M – 6 Y	Criminalised Fine/< 3 Y Fine/< 3 Y / 4 M – 6 Y	Criminalised as breach of public order Fine	Criminalised < 6 M
France	Not in place	Criminalised < 2 M + rights deprivation + fine	Criminalised 7 Y + fine Aggravated: 10 Y + fine/15 Y + fine/20 Y	Criminalised as Pandering: 7 Y + fine Aggravated: 10 Y + fine/15 Y + fine/20 Y	Criminalised as aggravated pandering 10 Y + fine/15 Y + fine/20 Y	Not criminalised	Not criminalised
Germany	Not in place	Not in place	Criminalised < 3 Y	Criminalised 6 M-5 Y	Criminalised through THB provisions 6 M – 10 Y (Aggravated THB 1 – 10 Y)/as pandering 6 M-5 Y	Not criminalised	Not criminalised
Italy	Not in place	Not in place	Criminalised 2-6 Y + fine	Criminalised 2-6 Y + fine	Criminalised 2-6 Y + fine	Not criminalised	Not criminalised
Latvia	Health aspects regulated	Administrative offence	Criminalised Fine/< 3 Y Aggravated: 5-15 Y	Criminalised < 4 Y + fine	Criminalised through THB provisions 3 – 8 Y (Aggravated THB 5 – 15 Y)/as pandering Fine/< 3 Y Aggravated: 5-15 Y	Not criminalised	Not criminalised
Netherlands	In place: article 151a of the Municipalities Act (Gemeentewet) and all legislation on health and safety apply to prostitution. ³⁷⁶	Not in place. Article 151a of the Municipalities Act (Gemeentewet) stipulates that municipalities can introduce by-laws for this. ³⁷⁷	No (no national-level legislation)	Unless coerced prostitution (the means referred to in article 273f para. 1 subpara. 1 are used), exploitation of (consensual) prostitution of adults is not criminalised	Criminalised through THB provisions < 6 Y (Aggravated THB fine + < 8 Y to 15 Y) ³⁷⁸	Not criminalised	Not criminalised ³⁷⁹

³⁷⁴ The new Criminal Code which also contains provisions on procuring (Section 189) and on prostitution endangering morals of children (Section 190), will be effective as of 1 January 2010.

³⁷⁵ Penal Code § 143. Compelling person to engage in sexual intercourse and § 143/1 Compelling person to satisfy sexual desire may, however, be applied in these cases.

³⁷⁶ The Government has recently sent a Bill on the Regulation of Prostitution to the Council of State for advice. Once this advice has been received and processed, the Bill will be submitted to Parliament.

³⁷⁷ The new Bill on the Regulation of Prostitution will contain national provisions on this subject.

³⁷⁸ On 9 June 2009, Parliament approved a bill submitted by the Minister of Justice, which entails an increase in all maximum penalties and which will enter into force as of 1 July 2009.

³⁷⁹ Idem.

	Provider of sex services		Procurer in sex services			User of sex services	
	Is there a specific national level uniform legislation on the treatment of prostitution?	Is there a specific national level uniform legislation on provision of sex services in public places/soliciting?	Is pandering/pimping/enticing into prostitution criminalised at national level?	Is exploitation of others' prostitution criminalised at national level?	Is coerced prostitution criminalised at national level?	Is there national level uniform legislation on using sex services?	Is knowingly using services of victim of sex trafficking/sex trade criminalised at national level?
Poland	Not in place	Not in place	Criminalised < 3 Y Aggravated 1-10 Y	Criminalised as pandering < 3 Y Aggravated 1-10 Y	Criminalised 1-10 Y	Not criminalised	Not criminalised
Romania	Criminalised 3 M-3 Y	Criminalised 3 M-3 Y	Criminalised 2-7 Y	Criminalised as Pandering 2-7 Y	Criminalised 2-7 Y	Not criminalised	Not criminalised
Spain	Not in place	Not in place	No (no national-level legislation)	No (no national-level legislation)	Criminalised < 4 Y	Soliciting sexual services in exchange of retribution while "objectifying" or humiliating the victim criminalised < 6 M	Not criminalised
Sweden	Not in place	Not in place	Criminalised < 4 Y Aggravated: < 8 Y	Criminalised < 4 Y Aggravated: < 8 Y	Criminalised < 2 Y Aggravated: 6 M - 4 Y	Criminalised Fine/< 6 M	Criminalised as use of Sex services Fine/< 6 M
UK	Not in place	Criminal offence Fine	Criminalised < 7 Y	Criminalised as pandering < 7 Y	Criminalised as pandering < 7 Y	Not criminalised	Not criminalised

While in all examined EU Member States the criminal legislation on prostitution is defined at national level, in several Member States other aspects of prostitution regulation are either not addressed at all, or partially addressed by national (or federal) legislation. In some instances, regulations other than criminal law exist only at the level of state (in federal countries) and/or at the level of local governance bodies such as municipalities. In others, national legislation defines a broad framework of regulation which is complemented at local level. Consequently, in some EU Member States regulations differ in the various administrative units of the country and there is no uniform nation-wide regulation in place. In this case, whichever prostitution regime is chosen at national level, it leans heavily on local level particularities. Several experts (Belgium, Netherlands, Spain) have highlighted that this situation reduces the impact of national level legislation on the situation of prostitutes. Local level legislative acts were beyond the scope of this study, as their review would involve very extensive research and sources on this issue are scarce.

Regardless of the existence or not of local level regulation of prostitution, non criminal aspects of prostitution such as labour relations, taxation or public order are rarely addressed by national level legislation in a comprehensive manner. This partial regulation of prostitution which is in place in most EU Member States has been criticised for (1) failing to address effectively negative phenomena associated with prostitution such as forced prostitution, pimping, prostitution in public places, organised crime including trafficking in human beings for sexual exploitation; (2) failing to empower persons in prostitution and to increase their ability to effectively uphold their rights, including access to social and health insurance, and (3) failing to address public health concerns. This critique was repeated by the Council of Europe, which called upon its Member States to formulate an explicit policy on consensual adult prostitution that would

“avoid double standards and policies which force prostitutes underground or into the arms of pimps, which only make prostitutes more vulnerable – instead they should seek to empower them. In particular, Member States should refrain from criminalising and penalising prostitutes. They should develop programmes to assist prostitutes to leave the profession should they wish to

do so, and address personal vulnerabilities of prostitutes. Underlying structural problems also need to be addressed to prevent people being 'forced' into prostitution by circumstances"

(PACE, 2007, Summary).

In the same report, the Rapporteur of the Committee on Equal Opportunities for Women and Men of the Council of Europe criticised the criminalisation of prostitution for its "many drawbacks and few, if any, advantages". According to the Rapporteur, this approach "tends to make all prostitution a criminal offence (not just forced prostitution and prostitution of minors), but it is usually the prostitute, not the client, who is prosecuted. In countries which adopt this approach, prostitution is thus pushed underground and becomes a criminal activity, with all the disadvantages this entails. Prostitutes are particularly vulnerable in these countries, are seldom independent, and are thus very much at risk of, for example, being coerced into having unprotected sex – which, of course, is a public health concern, especially in the era of HIV/AIDS." (PACE, 2007, par 22).

Importantly, the implementation of the various legislative frameworks, whether at national or local level, tends to differ widely between and within the 17 EU member states examined. Many experts have emphasised that, regardless of the chosen prostitution regime, the efficacy of legislation in terms of regulation of the prostitution market depends to a considerable extent on the resources and practices employed to enforce it. For instance, a prostitution regime which regulates prostitution as a form of labour may rely heavily on labour inspection. A regime based on criminalisation of certain forms of prostitution or of certain actors in prostitution is meaningful only if effectively enforced by the police and the justice system. The differences in implementation of legislation often have greater consequences than the nuances in the de jure regulation of certain aspects of the sex markets.

Bearing these important nuances in mind, the current debate on the prostitution regulation spectrum in EU is influenced by two types of regulation, which are informed by opposing perspectives on male and female sexuality (Outshoorn, 2004, p. 146). These two models, exemplified by regulations in Sweden, where purchase of sexual services is criminalised, and in the Netherlands, where prostitution is considered work and is legalised, are therefore examined in more detail below.

6.2.1. Regulation of prostitution in Sweden

As of 1 January 1999 a new law entered into force in Sweden according to which "a person, who [in other cases than previously stated in this chapter] obtains a casual sexual relation in exchange for a payment shall be sentenced for the purchase of sexual service with a fine or imprisonment for up to six months." This applies also in cases where the payment has been promised or made by someone else. The main objective of the Law of Sweden on the Prohibition of the Purchase of Sexual Services³⁸⁰ was to eliminate prostitution, which is considered an unacceptable phenomenon.³⁸¹ It was argued at the

³⁸⁰ Law of Sweden on the Prohibition of the Purchase of Sexual Services of 1 January 1999. In connection with the reform of legal provisions on sexual offences in 2005, the Law on the Prohibition of the Purchase of Sexual Services was revoked and replaced by a new penalty provision, the purchase of sexual service, in the criminal code.

³⁸¹ "The good thing about the 1999 legislation is that it coincides extremely well with the public perception of prostitution. In Sweden, 12 – 13 per cent of men have purchased or have been ready to purchase a sexual service,

time of the adoption of the Law that it is not reasonable to criminalise people who in the largest share of cases are the weakest party, exploited by those who want to satisfy their sex drive (BRÅ, 2000, p. 15).

The Swedish legislation is worded in a gender-neutral way, but it is informed by the view that sexual services are provided by women and bought by men, i.e. that it is “a gender-specific phenomenon”, and that prostitution is inherently harmful, i.e. a “form of violence committed by men against women” with the “overwhelming majority of victims [being] women and girls, while the perpetrators are invariably men” (Prostitution and Trafficking Fact Sheet, 2005).

In Sweden, the issues of trafficking in human beings and prostitution are often considered together:³⁸² “prostitution and trafficking in human beings for sexual purposes are (...) issues that cannot, and should not, be separated; both are harmful practices and intrinsically linked. (...) Accordingly, it is argued that trafficking in human beings for sexual purposes will never be eliminated unless the international community also takes a vigorous stand and puts in place concrete measures against prostitution and sexual exploitation” (Ekberg, 2004, pp. 1189-1190).

The Law did not come into place primarily as a tool against trafficking in human beings, which was not high on the agenda back in 1999, but it was part of an Act on Violence Against Women (Kvinnofrid), which was enacted on July 1, 1998 (Swedish Government Offices, 2001 qtd. in Ekberg, 2004, pp. 1191-1192).³⁸³

The understanding of prostitution as a form of male violence against women³⁸⁴ explains the difficulties in addressing certain issues such as male prostitution, female clients purchasing sexual services and, ultimately, options for those men and women who wish to continue providing sexual services for remuneration. The concerns of these groups are at times dismissed as marginal, irrelevant or simply non-existent, since prostitution cannot be voluntary and some interviewed experts pointed out that the official discourse oversimplifies the multifaceted reality.³⁸⁵ Others maintain that the focus on violence against

in other countries, the number is higher. Buying sex is something that you do not do in Sweden, basically. The law was well received by the public and the law enforcement, it is a norm setting law.” (Sweden).

³⁸² For example, the Swedish Action Plan against Prostitution and Human Trafficking for Sexual Purposes 2008 mentions “the need for effective and appropriate legislation for combating prostitution and trafficking.”

³⁸³ The authors would like to thank to the Swedish National Rapporteur on trafficking in human beings for bringing up this point. (K. Wahlberg, personal communication, 3 June 2009).

³⁸⁴ “We do not look at prostitution as voluntary. We have conducted a lot of research in 1970-1990 and the researcher found that 75%-80% of women in prostitution have been traumatised or sexually abused in their childhood and they seem to continue to hurt themselves. They continue this destructive way of living. We know prostitution harms women and we understand that complexities behind. It is not that they [women in prostitution] have a lot of choices to support themselves and suddenly decide prostitution is the best of them. The police officers who work in the field, they strongly support this view of violence against women.” (Sweden).

³⁸⁵ “During the interviews with social workers in Sweden I felt that it was important for them to point out that the reality is somewhere in between sex work and sex slaves and that the Swedish debate does not capture this. In Sweden everyone needs to be seen as a victim, this is the consequence of the political discussion, it is so dominated by the anti-sex feminist rhetoric, but the police and social workers report that the reality is much more complex. The reality is not simple – you cannot divide into sex worker and sex slave. All actors have a degree of agency, they constantly negotiate the working conditions etc.” (Sweden). “We have sometimes difficulties accommodating male prostitution in the discourse.” (Sweden). “For instance we have more young boys today

women is justified as this is the “real problem” (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009). Some official documents recognise some of these phenomena (e.g. the 2008 Action Plan against Prostitution and Human Trafficking for Sexual Purposes mentions the phenomenon of boy/male sexual exploitation).

The law has received support from some persons with experience of prostitution, while it was opposed by others (Svanström, 2001, p. 240).

Assessments of the ban on purchase of sexual services

A comprehensive evaluation of the impact of the criminalisation of the purchase of sex services in Sweden has not been conducted up to date. Various UN bodies have called upon Sweden to conduct a comprehensive independent evaluation of the Swedish policy or regretted the lack thereof.³⁸⁶ In April 2008, the Swedish government appointed a special commissioner to evaluate the effects of the ban on sexual services on the occurrence of prostitution and trafficking for sexual purposes in Sweden. The results of this review should be available in 2010 (Utvärdering av förbudet mot köp av sexuell tjänst (2008), [translation: Evaluation of the ban on purchase of sexual services]).

Changes in the prevalence of prostitution

According to information from the government of Sweden, the legislation has considerably decreased the number of both women in prostitution and male sex buyers in Sweden (A/HRC/4/34/Add.3, 2007, para. 42) and thus contributed to a decrease in trafficking in human beings (Bindel & Kelly, 2003, pp. 25, 29).

In its 2004 report, Socialstyrelsen (National Board of Health and Welfare) noted that street prostitution is reported to be less widespread than it was before the new law against buying sex went into effect, but that there have been no significant changes in the overall extent of prostitution since 1999. Three years later, in 2007, Socialstyrelsen (2007, p. 61) concluded that street prostitution is slowly on its way back, though the report again stressed that it is difficult to obtain a clear picture about the overall scope and trends in prostitution. A 2008 report of the Swedish National Council for Crime Prevention, states that going to central prostitution streets is still one of the easiest ways to find prostitutes in Sweden (BRA, 2008:21, p. 127).

According to information provided by the Swedish National Rapporteur on trafficking in human beings, in Stockholm during a night with high prostitution activity there are some 15 to 20 women in street prostitution in 2009 compared to 40 to 60 in 1998 (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009).

selling sex than girls. They would not look at themselves as prostitutes at all, they sell sex on the internet to one another.” (Sweden).

³⁸⁶ The UN Special Rapporteur on violence against women 2007 report (A/HRC/4/34/Add.3, 24) noted the absence of a comprehensive independent evaluation and pointed out that it is not certain what effect the Swedish policy has had on the types of violence often connected to prostitution, whether the law has increased or decreased the buying of sex by Swedish men abroad. It recommended that the Swedish government commission a comprehensive, independent study to examine “the Swedish policy on prostitution and its impact on human trafficking and other types of violence often occurring in the context of prostitution. The study should also consider the policy’s long-term effects and its potential impacts outside of Sweden.” Similarly, the Committee on the Elimination of Discrimination against Women regretted the lack of information and data on the prevalence of prostitution in Sweden, including clandestine prostitution, and requested Sweden to provide full information in the next periodic report (CEDAW, 2008, para. 32-33).

Impact on working conditions of persons in prostitution

According to information from the Swedish National Rapporteur on trafficking in human beings, the National Criminal Police has gathered information about whether the level of violence affecting prostitutes has increased after the Law banning the purchase of sexual services was passed. With the only exception being of the police in Malmö, who reported, during a short period in 2002, an increase in violence, neither the police nor the social service agencies reported an increase in violence. (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009). The 2004 Report of Socialstyrelsen (National Board of Health and Welfare) on prostitution in Sweden did not state whether there was an increase in violence affecting prostitutes, since data on this issue was not collected either prior to or following the enactment of the law.

Expert assessments of the developments in this area vary. According to Bertone (2004, p. 20), the law has created "more dangerous conditions for women who choose to be prostitutes or those who are forced into the business". Some information suggests that prostitutes' dependence on pimps has increased because they cannot work as openly as in the past (Purchasing Sexual Services in Sweden and the Netherlands, 2004, pp. 52-53). Informants interviewed for the "Purchasing Sexual Services in Sweden and the Netherlands report" (2004, pp. 13-14), maintained that the working conditions of street prostitutes deteriorated and that violence among street prostitutes has increased since the law entered into force. This may be due to several effects of the legislation: the 'normal' clients have been scared off by the law from purchasing on the street; the number of clients decreased, driving down the price of the services; the negotiation time has now to be shortened and the clients are more nervous when negotiating the services, which makes it more difficult for the prostitute to assess whether the client is dangerous or not. The police in Malmö share the opinion that the level of violence has increased (article in Swedish Police Journal *Polistidningen* qtd. in Purchasing Sexual Services in Sweden and the Netherlands, 2004, p. 13).³⁸⁷ However, information from interviews conducted with women engaged in street prostitution in Stockholm does not support the view that violence has increased (Danna, 2007).

Some experts interviewed for this report maintained that prostitutes working in public places are more likely to be able to choose their clients than those working inside (Finland) and that "*prostitution practiced indoors is more hidden and is likely to induce psychological dependencies of the victim towards the trafficker. Often clients are found through advertisements in local newspapers or internet, which is the only way how indoor prostitutes can be contacted.*" (Italy).

The interviewed experts were not of the same opinion as to whether it is possible to register as a prostitute in Sweden, or to the situation regarding tax proceeds from prostitu-

³⁸⁷ In the UK, where legislation to criminalise those who are found to be paying for sex with a person who is being controlled against their wishes for someone else's gain is under consideration, the English Collective of Prostitutes commented that "experience had taught them any law against consenting sex forces prostitution further underground and makes women vulnerable to violence" (New law to criminalise men who pay for sex with trafficked women, 19 November 2008). However differences between the UK prostitution scene and other scenes/countries need to be kept in mind. The authors would like to thank to the Swedish National Rapporteur on trafficking in human beings for bringing up this point. (K. Wahlberg, personal communication, 3 June 2009).

tion. According to one expert it is not possible, because prostitution is “*not tolerable social phenomenon*,” but according to another one it is possible.³⁸⁸ According to the Swedish National Rapporteur on trafficking in human beings income from prostitution is taxable (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009)

Demand reduced or displaced?

Proponents of criminalization of demand argue that this policy leads to demand reduction. Although it seems plausible that part of the demand will be reduced, it is not clear how many potential purchasers of sexual services will be dissuaded by the effects of the regulation. It is conceivable that some potential purchasers will forego paying for sexual services out of fear of possible criminal law consequences.

According to information from the Swedish National Rapporteur on trafficking in human beings, opinion polls have consistently shown that 70-80 percent of the Swedes are satisfied with the law that prohibits the purchase of sexual services. Research conducted by Jari Kuosmanen in 2008 shows that in Sweden the percentage of adult men that have purchased sexual services has decreased from 13,6 percent in 1996 to 8 per cent in 2008. Research by Sven-Axel Månsson shows, that the majority of Swedish sex buyers are ‘occasional buyers’ who stop buying when it becomes too complicated. (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009).

At the same time, Sveriges Radio (SR) reported (based on a 2009 report by the Swedish National Board for Youth Affairs, or Ungdomsstyrelsen) that 43 percent of young people between the ages of 16- and 25-years-old believe that getting paid for sex is acceptable, as long as the parties involved are in agreement. The report also found that more boys than girls have been paid for having sex with others. (Thousands of young Swedes sell sex: study, 14 September 2009).

It is also conceivable that demand for sexual services will be increasingly displaced to other segments of the prostitution market, such as private places in which the policy cannot be enforced effectively.

Part of the demand can be also displaced to foreign locations. There are reports of Swedish men travelling abroad, for example to Denmark, Finland and Latvia, to purchase sexual services (The Times, 21 June 2008). Among the many causes of changes in demand (such as economic disparities), it seems likely that the criminalisation of the purchase of sexual services in Sweden has contributed to displacing the demand for sexual services abroad. This was also repeatedly mentioned in the interviews.³⁸⁹

³⁸⁸ “A person cannot work in Sweden as a prostitute, in practice. There have been some attempts to pay taxes on income from prostitution but it was not possible. The official view is that prostitution is something bad, a not tolerable social phenomenon. In theory you could look at it as an income generating activity, but no, this is not possible in practice. In practice it should not be possible.” (Sweden). According to another expert, “It is possible for a person offering sexual services to be registered as self-employed and be a part of the welfare system.” (Sweden).

³⁸⁹ “It is like the Swedes wants to have a clean house but they do not care at all what is going on outside of Sweden.” (Czech Republic). “Swedish and UK sex tourists are coming to Latvia in big numbers. I know also from Denmark that Swedish tourists are travelling there. We have case of Latvian girls being trafficked to Finland. Somehow this Swedish legislation, progressive as it is, indirectly harms neighbouring country.” (Latvia). After the introduction of the Swedish laws on prostitution there was an initial increase in the number of Scandinavian customers. Now, Scandinavian and British tourists are the most common foreign customers.” (Estonia). “We are

Implementation of the ban

The Swedish reports on the implementation of the policy criminalising demand noted that there are serious difficulties in securing evidence that the crime of purchasing sexual services has taken place, as this is an offence without a complainant. The prostitutes are obliged to give evidence but they can refuse to give evidence which can reveal that they have participated in prostitution as this is a “disreputable” act (Purchasing Sexual Services in Sweden and the Netherlands, 2004, p.18). Also, if both parties deny that a payment has been made for the sexual act, it is practically impossible to prove it. It is not clear what exactly constitutes a ‘casual’ sexual act. In order to secure evidence, the police often wait to intervene until after the sexual activity is concluded, although this is in conflict with the duty of police - to prevent criminal acts. In practice, in most convicted cases, the buyer of sexual services confessed. (BRÅ, 2000, English summary; Purchasing Sexual Services in Sweden and the Netherlands, 2004). One interviewed expert noted: *“Men are not prosecuted to the extent possible by the law, they are not convicted to six months in prison as made possible by the law, but usually they pay only a small fine. The courts make use of the lowest possible sentence. The authorities also agree to send the communication to the workplace of the charged men, helping the men to cover it up. This shows the state is very unclear on how to go about it”* (Sweden). According to information from the Swedish National Rapporteur on trafficking in human beings, there were misunderstandings about where to send the notifications during the first year of implementation of the law but since then all notifications are being sent to the address where the perpetrator resides (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009).

The Swedish National Rapporteur on trafficking in human beings pointed out that the effect of the law cannot be evaluated by counting convictions and police reports, “especially because the police intervenes if they assume someone is planning on buying sexual services, and inform potential buyers that this is prohibited” (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009).

One expert also mentioned that in practice, *“the Swedish police do not give enough priority to trafficking in human beings. It is easier for the police to prioritise drug dealing, other crimes that the police are familiar with. Sometimes those who define the priorities within the police do not have the right knowledge.”* This is, according to the expert, mainly due to the fact that trafficking in human beings investigations are resource intensive, especially when compared to the sentences pronounced by the courts.³⁹⁰

not sure whether it is not so visible or if the problem is that the women [prostitutes or trafficked persons] have been transferred to other places near Sweden.” (Spain).

³⁹⁰ *“There is also an attitude problem towards this type of crime. It is important to discuss attitudes when it comes to trafficking in human beings in general. Ministers within the EU (and in Sweden) stand up and say trafficking in human beings is horrible crime, we need to do something about it now and you come back home from international meetings and find that the Swedish police do not give priority to THB. It is easier for the police to prioritise drug dealing, other crimes that the police are familiar with. Sometimes those who define the priorities within the police do not have the right knowledge. The obstacle is that trafficking in human beings is so resource intensive. It costs a lot to detect, to investigate. You have to do phone interceptions, to interpret all the conversations, sometimes you have to travel to the countries of origin to find evidence. The trafficking in human beings cases cost too much the police to investigate and then very often the penalty is too low – you get two years of imprisonment against one year of investigation. The penalty scale is up to 10 years, but in the real world the traffickers receive*

Impact on crime, organised crime and trafficking in human beings

The 2004 Socialstyrelsen (National Board of Health and Welfare) report quotes the opinion of the National Criminal Investigation Department that the new Swedish law is a barrier to the establishment of trafficking in Sweden. According to this view, expressed also in the expert interviews, it is now more difficult for traffickers to make a profit in Sweden since trafficked women cannot be put to work on the street due to the risk of their discovery.³⁹¹

On the other hand, a recent report on prostitution and human trafficking focusing on clients states that “because the trafficking market in Sweden is not very large, prices are a lot higher than in other countries.³⁹² This serves as an incitement and makes Sweden attractive to traffickers. Traffickers know that they can earn a lot of money in a short period of time by letting their women work in Sweden and they can also obtain many clients by charging lower prices than those charged by local women” (Hagstedt, Korsell & Skagero, 2009, p. 194).

According to the Swedish National Rapporteur on trafficking in human beings, “the Law has proven to be an efficient instrument against trafficking in human beings” and thanks to the Law of Sweden on the Prohibition of the Purchase of Sexual Services, Sweden has been affected by trafficking in human beings less badly than other Nordic countries (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009). The authors could not locate reliable empirical evidence corroborating or refuting this claim due to the lack of reliable empirical evidence on trafficking in human beings discussed earlier in this report.

Driving prostitution underground

At least initially, implementation efforts have been “focused on the surveillance of unconcealed street-prostitution and on attempts to disrupt this form of prostitution” and the police have reported that implementation of the law in the more hidden segment of the market has proved difficult. (BRÅ, 2000, English summary).

According to some experts, criminalisation of demand is an additional factor that may drive prostitution underground. Consequently it is more difficult for the police to investigate cases of pimping and trafficking in human beings (Purchasing Sexual Services in Sweden and the Netherlands, 2004, pp. 52-53). This opinion was also shared by several

only 2 years and can get out after 1 and ½ year (...) And there is the attitude that the trafficking in human beings paragraph is only a political paragraph; that it is not something we have to take seriously.” (Sweden).

³⁹¹ *“We have been able to make it more difficult for pimps and trafficker to work in open prostitution, which since 1999 has meant that the phenomenon has been in a sense that we are able to fight back. Because we have made the operations of pimps and traffickers more difficult, that means that street prostitution is more or less gone, they do not find it worth the investment required.” (Sweden).*

³⁹² This statement seems to be in contradiction with information that “prices [for sexual services] went down”, quoted above in the section on the “Impact on working conditions of persons in prostitution.” However, it is conceivable that before 2004 there was a decrease in prices for sexual services in Sweden and that in 2009 prices in Sweden are ‘a lot higher than in other countries’. It is also possible that prices went up in Sweden between 2004 and 2009 either in absolute terms or in relative terms when compared to other countries. The scope of this report did not allow for more in-depth research of this issue and comparison of prices in Sweden and other countries.

interviewed experts.³⁹³ Some experts also voiced concerns that criminalisation of the client may break off the only link a forced prostitute/trafficked person may have with the outside world.³⁹⁴

However, according to information from the Swedish National Rapporteur on trafficking in human beings, even before 1999 when the law banning purchase of sexual services was enacted, most prostitution activities took place indoors and indoor prostitution is easier to monitor than outdoor prostitution (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009).

Also other developments, such as advances in communication technologies (mobile phones and internet), contribute to changes in the way prostitution markets are organised. The 2003 "RFSU Report Prostitution på Internet" (qtd. in *Purchasing Sexual Services in Sweden and in the Netherlands*, 2004, p. 11) suggested that internet sex contact pages are "the real forum for prostitution." The difficulties in monitoring prostitution in private settings are characteristic for all jurisdictions, but they are likely to be particularly pronounced in those jurisdictions where the purchase of sexual services is criminalized. In these jurisdictions the buyer is not motivated to share information about abuse or exploitation of prostitutes or other criminal acts, because he would be self-incriminating himself. The ban on the purchase of sexual services also complicates the investigation and prosecution of pimping and trafficking in as much as it effectively prevents customers of prostitutes from testifying in courts, since they would then be confessing to their own crimes (Rikskriminalpolisen, 2001, p. 28).

On the other hand, according to the Swedish National Rapporteur on trafficking in human beings, the courts question those who have purchased sexual services about the circumstances of this act and thus gain "a good picture about what is going on." According to her the problem [the 1999 legislation complicating investigation and prosecution] has been solved a long time ago" (K. Wahlberg, personal communication with Martijn Pluim, 3 June 2009).

Among the unintended effects of the law is a new form of crime – women pretending to be prostitutes and robbing clients, who are afraid to report the robbery due to fear of being indicted for attempt to purchase sexual services (*Purchasing Sexual Services in Sweden and the Netherlands*, 2004, pp. 19-20).

Preliminary conclusions about the effect of the ban on purchase of sexual services

Reliable empirical evidence allowing for the assessment of the impact of the ban on the purchase of sexual services is not available and expert opinions vary widely. Drawing preliminary conclusions has been further complicated by the absence of a

³⁹³ "Accommodation is cheap and plentiful. If there is a risk having people on the street, they can afford flats... You will drive it undergrounds and it will be affordable" (United Kingdom). "The more prostitution is forbidden, the harder it is to identify victims. The more that prostitution is pushed underground through prohibition the more difficult it is to come into contact with potential victims. Brothel owners have an incentive to co-operate and abide by laws in order to ensure that their business runs smoothly, pimps and traffickers do not." (Germany). "We are afraid to drive the phenomenon underground. The contacts [can] go via internet, [then] you cannot control it at all. It is important not to lose sight of what is going on and that is difficult." (Netherlands).

³⁹⁴ "In some cases, the clients may be the only link to the outside world." (Netherlands). "There is always the discussion whether the Swedish model is a good way to fight trafficking in human beings, [but] prostitution would underground and victims of trafficking would be more difficult to find." (Belgium).

comprehensive evaluation of the impact of the criminalisation of the purchase of sex services.

- While the ban has in all likelihood contributed to a decrease in street prostitution in Sweden, it is not clear whether it has contributed to a decrease in the overall scale of prostitution, i.e. including prostitution in private places.
- It is likely that some persons were dissuaded from purchasing sexual services.
- The policy has probably contributed to a shift of demand from public places in Sweden to other market segments (off-street prostitution) and to abroad.
- The impact on the working conditions of persons in prostitution is not clear.³⁹⁵
- Reliable information about the impact of the changes in the legislation is not available. The Swedish authorities state that the changes in the legislation have limited the prevalence of trafficking in human beings for sexual exploitation to Sweden.

6.2.2. Regulation of prostitution in the Netherlands

On 1 October 2000 the Netherlands lifted the Ban on Brothels and introduced into the Dutch Penal Code more severe punishment for so-called ‘undesirable forms of prostitution’ and the sexual abuse of minors.³⁹⁶ Trafficking in human beings for sexual exploitation and forced prostitution are one and the same criminal act.

The details of the regulation of prostitution are left to the discretion of the local self-government bodies, some of which have adopted local level legislation which fully legalizes sex work as labour, with associated registration, taxation and social benefits. In other cases municipalities aimed to reinstate the ban on brothels.

Among the intended benefits of the legalization regime were the reduction of criminal activity associated with prostitution (forced prostitution, prostitution of irregular migrants, organised crime, child prostitution and trafficking in human beings). This policy also aimed at tighter control over and regulation of the organisation of consensual prostitution, in order to improve the protection of human rights, health, safety and working conditions of sex workers. In addition, the legalization regime was tasked with alleviating the social exclusion that sex workers typically face and lessening the stigmatization associated with prostitution.

The dominant discourse during the debate preceding the lifting of the ban on brothels was the sex work discourse, which considers prostitution a form of work. However, it had to be conceded that prostitution is a “special profession” (Outshoorn, 2001, p. 483). The sex sector should be regulated by the introduction of compulsory licensing for the operating of brothels; prostitution could be run legally – with the associated rights and duties. (Dekker, 2006, p. 1). The discussion on regulating prostitution was tightly linked to the debate on illegal migration and trafficking in human beings. For example, the Christian Democrats maintained that by combating illegal migration, trafficking in women would be stopped. The political discourse was mainly based on the assumption that women were driven into prostitution by poverty and it did not take into consideration the demand side (the only exception were the left-wing parties) (Outshoorn, 2001, pp. 477-479).

³⁹⁵ Prostitution is not considered work in Sweden.

³⁹⁶ Section 250a, CC of the Netherlands, later renumbered as section 273f.

Assessments of the 'Dutch' model

The changes in the regulation of prostitution introduced in 2000 were repeatedly evaluated. In 2001, the first evaluation of the effects of the abolition of the ban on brothels was conducted by the research office of the Association of Netherlands Municipalities. In 2002 the WODC (the Dutch abbreviation for *Wetenschappelijk Onderzoek - en Documentatiecentrum*, in English: Research and Documentation Centre), an international criminal justice knowledge centre, directed a second co-ordinated research of six studies. The main result was that it was too early to draw conclusions about the effects of the new law (Daalder, 2002, p. 1).

In 2006, the WODC directed, upon request of the Dutch Minister of Justice, further evaluation projects (Daalder, 2007, p. 9). The first study, implemented by the DSP Group, collected and analysed representative data on the municipal prostitution policies, regulations and enforcement.³⁹⁷ The second study was carried out by the Regioplan *Beleidsonderzoek*, with the aim of examining the evolution of the social position of prostitutes in the licensed sector since the ban on brothels had been lifted.³⁹⁸ The third study was

³⁹⁷ The study conducted by the DSP Group found that 68% of the respondent municipalities had formally established a formal policy concerning the provision of sexual services in 2006. Most local authorities decided to regulate this business by means of a licensing system and by adapting their local bylaws. Half of them had determined a maximum number of sex establishments. However, in some municipalities the conditions for operation of sex establishments were so strict or unreasonable that it was difficult to operate legally (*Purchasing Sexual Services in Sweden and the Netherlands*, 2004, p. 31). Between 2000 and 2006, there had been a decrease in licensed sex establishments by 17%. However, this was not the result of the regulation, as local authorities, prostitutes and operators pointed out, but a consequence of the economic situation. In 2006 there were approximately 1,270 licensed sex establishments in the Netherlands, mainly (window) brothels, sex clubs and private houses. A minority of local authorities took account of prevention (40%) or care (23%) in their policy. The police were involved in 96% of all inspections. The local policies mainly consisted of checking the appropriate licenses. The local authorities concentrated their regulations on fixed establishments that fulfilled a clear sexual purpose, and less on non-fixed-location companies, like escort companies or establishments with no explicit sexual purpose, like massage salons. As a result, the fixed-location establishments were more thoroughly inspected than those without a fixed location, which drove licensed fixed operators to speak of unfair competition. Another side effect of the enforcement the research detected was a "strong suspicion" that many prostitutes, particularly those who had already built up their own clientele, did not wish to apply for a license and had gone underground. The research did not provide any estimate of the number of non-licensed sex establishments. The local authorities were of the opinion that the licensed sector slowly develops into a normal business sector, that the branch maintained good or reasonable compliance with the rules, and that the situation of the prostitutes appears to be better than in the past (WODC, 2006, pp. 1-7).

³⁹⁸ The substudy by Regioplan based on face-to-face interviews with 354 prostitutes and 49 operators conducted in 2006 analyzed the effects of the change in law in 2000 on the social position of prostitutes in the licensed sector. It concludes that "on balance, there do not seem to have been any major changes in their social position" (Dekker, 2006, viii). A prostitute lives unhealthier than the average Dutch woman, due to her smoking and drinking habits; however, her emotional well-being was not generally lower than that of the average population. The survey found that the majority of prostitutes do not pay any taxes and do not receive any social security benefits. Ninety-five percent of the prostitutes polled described themselves as independent, but the researchers noted limits to their independence. The prostitutes considered being employed as a great disadvantage and expected that a lot of women would leave this sector of the industry rather than enter into legal employment. They valued anonymity, freedom and independence. Persisting stigma and prejudice about their profession continues to be a problem. The majority of the operators - 84% - regarded the change in law as a positive development; however, of the 60% of prostitutes that were aware of the change in law, almost half were not in favour of it, the main reason being that they do not command more respect now and that the crime levels in the industry have not decreased. For the future,

carried out by IntraVal (2006); it covered the nature and scale of various forms of non-legal prostitution in four regions. (Daalder, 2007, pp. 9-10).³⁹⁹ Also, the reports of the Dutch National Rapporteur on Trafficking in Human Beings discussed selected aspects of the Dutch regulation of prostitution.

Impact on stigmatization

The legalization of prostitution has to some degree decreased the stigma associated with prostitution. As suggested by an expert, *"in a legalised prostitution system, like in the Netherlands, there is less stigma about prostitution among professional groups that come into contact with prostitutes when exercising their duties, but the general public still stigmatises prostitution"* (Netherlands). It has also empowered the sex workers, as testified for example by the increased number of complaints to the police from sex workers in both the licensed and unlicensed sectors (Purchasing Sexual Services in Sweden and the Netherlands, 2004, p. 39).

Impact on working conditions of sex workers

The conducted evaluations found stark differences in the working conditions of sex workers, but only few instances of abuse (Daalder, 2007, pp. 87-88). Protecting the rights of prostitutes continues to be a challenge even in the licensed sector. Among the problematic issues is bogus self-employment. It is often unclear whether a sex worker is employed or self-employed. Both prostitutes and owners maintain that prostitutes are self-employed, but the owners of the sex businesses often interfere with the prostitutes' activities in ways that constitute an employer-employee relationship, a point particularly stressed by the tax authorities. (Daalder, 2007, pp. 87-88).⁴⁰⁰

An evaluation study based on face-to-face interviews with 354 prostitutes and 49 operators conducted in 2006 was far more critical about the achievements. It concluded that *"on balance, there do not seem to have been any major changes in their social position"* (Dekker, 2006, viii). The survey found that the majority of prostitutes do not pay any taxes and do not receive any social security benefits and that persisting stigma and prejudice about the profession of prostitute continues to be a problem. Some respondents also stated that the crime levels in the industry have not decreased. For the future, prostitutes wish for their interests to be better represented, whereas operators yearn for more clarity regarding regulations. (Dekker, 2006, i-viii).

Interviewed experts maintained that the legislation change *"has helped to improve the working conditions in the sex sector: before the law, a working day of 12 hours was common,*

prostitutes wish for their interests to be better represented, whereas operators yearn for more clarity regarding regulations. (Dekker, 2006, i-viii).

³⁹⁹ The IntraVal study that focused on the unlicensed, illegal sector found that there are unlicensed location-bound prostitution establishments, albeit to a minor extent. Along with the checking of adherence to local rules and regulations, the awareness about possible abuses has also increased. According to the study, there are not large numbers of minors in the (licensed) prostitution field. While there are no clear developments regarding associated criminal phenomena, there seems to be a decrease in the number of illegal foreign nationals working as prostitutes in the (licensed) field (IntraVal, 2006, summary).

⁴⁰⁰ *"Working positions of prostitutes have not improved enough. One of the big issues was labour relations, brothel owners refused to pay social security, all of the workers have to work as self-employed. As a result, many women did not get a better deal and they chose to work from their own homes. But this was in conflict with the municipality, which often wanted to prevent sex workers to work from home."* (Netherlands).

now it is an exception; before working part time was not a right, now it is; today if sex worker wants to go to court she has a stronger case than earlier; the sex workers have more trust to call the police if they need and the law has reduced dependence on pimps”(...) “A good regulation system has a preventive function as well and if prostitutes are informed about their rights, it can make them less vulnerable” (Netherlands).

Some of the experts concluded that more needs to be done to educate sex workers about their rights and to help them organise.⁴⁰¹

The 2006 evaluations also noted the lack of ‘exit programs’ for those who wish to leave the sex sector (Daalder, 2007, pp. 87-88).

Impact on knowledge about the sex industry and law enforcement prospects

According to the evaluation reports and information from interviewed experts, the legalization of prostitution has enabled the police to establish better knowledge and contacts in the sex industry.⁴⁰²

The regulation also enables the law enforcement bodies and organizations working with persons engaged in prostitution to draw on clients as an important source of information. *“It is likely that in a system where prostitution is legal, clients are more induced to report suspicions of trafficking in human beings.”* (Netherlands). An expert from an NGO working with sex workers reported that clients at times provide valuable leads and information about forced prostitution.

However, the police continue to play the most important role in monitoring the licensed sector and consequently it has less capacity and resources to inspect and investigate the non-licensed sector and punishable forms of exploitation.

Changes in the sex market – legal versus illegal circuit and other developments

The Dutch National Rapporteur on Trafficking in Human Beings reported in 2007 that in recent years sex services have been on offer clandestinely in saunas, coffee houses, nail and tanning studios and over the internet and that the number of licensed businesses is decreasing (Dettmeijer-Vermeulen et al, 2007, p. 75).

The 2006 evaluations did not find an extensive ‘illegal circuit’ or indications that it exists. The new situation, characterised by the existence of licensed forms of prostitution and stricter enforcement of rules prohibiting the exploitation of prostitution (forced prostitution), has led to “a ‘paradoxical situation’: prostitutes and sex business owners now feel

⁴⁰¹ *“The government made one big mistake – it thought the sector will take place of itself, that it is enough to change the legislation. They did not think there needs to be more funds to support the sex workers in getting their labour rights. The Government told to the sex workers, just go to the trade unions.”* (Netherlands).

⁴⁰² Experts from Germany, where prostitution is also legalized in some places at the local level, maintained: *“Definitely [there are links between the regulation of prostitution and trafficking in human beings], if one is in a position to control the tolerated red light districts, then at least in those areas there is a reduction in the number of victims. A displacement of victims into the illegal areas is not 100%, therefore the police continues to have access to a certain percentage of victims. The brothel owners have a vested interest in cooperating, as illegal prostitution and trafficking undercut their prices and endanger their standing and stability. Not all ethnic prostitution rings use victims of THB, but far more than in the legal environment.”* (Germany). *“With legal prostitution and clearly defined legal prostitution zones in which inspections are regularly carried out the visibility of victims remains higher than if prostitution was allowed across the municipality evenly.”* (Germany). *“Legalization of prostitution has eased enforcement in that law enforcement agencies can focus more of their efforts on preventing abuse and exploitation rather than the suppression of the prostitution phenomenon as such.”* (Germany).

that the regulations have become stricter, whereas in practice it is a matter of a stricter enforcement, which has replaced the former policy of tolerance” (Daalder, 2007, p. 84).

However, as the Dutch National Rapporteur on Trafficking in Human Beings reports, there is an illegal circuit and this circuit is associated with trafficking in human beings (Dettmeijer-Vermeulen et al, 2007, p. 76). Clearly, some forms of illegality continue to exist: *“There are of course other forms of illegal prostitution – owners of brothels, sex workers do not want to pay taxes, you will also have sex workers that do not want to be visible, they will work illegally. It is not possible to have only legal prostitution.”* (Netherlands).

Impact on irregular migrant sex workers

Stricter enforcement of the law has also impacted the situation of irregular migrants in prostitution (Purchasing Sexual Services in Sweden and in the Netherlands, 2004, p. 34). Between 2001 and 2006 the number of prostitutes from Russia, Romania, Bulgaria and Latin American countries, i.e. those that as a rule do/did not have the documents required to enter the formal labour market, has decreased. Also, the number of women who apply for jobs at clubs without the required documents has decreased. Similarly, the involvement of intermediaries offering foreign prostitutes to club owners and the number of violations found during inspections has dipped, in particular with regard to foreign prostitutes working without the required documents. Prostitutes from non-EU countries seem to be replaced by prostitutes from new EU Member States, who can reside and in some cases also work in the Netherlands legally. (Daalder, 2007, p. 88).

Impact on forced prostitution and trafficking in human beings for sexual exploitation

According to Daalder (2007, p. 84) “trafficking in human beings (...) is likely to have become more difficult, because the enforcement of the regulations has increased in comparison to the former situation.” However, it is often difficult for third parties to establish that coerced prostitution takes place. A particular cause of concern is the continuing presence of pimps, who often operate in the background and whose existence the owners of sex establishments are not always aware of.

Changes in supply of and demand for sexual services

Regarding supply and demand for sexual services, Daalder (2007, p. 85) suggests that

“during the past years, both the demand and supply of prostitution services appear to have declined. However, the question is to what degree this is a result of the lifting of the brothel ban and the stricter enforcement that has accompanied it. It is more plausible that the drop in demand has been caused by other factors, such as the economic downswing and the growth of the Internet, (...) the eroticisation of nightlife, as a result of which voluntary unpaid sexual activities have increased; and the deterrent effect on clients of camera surveillance in prostitution areas. Finally, the drop in demand can have been partially caused by a decreased diversity of the supply (...) related to the increased [law] enforcement in the prostitution sector, which has made it more difficult for foreign women who do not possess the legal residence permit required for employment to work in the sex business”.

Several interviewed experts explicitly questioned that legalised prostitution leads to an increase in supply of sexual services. *“It is not clear whether legalised prostitution is a ‘pull factor’ for sex workers, because it is quite complicated to become a licensed sex worker”* (Netherlands). However, it is possible that legalization does in fact serve as a pull factor for persons offering sexual services, inasmuch as it positively affects their working conditions and prospects for enjoying their labour and other rights. According to one expert,

“it may be that local women in prostitution in Germany and Netherlands work in better conditions, [that they] prefer to work in the legal system (Sweden). Also, according to another expert, some persons in prostitution in the Netherlands “try to find better [work] conditions. It is not necessarily the money, the prices are just about the same in Eastern Europe as in Netherlands” (Netherlands).

Some experts noted that the legalization of prostitution led to an increase in demand for sexual services in the form of an influx of sex tourists: *“In the Netherlands there was an influx of groups of sex tourists” (UK).*

Implementation

Some of the intended impacts of the new regulation have not materialised due to a lack of uniformity in application of the legislation across municipalities.⁴⁰³ Also, the actors in the licensed sector perceived that they are inspected more often than non-licensed businesses and this continued to undermine their willingness to adhere to the rules.

In the words of one interviewed expert: *“they [the Dutch] have left it to the discretion of the local authorities to make it work; officially the government stated each community should be allowed to have a brothel, but if the mayor does not want it they will give ‘bad’ permission with so many conditions attached that it de facto results in a zero option. The good ones from the business tried to follow the rules, but after the new policy was put in place, there was a lot of effort of the police to control the bonafide ones. That was not the right direction: you need to focus on those that are malafide on those who remained in shadow. This was counterproductive.” (Belgium).* Also, the regulation and monitoring of the mobile services, such as for example escort services, continues to present a particular challenge.

Preliminary conclusions about the effects of the changes in regulation of prostitution

More research needs to be conducted in order to conclude authoritatively whether the legislative changes led to their intended impact, i.e. reduction of criminal activity associated with prostitution (forced prostitution, prostitution of irregular migrants, organised crime, child prostitution and trafficking in human beings) and improved protection of human rights, health, safety and working conditions for sex workers. Several evaluation studies conducted suggest that:

- Following the changes in the legislation in 2000, the police have prioritised combating forced prostitution and trafficking in human beings and there was an increase in prosecuted cases of trafficking in human beings (Purchasing Sexual Services in Sweden and the Netherlands, 2004, p. 39).⁴⁰⁴
- Some information suggests that the legislative changes introduced in 2000 have strengthened the position of persons in prostitution and that the rights of these persons are today better protected than in the past. However, other sources suggest that the majority of prostitutes do not pay any taxes and do not receive any social security benefits and that persisting stigma and prejudice about the profession of prostitute continues to be a problem.

⁴⁰³ New legislation establishing nationwide licensing requirements is currently under preparation in the Netherlands.

⁴⁰⁴ This increase in recorded cases of trafficking in human beings and forced prostitution does not mean that trafficking in human beings is more prevalent today than prior to the enactment of changes in the legislation.

- At the same time, the implementation efforts have prioritised the introduction and administration of the licensing system over measures to empower sex workers (for example by informing them about their rights and supporting them in claiming their rights, by enforcing rigorously labour standards in the sex industry, by supporting exit options from prostitution, etc.).
- Stricter enforcement of legislation has led to a decrease in prostitution amongst irregular migrants, some of which have left for other countries.
- Legal and illegal forms of prostitution continue to co-exist in the Netherlands. The 2006 evaluations did not find extensive illegal operations, but clandestine operations are present and associated with trafficking in human beings.

6.3. Prostitution regulation regimes and their contribution to combating trafficking in human beings for sexual exploitation

Discussion about the advantages and disadvantages of a particular regime regulating prostitution are greatly constrained by an acute lack of empirical evidence about the links and relationships between the way sex markets are regulated and the prevalence and patterns of trafficking in human beings for sexual exploitation.

The background research conducted for this study found that most of the reports which explicitly discuss links between prostitution and trafficking in human beings often quote unjustified estimates and as a rule do not provide sources or methodologies used. They also tend to disregard the specifics of each segment in the fragmented market of prostitution, and often fail to take into account other factors that have an impact on the prostitution market, such as social or economic policies. In some reports, the terms prostitution and trafficking in human beings for sexual exploitation are used interchangeably, conflating phenomena that have very different policy exigencies and implications. This conflation was also present and at times reflected upon in expert interviews conducted for this study.⁴⁰⁵

The debate tends to be highly politicised; the impact attributed to the changes in legislation is often invoked to support different ideological views. In general, feminist and religious groups have tended to see very limited positive effects of legalisation. Those in health organisations, human rights groups, and sex worker collectives have generally done the opposite (Moosman, 2007).

In a collection of country studies on Sweden, Netherlands, Italy and Romania, looking at the demand for sexual services provided by trafficked persons, Di Nicola et al. (2009, pp.

⁴⁰⁵ *"The policy makers often conflate trafficking in human beings and prostitution" and this conflation "is not reflected."* (Czech Republic). *"We think that it is very important to clarify the differences and the links between prostitution and trafficking in human beings, we have reasons to believe that some of the arguments used in the current debate are not based on empirical evidence, but rather part of a moral argumentation."* (Bulgaria). *"There has been some confusion between the concepts of prostitution and trafficking. Trafficking has been used or sometimes misused in order to promote repressive policy [against prostitution]."* (Finland). *"One of the problem was that discussion [about trafficking in human beings] was focused on prostitution, the main concern was what to do with prostitution. You have here always even in roundtables and events on trafficking in human beings mix with prostitution. But trafficking in human beings is in countries that have legalised or criminalised prostitution. This conflation of trafficking in human beings and prostitution has been one of the problems causing delays in response to trafficking."* (Spain).

21 and 232) conclude that “for the time being it is not possible to say if there is a better model on prostitution than another in tackling human trade, and these questions should be answered only after deeper analysis has been made.” Similarly, the only study identified by the authors of the present report that uses quantitative data to shed light on this question did not find any evidence in support of any of the regimes (Belser & Danailova-Trainor, 2006).

To summarise, given the absence of reliable empirical evidence, it is not possible to conclude authoritatively how a specific type of regulation of prostitution (legalisation, criminalisation or criminalisation of demand) or a change from one to another system impacts on the prevalence or patterns of trafficking in human beings.

However, a strong argument can be made that policy makers should opt for a clear, comprehensive regulation on prostitution that maximises benefits, minimises the costs of prostitution and which allows people to distinguish between legitimate prostitution and trafficking and exploitation (Cauduro et al., 2009, p. 66 and Di Nicola et al., 2009, p. 233). In other words, regulation of the sex market should take into consideration the heterogeneity and complexity of the sex sector and address the needs of various groups of prostitutes accordingly. For those who enter sex work on their own accord it would be beneficial for policies to focus on improving their working conditions, including social protection. For those who have been subject to force or violence, the priority should be their rescue, rehabilitation and reintegration into society (Lim, 1998, p. 213).

This opinion is also supported by the Rapporteur of the Committee on Equal Opportunities for Women and Men of the Council of Europe:

It is my belief that the decisions of adult women and men who have made a conscious decision to work as prostitutes deserve to be respected. We should not victimise people who do not consider themselves victims. On the other hand, however, we should not make people vulnerable because they have chosen to work as prostitutes, either. This means addressing personal vulnerabilities (pathological aspects such as mental health, low self-esteem and childhood neglect or abuse, as well as drug abuse) and structural problems (poverty, political instability/war, gender inequality, differential opportunity, lack of education and training). It means avoiding policies which force prostitutes underground or into the arms of pimps, which only make prostitutes more vulnerable – we should instead seek to empower them. This is important also from a public health viewpoint in the era of resurging STDs and an HIV/AIDS pandemic. At the same time, we should make sure that prostitutes who want to leave the profession can find a way out; no-one should be “forced”, even by circumstances, to exercise a profession which has such strong moral connotations. To answer the question the report poses – what stance to take on voluntary prostitution – I would thus recommend a pragmatic, regulationist approach based on respect of human dignity.

(PACE, 2007, par. 32).

6.3.1. Opinion about regimes regulating prostitution from expert interviews

Experts interviewed for this study have differed greatly in their assessment of the regimes regulating prostitution. Some clearly preferred criminalising demand (Bulgaria), while others voiced their support for criminalisation of demand in principle, but questioned how it can be implemented practically (Estonia, Finland). Some voiced a clear preference for the legalisation model (Germany, Belgium). Some stressed that both the ‘Swedish’ as well as the ‘German and Dutch’ models have negative sides (Netherlands, Latvia), and that trafficking in human beings for sexual exploitation continues to occur in all countries irrespective of the prostitution regulation regime. Some stressed that other

issues need to be taken into consideration in order to tackle the issue of trafficking in human beings for sexual exploitation (Spain, Estonia).

Some interviewed experts were of the opinion that there is a link between prostitution and trafficking, while others questioned the existence of such a relationship. Other experts believed that the way prostitution is regulated has no impact on the number of persons trafficked for sexual exploitation, but that it negatively affects the level of access of law enforcement and social services into the prostitution sector and thus limits their ability to monitor it (Germany, Finland, UK).

Some experts indicated that the general sex business and also the implicit services provided by trafficked persons are more hidden than in the past. This can be due to several factors, including criminalisation of demand for sexual services or criminalisation of prostitution. However, a more important reason is the increased availability of modern communication technologies, which are well capable of preserving the anonymity of transactions and match effectively supply and demand even in dispersed markets. The monitoring of off-street prostitution is both more resource-intensive and contested due to concerns regarding right to privacy (cf. Socialstyrelsen, 2003; UK expert interview).

Some experts also shared the opinion that criminalization of prostitution per se or criminalization of demand might in fact negatively affect the victims of trafficking in human beings: *"In the field of prostitution legislation, one could, at the limit, imagine that a model which would criminalise all forms of prostitution at all levels, if effectively implemented in a country, would simply suppress prostitution and would thus make traffickers choose other countries. However such a system would be impossible to enforce, and both prostitution and trafficking for sexual exploitation would move towards more hidden contexts. The impact of prostitution legislation is thus extremely difficult to anticipate. In reality, in such a system it is trafficked persons who would first suffer from criminalisation of prostitution: more coercion and lesser access to assistance mechanisms."* (Italy).

Several experts have pointed out the practical difficulties in distinguishing between consensual and involuntary prostitution (Finland, Latvia) and to the fact that the diversity of prostitution markets is not always sufficiently recognised in the debates (Germany).

Some experts also felt that the current discussion focuses too much on the 'extreme cases' of regulation of prostitution and that there is not enough empirical evidence on the impact of various regulatory regimes, or their modifications (Bulgaria, Czech Republic, Denmark, Finland). Some experts indicated that the highly politicised, value-based discussion of the Swedish and the Dutch models is not beneficial for an issue-based discussion and evidence-informed policy development on prostitution (Belgium, UK) and one spoke about "international pressure" to criminalise demand (Finland).

Some experts have shared their opinion about an 'ideal' policy model regulating prostitution, which should *"take into account diversity of the market and there would be a diversity of services for all those who need them, not only for those who were identified as trafficked persons but also for others, prostitutes."* (Latvia).

Ultimately, as one of the interviewed experts put it: *"whatever policy on prostitution will not solve the trafficking in human beings problem; only laws and their implementation will. You need to check the legal and underground sex industry and prosecute where necessary."* (Netherlands).

7. Factors shaping demand and supply of sexual services provided by trafficked persons

In any given society, consumption patterns are to a large extent socially, politically, culturally and historically determined, and they can be analysed in terms of supply and demand. As trafficking in human beings for sexual exploitation is a phenomenon that takes place in the context of a market, namely the sex market, it also responds to the laws of demand and supply. This section examines the factors influencing on the one hand the demand and on the other hand the supply of sexual services of trafficked persons.

7.1. Factors influencing demand for sexual services of trafficked persons

Does the demand for sexual services necessarily mean demand for services of trafficked persons? Clearly, if there were no demand for commercial sexual services (prostitution) at all, then there would be no demand for these services offered by trafficked persons.

If one considers that all prostitution is a result of coercion and violence, then commercial sexual services are provided by trafficked (or coerced) persons and any demand for commercial sexual services is by definition demand for services provided by trafficked (or coerced) persons. In this case, the demand should be eliminated as a means of reducing trafficking in human beings and forced prostitution (cf. Ekberg, 2004).

On the other hand, if one considers that sexual services can be provided by a consenting adult, then it is conceivable that demand for sexual services could be met by consensual prostitution. In this case, a clear line has to be drawn between consensual and forced prostitution in order to effectively combat trafficking in human beings. The legalisation of consensual prostitution and its recognition as a form of labour would be a step in the right direction.

In the EU, several countries have moved to reduce demand for commercial sexual services by criminalising the purchasing of sexual services, or the purchase of certain types of sexual services. Sweden criminalised demand for commercial sexual services in 2000 and Finland criminalised the purchase of sexual services from trafficked or pandered persons in 2006. A similar measure is currently under consideration in the UK.

Criminalisation of purchase of sexual services sends a message that purchasing sexual services is not socially acceptable practice. It dissuades some potential clients from purchasing sexual services because of the potential costs (punishment). How many will be dissuaded from purchasing sexual services in jurisdictions where purchasing sexual services is criminalised (e.g. in Sweden) depends on the probability and the severity of the punishment (efficiency of law enforcement, foreseen sentences and severity of the judi-

ciary), as well as on the availability of non-criminalised alternatives in the jurisdiction in question (and outside of it). The more 'acceptable' (from the point of view of a potential client) alternatives, such as the availability of sexual services in a relationship, marriage, etc., the more likely the potential client will refrain from engaging in the criminalised behaviour, i.e. in purchasing sexual services.

At the same time, some demand for services which are criminalised are likely to shift from market segments where the likelihood and/or efficiency of law enforcement is higher (e.g. street prostitution) to those market segments where the same services can be purchased but where the probability and/or efficiency of law enforcement is lower (e.g. escort services, massage parlours, private clubs and apartments). Alternatively, the demand for services which are criminalised in one jurisdiction can shift to jurisdictions in which those same services are not criminalised or in which the law criminalising them is not enforced. In such cases the decisions on 'shopping' for services will be adversely affected by higher costs (e.g. travel costs). Where jurisdictions that criminalise demand co-exist with jurisdictions which do not, it is likely that some of the demand from the jurisdictions that criminalise purchasing sexual services will shift to jurisdictions that do not criminalise it. Currently, this seems to be the situation with demand shifting abroad from Sweden, as mentioned in several interviews with experts from neighbouring countries. Demand for sexual services might also shift within a country where different systems co-exist due to the different policies and/or levels of their enforcement policies in various localities.

On the other hand, it can be hypothesised that the legalisation of prostitution sends a message that, under certain conditions, buying sexual services is acceptable. Though proponents of criminalisation of demand suggest that regulation of prostitution as a form of labour leads to an increase in demand, this study did not find any empirical evidence to support this.

Even assuming that legalisation of prostitution results in an increase in demand for sexual services, this does not necessarily mean an increase in demand for services provided by trafficked persons. It is conceivable that the demand would be met by services offered by consenting adults engaged in prostitution.

Whether the demand for sexual services is met by trafficked persons/forced prostitutes or by consensual prostitutes depends on the relative cost of these services. If the state creates conditions under which it is not profitable (too risky) for the traffickers to offer services provided by trafficked persons, the supply of services provided by trafficked persons will diminish. In other words, if the state criminalises trafficking in human beings and forced prostitution and enforces rigorously the law, the risks and therefore the costs for traffickers will go up. At some point it will cease to be profitable for traffickers to enter or to stay in the 'business' of trafficking. Consequently, whether services provided by trafficked persons are provided on the market is determined, among other things, by the severity of criminalisation of trafficking in human beings and the degree of law enforcement.

Although research on demand for trafficked prostitution is extremely scarce (Di Nicola et al., 2009), the few studies that attempt to contribute to closing this gap suggest that "clients do not seek actively and deliberately for vulnerable or trafficked women" (Zaitch & Staring, 2009, p. 118) and that "all clients say that they think trafficking is a

terrible business and that they would never buy sexual services from a woman that they knew was a victim of trafficking” (Hagstedt, Korsell & Skagero, 2009, p. 197). Yet “even if most clients do not have an explicit preference for trafficked women, implicitly they might. By preferring (...) for example low-cost prostitutes or foreign prostitutes” (Hagstedt, Korsell & Skagero, 2009, p. 179). However, services of a victim of trafficking for sexual exploitation do not have to be ‘cheap’ or a trafficked person does not have to be foreigner, and the buyer may simply not be in a position to distinguish whether the person is a victim of trafficking or not.

7.2. Factors influencing supply of services provided by trafficked persons

7.2.1. Cost-benefit ratio and risks of procurers

As discussed in the previous section, whether the demand for sexual services is met by trafficked persons/forced prostitutes or by consensual prostitutes depends on the relative cost of these services for the consumer. It also depends, to a large extent, on the cost-benefit ratio on the supply side, i.e. the traffickers. Since by definition services provided by trafficked persons are not supplied voluntarily, it is relevant to analyse this ratio as it applies to the procurers of coerced prostitution/trafficking in human beings for sexual exploitation.

Criminals and criminal networks ranging from small, ad hoc criminal groups to hierarchical, well-organised criminal syndicates facilitate and profit from matching supply and demand for sexual (and other) services. If the state creates conditions under which it is not profitable (too risky) for the traffickers to offer services provided by trafficked persons, the supply of services provided by trafficked persons will diminish. In other words, if the state criminalises trafficking in human beings and forced prostitution and enforces rigorously the law, the risks and therefore the costs for traffickers will go up. At some point it will cease to be profitable for traffickers to enter or to stay in the ‘business’ of trafficking. Consequently, whether services provided by trafficked persons are provided on the market is determined, among other things, by the severity of criminalisation of trafficking in human beings and the degree of law enforcement. This opinion was echoed in some interviews conducted in the Netherlands. The problems surrounding trafficking in human beings cannot be solved despite policies revolving around prostitution. The answer to the problems is only with the implementation of laws, when the formal and informal sex industry is monitored and then one can prosecute where necessary.

The European Commission Working Document – Evaluation and Monitoring of the implementation of the EU plan on best practices, standards and procedures for combating and preventing trafficking in human beings (COM(2008) 657 final, p. 3) concluded that “trafficking in human beings is still a low-risk crime concerning both trafficking for sexual and labour exploitation”.

Another important factor in the cost-benefit ratio of traffickers is the relative difficulty or ease to ‘recruit’ trafficked persons. To understand the factors that influence the supply side, it is therefore essential to examine what makes a person susceptible to being trafficked or coerced into providing sexual services.

The literature and expert interviews point to a number of factors that contribute to the vulnerability of persons to trafficking, and thus to the availability of services provided by trafficked persons.⁴⁰⁶

Interviewed experts pointed to the multiplicity of factors that allow for persistent supply of potential victims of trafficking. As one expert noted, *“trafficking is the consequence of market forces. You will always find lower price segments where criminals are involved (drugs, pharmaceutical industry, construction). There will always be a price segment dominated by crime, [and] so will it be with prostitution as well.”* (Sweden).

At the risk of over-generalising, several external factors contributing to the vulnerability to trafficking and thus to the ‘supply’ of trafficked persons can be identified. These are discussed in more detail in the following sections.

7.2.2. Non-regulated segments of the labour market

Available empirical evidence suggests that trafficked persons are found especially in sectors without well-established or enforced labour standards and where the workforce is not unionised, as is frequently the case with the commercial sex sector. It can be argued that “the absence of effective regulation is one of the factors that help to create an environment in which it is possible and profitable to use unfree labour” (Lim, 1998 qtd. in Anderson & O’Connell Davidson, 2003, p. 44). Consequently, bringing the sex sector out of the shadow economy into a well-regulated environment characterised by the unflinching enforcement of all pertinent laws may be an effective way to reduce the prevalence and severity of abuse.

Though illegal or informal market segments exist alongside any regulated sector, their size and the degree of violations that they display depend upon their cultural acceptability, the regulatory framework and on the level of law enforcement. The employers, including rogue employers (and in some cases workers) have an economic incentive to evade the regulations if the returns on non-compliance are higher than the (perceived) costs of compliance or punishment by the state. In the specific case of the sex sector some actors prefer to continue their activities outside of the purview of the state and the society, not least because of the stigma usually associated with engagement in prostitution.

7.2.3. Inequality between and within states

Many interviewed experts named relative poverty of countries of origin as compared to countries of destination. They also named poverty, social hardship and exclusion in countries of origin *and* destination as key elements shaping vulnerability to trafficking in human beings.

This opinion is supported by available empirical evidence: identified trafficked persons were from countries that were economically worse-off than the countries in which they were exploited/trafficked – the majority of persons identified in the EU as trafficked persons were exploited outside of their home countries. Among the trafficked persons are non-EU nationals as well as EU nationals, especially from Romania, Bulgaria and other

⁴⁰⁶At the same time, as some interviewed experts have pointed out, the group of trafficked persons is extremely diverse, as are the specific circumstances that led into the being trafficked, and it is difficult to generalise.

new EU Member States. Trafficked persons tended to be recruited among disadvantaged groups; in the interviews, persons belonging to the Roma minority from Bulgaria and Romania were repeatedly mentioned in this context.

Interviewed experts noted that poverty and/or the wish to improve one's personal and/or family's economic situation creates a powerful impetus for seeking fortune abroad. Importantly, expectations of high profits, which in the perception of many victims or potential victims can be achieved in prostitution in more prosperous EU Member States, figure in the risk/benefit calculations of potential victims of trafficking with the result that more persons enter risky arrangements.

Many experts from old EU Member States emphasised disparities in economic development among countries, while some representatives of new EU Member States also highlighted regional disparities within individual countries. *"In some areas of Bulgaria one prostitute is supporting the whole of her family, they try to collect some money to have a normal house, to buy some animals, to have more normal living conditions."* (Bulgaria). Some experts advanced similar observations concerning victims from, for instance, sub-Saharan Africa.

7.2.4. Restricted migration and legal employment opportunities in the EU

Some experts noted that strict migration rules and border controls limit the manoeuvring space of the traffickers (Latvia), but the majority have argued that strict migration and employment rules increase the vulnerability of trafficking and make trafficked persons more dependent on the traffickers.

Given the inequalities in socio-economic development, the incentives to migrate in search of a job are strong for many even in the face of very limited legal migration and employment channels. Often, lack of reliable information about reliable job placement channels and employment opportunities in the countries of destination plays an important role in increasing the vulnerability to trafficking.

At times the national legislation exacerbates the inequality of power between an employer and migrant employee. This can occur when changing employers/place of work or renewing residence permits depend on the employer. These situations may result in abuse and exploitation, including sexual exploitation, or in situations where a migrant loses his or her regular employment and residence status and as a result feels compelled to generate income in the unregulated sectors of the economy, including prostitution.

The combination of strong motivation to search for a job abroad and restricted legal migration and employment channels creates a supply of persons vulnerable to trafficking. *"The limited migration channels are just doing a favour to traffickers and smugglers, they are creating clients for them"*, an interviewed expert from Spain noted. *"The fact that EU is so restrictive means that for people who want to emigrate the only solution is to ask traffickers to emigrate, under high risks. The migration policies increase the risk of trafficking. Organised crime surely can use also the profit from the fact that people want to emigrate, they make big money."* (Belgium). Available evidence suggests that earnings from prostitution are often higher than those generated in alternative employment opportunities open to women with either no education or a generally low level, or with no access to the formal labour market (Lim, 1998, 207). The limited legal and de-facto employment opportuni-

ties in the EU for migrants, and especially for female migrants, channel some of them into prostitution,⁴⁰⁷ which puts them at an increased risk of trafficking or exploitation.⁴⁰⁸

7.2.5. Discrimination in home countries and in the EU Member States

Interviewed experts indicated that various forms of discrimination are increasing vulnerability to trafficking. In the countries of origin, gender and other forms of discrimination (expressed for example in limited access to education, in access employment opportunities) represent a powerful 'push factor'.

In the EU Member States, discrimination against foreigners, gender discrimination and prejudice against prostitution align, making potential victims vulnerable to trafficking and complicating the extrication of actual trafficked persons from situations of trafficking. Not all groups of victims of trafficking in human beings for the purpose of sexual exploitation are afforded access to their rights in EU Member States, including irregular migrants, and this is a particularly important factor in increasing the vulnerability to trafficking: *"The fact is, that people with illegal residence status are in very bad situation which does not allow them to exercise their rights."* (Belgium). Also, the stigma attached to prostitution and prostitutes makes it difficult to formally identify them as victims of trafficking. Women who have at some point consented to prostitution are not considered 'presumed victims of trafficking' by law enforcement agencies or service providers.⁴⁰⁹ Consequently, they are not informed about rights and services available to presumed victims of trafficking and are deported as irregular migrants.

Importantly, certain immigration policies may in fact directly discriminate against migrant women from non-EU countries: "suspected non-EU prostitutes are not allowed to enter the country [according to Art. 148 Aliens law], in some cases they revert to organised crime groups to facilitate their entry and accommodation, and are afraid of contact-

⁴⁰⁷ *"Many women from [former] Soviet countries don't have the possibility of working in Finland in other sectors than in prostitution. It is hard to find jobs for foreigners if they don't speak excellent Finnish. The attitudes towards migrants are quite harsh, and this concerns for example women coming from former Soviet countries, who make the majority of migrant sex workers in Finland."* (Finland). *"At the beginning women come to be agricultural workers, then, due to obligations [for example to send money home] and other reasons the situation transforms them into sexual services providers, forced by poverty or by easy money."* (Spain).

⁴⁰⁸ *"Prostitution is a choice mainly for women from lower economic background. There are inequalities between the living standards of Finland and the former Soviet countries and you can make more money here [in Finland] working as a prostitute than in your country of departure working in a "regular job."* (Finland). *"Since 2000 I have talked to some 2000 prostitutes. Some of them tell me, 'please give me another job where I can earn the same money. If I work as prostitute I have 500 – 1000 Euro per day as compared to 150 Euro in a month in Bulgaria. I am providing for my child'. Many prostitutes support their families."* (Bulgaria). *"Last year a 16-years old Romanian girl came into the hospital with seizures. She was proud of being a prostitute and earning Euro 300 per month which was more than her father has earned in Romania. They work only within their own ethnic community, and for Euro 50 per night, far below the normal price class."* (Germany).

⁴⁰⁹ As one respondent noted: *"Although many trafficked women have initially consented to work in prostitution, unaware of the actual working conditions, this factor is not sufficiently considered in Finland. Sometimes it seems like a woman as soon as she consented to work in prostitution gave up all her rights."* (Finland). *"Important are prejudices against prostitution. These can result in lower identification rate. Often I have heard police saying: 'But it is only a prostitute. You are not to believe her.' A prostitute is not trustworthy. Similarly some social workers treat prostitutes with prejudices"* (Czech Republic). *"The NGOs [service providers to prostitutes and victims of trafficking] were reported many incidents of bad behavior from authorities towards their clients."* (Finland).

ing the police even in emergency – the vulnerability of sex workers is partially due to legislation which pushes them underground.” (Finland).⁴¹⁰

However, continuing gender discrimination in the EU labour markets also plays an important role in affecting the vulnerability level to trafficking for sexual exploitation. Today, the EU labour markets are segregated to a degree by gender, in particular areas of the economy. In general, men are over-represented in higher level occupations and managerial jobs, whilst women are disproportionately engaged in lower level, unskilled, clerical, sales and service jobs and also low-paid actualised work, including the informal economy (for example in child and elderly care, domestic services). The continuing gender pay gap in the EU is conditioned by sectoral and occupational segregation, differences in working time arrangements, differences in terms and conditions (such as overtime and bonus payments) and direct discrimination.⁴¹¹ (Webster, 2007).

As one expert summarised: *“the gender issue and the discrimination and all the cultural issues, these are in favour of traffickers again, it is easy to manipulate these women, easier to control them for longer time, often with the help of debts mechanisms.”* (Spain).

⁴¹⁰ Finland, Section 148 Aliens Act (Grounds for refusal of entry): (1) An alien may be refused entry into the country if: (...) 6) there are reasonable grounds to suspect that he or she may sell sexual services.

⁴¹¹ Women and men do not have equal access to professional skills, training and personal development opportunities. In addition, cuts in public sector expenditures and the flexibility of labour markets have had very serious implications for gender pay equality. The flexible employment arrangements that are entered into primarily by women, are double-edged swords for gender equality because they are often associated with poor employment conditions, career and learning prospects and protection arrangements. The rise of the ‘flexicurity’ model does not appear to have addressed the inherent gender inequality in flexible and discontinuous forms of employment which tend to be female-dominated. The gender policies are today often piecemeal and unsystematic and as a result ineffective in tackling the fundamental causes of inequality: the EU funded projects “Policy Frames and Implementation Problems: The Case of Gender Mainstreaming” and the “Gender Sensitive and women-friendly public policies: analysis and assessment” found that in EU policy-making, gender policies are increasingly serving other policy objectives such as employment and economic policies, and that there is a declining commitment to, and an effective watering down of, gender equality policies. (Webster, 2007).

8. Conclusions

The subject of trafficking in human beings for sexual exploitation has proven to be a particularly difficult research topic. This is in part due to inherent problems with empirical data on trafficking in human beings and related areas such as prostitution, and to the divisive nature of the subject. Prostitution and trafficking in human beings for sexual exploitation have been often treated in a highly emotive, sensationalised and value-laden manner, which precluded candid exposition of the many controversial and complex aspects.

8.1. Key developments in trafficking in human beings for sexual exploitation in 17 EU Member States

The information collected and reviewed for this study testifies that our knowledge about trafficking in human beings in general and about trafficking in human beings for sexual exploitation in particular has grown over the past years. Despite these advances, however, we still lack empirical evidence and thus conclusive answers to rather basic questions such as: what is the extent of trafficking in human beings and which factors influence the prevalence and patterns of trafficking in human beings.

As of the time of writing, this report available quantitative data on trafficking in human beings does not allow for a meaningful and methodologically sound comparison across countries or over time. The development of concrete initiatives on data collection has only fairly recently moved forward at the EU level, despite the fact that the issue has been on the political agenda of the EU and its Member States at least since the first major EU conference on trafficking in human beings organized in Brussels in 1996.

The limited available data and expert opinions suggest several key trends in trafficking in human beings in the 17 EU Member States studied:

- The share of identified cases/victims of trafficking in human beings for sexual exploitation in the overall number of identified and registered cases/victims of trafficking in the EU has decreased. This is because more cases of trafficking for other purposes than sexual exploitation are identified, in part due to the increased attention paid to this phenomenon.
- Trafficked persons identified in the EU Member States generally come from non-EU countries and from new EU Member States, especially Romania and Bulgaria. However, there are also cases of internal trafficking within the EU, which are often not reflected in the official statistics.
- The level of (physical) violence used to coerce a trafficked person into compliance has decreased. Today, traffickers use more 'subtle' methods of coercion (such as debt manipulation, blackmailing, threats against family members in countries of origin), which makes proving coercion in trafficking in human beings cases challenging.

Physical violence, however, continues to be relatively widespread among certain groups of trafficked persons/traffickers.

- The prostitution market and therefore also the market segment in which persons trafficked for sexual exploitation provide services tend to be more hidden than in the past due to advances in communication technologies, changes in legislation on prostitution and trafficking and its enforcement. Identification and investigation of trafficking in human beings in the hidden market for sexual services is extremely challenging.

The latter two trends, which contribute to weak identification of trafficked persons and trafficking cases in general, may explain in part why in several countries there is no increase in the number of trafficking in human beings cases and/or trafficked persons recorded, despite reports that the law enforcement and other actors pay increased attention to the phenomenon. Ultimately, however, the available data does not allow for any empirically verifiable conclusion about the dynamics of trafficking.

8.2. The market for sexual services provided by trafficked persons

In the past, research and policies on trafficking in human beings tended to prioritise organised crime and irregular migration aspects of trafficking in human beings and trafficking in human beings for sexual exploitation. Today, economic aspects of trafficking, including the analysis of the market for labour and services provided by trafficked persons, increasingly feature in the research and policy debate. Often, however, the policies and practices of EU Member States do not yet fully reflect these conceptual advances.

The EU Member States have several options on how to limit the market for services offered by persons trafficked for sexual exploitation – they can target the demand (buyers of sexual services provided by trafficked persons), the supply (trafficked persons) or the mediators (traffickers). It has to be acknowledged that it is, in general, difficult to distinguish between demand for services provided by trafficked or coerced persons and demand for services provided by consensual prostitutes.

Demand for sexual services as such is affected by several factors including any regulations in place for the marketing of sexual services and the cultural acceptability of purchasing sex services. Importantly, the limited research available suggests that, as a rule, buyers of sexual services do not demand in particular services provided by trafficked persons. However, it is possible, that the services provided by trafficked persons are meeting certain demands of the users such as demand for cheap or 'specific' services.

By tackling gender inequality, various forms of discrimination and social exclusion, labour regulation both in law and in practice, the EU Member States can influence some of the factors affecting the overall vulnerability to becoming a trafficked person. Other important factors of vulnerability directly concern the countries of origin, such as prevalence of poverty.

The market for sexual services is strongly shaped by the mediators, placed as they are between supply and demand, such as operators of brothels, pimps, traffickers, procurers. While some are linked to organised crime networks, many operate individually and some even with full legality. It is clear that the regulation of the prostitution market influences

the power relations between mediators and other actors in the market, but this area remains seriously under-researched.

Finally, the market for sexual services is also influenced by macroeconomic developments, such as the global financial crisis. As of the time of writing of this report, only limited evidence about the impact of the crisis on labour markets, migration and related areas was available. What there was pointed to the fact that labour markets will have to accommodate a share of the negative implications of the crisis and that countries which are better-off economically might further restrict access to its labour markets for foreigners. This may lead to an increase in irregular migration and informal economy as third-country nationals in EU Member States will become unemployed and in need of income. At the individual level this is likely to further increase the vulnerability of many to trafficking and exploitation, including trafficking for sexual exploitation.

8.3. Mainstreaming trafficking in human beings as reflected in various policies

8.3.1. Regulation of prostitution

Among policies that directly affect trafficking in human beings for sexual exploitation, the regulation of the sex market plays a particularly important role, as it influences the conditions of supply and demand, and the mediators on the market, but also provides access to the law enforcement and social services. However, policy makers often shy away from treating prostitution as an economic sector. Various moral, law and order, public health and other considerations have too often prevented states from formulating and implementing coherent policy on prostitution, resulting in ambivalent and inconsistent approaches and policies, which do not empower persons working in prostitution.

There is an ongoing discussion about the reduction of demand for sexual services provided by trafficked persons. EU Member States might consider altering prevailing social norms and thus help to shape people's behaviour as consumers in both legal and illegal segments of the commercial sex market. In this sense, criminalisation of demand is sending a message that the purchasing of sexual services is socially unacceptable and thus probably reduces the demand for sexual services. It could also be argued that criminalisation of demand dissuades some potential clients from purchasing sexual services because of the potential costs (in the form of punishment) involved.

Available evidence however does not allow us to conclude whether measures addressing demand as such are an effective means to reduce the demand for services provided by trafficked persons. Enforcing measures that criminalise the demand for sexual services has serious implications for the right to privacy, bearing in mind particularly that the criminalisation of demand drives the sex market underground, where it is extremely difficult to monitor. This limits the access of various service providers and law enforcement agencies to persons providing sexual services, including victims of trafficking, who may as a result remain undetected and subjected to a higher degree of violence. Some information collected for this study indicates that persons involved in off-street prostitution, when compared to those in street prostitution, may be exposed to equal or even higher risks of violence.

Regimes criminalising the purchase of sexual services are also likely to displace some demand for sexual services abroad, as confirmed by reports about Swedish men travelling abroad to purchase sexual services there.

Regarding the supply of sexual services, the way that sex markets are regulated can perpetuate or deepen the stigmatisation and further marginalisation of prostitution, prostitutes and persons trafficked for sexual exploitation in prostitution; or on the contrary it can contribute to their empowerment.

Criminalisation of prostitution, still in force in Romania in 2008, has been rightly criticised for perpetuating paternalism, gender discrimination, double moral standards, driving the sex market into illegality, weakening the position of the prostitutes and contributing to worsening even further the situation of victims of trafficking and sexual exploitation.

Similarly, partially legal regulation of prostitution, which is in place in most of the 17 EU Member States studied, has been criticised for, *inter alia*, failing to improve the standing of the sex workers and for failing to reduce the incidence of crime related to sexual exploitation. Most regulations refer to the conditions under which prostitution can be performed with respect to public order, locations and times or regarding the obligations of the providers of sex services (e.g. voluntary or compulsory registration with the authorities, tax payments). Since prostitution is not considered a regular professional activity, this situation has a direct impact in terms of equal access of the sex workers to services provided by the state to other categories of workers. Furthermore, the series of measures partially regulating prostitution are mostly neither accompanied by outreach activities for sex workers, nor are they part of comprehensive packages combining interventions across a number of policy areas such as education, welfare and communication. This may in some cases lead to marginalisation and disenfranchisement of consensual sex workers.

Available research suggests that where consensual prostitution of adults is legalised and brought above ground, it empowers sex workers, improves prospects for monitoring of the sex market by law enforcement and labour inspections, and advances the access of sex workers to health, social and other services. Therefore such policy may be an effective way of reducing the prevalence and severity of abuse. However, change in legislation has to be accompanied by practical measures to inform and support sex workers in claiming their rights and also to facilitate the exit of those who no longer wish to provide sex services.

In the context of addressing trafficking in human beings, the benefits of legalisation of prostitution have factors that outweigh the benefits of criminalisation of prostitution as such or of demand.

However, empirical knowledge of the effects of various regulation regimes is limited: it is not possible to conclude authoritatively on how a specific type of regulation of prostitution or a change from one to another system impacts on the prevalence or patterns of trafficking in human beings.

When considering a change in the regulatory framework of prostitution, policy makers need to be clear about their objectives and carefully assess the impact of policies on trafficking in human beings. Broad public consultations, including those with persons involved in prostitution, help to ensure that policy makers have access to knowledge

relevant to the future legislative change. These consultations provide for a higher degree of ownership of the new regulations, thus contributing to improved enforcement and implementation.

It needs to be kept in mind that whether the expected benefits materialise depends to a large degree on the actual implementation of the policy. Ultimately, no matter what constitutes the legal regulation of sex markets, there will always be a shadow market and possibly illegal market segments, as is the case in any other sector. However, its size and degree of violations and abuse committed in this segment may be influenced by the choice of regulation.

It is also worth noting that, as prostitution policies are highly dependent on national public opinion, it is difficult for Member States to co-ordinate these policies internationally. Therefore, even effective measures to address trafficking in one country may simply re-direct traffickers, their victims and clients abroad.

Irrespective of the prostitution regulation regime, in order to limit the market for services provided by trafficked persons, the EU Member States have to prioritise the enforcement of legislation against any form of exploitation, including trafficking for sexual exploitation and forced prostitution. Considering the difficulties in prosecuting trafficking in human beings, and bearing in mind that trafficking in human beings is a criminal act aiming at exploitation, it is important to link anti-trafficking strategies closely with broader policies responding to and preventing exploitation in all its forms.

8.3.2. Trafficking in human beings and macro-policies addressing factors of trafficking in human beings for sexual exploitation

Understandably, the intent to combat trafficking in human beings is not always the paramount concern influencing policy choices made in connected areas such as migration, labour law and policies, employment policies, anti-discrimination, redistribution and international development. However, it is evident that the success of combating trafficking in human beings hinges to a high degree on these policies.

In this context, migration regimes and labour market regulations are of particular importance. The more restrictive these regimes are the more (potential) labour migrants will resort to the use of irregular channels and various intermediaries at all stages of their migration. This makes them vulnerable to traffickers and exploitation. The vulnerability of migrants, especially irregular ones, is exacerbated when they are not able to effectively exercise all their rights, particularly gaining access to justice in the countries of destination.

When it comes to poverty reduction strategies in countries of origin, they are essential for reducing the vulnerability of potential and actual victims to traffickers. But by their nature, poverty reduction strategies are long-term undertakings, and their impact cannot be felt in the short-term. Likewise, social policies that seek to address social and economic marginalisation in countries of destination are long-term undertakings, and their effect on the vulnerability of potential trafficked persons is not immediate. It must also be kept in mind that these policies require complex political and policy choices. For instance, whether a national government chooses to target a specific country of origin with assistance for poverty reduction, or to treat poverty in this country of origin as a part of international assistance programmes, reduction in trafficking is only one of many objectives pursued, and therefore one of the many elements of the relevant policy choice.

It is important to assess the impact of these policies on trafficking in human beings and to integrate these considerations in the policy choices. These policies justifiably attract a high degree of public interest, but also easily render themselves to political manipulation. The decision-makers will thus be hamstrung in their ability to mainstream trafficking agenda when developing these policies by having to reconcile an array of competing policy choices and by having to strike necessary compromises with influential groups of interest.

Still, in case a state chooses a policy which can be expected to adversely affect victims of trafficking, measures should be taken to assess the human rights impact and mitigate the negative effects of these policies.

8.4. Policies focused on traffickers and trafficked persons are indispensable

The above discussion shows that the impact of broader policies on trafficking in human beings is hard to assess, due to lack of data, and the complex interplay of various intervening factors. For optimal results, anti-trafficking policies need to be integrated into a broader approach to respond to and prevent exploitation in all its forms: identification and assistance of victims of exploitation, prosecution of perpetrators and prevention measures.

This study has identified two parallel trends: harmonisation of the EU Member States' criminal legislation and increased focus on protection and assistance to victims of trafficking. These trends must be strengthened and supported by more comprehensive standards at European level. At the national level, programmatic documents need to process research into policy making, detail programmatic measures and specify the duty bearers of each of these measures.

8.4.1. Increasing the risks for traffickers

From the point of view of traffickers, trafficking in human beings is a profit-generating enterprise. They are motivated by the gains expected from engaging in this activity.

Whether the demand for sexual services is met by trafficked persons or by consensual prostitutes depends in part on the cost of these services. If the state creates conditions under which it is too costly for the traffickers to offer services provided by trafficked persons, the supply of these services will diminish. In other words, if the state rigorously criminalises trafficking in human beings and enforces the law, the risks and therefore the costs for traffickers increase. At some point it ceases to be profitable for traffickers to enter or to stay in the business of trafficking. Consequently, to what extent services provided by trafficked persons are available on the market is, among other things, determined by the extent of criminalisation of trafficking in human beings and the degree of law enforcement. This is illustrated by the Dutch case, where trafficking in human beings is likely to have become more difficult because the enforcement of the regulations has increased in comparison to the former situation.

The risks to traffickers can, therefore, be increased through toughening the criminal law with regard to trafficking in human beings, better law enforcement, and facilitation of the extrication of victims from trafficking situations. At minimum, this requires from the EU Member States full implementation of the European Council Framework Decision

2002/629/JHA on Combating trafficking in human beings. However, the harmonisation of national legislations with this Decision is far from being complete. While the Decision does not prescribe the transposition of the definition of trafficking in human beings into domestic criminal legislation, it does oblige EU Member States to criminalise all possible acts that constitute trafficking in human beings. This is clearly not the case in two of the countries examined (Estonia, Spain), and it is difficult to establish for four additional countries (Germany, Italy, Poland, UK). The Decision does not specify a range of sentences for non-aggravated trafficking in human beings – and domestic legislations vary considerably on this matter – but it does prescribe a list of aggravating circumstances to be met by a minimum sentence. Three of the studied countries have failed to transpose this provision (Estonia, the Netherlands, Poland). Eight other countries (Bulgaria, the Czech Republic, Denmark, Italy, Latvia, Romania, Sweden, the UK), while setting a basic sentence for trafficking in human beings high enough to comply with their basic obligations, do not list all aggravating circumstances mentioned in the decision. Finally, five countries (Bulgaria, the Czech Republic, Italy, Poland, Romania), to our knowledge, fail to provide criminal liability for legal entities engaged in trafficking in human beings, in violation of the Decision. However, in some cases legal entities may be prosecuted by using legislative provisions not pertaining to the criminal legislation.

The EU Member States' approaches to transposition of EU legislation on trafficking in human beings vary. Some national legislators have opted for extensively legislating on the issue of trafficking in human beings for sexual exploitation. Other countries have considered that many requirements of the Framework Decision were already respected through blanket provisions of their criminal law system or through articles related to offences other than trafficking in human beings.

The range of sentences for trafficking in human beings for sexual exploitation is wide. In some countries, the definition of trafficking in human beings in the national legislation lacks clarity. In some other cases it does not cover all forms of trafficking. The variety of definitions and sentences reduces the degree of harmonisation of the criminal law responses to this crime. This limits the possibility of international co-operation and provides room to manoeuvre to the traffickers.

Opinions of interviewed experts consistently suggest that it is paramount to ensure better harmonisation of criminal law and law enforcement which tackle trafficking in human beings for sexual exploitation among all EU Member States, and possibly also the EU Eastern Partnership and EU Mediterranean Partnership countries.

By the same logic, anti-trafficking policies – both in terms of criminal legislation and law enforcement practices – should be as strong as policies against other forms of crime, especially organised crime. In this way, criminal networks would not diversify into trafficking in human beings from other criminal activity (e.g. drugs trafficking).

8.4.2. Empowering and assisting persons trafficked for sexual exploitation

Equally important for addressing the problem of trafficking is to provide trafficked persons with adequate assistance and to empower both the potential and actual victims of trafficking in human beings. Every victim escaping the network is a victory against trafficking in human beings not only because of the human rights concerns, but also because this dramatically increases the traffickers' risks of being exposed to law enforcement.

Empowerment and assistance to trafficked persons who participate in legal proceedings are clearly addressed in the European Council Directive 2004/81. On the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal migration, and who cooperate with the competent authorities, there are a number of obligatory provisions and optional recommendations. Under this instrument, assistance is connected to the granting of a reflection period with a view towards co-operation with relevant authorities, followed by a residence permit for the duration of the proceedings.

Compliance with this directive is still very incomplete in the 17 EU Member States studied. Three countries only (Bulgaria, France, Italy) could be assessed as fully compliant with the obligatory provisions of the Directive, while two countries (the United Kingdom and Denmark) declared themselves not bound to the Directive. None of the countries studied comprehensively apply all provisions and recommendations of the Directive. Importantly, the most crucial provisions of the Directive register the lowest rate of compliance: for the granting of a reflection period there are four cases of incompliance, and three countries are non-compliant with the criteria for the granting of residence status (this is without taking the United Kingdom and Denmark into account).

In addition, experts and reports indicate that, whether or not the legislation is followed, implementation is often lagging behind and only a fraction of all victims actually receive assistance. The 17 EU Member States studied tend to shy away from accepting a positive legal obligation to provide assistance to the victims of trafficking. In practice, where social and legal assistance is provided, it appears that states prefer to leave the provision of these services to the non-governmental sector. This might reflect the still relatively low priority placed on the empowerment of victims, which is counterproductive in the fight against trafficking in human beings for sexual exploitation. More effort is needed from the member states to address and remedy the vastly differing degrees, standards and focus of assistance. In this context, the group of EU citizens who were trafficked into another EU country deserves a particular attention since the EU Member States are not obligated to assist them under the Directive. Therefore it is not clear whether they have access to any trafficking-specific assistance.

Beyond compliance with the relevant EU directive, a great number of non-obligatory measures can significantly reduce victim vulnerability and facilitate victim extrication. These measures, which are rarely applied, include national and trans-national referral mechanisms, unconditional assistance to trafficked persons, long-term recovery and rehabilitation assistance including access to the labour market in the host country, and effective access to compensation. Extrication, rehabilitation and reintegration of the victims, whether in the country of destination or after return to the country of origin, are indeed major factors to reduce (re-)trafficking for sexual exploitation. If they are not ensured, trafficked persons might temporarily free themselves from the traffickers but their vulnerability to trafficking will not be reduced. In the same way, the reintegration of trafficked persons who choose to return to their country of origin remains to be seen as an unmet challenge.

Current assistance schemes are mostly conditional on co-operation of the victims with law enforcement. The residence permits are temporary, placing restrictions on the victims and limiting their long-term perspectives, while trafficked persons need long-term perspective to either integrate into the host country or reintegrate in their home coun-

try. The Italian model, which provides unconditional protection for women and children who are victims of human trafficking, can be recommended as good practice for enhanced identification and prosecution of trafficking in human beings for sexual exploitation and prevention of re-trafficking.

In some cases, offered assistance is not adequate to the needs of the trafficked person and some experts argued that more efforts need to be made to ensure that trafficked persons receive assistance customised to their needs.

Finally, nationals of the country where exploitation takes place, as well as EU citizens, are not necessarily entitled to assistance for trafficked persons, since this assistance is in most cases linked to the residence permit. While they usually would be entitled to other social and other assistance, especially if they are in their home countries, it is unclear whether some of them are not in fact deprived of the necessary assistance. More research is needed in this area.

8.4.3. Institutional solutions

Given the complexity of trafficking in human beings, there is a particular need for a coordinated response of multiple actors. There is evidence to show that in those countries where policies on trafficking in human beings were specified in a National Action Plan (or a similar document) and where a National Governmental Co-ordinator (or similar function) was designated, the actual implementation of anti-trafficking measures, co-ordination and co-operation among various actors proceeds more smoothly than in countries without a clear policy plan and a co-ordinating agency.

In terms of data generation and processing, a lot remains to be done. There have been certain movements towards developing shared standards and definitions. Many countries are moving towards revising their methodologies and establishing a single depository of the trafficking related data. These efforts must be encouraged both at the national and the EU level. The EU should also pay close attention to assigning a responsibility for comprehensive analysis of the collected data.

9. Recommendations

9.1. Recommendations to EU Member States

1. EU Member States should adequately implement their commitments to combat trafficking in human beings. In particular, EU Member States should ensure full and unambiguous compliance with the European Council Framework Decision 2002/629/JHA and the European Council Directive 2004/81. They should ratify and implement the Council of Europe Convention on Action against Trafficking in Human Beings and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime.
2. EU Member States should mainstream the fight against trafficking in human beings into policies (on such issues as prostitution, migration, social assistance and redistribution, employment, labour law, gender equality, poverty reduction and foreign aid, discrimination) affecting - directly or indirectly - the market for services provided by trafficked persons.
3. Policy makers should carefully assess the possible impact of policy and legislation choices on the various actors in the market for trafficking in human beings. They should especially ensure that presumed victims of trafficking cannot be prosecuted for offenses committed due to their situation as trafficked persons.
4. As a preventive measure, special empowerment strategies should be available for persons active in the sex industry to prevent them from falling victim of trafficking. Such programmes should address the issues of exploitation and other human rights abuses to make individuals aware of their rights, particularly their socio-economic rights, including the right to health care.
5. Member States should develop programmes offering persons active in the sex industry, who are potential victims of trafficking for sexual exploitation, alternative livelihood opportunities and programmes.
6. Whether demand for sexual services is criminalised or prostitution is either legalised or depenalised, the implementation of the regulatory framework should be prioritised and carefully monitored in order to prevent and address violations of the rights of persons involved in prostitution.
7. EU Member States should prioritise anti-trafficking strategies that empower the groups affected and/or at risk of trafficking in human beings, in particular regular and irregular migrants and persons engaged in prostitution and ensure adequate and equal standards of support for trafficked persons regardless of their participation in judicial proceedings.

8. It has to be acknowledged that it is, in general, difficult to distinguish between demand for services provided by trafficked or coerced persons and demand for services provided by consensual prostitutes. Information campaigns therefore should make more potential clients aware of the realities of human trafficking and the likelihood of sexual exploitation.
9. EU Member States should pay special attention to the rights of trafficked children and where necessary devise child-specific policies and assistance programmes, bearing in mind their specific rights, needs and vulnerabilities.
10. EU Member States should reinforce the capacities of law enforcement agencies to effectively enforce laws addressing trafficking in human beings and related fields such as for example labour standard enforcement and policies regarding prostitution. Special focus in this regard should be given to identification procedures, asset seizure and victim compensation. A deepening co-operation between law enforcement agencies and judicial authorities is necessary in all the above mentioned instances, considering the significant burden of proof and the delicate balance between the contradictory principles inherent in trafficking in human beings cases.
11. EU Member States should improve or put in place national referral mechanisms in order to facilitate referral and assistance to trafficked persons. They should also improve or develop transnational referral mechanisms in order to protect the rights of the trafficked persons moving between EU Member States as well as between EU Member States and third countries for return, trial or resettlement reasons. This should include a formalisation of relations between the State and civil society organisations that provide services to trafficked persons.
12. Where it has not been done yet, EU Member States are urged, on the basis of all available data and through a process of consultation, to adopt a national policy against trafficking in human beings (e.g. National Strategy and Action Plan or equivalent documents). This policy should incorporate an explicit division of responsibilities among various agencies, provide for resource allocation and contain a monitoring and evaluation mechanism managed by an independent National Rapporteur.
13. EU Member States should collect reliable data and information on trafficking to inform decision-making. The Member States should make additional efforts to compile existing sources of information on trafficking in human beings that are available from various agencies (e.g. police, courts, service providers, labour inspection records). Where it has not been done yet, Member States should appoint an agency in charge of research, gathering and analysing data on all aspects of trafficking in human beings, as well as monitoring the implementation of the policies to fight the phenomenon. This body should report, at least annually, on trafficking in human beings and the successes and shortfalls of the national laws and policies and their implementation.

9.2. Recommendations to the EU Institutions

1. Relevant European Institutions should periodically review the compliance of EU Member States with EU standards on trafficking in human beings. Special attention should be paid to monitoring of the implementation of the anti-trafficking measures and their impact.

2. The European Commission should work with the Member States to develop common parameters and guidelines for data collection and analysis. Data collection bodies should be trained in the practical application of the methodologies for data collection and analysis.
3. The European Commission should facilitate the establishment of a central repository of EU Member States' national legislation on trafficking in human beings and related areas and its translations.
4. The relevant European Institution should compile national-level data and reports into a periodic EU-wide report on the situation concerning trafficking in human beings.

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Annex I – Country Fact Sheets

Austria

Basic Country Facts⁴¹²

Population 2007: 8,331,930
Surface: 83,870 sq km
GDP per capita in PPP Euro (2008): 32,526.84
Date of accession to the EU: January 1, 1995

International law⁴¹³

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: not ratified

1950 Council of Europe European Convention on Human Rights: 3 September 1958 (R), see reservations⁴¹⁴

1966 UN International Covenant on Economic, Social and Cultural Rights: 10 September 1978 (R)

1996 European Social Charter: 7 May 1999 (S)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 15 September 2005 (R)

Domestic law⁴¹⁵

Trafficking in human beings

Austrian Criminal Code § 104a, Trafficking in Human Beings

(1) Whoever recruits, shelters, accommodates, transports, offers the services of or passes on

1. An underage person or

2. An adult through dishonest means

with the intention to exploit this person sexually, through organ removal or for its manpower has to be prosecuted with imprisonment of up to 3 years.

⁴¹² The country basic facts data for all countries were taken from Eurostat, with the exception of surface, which is taken from CIA Factbook.

⁴¹³ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴¹⁴ <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=11/23/2008&CL=ENG&VL=1>

⁴¹⁵ Please note that the translations appearing in this study are not official. Formally translated version of the relevant legislation was not available at the time of the publication of this study.

(2) Dishonest means are the subterfuge of facts, the abuse of an authority position, of a plight, of a mental disease or condition, that make a person defenceless, intimidation and the granting or acceptance of an advantage that bring this person under someone's domination.

(3) Whoever commits this crime with violence or wicked threat has to be prosecuted with imprisonment of between six months and five years.

(4) Whoever commits this crime against an underage person within a criminal organisation, using serious violence or in the way that the life of this person is endangered or that the crime causes a serious disadvantage for this person, has to be prosecuted with imprisonment of between one and ten years.

Criminal Code, §104 (Slavery)

(1) Whoever deals with trafficking for the purpose of slavery is to be sentenced with 10 to 20 years of imprisonment.

Alien's Police Act §116 (Exploitation of an alien)

(1) Whoever procures to himself or to a third person a recurrent financial profit from exploiting the particular dependency of an alien, who resides illegally in the country, who has no valid work permit or who stands in a particular state of dependency, has to be sentenced to imprisonment of up to three years.

Criminal Code §217 – Crossborder trafficking for prostitution (*Amtsblatt (Official Journal) I Nr. 15/2004, in force since: 1 Mai 2004*)

(1) Whoever brings a person to perform illicit prostitution, even if such person already commits prostitution, in another country than the one whose citizenship such person has or where such person has his/her habitual place of residence, or procures such person for such purposes, shall be sentenced to imprisonment of six months to five years, and, if the crime is committed for profit, to imprisonment of one to ten years.

(2) Whoever induces by deception a person to commit prostitution in another country than the one whose citizenship such person has or where such person has his/her habitual place of residence or coerces such person by violence or dangerous threat to move to another country or conveys such person to another country by violence or by exploitation of such person's error shall be sentenced to imprisonment of one to ten years.

Prostitution

Criminal Code, §74

(1) (...) 9. Prostitution: the execution of sexual practices on one's own body for money with the intention to ensure a continuous income for oneself or a third person by this recurrent execution or toleration.)

Criminal Code, §216

(1) Whoever procures continuous income for himself through the prostitution of another person, with the intent to exploit this person, has to be sentenced for imprisonment of up to one year.

(2) Whoever procures continuous income for himself through the prostitution of another person, with the intention to exploit this person, by intimidating her, by dictating to her the conditions of the prostitution or by exploiting several persons in this way at the same time has to be sentenced with imprisonment of up to two years.

(3) Whoever commits the crime as a member of a criminal organisation has to be sentenced with imprisonment of up to three years.

(4) Whoever keeps a person from quitting prostitution by intimidating her, has to be sentenced with imprisonment of up to three years.

Länder level

Salzburg: Salzburger Prostitution Act

§1

1. The exercise of prostitution: the professional toleration of sexual activities on one's own body or the professional execution of sexual activities. Professional exercise of the activities takes place when the toleration or execution is carried out with the intention to procure a constant income through its regular perpetration.

2. The initiation of prostitution: a behavior that reveals the intention to intentionally practice prostitution.

§1a

(1) It is forbidden:

1. the practice of prostitution outside regulatory allotted brothels;
2. the initiation of prostitution outside regulatory allotted brothels;
3. the non gratuitous or gratuitous assignment of rooms or buildings outside regulatory allotted brothel to persons who initiate or practice prostitution there;
4. the demonstrative labelling or lighting of brothels, as well as the mounting of advertising structures of any kind for brothels advertisement.

Vienna: Viennese Prostitution Act

§2

(1) According to the law, prostitution is the toleration of sexual activities on one's own body or the execution of sexual activities, as far as professional activity is existent.

(2) Initiation of prostitution takes place when someone reveals through his/her behaviour that he/she wants to practice prostitution.

(3) A professional capacity is takes place, when the initiation, the toleration or the activity is carried out with intent to procure a continuous, however not regular, income through its periodical perpetration.

§3 Prostitution cannot be initiated or practiced by minors and persons, where magisterial tutelage concerns exist against their prostitution practice.

§8a (1) Whoever initiates or practices prostitution

1. against the prohibition clauses of §3,
2. without a registration according to §6 (1),

3. during the time an interruption was reported or after the cessation of activity had been reported (§7 para. 1),

4. for or in domiciles or accommodations, in which the practice of prostitution are forbidden as per §5 para. 1, 4 or 5,

commits an administrative offence and has to be sentenced to a fine of up to 1000 Euro, in case of irrecoverability [of the fine] to a surrogate of imprisonment of up to eight days, in case of recurrence to a fine of up to 2000 Euro, in case of irrecoverability [of the fine] to a surrogate of imprisonment of imprisonment of up to 12 days.

Policies on trafficking in human beings and their implementation

Policy documents

In November 2004 the Council of Ministers decided to set up the Human Trafficking Task Force under the direction of the Foreign Ministry. The Task Force prepared a comprehensive National Action Plan against Human Trafficking adopted in March 2007.

In 2008, the First Austrian Report on Combating Human Trafficking was prepared covering the period March 2007 to May 2008. The report offers a current overview of the anti-trafficking activities and measures Austria has launched and is planning to take.

There is a Working Group on Child Trafficking established under the National Action Plan Against Human Trafficking. This Working Group prepared a report on child trafficking in Austria and an information folder on child trafficking in Austria.

Implementation of the law/policies

Coordination – Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Justice and the Federal States, the Task Force, Federal Government.

Identification of victims/offenders – The Ministry of Foreign Affairs in co-operation with the members of the Task Force, Ministry of the Interior, Ministry of Justice, the Intervention Centre for Women affected by Trafficking (LEFÖ-IBF) and the Federal States take part in the data collection.

Prevention – Task Force, Ministry of the Interior, Ministry of Foreign Affairs, LEFÖ-IBF, Women's Directorate at the Federal Chancellery, Ministry of Social Affairs and Consumer's Protection, Social Partners, Ministry of Economic Affairs and Employment, Ministry of Education, Art and Culture, Federal States.

Assistance to victims – while the National Report on Trafficking in Human beings of 2008 mentions a 30 days "recovery" period, no legal provisions could be identified. A Ministry of Interior Directive, which refers directly to the Council of Europe Convention prevents from enforcing orders for repatriation of victims, during a certain period for recover. The Settlement and residence Act foresees a permit of residence for humanitarian reasons. No assistance to victims is foreseen by the law. Assistance is mostly delivered by NGOs

Protection of victims – Ministry of the Interior, Ministry of Social Affairs (BMSK), Ministry of Economic Affairs and Employment, Federal States, Women's Directorate at the Federal Chancellery, Task Force, the Intervention Centre for Women affected by Trafficking (LEFÖ-IBF), Ministry of Health, Family and Youth, Task Force, Austrian Development Agency (ADA)

Non-Governmental Response

LEFÖ (Intervention Centre for Migrant Women Affected by Human Trafficking, <http://www.lefoe.at>) runs a centre that offers assistance and support to female migrants trafficked to Austria for the purpose of prostitution or domestic servitude. The Ministry of the Interior co-operates with LEFÖ-IBF in preparing a uniform nationwide decree providing that LEFÖ-IBF's shall take care for victims of human trafficking on a nationwide basis. RESPECT (<http://www.respect.at>) NGO runs informational and public relations projects on tourism and development in developing countries frequented by Austrian travelers. Other NGOs: LENA and MAIZ (information and assistance centres in Upper Austria) and SOPHIE (information and assistance centre for prostitutes in Vienna).

National data on trafficking in human beings

CC = Criminal Cases

AUSTRIA	2000	2001	2002	2003	2004	2005	2006	2007
CC - indictment (§104a Penal Code) (a)						16	33	18
CC - conviction (§104a Penal Code) (a)						1	9	2
CC - indictment for sexual exploitation of minors (§217 Penal Code) (a)						542	395	524
CC - conviction for sexual exploitation of minors (§217 Penal Code) (a)						76	75	85
Persons suspected of trafficking in persons (§104a) (b)						92	7	11
Persons suspected of "cross-border trafficking of prostitutes" (§217) (b)						76	86	70
Persons convicted of trafficking in persons for "cross-border trafficking of prostitutes" and "exploitation of aliens" (c)						30	19	33
Victims of trafficking in persons sheltered by NGOs in Vienna (females) (d)				45	35	37	38	33

Sources of data:

- (a) Federal Ministry for European and International Affairs (n.d.) First Austrian Report on Combating Human Trafficking (period under review March 2007-May 2008). Retrieved on 11 August 2008 from: http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/First_Austrian_Report_in_THB_080730.pdf
- (b) Police Criminal Statistics of Austria qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 235
- (c) Ministry of Justice, Austria qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 236
- (d) NGO LEFÖ-IBF qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 236

Other relevant information

Austria is a transit and destination country for trafficking in human beings. According to estimates, the most frequently recorded cases of trafficking in human beings are for sexual exploitation, labour exploitation in domestic services and child trafficking.

The Austrian Government particularly sees the need for increased action in the area of identification of victims and assistance to victims, in particular then assistance to children.

Trends in trafficking in human beings reported in expert interviews

Linked to migration from the Balkans (especially Romania, Bulgaria and Moldova), a peak in trafficking in human beings was reported in 2002-2003. The number of registered trafficked person remains relatively high.

Modi operandi of organised crime reported in expert interviews

Following an amendment of the legislation criminalising trafficking in human beings, it could be observed that traffickers adapted well to the legal framework. Consequently, physical violence is less used now than 15 years ago and other ways of putting trafficked women under pressure (such as debts) are applied.

Belgium

Basic Country Facts

Population 2008: 10,666,866
Surface: 30,528 sq km
GDP per capita in PPP Euro (2008): 30,286.29
Date of accession to the EU: 1957 (founder member)

International law⁴¹⁶

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 22 June 1965 (R)

1950 Council of Europe European Convention on Human Rights: 14 June 1955 (R)

1966 UN International Covenant on Economic, Social and Cultural Rights: 21 April 1983 (R), see reservations⁴¹⁷

1996 European Social Charter: 2 March 2004 (R)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 11 August 2004 (R)

Domestic law

Trafficking in Human Beings

Code pénal, Livre II, Titre VIII, chapitre IIIter: « de la traite des êtres humains », 433. quinquies

§ 1er. Constitue l'infraction de traite des êtres humains le fait de recruter, de transporter, de transférer, d'héberger, d'accueillir une personne, de passer ou de transférer le contrôle exercé sur elle, afin:

1° de permettre la commission contre cette personne des infractions prévues aux articles 379(1), 380, § 1er et § 4(2), et 383bis, § 1er (3);

2° de permettre la commission contre cette personne de l'infraction prévue à l'article 433ter(4);

3° de mettre au travail ou de permettre la mise au travail de cette personne dans des conditions contraires à la dignité humaine;

4° de prélever sur cette personne ou de permettre le prélèvement sur celle-ci d'organes ou de tissus en violation de la loi du 13 juin 1986 sur le prélèvement et la transplantation d'organes;

5° ou de faire commettre à cette personne un crime ou un délit, contre son gré.

Sauf dans le cas visé au 5, le consentement de la personne visée à l'alinéa 1er à l'exploitation envisagée ou effective est indifférent. (...)

⁴¹⁶ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴¹⁷ http://www.unhchr.ch/html/menu3/b/treaty4_asp.htm

§ 2. L'infraction prévue au § 1er sera punie d'un emprisonnement d'un an à cinq ans et d'une amende de cinq cents euros à cinquante mille euros. (...)

Prostitution

Code pénal, Article 380bis

Sera puni d'un emprisonnement de huit jours à trois mois et d'une amende de vingt-six francs à cinq cents francs, quiconque, dans un lieu public aura par paroles, gestes ou signes provoqué une personne à la débauche. La peine sera élevée au double si le délit a été commis envers un mineur.

Pimping

Code pénal, Titre VII – des crimes et des délits contre l'ordre des familles et contre la moralité publique, Article 380 (dernière modification: loi du 28 novembre 2000, M.B., 17 mars 2001)

§ 1. Sera puni d'un emprisonnement d'un an à cinq ans et d'une amende de cinq cents francs à vingt-cinq mille francs:

1° quiconque, pour satisfaire les passions d'autrui, aura embauché, entraîné, détourné ou retenu, en vue de la débauche ou de la prostitution, même de son consentement, une personne majeure (...)

4° quiconque aura, de quelque manière que ce soit, exploité la débauche ou la prostitution d'autrui. (...) § 4. Sera puni (de la réclusion) de dix ans à quinze ans et d'une amende de mille francs à cent mille francs:

1° quiconque, pour satisfaire les passions d'autrui, aura embauché, entraîné, détourné ou retenu, soit directement soit par un intermédiaire, un mineur (...), même de son consentement, en vue de la débauche ou de la prostitution (...)

4° quiconque aura exploité, de quelque manière que ce soit, la débauche ou la prostitution d'un mineur (...)

Policies on trafficking in human beings and their implementation

Policy Documents

In 2005, the Belgian Centre for Equal Opportunities and for Combating Racism issued a "Note d'orientation 2005-2007." As foreseen by this Note, the Centre adopted in 2008 the 2008-2010 Triennial Strategic Plan for the action of the Centre, which includes trafficking in human beings. The Center's strategic plan only lists one recommendation: to reinforce and better identify the role of the Centre regarding fight against trafficking. The policy guidelines on fighting trafficking are thus mostly defined through the Center's yearly report on trafficking.

National Action Plan

In July 2008 the Belgian federal government introduced a national action plan to combat trafficking in human beings and human smuggling.⁴¹⁸ In general terms, the plan contains preventive and repressive elements and emphasises the need to aid the victims

⁴¹⁸ Ministry of Justice, "Actieplan: strijd tegen mensenhandel en mensensmokkel", <http://www.just.fgov.be/persberichten/2008/07/11.html> (accessed 4 March 2009).

and inform the public.⁴¹⁹ Two specific measures are worth mentioning: (i) the intensification of investigations into the financial means of perpetrators and increased financial punishment of traffickers; and (ii) the introduction of a protection system for economically exploited private personnel in the diplomatic sphere, who were up until now not entitled to a victim status and residence permit even if they cooperated with the judicial authorities.⁴²⁰

Implementation of laws/policies

Coordination and reporting: As per Article 1 of the Arrêté royal of 16 May 2004 on Fight against trading and trafficking in human beings, the Centre is in charge of stimulating, coordinating and monitoring anti-trafficking policy and acts as a national rapporteur on trafficking in human beings. The Centre is a Federal institution. Articles 3 and 4 give specifies that the Centre shall coordinate the work of the different agencies in charge of the issue, and establish a consultative mechanism, the Interdepartmental Cell for Coordination of Fight against Trafficking in Human Beings. This consultative body gathers, at least twice a year, representatives from all concerned ministries, the Prosecutors' Office, the Bar association, law enforcement agencies, federal authorities in charge of human rights issues, the labour inspection, and one NGO. Article 2 of the same Act entrusts the Centre to produce a yearly report on trafficking in human beings. The Government reports annually to the Parliament on the situation of trafficking in human beings.

Identification of victims/offenders: There is no single specific agency entrusted with identifying victims. The identification may be done by NGOs, the police or social services or NGOs (specifically those operating hotlines for potential VoTs). Identification of offenders is clearly entrusted to the police. Data collection is entrusted to the Centre for Information and Analysis with regard to Trafficking in Human Beings, as per the Arrêté royal of 16 May 2004. This Centre for Information and Analysis supposedly gathers anonymous case data and other information from all institutions represented at the above-mentioned consultative Cell – including law enforcement agencies. Some experts have mentioned that this might leave room for double entry and comparability problems, which negatively affects the reliability of the data. The data gathered is available is not public, but available to the institutions represented at the Cell. However, this data gathering mechanism remains, for the time being, “an empty box”, as reported by the Centre for Equal Opportunities and Combating Racism in its 2008 Report.

Assistance to victims: Assistance is mostly provided by three NGOs service providers which are accredited by the Federal Government under the Arrêté Royal of 16 June 1995 and the Directive of 13 January 1997. There remain concerns regarding the provision of residence permits for victims who co-operate with relevant authorities: incompliant provisions seem to exist with regard to the criteria for granting a reflection period (participation in a specialised program is a prerequisite) and for issuing a residence permit (severance of all links with the environment of exploitation is a condition). See above the chapter on Assistance to victims through a residence permit. The Centre for Equal Opportunities and Combating Racism also noted that victims of trafficking were sometimes detained in closed centres for illegal migrants (Centre pour l'Égalité des Chances et con-

⁴¹⁹ Ibid.

⁴²⁰ Ibid.

tre le Racisme, annual report 2008). A draft circulaire on a national referral mechanism is currently under elaboration.

Protection of victims: Protection of victims is entrusted to the police, but may also be provided through accommodation in a secured specialised centre, managed by one of the three NGOs accredited by the Government.

Repatriation: Voluntary returns are conducted in co-operation with IOM. Two Reintegration Funds- one of which, for vulnerable cases, explicitly covers trafficked persons - exist to assist returning victims.

National data on trafficking in human beings

BELGIUM (a)	2000	2001	2002	2003	2004	2005	2006	2007
Identified victims of THB (b)								178
Out of identified victims of THB: minors victims (b)					3% of the total		4	9
Identified victims of labour exploitation (c)	19	18	19	33	48	1101 (d)		
CC investigated (b)							451(e)/481(f)	
CC investigated for sexual and labour exploitation (g)						1074		
CC investigated for sexual exploitation (g)						82/34		
CC investigated for labour exploitation						37/13 (g)	135/219 (b)	
CC investigated for removal of organs (b)							5	
Other CC investigated (b)							26	
Civil suits for compensation of victims (b) (i)					363 (148/215)	282 (87/195)		
Overall number of repatriations (b) (l)							105	
Repatriation of minors (b)					13		1	
Permanent residence permits to victims (b)							52	
Persons convicted of trafficking in persons and smuggling of migrants (males/females/children/unknown) (j)				401 (327/61 /1/12)	362 (303/58 / 1/-)	281 (237/44 /-/-)		
Sanctions for trafficking in persons (non-custodial/custodial) (j)				725 (349/376)	663 (315/348)	530 (237/265)		

BELGIUM (a)	2000	2001	2002	2003	2004	2005	2006	2007
Victims of trafficking in persons and smuggled migrants identified by State authorities (adults/ children) (k)					184 (162/ 22)	145 (138/7)	160 (146/ 14)	
Victims of trafficking in persons and smuggled migrants identified by State authorities in Belgium, by exploitation (sexual exploitation/forced labour/ smuggling/other/begging) (k)						145 (69/57/ 15/4/-)	161 (57/65/ 22/15/ 2)	

Sources of data:

- (a) Centre for Equal Opportunities and Opposition to Racism: Rapport traite des êtres humaines 2006. http://www.diversite.be/?action=publicatie_detail&id=6&thema=2
Kingdom of Belgium: The fight against trafficking and smuggling in human beings. <http://www.diplomatie.be/en/pdf/mensenhandelen.pdf>
- (b) Contribution to ICMPD from the Belgium MoJ, 2008
- (c) Centre for equal opportunities and opposition to racism, 2005, p.70 and 91
- (d) This number represents the victims identified between 1999 and 2005 by the 3 reception centres specialised in THB
- (e) Overall number of opened cases registered by NGOs, out of which 118 were dropped and 300 transferred for further investigation
- (f) Overall number of opened cases registered by the State, out of which 127 were dropped and 324 transferred for further investigation
- (g) Cases reported between 1999 & 2005 by the Centre for equal opportunities and opposition to racism, p. 90, 117f
- (h) Contribution to ICMPD, the first number represents cases registered by the state, the second number represents cases registered by NGOs
- (i) The first number in brackets corresponds to the cases based on the article from the 1980 legislation, not harmonised with the Palermo Protocol, the second number are the cases based on the new legislation.
- (j) Databank of the condemnations – Federal Public Service of Justice qtd. in UNODC (2009) “Global Report on Trafficking in Persons”, p. 237
- (k) Immigration Office – Federal Public Service of Home Affairs qtd. in UNODC (2009) “Global Report on Trafficking in Persons”, p. 238
- Comment:
- (l) Quantitative data about the number of THB cases has only been specifically compiled since 2006, following the 2005 Circulaire Col. 10/2004 relative aux recherches et poursuites en matière de traite des êtres humains.

Other relevant information

Good Practices

See Coordination. The Centre for Equal Opportunities and Combating Racism includes, in its annual report, an analysis of jurisprudence on trafficking in human beings cases.

On 1 February 2007 the Ministry of Justice issued Directive COL 01/07 which provides judges, prosecutors and the police with guidelines on identification (indicators and leads) and treatment of victims.

Belgium has taken steps to make the assistance to victims granted under the residency permit for victims who co-operate, available to EU citizens.

All regional offices of the police and courts (for each judicial district) have specialised anti-trafficking units.

Trends in trafficking in human beings reported in expert interviews

The share of cases of trafficking in human beings for sexual exploitation in the overall number of trafficking in human beings cases is decreasing. This is mainly due to legislative changes and the fact that more attention is being paid to cases of labour exploitation. As a result, in 2007 most identified or presumed trafficked persons were trafficked for labour exploitation and males. Trafficking in human beings for sexual exploitation continues to be a significant problem and the market is increasingly 'hidden'.

Modi operandi of organised crime reported in expert interviews

Organised crime plays a more important role in trafficking in human beings for sexual exploitation than in trafficking in human beings for labour exploitation. Organised crime is becoming more professional. As a result, police needs more research capacity. The level of violence applied by traffickers to coerce persons to trafficking is lowering.

Bulgaria

Basic Country Facts

Population 2008: 7,640,238
Surface: 110,910 sq km
GDP per capita in PPP Euro (2008): 10,079.27
Date of accession to the EU: January 1, 2007

International law ⁴²¹

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 18 January 1955 (R)

1950 Council of Europe European Convention on Human Rights: 17 April 2007 (R)

1966 UN International Covenant on Economic, Social and Cultural Rights: 21 September 1970 (R)

1996 European Social Charter: 7 June 2000 (R)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 5 December 2001 (R)

Domestic law

Trafficking in Human Beings

Criminal Code, Section IX Trafficking in human beings (New, SG No. 92/2002), Article 159a

(1) [...trafficker is an individual who...] recruits, transports, hides or admits individuals or groups of persons in view of using them for sexual activities, forceful labour, dispossession of bodily organs or holding them in forceful subjection, regardless of their consent (...)

Combating Trafficking in Human Beings Act

Promulgated, State Gazette, No. 46/20.05.2003, amended SG 86/28.10.2005, effective 29.04.2006, supplemented, SG No. 33/28.03.2008. Additional provisions para 1.1, 1.2 and 1.3

1.1. "Trafficking in human beings" means the recruitment, transportation, transfer, concealment or acceptance of human beings, regardless of their own will, by means of coercion, abduction, deprivation of liberty, fraud, abuse of power, abuse of a state of dependence, or by means of giving, receiving or promising benefits to obtain the consent of a person who has control over another person, when it is carried out for the purpose of exploitation;

1.2. "Exploitation" means the illegal use of human beings for debauchery, removal of physical organs, forced labour, slavery or servitude;

1.3. The recruitment, transportation, transfer, concealment or acceptance of children for the purpose of exploitation shall be considered an act of trafficking in human beings, regardless of whether they have been carried out by the means in § 1 above.

Criminal Code, Section IX Trafficking in human beings (New, SG No. 92/2002)

⁴²¹ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

159 a 1) [Trafficking] shall be punished by deprivation of liberty of one to eight years and a fine of up to BGN eight thousand (8,000).

159b 1) [cross-border trafficking] shall be punished by deprivation of liberty from three to eight years and a fine of up to BGN ten thousand (10,000).

159c [recidivism or organised group] five to fifteen years and a fine of up to BGN twenty thousand (20,000), the courts being also competent to impose confiscation of some or all possessions of the perpetrator.

Prostitution

The law does not define prostitution. There are no sentences under the legislation of Bulgaria.

Pimping

Criminal Code, Article 155

(1) (Amended, SG No. 28/1982, SG No. 10/1993, SG No. 62/1997, SG No. 92/2002, SG No. 26/2004, SG No. 75/2006) A person who persuades an individual to practice prostitution or acts as procurer or procuress for the performance of indecent touching or copulation, shall be punished by deprivation of liberty of up to three years and by a fine of BGN 1,000 to BGN 3,000.

(2) (Amended, SG No. 10/1993, SG No. 62/1997, No. 75/2006) A person who systematically places at the disposal of different persons premises for sexual intercourse or for acts of lewdness shall be punished by deprivation of liberty for up to five years and by a fine of BGN 1,000 to BGN 5,000.

(3) (New, SG No. 62/1997; amended, SG No. 92/2002, No. 75/2006) Where acts under Paragraphs 1 and 2 above have been committed with a venal goal in mind, punishment shall be deprivation of liberty from one to six years and a fine of BGN 5,000 to BGN 15,000.

(4) (New - SG No. 21/2000, amended, SG No. 75/2006) A person who persuades or forces another person to using drugs or analogues thereof for the purposes of practising prostitution, to performing copulation, indecent assault, intercourse or any other acts of sexual gratification with a person of the same sex, shall be punished by deprivation of liberty for five to fifteen years and by a fine from BGN 10,000 to BGN 50,000.

Policies on trafficking in human beings and their implementation

Policy documents/co-ordination

The Combating Trafficking in Human Beings Act essentially represents the key policy as well as the legal document. The Act has established the National Commission for Combating Trafficking in Human Beings (NCCTHB) which is a lead actor or a co-ordinator for almost all aspects of anti-trafficking work, apart from those immediately linked law enforcement, where the Ministry of Interior and the Ministry of Justice take the lead. The NCCTHB is branching out with Local Commissions for Combating Trafficking in Human Beings (LCCTHB) which on one hand co-ordinate anti-trafficking work on a local level, and on the other serve as data collection and policy implementation branches for NCCTHB.

Since 2005, The NCCTHB publishes the annual National Programme for Prevention of Trafficking in Human Beings and Protection of Victims (the National Programme), which specifies policies for the coming year. The annual Report on the Activity of the National Commission summarises the achievements are summarised

The National Programme for 2008 is subdivided into the following policy areas:

1. **Institutional and organisational measures:**
Priorities: (1) Setting up of the new LCCTHBs in high-risk areas; equipping of the temporary accommodation shelters and of the Centres for Protection and Support of Victims; (2) Creation of a body within NCCTHB for research, analysis and reporting of statistical data related to trafficking in human beings; (3) Development of the National Referral Mechanism. **Partners:** Municipalities, NGOs.
2. **Prevention:**
Priorities: Training/sensitisation on trafficking in secondary schools; for the teachers; public information efforts; maintenance of the NCCTHB website. **Partners:** Ministry of Education and Science, Ministry of Interior, State Agency for National Security, Ministry of Foreign Affairs.
3. **Training and qualification of staff**
Priorities: Training for NCCTHB and LCCTHB staff; magistrates; Mol staff; investigators (on methodology); diplomats; journalists; social workers. **Partners:** relevant institutions hosting the training.
4. **Protection, Rehabilitation and Reintegration of Victims of Trafficking in Human Beings**
Priorities: updating the referral mechanism for trafficked children; develop mechanisms to prevent use of internet for THB; develop mechanism for medical and psychological assistance at the Centres for Protection of Victims; inclusion of the victims into professional re-training. **Partners:** State Agency for Child Protection, Central Commission for Combatin Juvenile Delinquency, Ministry of Labour and Social Policy, NGOs, Ministry of Defence (on internet), NGOs.
5. **International Cooperation** – sharing experience and best practices.
6. **Legislative measures**
Priorities: Amending Penal Code in accordance with Art. 19 with CoE Convention on Action against Trafficking in Human Beings for criminalisation of the intentional use of services of victims of THB; Request to the Supreme Court of Cassation for an interpretative decision on the contradictory court practices related to criminal cases on THB, specifically contradiction between Art. 159a (3) and Art. 182b of the Penal Code (article 182b criminalises selling born or unborn children by mothers – ed.) **Partners:** MoJ, Supreme Court of Cassation.

National data on trafficking in human beings

BULGARIA	2001	2002	2003	2004	2005	2006	2007	2008
Identified victims (a)					200/ 65			
Out of identified victims: minor victims (b)		10						
CC with indictment (c)							45	
CC with conviction							85 (e)	
Assistance to victims (d)					50			

Persons investigated for trafficking in persons (f)				130	159	219	209	74 (h)
Persons indicted for trafficking in persons (f)			13	44	63	97		
Persons sentenced for trafficking in persons (f)				3	33	71	85	34 (h)
Victims of trafficking in persons identified by State authorities (women/girls/men/boys/adults/children) (g)				170 (121/40/ 9)	(211) 137/ 61/13	(340) 263/61/ 15/1	(288) 235/53	(210) 187/23 (h)

Sources of data:

- (a) ICMPD questionnaire on Transnational Referral Mechanisms, the first number corresponds to the data collected by the state, the second number to the data collected by NGOs
- (b) State Agency for Child Protection for the UN questionnaire: http://www.stopech.sacp.government.bg/?sid=professional_eng&pid=0000000037
- (c) Activity of the Supreme Cassation Prosecution Office: http://www.mvr.bg/NR/rdonlyres/5658548C-B0F5-45F2-81B6-469C2CAB5C6A/0/annex_11_EN_.pdf
- (d) Social Assistance provided by AAF (Crisis Unit) + according to the data provided by the Animus Association Foundation, for the period 1999 – 2005, 19 foreign victims of trafficking were assisted by AAF (ICMPD TRM questionnaire)
- (e) Information from the website of the National Commission to Counter Human Trafficking, http://antittraffic.government.bg/index.php?option=com_content&task=view&id=164&Itemid=129&lang=english&lang=english&lang=english&lang=english, accessed on 28 November 2008.
- (f) The Supreme Cassation Prosecutor Office in Bulgaria qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 240
- (g) The National Commission for Combating Trafficking of Human Beings qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 241

Comment:

- (h) January-October 2008.

Other relevant information

Experts noted improvements in coordination of responses to trafficking in human beings and availability of data on trafficking, though the data still does not make any conclusion on the trends in trafficking possible.

In 2006, the Ministry of Interior suggested to legalise prostitution as a means of combating trafficking in human beings for sexual exploitation. The issue remains highly controversial and some experts clearly noted that legalisation of prostitution is not going to bring the expected improvements in Bulgaria due to the level of corruption in law enforcement agencies.

Trends in trafficking in human beings

Bulgaria is an important source country of persons exploited in prostitution and other sectors (such as agriculture) who are exploited in Belgium, the Netherlands, Germany, Austria, Italy, Spain and Poland. The majority of recorded cases are of trafficking for sexual exploitation, but labour exploitation of Bulgarian citizens has been reported in Spain and Greece and according to some experts, there are many more persons subjected to labour exploitation than to sexual exploitation. In 2008, more Roma women were recorded as trafficked persons than in the past years. Bulgaria is a transit (final destination being Western Europe countries) and/or destination country for trafficked persons from Ukraine, Moldova, Russia and sometimes Romania.

Modi operandi of organised crime reported in expert interviews

There are recognizable links between specific areas/provinces in Bulgaria and destination countries in Western Europe. This might indicate a working partnership among criminals in these countries.

In terms of methods of coercion, experts noted that up until early 2000's physical coercion was more widespread (victims were often kidnapped, beaten, raped) than today. Nowadays victims of trafficking in human beings are lured into trafficking with promises of better life and deception and blackmailing play more important role than in the past.

However, physical violence is still widespread especially among trafficked Roma persons, who are often exploited in the lowest segment of the market – street prostitution. A new trend of pimps marrying prostitutes was observed and the police noted that these cases are difficult to prosecute.

Czech Republic

Basic Country Facts

Population 2008: 7,640,238
Surface: 78,866 sq km
GDP per capita in PPP (2008): 21,137.64
Date of accession to the EU: May 1, 2004

International law⁴²²

1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 30 December 1993 (R)

1950 ECHR: 18 March 1992 (R), see reservations⁴²³

1966 ICESCR: 22 February 1993 (R)

1996 European Social Charter: 3 November 1999 (R)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the Convention against Transnational Organised Crime: 10 December 2002 (S)

Domestic law

Trafficking in Human Beings

Criminal Code, Article 232a (as amended by the Act No. 537/2004)

1) Whoever induces, engages, hires, lures, transports, hides, detains or delivers a person under 18 years of age to be used

a) for sexual intercourse or other forms of sexual molestation or exploitation,

b) for slavery or servitude, or

c) for forced labour or other forms of exploitation, shall be punished to imprisonment for two to ten years.

2) In the same manner will be punished whoever by means of the use of force, threat of force, deception or abuse of his mistake, stress or dependence induces, engages, hires, lures, transports, hides, detains or delivers another to be used

a) for sexual intercourse or other forms of sexual molestation or exploitation,

b) for slavery or servitude, or

c) for forced labour or other forms of exploitation.

3) Offender shall be punished by imprisonment of five to twelve years,

a) if he commits the crime stated in Article 1 or 2 as a member of an organised group,

b) if he exposes another by such act to danger of an aggravated bodily harm or death,

⁴²² The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴²³ <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=11/23/2008&CL=ENG&VL=1>

- c) if he commits such act with the intent of obtaining a substantial gain, or
- d) if he commits such act with the intent of using another for prostitution.
- 4) Offender shall be punished by imprisonment of eight to fifteen years,
 - a) if he causes by the crime stated in Article 1 or 2 an aggravated bodily harm, death or another particularly grave consequence,
 - b) if he commits such act with the intent of obtaining a gain of large scope, or
 - c) if he commits such act in connection with an organised group operating in more countries.

Prostitution

Prostitution is not defined.

The following sections in the Criminal Code are used to prosecute prostitution and related acts: Section 202, Hooliganism; Section 217, Endangering Morals of Youth; and Section 217a, Instigation to Sexual Intercourse.

Pimping

Criminal Code, Article 204

(1) Whoever engages, forces or lures another person to carry out prostitution or profits from prostitution carried out by another person, shall be punished by imprisonment for a term of three years.

(2) Whoever commits such act as defined in paragraph 1 shall be sentenced to imprisonment for a term of two to eight years in case he made use of violence or threat or other violent means or if the person abused is in a dependent position in the relation to him/her.

(3) Two to eight years of imprisonment shall be served by a person

- a) who gains a substantial profit from the acts defined in paragraph 1 or 2,
- b) who commits the act as a member of an organised group; or
- c) who commits the act on a person younger than eighteen years.

(4) The imprisonment of five to twelve years shall be served by a perpetrator who has committed the act defined in paragraph 2 on a person younger than fifteen years.

Policies on trafficking in human beings and their implementation

Policy documents

1. **National strategy to combat trafficking in human beings** (adopted by Government Resolution No. 67 on 23 January 2008, hereinafter "the Strategy"). The Strategy is a major comprehensive policy document relating to human trafficking in the Czech Republic. It is the third such document, the previous ones being adopted in 2003 and 2005. It consists of three main parts: an action plan for upcoming years assigning tasks to individual government agencies relating to their respective roles in the area of fighting human trafficking, evaluation of the actions included in the previous action plan and a general report relating to the efforts to fight human trafficking in the Czech Republic. The Strategy takes stock of the actions covering years 2005 – 2007 and sets out new objectives for 2008–2011.

2. **Methodical Guidelines of the First Deputy Minister of the Interior on the Operation of the Programme to Support and Protect Victims of Trafficking in Persons in the Czech Republic and on its Organisational Arrangement** [Metodický návod prvního náměstka ministra vnitra k fungování programu podpory a ochrany obětí obchodování s lidmi v České republice a jeho institucionálnímu zabezpečení] of 2 August 2005; (hereinafter “the 2005 Guidelines”). The Guidelines lay down the overall principles and conditions of the Programme’s operation including its aim, beneficiaries, procedures, services and roles of different actors in the Programme.

3. Guidelines of the First Deputy Minister of the Interior No. 5 of 26 October 2007 ((hereinafter “the 2007 Guidelines”) on the functioning of the Programme to Support and protect Victims of Trafficking in Human Beings and on responsible institutions. Internal act

Implementation of the law/policies

Coordination – Ministry of Interior (as the author of the Strategy)

Identification of victims/offenders – There is no specific agency obliged to identify victims. The identification may be done by NGOs, the police or other persons. Identification of offenders is clearly entrusted to the police under Section 158 of the Criminal Code: the police have a duty to undertake all necessary investigation and/or other measures with the aim to uncover the facts implying that a criminal offence has been committed and to identify perpetrators.

Assistance to victims – Under the Programme NGOs that have concluded an agreement with the Ministry of Interior on provision of services to trafficked persons within the framework of the Programme provide assistance to victims (as laid down by Art. 12 of the 2005 Guidelines and Article 13 of the 2007 Guidelines and respective agreements between MOI and NGOs). However, that does not mean that assistance cannot be provided outside the Programme’s framework or by other organisations.

Protection of victims – The police are responsible for the protection of victims (and/or of workers of service providing NGOs). This obligation generally follows from the Act on the Police of the Czech Republic and is further specified in Art. 13 and 14 of the 2005 and 2007 Guidelines respectively, and in Binding Instruction of the Police President Governing the Actions of the Police in the Effort to Suppress Trafficking in Persons and Vice Crime No. 61 of 2 May 2006.

Repatriation – Generally, the IOM Prague office is responsible to arrange voluntary return of victims to home country and, eventually, appropriate follow-up services under Art. 14 and 16 of the 2005 and 2007 Guidelines respectively.

National data on trafficking in human beings

CZECH REPUBLIC	2000	2001	2002	2003	2004	2005	2006	2007
Overall number of THB victims identified by the police (a)				53	72	43	71	29 (e)
Number of THB victims identified by the police: women (b)				2	3	10	7	5 (e)

CZECH REPUBLIC	2000	2001	2002	2003	2004	2005	2006	2007
Number of THB victims identified by the police: men (b)				1	0	0	2	1 (e)
Number of groups victim of THB identified by the police (b)				8	10	6	9	4 (e)
Number of persons in groups victim of THB identified by the police (b)				50	69	27	63	23 (e)
Criminal offences investigated (b)	13	27	15	10	13	16	16	10 (e)
Criminal Offences disclosed (b)	13	25	10	9	12	11	13	9 (e)
Number of persons investigated and prosecuted (b)	21	26	12	19	30	18	11	18 (e)
Number of convicted persons (b)	16	15	20	5	12	20	2	4 (f)
Out of which for unconditional sentences (b)	6	7	5	1	3	8	0	3 (f)
Out of which for conditional sentences	10	8	15	4	9	12	2	1 (f)
Number of persons registered in the programme (b)				5	11	17	14	14 (g)
Number of criminal offences of pimping investigated (b)	130	150	116	101	83	123	85	32 (g)
Persons investigated and prosecuted for pimping (b)	163	133	107	103	105	119	98	46 (g)
Persons investigated for trafficking in persons (b)				19	30	18	11	
Persons prosecuted for trafficking in persons (males/females) (b)				24 (17/7)	19 (16/3)	12 (10/2)	14 (10/4)	
Victims of trafficking in persons assisted by the Programme to Support and Help Victims of Trafficking in Human Beings (c)				5	11	17	14	

Sources of data:

- (a) 2008 Statistical Report on Trafficking in Human Beings in the Czech Republic, issued by Ministry of Interior, Security Policy Department, Prague 2009
(b) Statistical data taken from the Strategy of 23 January 2008

- (c) Czech Police statistics, Ministry of Justice qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 245
- (d) Ministry of Justice qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 245
- (e) Programme to Support and Help Victims of Trafficking in Human Beings qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 246

Comments:

- (f) Data as of September 2007
- (g) Data as of first half of 2007
- (h) Data as of 25 October 2007

In 2005 - 2006, there were 7 Czech, 9 Ukrainian, 4 Bulgarian, 6 Vietnamese, 2 other Central Europe, 3 South East Europe persons assisted by the Programme to Support and Help Victims of Trafficking in Human Beings

Other relevant information

Identified good practices

Regular semi-formal meetings of the actors participating in the Programme organised by the Programme contact persons at the MOI contribute to good co-operation of all actors and help to identify potential problems or deal with existing difficulties. They provide an opportunity to clarify roles and positions of individual actors and to refine procedures and services to respond to actual situation in practice. While in many cases such multidisciplinary co-operation tends to remain on paper in this case it is live, coordinated and helpful.

Other significant information

The fact that there are no provisions for criminal liability of legal persons in Czech legislation often officially justifies failure of the Czech Republic to ratify a number of international treaties that oblige state parties to criminally prosecute legal persons (for example Palermo Protocol or CoE Convention on THB). Even though provisions on criminal liability of legal persons are not part of the criminal law re-codification that is now pending in the Parliament, the work is currently under way to introduce administrative liability of legal persons for criminal offences into Czech legislation.

Currently, according to the information available the most common purpose of human trafficking in the Czech Republic is forced labour or other forms of exploitation in the sex industry or in other sectors. A significant problem, however, is that forced labour is not defined or described in more detail in the national legislation. It is only mentioned in the Charter of Fundamental Rights and Freedoms, where there is a provision on the prohibition of forced labour, and in the Criminal Code as one of the purposes of human trafficking. That is, however, in direct contradiction with the commitments under ILO Convention No. 29, which obliges signatories to prosecute forced labour as a criminal offence and to ensure that punishment is effective and rigorously applied. However, forced labour is not listed as a crime in the Czech Criminal Code.

Council Directive 2004/81/EC on short term residence permit for victims of trafficking includes clear provisions on the right of trafficked persons to a reflection period to decide on co-operation with law enforcement. However, the actual transposition (Section 42e of the Alien Act) and its practical application according to some practitioners virtually render the provision on reflection period useless, because in practice the police inform a victim about the right to a reflection period at a point when the police already

have sufficient reasons to believe that the information the victim possesses will be important for the prosecution.

Modi operandi of organised crime reported in expert interviews

During 1990s, the level of violence was in general higher and paradoxically, it was easier for police to prove trafficking in human beings (trafficking in women at that time) than today. Today's coercion methods are more sophisticated, "softer" and more difficult to prove. The victims are less motivated to testify against traffickers and to leave the business. A particular problem in prosecution is how to prove threats and psychological violence – for example, when somebody from a group of trafficked persons disappears.

Trends in trafficking in human beings reported in expert interviews

The definition of trafficking in human beings has been widened to include also men and other forms of exploitation than sexual exploitation and new actors (such as NGOs working with migrants or homeless men) started to get involved.

During 1990s the prevalent trend was that of Czech women trafficked to Western Europe, but also US and Japan. In 1997, one of the key service providers registered the first case of a foreign victim exploited in the Czech Republic (woman from Ukraine). Since 1997, cases of foreigners (for example from Moldova, Ukraine, Bulgaria) exploited in the Czech Republic became more and more frequent. In 2004, the first man received assistance.

While the number of assisted Czech victims of trafficking declined between 2003 and 2006, in 2007 and 2008 their number increased again and currently there are quite few Czech victims of trafficking who were forced into prostitution in the Czech Republic.

Denmark

Basic Country Facts

Population 2008: 5,475,791
Surface: 43,094 sq km
GDP per capita in PPP Euro (2008): 31,239.51
Date of accession to the EU: January 1, 1973

International law⁴²⁴

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 12 February 1951 (S)

1950 European Convention on Human Rights: 13 April 1953 (R)

1966 UN International Covenant on Economic, Social and Cultural Rights: 3 January 1976 (R), see reservations⁴²⁵

1996 European Social Charter: 3 May 1996 (S)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 30 September 2003 (R), see reservations⁴²⁶

Domestic law

Trafficking in Human Beings

Danish Penal Code, Section 262a

(1) Any person who by an act of recruiting, transporting, transferring, housing, or subsequently receiving another person shall be guilty of trafficking in humans and shall be liable to a term of imprisonment of no more than eight years if the following is used or has been used:

1. Unlawful coercion, under Section 260,
2. Illegal restraint, under Section 261,
3. Unlawful inducement, encouragement or exploitation of a mistake or
4. Another manner of taking unfair advantage in order to exploit the person in question for sexual immorality, forced labour, slavery or slavery-like conditions or removal of organs.

(2) In the same manner a person shall be subject to punishment that exploits the person in question for sexual immorality, forced labour, slavery or slavery-like conditions or removal of organs,

1. Recruits, transports, transfers, houses or subsequently receives a person under the age of 18, or
2. Provides payment or other consideration to obtain the consent to the exploitation from a person who has custody of the injured party and the person who receives such payment or other consideration.

⁴²⁴ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴²⁵ http://www.unhchr.ch/html/menu3/b/treaty4_asp.htm

⁴²⁶ <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html>

Prostitution

Danish Penal Code

Section 228

(1) Any person who

1. induces another to seek a profit by sexual immorality with others; or
2. for the purposes of gain, induces another to indulge in sexual immorality with others or prevent another who engages in sexual immorality as a profession from giving it up; or
3. keeps a brothel

shall be guilty of procuring and liable to imprisonment for any term not exceeding 4 years.

(2) The same penalty shall apply to any person who incites or helps a person under the age of 21 to engage in sexual immorality as a profession, or to any person who abets some other to leave the Kingdom in order that the latter shall engage in sexual immorality as a profession abroad or shall be used for such immorality, where that person is under the age of 21 or is at the time ignorant of the purpose.

Section 229

Any person who, for the purpose of gain or in frequently repeated cases, promotes sexual immorality by acting as an intermediary, or who derives profit from the activities of any person engaging in sexual immorality as a profession be liable up to 3 years imprisonment.

Section 233

Any person who incites or invites other persons to prostitution or exhibits immoral habits in a manner which is likely to annoy others or arouse public offence be liable to simple detention or to imprisonment for any term not exceeding one year or, in mitigating circumstances, to a fine.

Policies on trafficking in human beings and their implementation

Policy documents

The 2007 – 2010 National Action Plan for Combating Trafficking is currently the key national policy document.⁴²⁷ It has replaced the 2002 National Action Plan to Combat Trafficking in Women and its 2005 appendix regarding the trafficking of children. The 2007 – 2010 National Action Plan covers all persons who have been subjected to trafficking and it adopts a holistic approach to provision of services, while also emphasising the need to strengthen international efforts to combat human trafficking. The document sets the following priorities:

1. To strengthen investigative measures, so kingpins are identified and brought to justice.
2. To support victims by strengthening social services in Denmark.
3. To prevent human trafficking by limiting demand and increasing public awareness.
4. To prevent human trafficking by improving international collaboration, including improving preventive work in the exporting country.

⁴²⁷ http://ligeuk.itide.dk/files/PDF/Handel/Menneskehandel_4K.pdf

A total of DKK 70 million (appr. 9,4 mil EUR) has been allocated for domestic activities. There are also aid funds for projects involving the prevention of human trafficking in the countries of origin and funding from the Danish Ministry of Foreign Affairs' Neighbourhood Program.

Implementation of the law/policies

The 2002-2005 National Action Plan was officially evaluated in 2006.⁴²⁸ The evaluation highlighted good co-ordination among government agencies, the police and social services, and it proposed improvements for co-ordination among social protection organisations. Moreover, it noted the need to co-ordinate THB efforts with efforts focused on prostitution, especially prostitutes from abroad. It also emphasised that the collaboration with the health sector needed to be formalised. As a problematic area, the evaluation noted that only very few women accept the offer of being received by an NGO in their respective country of origin. The government was also recommended to make its international efforts to combat trafficking more visible.

Following the adoption of the 2007-2011 NAP, the Danish Centre against Human Trafficking (Center mod Menneskehandel - CMM) was established in 2007 and local outreach teams covering the whole country have also become functional. The reflection period for victims of human trafficking was extended, so that victims of human trafficking, who collaborate on a prepared return, are now allowed to remain in the country for up to 100 days. In addition, the Danish National Commissioner of Police launched a strategy to combat prostitution kingpins.

The Ministry of Social Affairs is responsible (through the Anti-Trafficking Centre) for the overall implementation and monitoring of the NAP and for the division of responsibilities in this process, as well as for the communication and information campaigns.

The Danish Centre against Human Trafficking was established in September 2007 and its goal is to ensure that victims of human trafficking and potential victims receive improved and coordinated social assistance while staying in Denmark. In practice this means that the Centre is responsible for setting up and coordinating the outreach work to potential victims of trafficking all over the country, establishing and running drop-in-centres, as well as running the assistance/counselling hotline. The Anti-Trafficking Centre is also responsible for developing victim-identification guidelines, for training relevant actors such as social workers and the police, and for collecting and communicating knowledge in the field of human trafficking. Moreover, the Centre is responsible for establishing a national referral mechanism, and for coordinating collaboration between relevant social organisations and public authorities involved in the fight against trafficking in human beings.

Inter-Ministerial Working Group – a high-level policy group consisting of the Danish Ministry of Justice, the Department of Gender Equality, the Ministry of Social Affairs, the Danish Immigration Service, the Ministry of Refugee, Immigration and Integration Affairs, the Danish National Police, the implementing social organisations, the police and the prosecutorial authorities.

The Ministry of Justice is responsible for: educating relevant professionals on the phenomenon (together with the Ministry of Social Affairs); identifying whether the Aliens

⁴²⁸ See COWI: "Evaluering af handlings-planen til bekæmpelse af kvindehandel" (2006) ["Evaluation of the Action Plan to Combat Trafficking in Women"].

Act is abused for trafficking; participates in the division of mandates/roles; participation in international efforts.

The Ministry of Foreign Affairs leads international initiatives to combat trafficking and preventive initiatives on children trafficking, as well as participates in the repatriation process.

The Ministry of Refugee, Immigration and Integration Affairs is responsible for: identifying whether the Aliens Act is abused for trafficking; participates in division of mandates/roles; leads on developing the methods of identification of children-victims; leads in professional education on child trafficking; leads the communication efforts on child trafficking.

The Ministry of the Interior and Health is responsible for organising and running, together with the Ministries of the Interior and of Social Affairs, specific places where victims can meet social workers.

The Danish National Commissioner of Police is working on anti-trafficking matters through a strategy for strengthened police-related measures to combat prostitution kingpins.

Aliens who are victims of human trafficking are included in the **Danish Immigration Service's** maintenance obligation. Under the Danish Aliens Act, the Danish Immigration Service is responsible for providing accommodation, healthcare treatment and maintenance and—in the event the person in question is not granted a residence permit—it should ensure, in collaboration with the relevant organisations and government agencies and to the greatest extent possible, that all victims of human trafficking are offered a well-planned and properly managed reception in their countries of origin.

National data on trafficking in human beings

DENMARK	2000	2001	2002	2003	2004	2005	2006	2007
Number of reported trafficking offences (a)				1	2	4	5	11
Number of persons charged for trafficking in persons (a)				7	4	3	2	23
Number of persons convicted of trafficking (a)					3	7	3	8

Sources of data:

(a) Danish National Police qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 247

Other relevant information

In Denmark, trafficking in human beings is mainly conceived as trafficking in women for sexual exploitation, often conflated with prostitution, but there have also been a few cases of trafficking in children that have been registered. According to the 2007-2010 NAP, persons trafficked into forced labour are not a known problem in Denmark.

Forced prostitution is considered a key crime, which is dealt with by the police mainly through combating kingpins and networks of organised crime. The police strategy focuses on: systematic exposure of kingpins; preparation of local strategies and action plans; intelligence-based police effort and targeted investigation; increased control;

careful handling of victims and witnesses; expanded education of the police and prosecutorial authorities; expanded collaboration with other authorities and organisations; and preventive measures. The key identification methods are through hotline or through victims directly approaching social assistance centres.

The available data on human trafficking in Denmark is limited. The Danish Centre against Human Trafficking collects data based on information from the police and from the asylum procedures, but also based on the numbers of persons that social organisations come across through outreach activities in the streets of Copenhagen and in massage parlours all over the country. In 2007 alone, NGOs were in contact with approximately 250 women who might be victims of human trafficking. (CEDAW 2008b, 29) With regard to trafficking in children, the most recent available data refers to seven children believed to have been trafficked during the period from December 2005 to December 2006. (CEDAW 2008b, 29)

International Cooperation

In 2006, the *Council of the Baltic Sea States Task Force against Trafficking in Human Beings* (CBSS TF-THB) was established, following a decision of the Heads of State to integrate the Nordic Baltic Task Force against Trafficking in Human Beings in the Council of the Baltic Sea States (CBSS) framework. The task force is composed of experts from relevant national ministries and authorities. Chairmanship rotates between Member States on an annual basis⁴²⁹ and the current mandate of the Task Force runs until the end of June 2011.

The *European Women's Lobby* was appointed regional co-ordinator of the Nordic Baltic Network - support to women victims of trafficking for sexual exploitation in 2005. The 3-year project aims at developing victim-centred and durable models for support and reintegration of women victims of trafficking for sexual exploitation in and between the Nordic and Baltic countries.

The main points of the newly adopted CBSS TF-THB strategy for 2008-2010 are: To continue the trainings on human trafficking for diplomatic and consular personnel and to expand this activity in the whole CBSS region; to develop a joint project with the UNODC on fostering NGO and law enforcement co-operation directed at preventing and combating human trafficking; to conduct a regional information campaign against trafficking in human beings; to carry out a comparative regional legal analysis on human trafficking; to improve data collection and to provide support for research activities on human trafficking in the region.

Trends in trafficking in human beings reported in expert interviews

According to the interviewed experts, currently there are no reliable estimates on the number of victims of human trafficking in Denmark. On the other hand, NGO estimations indicate that there are approximately 6,000 women in prostitution, of which about half are believed to be foreign, predominantly from Africa, Eastern Europe (Baltic, Central and South East), South America and Thailand.⁴³⁰ However, no estimates exist of how many of the prostitutes from abroad are victims of trafficking. (Danish Center for Research on Social Vulnerability, 2006, quoted in the National Action Plan 2007-2010, 6)

⁴²⁹ <http://www.cbss.st/structure/ththb/>

⁴³⁰ http://www.norden.org/nr/utskott/medborga_konsument/Konferenser_Hearings/sk/thenest-nordiskraad-2-lang.ppt

Estonia

Basic Country Facts

Population 2008: 1,340,935

Surface: 45,226 sq km (includes 1,520 islands in the Baltic Sea)

GDP per capita in PPP Euro (2008): 18,331.99

Date of accession to the EU: May 1, 2004

International law⁴³¹

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: not ratified

1950 European Convention on Human Rights 16 April 1996 (R), see reservations⁴³²

1966 UN International Covenant on Economic, Social and Cultural Rights: 21 October 1991 (R)

1996 European Social Charter: 11 September 2000 (R)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 12 May 2004 (R)

Domestic law

Trafficking in Human Beings⁴³³

Estonian Penal Code, Division 1 §259, Illegal transportation of aliens across state border or temporary border line of Republic of Estonia

(1) Illegal transportation of an alien across the state border or temporary border line of the Republic of Estonia is punishable by a pecuniary punishment or up to one year of imprisonment.

(2) The same act, if committed:

1) by a group, or

2) by using violence,

is punishable by a pecuniary punishment or up to 3 years' imprisonment.

(3) An act provided for in subsection (1) or (2) of this section, if serious health damage is thereby caused, is punishable by 4 to 12 years' imprisonment.

⁴³¹ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴³² <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=11/23/2008&CL=ENG&VL=1>

⁴³³ Estonian Penal Code, Division 1 § 133 enslaving, as well as, § 136 Unlawful deprivation of liberty, § 138 Illegal conduct of human research, § 139 Illegal removal of organs or tissue, § 140 Inducing person to donate organs or tissue

Compelling person to engage in sexual intercourse, § 172 Child stealing, § 175 Disposing minors to engage in prostitution, § 176 Aiding prostitution involving a person of less than 18 years of age by mediation, § 177 Use of minors in manufacture of pornographic works, § 178 Manufacture of works involving child pornography or making child pornography available– may also be applied for trafficking-related crimes.

Estonian Penal Code, Division 1 §173, Sale or purchase of children

(1) The sale or purchase of children is punishable by 1 to 5 years' imprisonment.

(2) The same act, if committed by a legal person, is punishable by a pecuniary punishment

Prostitution

The law does not define prostitution. However, the comments to the Penal Code published in December 2008 define prostitution, but no English language version of said comments was available at the time of writing this report.

Pimping

Estonian Penal Code, Chapter 16, Offences Against Public Peace

Division 1 § 268/1, Aiding prostitution

(1) Aiding prostitution involving a person by mediation, provision of premises or in any other manner is punishable by a pecuniary punishment or up to 5 years' imprisonment.

(14.06.2006 entered into force 16.07.2006 - RT I 2006, 31, 233)

(2) The same act, if committed:

1) by a group or a criminal organisation;

2) by a person who has previously committed a criminal offence provided in this section or aiding prostitution involving minors, is punishable by 3 up to 12 years' imprisonment.

(14.06.2006 entered into force 16.07.2006 - RT I 2006, 31, 233)

(3) An act provided for in subsection (1) of this section, if committed by a legal person, is punishable by a pecuniary punishment.

(14.06.2006 entered into force 16.07.2006 - RT I 2006, 31, 233)

(4) An act provided for in clause (2) 2) of this section, if committed by a legal person, is punishable by a pecuniary punishment or compulsory dissolution.

(14.06.2006 entered into force 16.07.2006 - RT I 2006, 31, 233)

(5) For a criminal offence provided in this section:

1) the court may impose, as supplementary punishment, a pecuniary punishment pursuant to the provisions of § 53 of this Code, or

2) the court imposes, pursuant to the provisions of § 832 of this Code, extended confiscation of the property obtained by the criminal offence.

(13.12.2006 entered into force 01.02.2007 - RT I 2007, 2, 7)

Division 1 §26, Provision of opportunity to engage in unlawful activities, or pimping

(14.06.2006 entered into force 16.07.2006 - RT I 2006, 31, 233)

(1) Providing premises for the purposes of illegal consumption of narcotic drugs or psychotropic substances, or for organising illegal gambling, is punishable by a pecuniary punishment or up to 5 years' imprisonment.

(14.06.2006 entered into force 16.07.2006 - RT I 2006, 31, 233)

(2) For a criminal offence provided in this section:

- 1) the court may impose, as supplementary punishment, a pecuniary punishment pursuant to the provisions of § 53 of this Code, or
- 2) the court imposes, pursuant to the provisions of § 832 of this Code, extended confiscation of the property obtained by the criminal offence.

(13.12.2006 entered into force 01.02.2007 - RT I 2007, 2, 7)

Policies on trafficking in human beings and their implementation

Policy Documents

Development Plan for Combating Trafficking in Human Beings (January 2006): This document represents the National Action Plan in Estonia, in that it spells out the individual competencies of national Estonian actors in combating THB and it also includes an implementation plan. Its objectives are listed as being: (i) Continuous mapping of the phenomenon; (ii) Preventing human trafficking through awareness raising campaigns; (iii) Capacity building and the strengthening of co-operation of the relevant actors; (iv) Improving border controls and regulating employment agencies; (v) Effectively reacting to human trafficking crimes; (vi) Providing assistance and rehabilitation to victims of human trafficking.

Implementation of the law/policies

Coordination - The Ministry of Justice shall reports on the implementation of the measures and activities within its area of responsibility. Based on the received summaries, round tables are organised upon the initiative of the Ministry of Justice, bringing together THB specialists employed by the involved Ministries (see below), and research and social services agencies. Representatives of non-profit associations are involved in the preparation of the reports by the Ministry of Justice.

Identification of victims/offenders – Ministry of Internal Affairs (Central Criminal Police), Ministry of Justice (Prosecutor's Office⁴³⁴), and NGOs.

Assistance to victims – Department of Equality of the Ministry of Social Affairs, Ministry of Foreign Affairs, Ministry of Internal Affairs (Citizenship and Migration Board), local governments and NGOs.

Protection of victims – Ministry of Internal Affairs (Central Criminal Police), Ministry of Justice (Prosecutor's Office).

Repatriation – Ministry of Internal Affairs (Central Criminal Police), and Ministry of Justice (Prosecutor's Office).

National data on trafficking in human beings

According to the data in the Register of Criminal Proceedings, approximately 160 criminal offences which may be linked to human trafficking were registered in Estonia, in about 100 cases judgments have entered into force. (Information from National Action Plan (Development Plan for Combating Trafficking in Human Beings 2006–2009)

The criminal offences were registered under the following PC articles:

⁴³⁴ Guidelines for identification of VoTs were issued in January 2009.

- § 133. Enslaving - 1
- § 134. Abduction - 0
- § 136. Unlawful deprivation of liberty - 55
- § 138. Illegal conduct of human research - 0
- § 139. Illegal removal of organs or tissue - 0
- § 140. Inducing person to donate organs or tissue - 0
- § 143. Compelling person to engage in sexual intercourse - 5
- § 172. Child stealing - 6
- § 173. Sale or purchase of children - 1
- § 175. Disposing minors to engage in prostitution - 0
- § 176. Aiding prostitution involving minors - 3
- § 177. Use of minors in manufacture of pornographic works - 26
- § 178. Manufacture of works involving child pornography or making child pornography available - 3
- § 259. Illegal transportation of aliens across state border or temporary border line of Republic of Estonia - 2
- § 268. Provision of opportunity to engage in unlawful activities, or pimping - 59

ESTONIA	2000	2001	2002	2003	2004	2005	2006	2007
CC investigated							135(a)	136 (b)
CC with indictment						79 (a)		
CC with conviction								3 (b)

Sources of data:

- (a) data cited in the National Action Plan (Development Plan for Combating Trafficking in Human Beings 2006–2009);
- (b) interview with Ms Brit Tammiste, Ministry of Interior of Estonia.

Other relevant information

International co-operation

Estonia takes part in the Council of the Baltic Sea States Task Force against Trafficking in Human Beings and the Council of the Baltic Sea States work related to trafficked and unaccompanied children. For more information refer to the country fact sheet on Denmark.

Modi operandi of organised crime reported in expert interviews

Organised crime does not play a very large role in THB in Estonia. There is no mafia, but there are small units of criminals. According to experts, THB is a big business nonetheless, but oftentimes it is more segmented, with different groups involved in each phase of the trafficking cycle. Therefore, low levels and modes of violence and coercion are reported.

The recruitment of VoTs has become more clandestine. Often women are recruited through promises of legitimate (non-sexual service) employment. Methods have become more deceptive.

Trends in trafficking in human beings reported in expert interviews

Victims of trafficking in Estonia are most often from the Russian Federation and Estonia. The ethnic Russian population in Estonia is especially at-risk.

Finland

Basic Country Fact

Population 2008: 5,300,484
Surface: 338,145 sq km
GDP per capita in PPP Euro (2008): 30,292.38
Date of accession to the EU: January 1, 1995

International law⁴³⁵

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 8 June 1972 (R), see reservations⁴³⁶

1950 European Convention on Human Rights: 10 May 1990, see reservations⁴³⁷

1966 UN International Covenant on Economic, Social and Cultural Rights: 19 August 1975 (R)

1996 European Social Charter: 21 June 2002 (R)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 7 September 2006 (R)

Domestic law

Trafficking in Human Beings

The Penal Code of Finland (39/1889; amendments up to 650/2003 as well as 1372/2003, 650/2004 and 1006/2004 included)

Chapter 25 - Offences against personal liberty (578/1995)

Section 3 - *Trafficking in human beings* (650/2004)

(1) A person who

- (1) by abusing the dependent status or insecure state of another person,
- (2) by deceiving another person or by abusing the mistake made by that person,
- (3) by paying remuneration to a person who has control over another person or
- (4) by accepting such remuneration

takes control over another person, recruits, transfers, transports, receives or harbours another person for purposes of sexual abuse referred to in chapter 20(9)(1)(1) or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial gain shall be sentenced for trafficking in human beings to imprisonment for a minimum of four months and a maximum of six years.

(2) A person who takes control over another person under 18 years of age or recruits, transfers, transports, receives or harbours that person for the purposes mentioned in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1 – 4) have been used.

⁴³⁵ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴³⁶ <http://www.unhcr.ch/html/menu3/b/treaty11a.htm>

⁴³⁷ <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=11/23/2008&CL=ENG&VL=1>

(3) An attempt shall be punished.

Section 3a - Aggravated trafficking in human beings (650/2004)

(1) If, in trafficking in human beings,

(1) violence, threats or deceitfulness is used instead of or in addition to the means referred to in section 3,

(2) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is deliberately or through gross negligence inflicted on another person,

(3) the offence has been committed against a child younger than 18 years of age or against a person whose capacity to defend himself/herself has been substantially diminished or

(4) the offence has been committed within the framework of a criminal organisation referred to in chapter 17(1a)(4)

and the offence is aggravated also when considered as whole, the offender shall be sentenced for aggravated trafficking in human beings to imprisonment for a minimum of two years and a maximum of ten years.

(2) A person who enslaves or keeps another person in servitude, transports or trades in slaves shall also be sentenced for aggravated trafficking in human beings if the act is aggravated when assessed as whole.

(3) An attempt shall be punished.

Prostitution

Prostitution is not defined in the legislation and there are no sentences under the legislation of Finland. Sexual services, however are defined in Chapter 20 §10 para 1 of the Penal Code (39/1889).

The Aliens Act (301/2004, amendments up to 973/2007 included):

Chapter 9 - Removing aliens from the country

Section 148 - Grounds for refusal of entry

(1) An alien may be refused entry into the country if: [...]

(6) There are reasonable grounds to suspect that he or she may sell sexual services;

See also: Ordningslag 27.6.2003/612 (not available in English)

7 § - Other activities that cause disturbances (Subsection 1)

In a public place it is forbidden to buy and against payment offer sexual services. In the context of this law sexual services are considered to be intercourse according to Chapter 20 §10 para 1 of the Penal Code (39/1889) as well as comparable sexual acts. Chapter 20 §8 para 8 of the Penal Code prescribes penalties for exploitation of persons that are subjected to sex trade and purchase of sexual services from young persons. (25.8.2006/744)⁴³⁸

Pimping

The Penal Code of Finland 39/1889; amendments up to 650/2003 as well as 1372/2003, 650/2004 and 1006/2004 included)

⁴³⁸ Inofficial translation.

Chapter 20 - Sex offences (563/1998)

Section 9 - *Pandering* (563/1998)

- (1) A person who, in order to seek financial gain to himself/herself or to another person,
- (1) supplies a room or other facilities where sexual intercourse or a comparable sexual act or a sexually obscene act performed by a child younger than 18 years of age are offered for remuneration,
- (2) as an established part of his/her business harbours a person engaging in such an act and thereby substantially promotes such an act,
- (3) provides contact information of or otherwise markets another person engaging in such an act knowing that his/her actions substantially promote the occurrence of such an act,
- (4) otherwise takes advantage of such an act performed by another person or
- (5) tempts or coerces another person to perform such an act, shall be sentenced for pandering to a fine or imprisonment for a maximum of three years. (650/2004)

(2) An attempt shall be punished.

Section 9a - *Aggravated pandering* (650/2004)

- (1) If, in pandering,
- (1) considerable financial gain is pursued,
- (2) the offence is committed in a particularly methodical manner,
- (3) grievous bodily harm, a serious illness or a state of mortal danger or comparable particularly grave suffering is deliberately or through gross negligence inflicted on another person or
- (4) the object is a child younger than 18 years of age and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated pandering to imprisonment for a minimum of four months and a maximum of six years.
- (2) An attempt shall be punished.

Penal Code Chapter 20

Section 8 (amended on 25 August 2006/743): *Exploitation of a person victim of sex trade*

- (1) A person who promises or gives a compensation, which represents a direct economic value, to a person victim of a crime referred to in Sections 9 and 9a or in Chapter 25, Sections 3 or 3a to have sexual intercourse or perform a sexual act comparable with it, if the act does not constitute a crime according to Section 8a, shall be sentenced for exploitation of a person victim of sex trade to a fine or imprisonment for at most six months.
- (2) A person who benefits from a compensation, according to the first paragraph, that has been promised or given by a third party, by having sexual intercourse or performing a sexual act comparable with it with a person victim of a crime stated in the said paragraph shall also be sentenced for exploitation of a person victim of sex trade.
- (3) An attempt shall be punished.

Section 8 a - *Buying sexual services from a young person* (650/2004)

- (1) A person who, by promising or giving remuneration, engages a person younger than 18 years of age to have sexual intercourse or to perform other sexual acts shall be sentenced for buying sexual services from a young person to a fine or imprisonment for a maximum of one year.

(2) An attempt shall be punished.

Aliens Act (301/2004, amendments up to 973/2007 included)

Section 52a (619/2006) - *Issuing a residence permit for a victim of trafficking in human beings*

(1) A victim of trafficking in human beings staying in Finland is issued with a temporary residence permit if:

1) the residence of the victim of trafficking in human beings in Finland is justified on account of the pre-trial investigation or court proceedings concerning trafficking in human beings;

2) the victim of trafficking in human beings is prepared to cooperate with the authorities so that those suspected of trafficking in human beings can be caught; and

3) the victim of trafficking in human beings no longer has any ties with those suspected of trafficking in human beings.

(2) If the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements laid down in subsection 1(1) and (2) are met.

(3) Issuing the residence permit is not conditional on the alien having secure means of support.

(4) If a victim of trafficking in human beings is issued with a temporary residence permit, his or her family members staying abroad are not issued with a residence permit on the basis of family ties. If he or she is issued with a continuous residence permit, family members are issued with a residence permit under section 47(3).

Section 52b (619/2006) - *Reflection period for a victim of trafficking in human beings*

(1) Before issuing a residence permit laid down in section 52a, a reflection period of at least thirty days and a maximum of six months may be granted to a victim of trafficking in human beings.

(2) During the reflection period, a victim of trafficking in human beings must decide whether he or she will cooperate with the authorities referred to in section 52a(1)(2).

(3) The reflection period may be suspended if the victim of trafficking in human beings has voluntarily and on his or her own initiative re-established relations with those suspected of trafficking in human beings or if this is necessary on the grounds mentioned in section 36(1).

Section 52c (619/2006) - *Deciding on the reflection period*

(1) The District Police or a border control authority shall decide on granting and suspending the reflection period.

(2) The victim of trafficking in human beings is notified of the reflection period and its suspension in writing. The notification must give the purpose, start date and duration of the reflection period, make clear that the reflection period may be suspended, and give the grounds for suspending the reflection period.

Act on the Integration of Immigrants and Reception of Asylum Seekers (493/1999)

Chapter 4a Assistance to victims of trafficking in human beings (1269/2006)

Section 25a *Content of assistance* (1269/2006)

Victims of trafficking in human beings may be provided with services and support measures, which may include legal and other advice, crisis therapy, social and health care services, interpretation services and other support services, accommodation or housing, social assistance and other necessary care, and support for a safe return. In arranging such services and support measures, account shall be taken of special needs

arising from the age, vulnerability, and physical and mental state of the victim, and the safety of the victim and of personnel providing services and support measures.

Policies on trafficking in human beings and their implementation

Policy documents

In 2005, the first **National Plan of Action against THB** was adopted by the Finnish government, which was followed by the **Revised National Plan of Action against THB June 2008** after an assessment of the steering group. The Revised NPA contains a comprehensive description of future activities foreseen to combat THB in Finland. It provides for adequate government funding to organisations involved in outreach work and advisory work with victims of trafficking, paying special attention to the identification of victims and the enhancement of co-operation between labour market organisations, government and NGOs.

Implementation of the law/policies

Coordination – Monitoring of the implementation of the Plan of Action continues to be undertaken by a cross-discipline steering group. The group is chaired and action against human trafficking coordinated by the Ministry of the Interior. Operative work is coordinated by the National Bureau of Investigation in co-operation with other authorities utilizing especially PCB activities (joint criminal intelligence and investigation activities of the police, Customs and Border Guard).

National Rapporteur – The Ombudsman for Minorities acts as the National Rapporteur on action against human trafficking, acting as an independent authority.

Identification of victims/offenders – All authorities in their respective administrative sectors, NGOs and labour market organizations, churches and other religious communities.

Assistance to victims – Ministry of the Interior, Ministry of Social Affairs and Health, municipalities.

Protection of victims – Ministry of Justice, Ministry of the Interior.

Repatriation – According to Section 8 a of the Integration Act (493/1999) the competent grant authority deciding on return assistance, and on other matters related to return assistance, is one of the competent reception centres or the local authority (municipality) in the case that the person is a resident of the given municipality. Return assistance is granted within the limits of the appropriation allocated for the purpose in the central government budget. In practice, the reception centres and municipalities can also co-operate with e.g. the National Bureau of Investigation, the Finnish Immigration Service and NGOs.

National data on trafficking in human beings

FINLAND (a)	2000	2001	2002	2003	2004	2005	2006	2007	2008
Overall number of identified victims (b)						4	9	5	15
Out of identified victims: minors						4	3	3	3
Identified victims of sexual exploitation						0	1	0	4

FINLAND (a)	2000	2001	2002	2003	2004	2005	2006	2007	2008
Out of identified victims of sexual exploitation: minors							0		1
Identified victims of labour exploitation						0	5	2	10
Out of identified victims of labour exploitation: minors							0	0	1
Identified victims of removal of organs						0	0	0	0
Identified victims of other crimes						4	0	3	1
Out of identified victims of other crimes: minors (c)						4	3	3	1
CC investigated (d)					2	18	42	30	21
CC investigated for trafficking and aggravated trafficking					0	5	5	3	8
CC investigated for removal of organs					0	0	0	0	0
CC investigated for usury type of discrimination at work					2	5	6	14	11
CC investigated for aggravated facilitation of illegal entry					0	9	31	13	4
CC with conviction (e)								1	
CC with conviction for sexual exploitation								1	
Repatriations						0	0	0	4
Permanent residence permits for victims (e)							0	0	0
Persons investigated for trafficking in persons (f)					0	8	10	4	8 (g)

Sources of data:

- (a) Statistics Finland, Information service, Library of Statistics and Legal Register Centre
- (b) Assistance system coordinated by Joutseno and Oulu reception centres – The numbers include suspected and identified victims of trafficking and objects of trafficking-related offences in the scope of the assistance system (the system is not restricted to victims of trafficking proper).
- (c) Transit cases, 2006 and 2008 also one (intended) forced marriage concerning the same person
- (d) Ministry of the Interior, Police Department
- (e) One conviction concerning trafficking in human beings. Other convictions exist for human-trafficking related offences. Further information can be obtained from Statistics Finland or the Legal Register Centre.
- (f) Statistics Finland qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 249

Comments:

- (g) January-September 2008

Other relevant information

In Finland, it is difficult to draw the demarcation line (1) between trafficking-related crimes and actual trafficking, i.e. THB for sexual exploitation and aggravated pandering, which includes the use of force and blackmail, and (2) THB for labour exploitation and usury type of discrimination at work (expert interview). Despite the similarity of these provisions and concomitant overlapping, the decision as to under which provision a case is tried has an impact on the victims' status. However, whereas victims whose cases are tried under the provision of usury type of discrimination at work are still considered victims in the legal process, those persons whose cases are tried under aggravated pandering are not considered victims, hence forfeiting the rights they would have been entitled to as recognised victims of trafficking such as a reflection period/residence permit and victims' compensation (expert interview).

The national steering group will together with the National Rapporteur draw up recommendations on action to develop legislation further and measures against human trafficking.

The referral system for victims of trafficking is rather new and coordinated by two reception centres for asylum seekers located in Oulu and Lappeenranta (Joutseno), maintained by the state.

A good practice in Finland is the assessment of anti-trafficking efforts by a steering group, involving representatives from national administration, NGOs and academia as well as the subsequent revision of the National Action Plan against Trafficking in Human Beings, adapting it to the needs identified.

International co-operation

For information on the Council of the Baltic Sea States Task Force against Trafficking in Human Beings please refer to the country fact sheet on Denmark.

Modi operandi of organized crime reported in expert interviews

As suspected non-EU prostitutes are not allowed to enter the country, in some cases they revert to organised crime groups to facilitate their entry and accommodation, find a place to work and make contacts with the clients, especially when they come for the first time. Faced with the risk of deportation, they are not motivated to cooperate with the authorities (even in cases of physical violence from traffickers), which makes them even more dependent on the criminal networks.

Organised crime groups in most cases provide their victims, who mainly come from the former Soviet countries, with travel documents. The main perpetrators stay outside of Finland in order to minimise their risk. As there is no visible violence applied, there is hardly any evidence when it comes to the trafficking in persons crime.

Trends in trafficking in human beings reported in expert interviews

Cases of THB for sexual exploitation labour exploitation are rare compared to cases of THB for labour exploitation. This, however, does not necessarily mean that THB for labour exploitation cases are more numerous but possibly it indicates that the authorities are better able to identify victims of THB for labour exploitation.

France

Basic Country Facts

Population 2007: 63,392,140
Surface: 643,427 sq km; 547,030 sq km (metropolitan France)
GDP per capita in PPP Euro (2008): 27,596.14
Date of accession to the EU: 1957 (founder member)

International law⁴³⁹

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 19 November 1960 (R), see reservations⁴⁴⁰
1950 European Convention on Human Rights: 3 May 1974 (R), see for reservations⁴⁴¹
1966 UN International Covenant on Economic, Social and Cultural Rights: 4 November 1980 (R)
1996 European Social Charter: 7 May 1999 (R)
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 29 October 2002 (R)

Domestic law

Trafficking in Human Beings

French Criminal Code (consolidated 17 July 2008, valid 24 July 2008), Chapitre V: Des atteintes à la dignité de la personne

Section 1Bis: De la traite des êtres humains

Article 225-4-1, Modifié par Loi n°2007-1631 du 20 novembre 2007 - art. 22 JORF 21 novembre 2007

La traite des êtres humains est le fait, en échange d'une rémunération ou de tout autre avantage ou d'une promesse de rémunération ou d'avantage, de recruter une personne, de la transporter, de la transférer, de l'héberger ou de l'accueillir, pour la mettre à sa disposition ou à la disposition d'un tiers, même non identifié, afin soit de permettre la commission contre cette personne des infractions de proxénétisme, d'agression ou d'atteintes sexuelles, d'exploitation de la mendicité, de conditions de travail ou d'hébergement contraires à sa dignité, soit de contraindre cette personne à commettre tout crime ou délit.

La traite des êtres humains est punie de sept ans d'emprisonnement et de 150 000 euros d'amende.

Article 225-4-2, Créé par Loi no. 2003-239 du 18 mars 2003 - art. 32 JORF 19 mars 2003
L'infraction prévue à l'article 225-4-1 est punie de dix ans d'emprisonnement et de 1 500 000 Euros d'amende lorsqu'elle est commise:

⁴³⁹ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴⁴⁰ <http://www.unhchr.ch/html/menu3/b/treaty11a.htm>

⁴⁴¹ <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=11/23/2008&CL=ENG&VL=1>

- 1° A l'égard d'un mineur ;
- 2° A l'égard d'une personne dont la particulière vulnérabilité, due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse, est apparente ou connue de son auteur;
- 3° A l'égard de plusieurs personnes ;
- 4° A l'égard d'une personne qui se trouvait hors du territoire de la République ou lors de son arrivée sur le territoire de la République;
- 5° Lorsque la personne a été mise en contact avec l'auteur des faits grâce à l'utilisation, pour la diffusion de messages à destination d'un public non déterminé, d'un réseau de télécommunications;
- 6° Dans des circonstances qui exposent directement la personne à l'égard de laquelle l'infraction est commise à un risque immédiat de mort ou de blessures de nature à entraîner une mutilation ou une infirmité permanente;
- 7° Avec l'emploi de menaces, de contraintes, de violences ou de manoeuvres dolosives visant l'intéressé, sa famille ou une personne étant en relation habituelle avec lui;
- 8° Par un ascendant légitime, naturel ou adoptif de la personne victime de l'infraction prévue à l'article 225-4-1 ou par une personne qui a autorité sur elle ou abuse de l'autorité que lui confèrent ses fonctions;
- 9° Par une personne appelée à participer, par ses fonctions, à la lutte contre la traite ou au maintien de l'ordre public.

Article 225-4-3, Créé par Loi no. 2003-239 du 18 mars 2003 - art. 32 JORF 19 mars 2003
L'infraction prévue à l'article 225-4-1 est punie de vingt ans de réclusion criminelle et de 3 000 000 Euros d'amende lorsqu'elle est commise en bande organisée.

Article 225-4-4, Créé par Loi no. 2003-239 du 18 mars 2003 - art. 32 JORF 19 mars 2003
L'infraction prévue à l'article 225-4-1 commise en recourant à des tortures ou à des actes de barbarie est punie de la réclusion criminelle à perpétuité et de 4 500 000 Euros d'amende.

Article 225-4-5, Créé par Loi no. 2003-239 du 18 mars 2003 - art. 32 JORF 19 mars 2003
Lorsque le crime ou le délit qui a été commis ou qui devait être commis contre la personne victime de l'infraction de traite des êtres humains est puni d'une peine privative de liberté d'une durée supérieure à celle de l'emprisonnement encouru en application des articles 225-4-1 à 225-4-3, l'infraction de traite des êtres humains est punie des peines attachées aux crimes ou aux délits dont son auteur a eu connaissance et, si ce crime ou délit est accompagné de circonstances aggravantes, des peines attachées aux seules circonstances aggravantes dont il a eu connaissance.

Article 225-4-6, Modifié par LOI n°2009-526 du 12 mai 2009 - art. 124
Les personnes morales déclarées responsables pénalement, dans les conditions prévues par l'article 121-2, des infractions définies à la présente section encourent, outre l'amende suivant les modalités prévues par l'article 131-38, les peines prévues par l'article 131-39.

Article 225-4-7, Créé par Loi no. 2003-239 du 18 mars 2003 - art. 32 JORF 19 mars 2003
La tentative des délits prévus à la présente section est punie des mêmes peines.

Article 225-4-9, Créé par Loi n°2004-204 du 9 mars 2004 - art. 12 JORF 10 mars 2004

Toute personne qui a tenté de commettre les infractions prévues par la présente section est exempte de peine si, ayant averti l'autorité administrative ou judiciaire, elle a permis d'éviter la réalisation de l'infraction et d'identifier, le cas échéant, les autres auteurs ou complices.

La peine privative de liberté encourue par l'auteur ou le complice d'une des infractions prévues à la présente section est réduite de moitié si, ayant averti l'autorité administrative ou judiciaire, il a permis de faire cesser l'infraction ou d'éviter que l'infraction n'entraîne mort d'homme ou infirmité permanente et d'identifier, le cas échéant, les autres auteurs ou complices. Lorsque la peine encourue est la réclusion criminelle à perpétuité, celle-ci est ramenée à vingt ans de réclusion criminelle.

Article 225-20 Modifié par Loi n°2007-297 du 5 mars 2007 - art. 65 JORF 7 mars 2007

Les personnes physiques coupables des infractions prévues par les sections 1 bis, 2, 2 bis et 2 ter du présent chapitre encourent également les peines complémentaires suivantes:

1° L'interdiction des droits civiques, civils et de famille, suivant les modalités prévues par l'article 131-26;

2° L'interdiction d'exercer l'activité professionnelle ou sociale dans l'exercice ou à l'occasion de l'exercice de laquelle l'infraction a été commise, suivant les modalités prévues par l'article 131-27;

3° L'interdiction de séjour;

4° L'interdiction d'exploiter, directement ou indirectement, les établissements ouverts au public ou utilisés par le public énumérés dans la décision de condamnation, d'y être employé à quelque titre que ce soit et d'y prendre ou d'y conserver une quelconque participation financière;

5° L'interdiction, pour une durée de cinq ans au plus, de détenir ou de porter une arme soumise à autorisation;

6° L'interdiction, pour une durée de cinq ans au plus, de quitter le territoire de la République;

7° L'interdiction d'exercer, soit à titre définitif, soit pour une durée de dix ans au plus, une activité professionnelle ou bénévole impliquant un contact habituel avec des mineurs;

8° L'obligation d'accomplir un stage de responsabilité parentale, selon les modalités fixées à l'article 131-35-1.

Pimping

French Criminal Code (consolidated 17 July 2008, valid 24 July 2008), Chapitre V: Des atteintes à la dignité de la personne

Section 2: Du proxénétisme et des infractions qui en résultent

Article 225-5 Modifié par Loi 2003-239 2003-03-18 art. 50 1° JORF 19 mars 2003

Le proxénétisme est le fait, par quiconque, de quelque manière que ce soit:

1° D'aider, d'assister ou de protéger la prostitution d'autrui;

2° De tirer profit de la prostitution d'autrui, d'en partager les produits ou de recevoir des subsides d'une personne se livrant habituellement à la prostitution;

3° D'embaucher, d'entraîner ou de détourner une personne en vue de la prostitution ou d'exercer sur elle une pression pour qu'elle se prostitue ou continue à le faire.

Le proxénétisme est puni de sept ans d'emprisonnement et de 150000 euros d'amende.

Article 225-6 Modifié par Loi 2003-239 2003-03-18 art. 50 1° JORF 19 mars 2003

Est assimilé au proxénétisme et puni des peines prévues par l'article 225-5 le fait, par quiconque, de quelque manière que ce soit:

- 1° De faire office d'intermédiaire entre deux personnes dont l'une se livre à la prostitution et l'autre exploite ou rémunère la prostitution d'autrui;
- 2° De faciliter à un proxénète la justification de ressources fictives;
- 3° De ne pouvoir justifier de ressources correspondant à son train de vie tout en vivant avec une personne qui se livre habituellement à la prostitution ou tout en étant en relations habituelles avec une ou plusieurs personnes se livrant à la prostitution;
- 4° D'entraver l'action de prévention, de contrôle, d'assistance ou de rééducation entreprise par les organismes qualifiés à l'égard de personnes en danger de prostitution ou se livrant à la prostitution.

Article 225-7, Modifié par Loi 2003-239 2003-03-18 art. 50 1° JORF 19 mars 2003

Le proxénétisme est puni de dix ans d'emprisonnement et de 1500000 euros d'amende lorsqu'il est commis:

- 1° A l'égard d'un mineur ;
- 2° A l'égard d'une personne dont la particulière vulnérabilité, due à son âge, à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse, est apparente ou connue de son auteur ;
- 3° A l'égard de plusieurs personnes ;
- 4° A l'égard d'une personne qui a été incitée à se livrer à la prostitution soit hors du territoire de la République, soit à son arrivée sur le territoire de la République ;
- 5° Par un ascendant légitime, naturel ou adoptif de la personne qui se prostitue ou par une personne qui a autorité sur elle ou abuse de l'autorité que lui confèrent ses fonctions;
- 6° Par une personne appelée à participer, de par ses fonctions, à la lutte contre la prostitution, à la protection de la santé ou au maintien de l'ordre public ;
- 7° Par une personne porteuse d'une arme ;
- 8° Avec l'emploi de la contrainte, de violences ou de manoeuvres dolosives ;
- 9° Par plusieurs personnes agissant en qualité d'auteur ou de complice, sans qu'elles constituent une bande organisée ;
- 10° Grâce à l'utilisation, pour la diffusion de messages à destination d'un public non déterminé, d'un réseau de télécommunications.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables aux infractions prévues par le présent article.

Article 225-7-1, Modifié par Loi 2003-239 2003-03-18 art. 50 1° JORF 19 mars 2003

Le proxénétisme est puni de quinze ans de réclusion criminelle et de 3000000 euros d'amende lorsqu'il est commis à l'égard d'un mineur de quinze ans.

Article 225-8, Modifié par Loi 2003-239 2003-03-18 art. 50 1° JORF 19 mars 2003

Le proxénétisme prévu à l'article 225-7 est puni de vingt ans de réclusion criminelle et de 3000000 euros d'amende lorsqu'il est commis en bande organisée.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables à l'infraction prévue par le présent article.

Article 225-9, Modifié par Loi 2003-239 2003-03-18 art. 50 1° JORF 19 mars 2003

Le proxénétisme commis en recourant à des tortures ou des actes de barbarie est puni de la réclusion criminelle à perpétuité et de 4500000 euros d'amende.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables à l'infraction prévue au présent article.

Article 225-10, Modifié par Loi 2003-239 2003-03-18 art. 50 1°, art. 51 JORF 19 mars 2003
Est puni de dix ans d'emprisonnement et de 750000 euros d'amende le fait, par quiconque, agissant directement ou par personne interposée:

1° De détenir, gérer, exploiter, diriger, faire fonctionner, financer ou contribuer à financer un établissement de prostitution ;

2° Détenant, gérant, exploitant, dirigeant, faisant fonctionner, finançant ou contribuant à financer un établissement quelconque ouvert au public ou utilisé par le public, d'accepter ou de tolérer habituellement qu'une ou plusieurs personnes se livrent à la prostitution à l'intérieur de l'établissement ou de ses annexes ou y recherchent des clients en vue de la prostitution ;

3° De vendre ou de tenir à la disposition d'une ou de plusieurs personnes des locaux ou emplacements non utilisés par le public, en sachant qu'elles s'y livreront à la prostitution;

4° De vendre, de louer ou de tenir à la disposition, de quelque manière que ce soit, d'une ou plusieurs personnes, des véhicules de toute nature en sachant qu'elles s'y livreront à la prostitution.

Les deux premiers alinéas de l'article 132-23 relatif à la période de sûreté sont applicables aux infractions prévues par les 1° et 2° du présent article.

Article 225-10-1 Créé par Loi 2003-239 2003-03-18 art. 50 2° JORF 19 mars 2003

Le fait, par tout moyen, y compris par une attitude même passive, de procéder publiquement au racolage d'autrui en vue de l'inciter à des relations sexuelles en échange d'une rémunération ou d'une promesse de rémunération est puni de deux mois d'emprisonnement et de 3 750 Euros d'amende.

Article 225-11 Modifié par Loi 2003-239 2003-03-18 art. 50 1° JORF 19 mars 2003

La tentative des délits prévus par la présente section est punie des mêmes peines.

Article 225-11-1, Créé par Loi n°2004-204 du 9 mars 2004 - art. 12 JORF 10 mars 2004

Toute personne qui a tenté de commettre les infractions prévues par la présente section est exempte de peine si, ayant averti l'autorité administrative ou judiciaire, elle a permis d'éviter la réalisation de l'infraction et d'identifier, le cas échéant, les autres auteurs ou complices.

La peine privative de liberté encourue par l'auteur ou le complice d'une des infractions prévues à la présente section est réduite de moitié si, ayant averti l'autorité administrative ou judiciaire, il a permis de faire cesser l'infraction ou d'éviter que l'infraction n'entraîne mort d'homme ou infirmité permanente et d'identifier, le cas échéant, les autres auteurs ou complices. Lorsque la peine encourue est la réclusion criminelle à perpétuité, celle-ci est ramenée à vingt ans de réclusion criminelle.

Article 225-11-2, Créé par Loi n°2006-399 du 4 avril 2006 - art. 16 JORF 5 avril 2006

Dans le cas où le délit prévu par le 1° de l'article 225-7 est commis à l'étranger par un Français ou par une personne résidant habituellement sur le territoire français, la loi française est applicable par dérogation au deuxième alinéa de l'article 113-6 et les dispositions de la seconde phrase de l'article 113-8 ne sont pas applicables.

Article 225-12, Modifié par LOI n°2009-526 du 12 mai 2009 - art. 124

Les personnes morales déclarées responsables pénalement, dans les conditions prévues par l'article 121-2, des infractions définies aux articles 225-5 à 225-10 encourent, outre l'amende suivant les modalités prévues par l'article 131-38, les peines prévues par l'article 131-39.

Article 225-20, Modifié par Loi n°2007-297 du 5 mars 2007 - art. 65 JORF 7 mars 2007 introduit des peines complémentaires pour les personnes physiques coupables des infractions prévues par les sections 1 bis, 2, 2 bis et 2 ter du présent chapitre.⁴⁴²

Use of sexual services

Section 2 bis: Du recours à la prostitution de mineurs ou de personnes particulièrement vulnérables

Article 225-12-1, Modifié par Loi 2003-239 2003-03-18 art. 50 3°, 4° JORF 19 mars 2003 (Section 2 bis: Du recours à la prostitution de mineurs ou de personnes particulièrement vulnérables)

Le fait de solliciter, d'accepter ou d'obtenir, en échange d'une rémunération ou d'une promesse de rémunération, des relations de nature sexuelle de la part d'un mineur qui se livre à la prostitution, y compris de façon occasionnelle, est puni de trois ans d'emprisonnement et 45000 euros d'amende.

Est puni des mêmes peines le fait de solliciter, d'accepter ou d'obtenir, en échange d'une rémunération ou d'une promesse de rémunération, des relations sexuelles de la part d'une personne qui se livre à la prostitution, y compris de façon occasionnelle, lorsque cette personne présente une particulière vulnérabilité, apparente ou connue de son auteur, due à une maladie, à une infirmité, à une déficience physique ou psychique ou à un état de grossesse.

Article 225-12-2, Modifié par Loi n°2006-399 du 4 avril 2006 - art. 16 JORF 5 avril 2006

Les peines sont portées à cinq ans d'emprisonnement et 75 000 euro d'amende:

1° Lorsque l'infraction est commise de façon habituelle ou à l'égard de plusieurs personnes ;

2° Lorsque la personne a été mise en contact avec l'auteur des faits grâce à l'utilisation, pour la diffusion de messages à destination d'un public non déterminé, d'un réseau de communication ;

3° Lorsque les faits sont commis par une personne qui abuse de l'autorité que lui confèrent ses fonctions ;

4° Lorsque l'auteur des faits a délibérément ou par imprudence mis la vie de la personne en danger ou a commis contre elle des violences.

Les peines sont portées à sept ans d'emprisonnement et 100 000 euros d'amende lorsqu'il s'agit d'un mineur de quinze ans.

Article 225-12-3, Modifié par Loi 2003-239 2003-03-18 art. 50 3° JORF 19 mars 2003

Dans le cas où les délits prévus par les articles 225-12-1 et 225-12-2 sont commis à l'étranger par un Français ou par une personne résidant habituellement sur le territoire français, la loi française est applicable par dérogation au deuxième alinéa de l'article 113-6 et les dispositions de la seconde phrase de l'article 113-8 ne sont pas applicables.

Article 225-12-4, Modifié par LOI n°2009-526 du 12 mai 2009 - art. 124

Les personnes morales déclarées responsables pénalement, dans les conditions prévues par l'article 121-2, des infractions définies à la présente section encourrent, outre l'amende suivant les modalités prévues par l'article 131-38, les peines prévues par l'article 131-39.

⁴⁴² Full article quoted above, under "Trafficking in human beings."

L'interdiction mentionnée au 2° de l'article 131-39 porte sur l'activité dans l'exercice ou à l'occasion de l'exercice de laquelle l'infraction a été commise.

Article 225-20, Modifié par Loi n°2007-297 du 5 mars 2007 - art. 65 JORF 7 mars 2007 introduit des peines complémentaires pour les personnes physiques coupables des infractions prévues par les sections 1 bis, 2, 2 bis et 2 ter du présent chapitre.⁴⁴³

Policies on trafficking in human beings and their implementation

Policy documents

France has not adopted any National Action Plan on combating trafficking in persons, nor appointed a national rapporteur. There is no regular public reporting mechanism. The most recent report was prepared by the Senat (higher chamber of the French Parliament) in 2005. The most notable pattern of the French anti-trafficking policy is that pandering and trafficking in human beings for sexual exploitation, although defined by two different sets of legal provisions, are addressed as one phenomenon.

Implementation of laws/policies

Coordination: The Central Office for Repression of Trafficking in Human Beings (Office Central pour la Repression de la Traite des Etres Humains – OCRTEH), within the Ministry of Interior, is a Police service tasked with centralising trafficking-related and pandering-related information at national level. This data is exclusively for Police use, and remains internal. The Office comprises, in addition to a documentation section, four investigative teams with national-level competencies in investigating relevant cases. The Office is also in charge of coordinating fight against sexual exploitation (including both trafficking in human beings for sexual exploitation and pandering).

Identification of victims/offenders: There is no specific agency obliged to identify victims. The identification may be done by NGOs, the police or social services or. Identification of offenders is clearly entrusted to the police.

Assistance to victims: In terms of assistance to victims, the French Ministry of Health has established an equivalent of a national referral mechanism, in co-operation with a panel of NGOs. The mechanism is financed by the Ministry of Health and functions under its aegis. Regular consultation meetings of stakeholders are hosted by this Ministry. However the mechanism's operations are coordinated at national level by an NGO, Ac-Se. Victims are identified by NGOs, the Police or social workers and referred to the closest service provider (NGO or social services). The case is jointly assessed and referred to Ac-Se, which further refers the victim to one of the partner social care centres (NGO or public service centre, not specialised in trafficked victims) for in-take of the victim and social integration in a different region of France.

Protection of victims: The police are responsible for the protection of victims. Protection is also ensured through geographic re-location under the above-mentioned assistance program.

Repatriation: Repatriation costs may be charged on the offender (Art. 225.24 CC).

⁴⁴³ Full article quoted above, under "Trafficking in human beings."

National data on trafficking in human beings

FRANCE	2000	2001	2002	2003	2004	2005	2006	2007	2008
Overall number of identified victims of trafficking in human beings or of pandering									1218 (a)
CC with indictment							1 (b)		
Persons investigated for "soliciting prostitution" (§225-5 to 225-12) (c)				1609	1716	2059	1963		
Persons prosecuted for "soliciting prostitution" (Art. 225-5 to 225-12) (males/females) (c)				709 (501/ 208)	717 (504/ 213)	880 (596/ 284)	745 (462/ 283)		
Victims of "soliciting prostitution" (§225-5 to 225-12) registered by OCRTEH (women/girls/ men/boys) (c)				900 (817/65 / 17/1)	998 (916/65 / 16/1)	1189 (1088/ 60/37/ 1/4)	1218 (1109/ 27/82/-)		
Victims of "soliciting prostitution" (§225-5 to 225-12) registered by OCRTEH by nationality: French/other (c)						(d) 650/ 1757			

Sources of data:

(a) Communiqué de Presse ALC 08 October 2008, reporting number of THB or pimping victims until 2008 established by the OCRTEH, Ministry of Interior

(b) Case for trafficking in babies for illegal adoption. Source: interview with NGO AcSE

(c) OCRTEH – French National Statistics qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 251.

Comments:

(d) 2005-2006

Victims of "labour and living conditions against human dignity" (§225-13 to 225-16) between January and September 2008: 23 Chinese; 23 Brazilians; 20 French; 13 Poles; 7 Moroccan; 9 other Europe, 3 other. Source: OCLTI and Gendarmerie Nationale qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 251.

Persons suspected of "labour and living conditions against human dignity" (§225-13 to 225-16) between January and September 2008: 23 French; 8 Turks; 7 North African; 6 Central European, 5 Portuguese; 5 Chinese, 1 Other. Source: OCLTI and Gendarmerie Nationale qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 251.

Other relevant information

Good practices

See Assistance to Victims.

Trends in trafficking in human beings reported in expert interviews

Most of foreign prostitutes are, according to experts, in a situation of exploitation. In turn, prostitution of French citizens has considerably decreased. Victims originate

predominantly from Sub-Saharan Africa (Nigeria in particular), Eastern Europe (Bulgaria, Romania, Ukraine). Few victims are originating from Latin America (Ecuador for instance); this concerns mostly male victims of trafficking in human beings for sexual exploitation. A small minority of victims come from Eastern Asia. Traffickers tend to increasingly transfer trafficked persons within France, as well as to/from France within the EU.

Modes of coercion differ, among other reasons, depending on the origin of the victims. According to experts, coercion and deceit are more frequent among victims originating from Eastern Europe, while the use of magic and voodoo-like practices as well as debt bondage are more frequent among victims from Africa.

Modi operandi of organised crime reported in expert interviews

As suspected non-EU prostitutes are not allowed to enter the country, in some cases they revert to organised crime groups to facilitate their entry and accommodation, find a place to work and make contacts with the clients, especially when they come for the first time. Faced with the risk of deportation, they are not motivated to cooperate with the authorities (even in cases of physical violence from traffickers), which makes them even more dependent on the criminal networks.

Organised crime groups in most cases provide their victims, who mainly come from the former Soviet countries, with travel documents. The main perpetrators stay outside of Finland in order to minimise their risk. As there is no visible violence applied, there is hardly any evidence when it comes to the trafficking in persons crime.

Interviewed experts consider organised crime as a factor depending on restrictive migration policies and differences socio-economic standards in countries of origin. Existing contacts and knowledge of the criminal culture in the destination country are determining the modi operandi of criminal networks. Once set up, criminal networks are hierarchically organised and comparable to the mafia. Sometimes, trafficking of prostitutes is just the starting point for establishing a criminal network that will at a later point enter more risky and consequently more profitable activities.

Germany

Basic Country Facts

Population 2007: 82,314,906
Surface: 357,021 sq km
GDP per capita in PPP Euro (2008): 29,041.57
Date of accession to the EU: 1957 (founder member)

International law⁴⁴⁴

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: N/a

1950 European Convention on Human Rights: 5 December 1952 (R)

1966 UN International Covenant on Economic, Social and Cultural Rights: 3 January 1976 (R), see reservations⁴⁴⁵

1996 European Social Charter: 29 June 2007 (S)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 14 July 2006 (R)

Domestic law

Trafficking in Human Beings

§ 232 Trafficking in Human Beings for the purpose of sexual exploitation

(1) Whoever brings another person, through the exploitation of a plight or helplessness linked to his/her stay in a foreign country, to take up or carry forward prostitution or other sexual activities by which this person is exploited, and to perform these activities with or in front of the offender or a third person, or to let a third person perform these activities on him/herself, has to be amerced to a prison sentence of six months up to ten years. Has to be sentenced as well whoever brings a person under the age of twenty-one to take up or carry forward prostitution or any sexual activities as described in sentence 1.

(2) The attempt is punishable.

(3) A prison sentence of one up to ten years has to be imposed when

1. the victim is a child (§ 176 Abs. 1),
2. the offender heavily maltreated physically the victim during the offence, or endangered the life of the victim through the offence, or
3. the offender committed the offence professionally or as a member of a criminal group, which joined a continuous perpetration of that sort of offences.

(4) According to paragraph 3, has to be prosecuted, whoever

1. forces another person by force, by threat of a sensitive evil or by subterfuge to take up or carry forward prostitution or other sexual activities described in paragraph 1, sentence 1, or

⁴⁴⁴ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴⁴⁵ http://www.unhcr.ch/html/menu3/b/treaty4_asp.htm

2. takes possession of another person by force, by threat of a sensitive evil or by subterfuge to force this person to take up or carry forward prostitution or other sexual activities as described in paragraph 1, sentence 1.

(5) In less severe cases of paragraph 1 a prison sentence of 3 months up to five years is to be imposed; in less severe cases of paragraph three and four a prison sentence of 6 months up to five years.

Pimping

Penal code, § 180a Ausbeutung von Prostituierten (Exploitation of prostitutes)

(1) Who so ever operates or owns a business in which persons are engaged in prostitution, and are held in conditions of personal or economic dependence, is to be punished with incarceration of up to 3 years or a fine

(2) Equally an individual will be punished who.

1. provides a minor with a location to engage in prostitution, or allows them to engage in such activities in any premises under their control
2. provides another person with the premises to engage in prostitution, and then promotes their engagement in prostitution and in this regard exploits them.

Penal code, § 181a

(1) A jail sentence of 6 months to 5 years is to be applied in cases where:

1. a person exploits an individual engaged in prostitution
2. a person profits from another person engaged in the exploitation of prostitution

(2) a jail sentence of up to 3 years or a fine shall be applied to whoever profits from the referral of clients for sexual services to an individual engaged in prostitution and thereby or as a condition of these referrals impedes the individual engaged in prostitution's personal and economic liberties, and in this regard maintains this relationship with the victims beyond an individual case.

(3) Sentences based on the acts and facilitations outlined in Paragraphs 1 and 2 are to handed down even if the victim is a spouse.

Policies on trafficking in human beings and their implementation

Policy documents

Cooperation concept for counselling services and the police concerning the protection of witnessing victims of traffic in human beings for the purpose of sexual exploitation (Federal Ministry Family, Seniors, Women and Youths) for November 2007):

The document provides the conceptual basis for the conclusion of co-operation agreements between law enforcement agencies and counselling services. These agreements are to mitigate the risk of the counselling services and the victims being instrumentalised by the law enforcement authorities. Especially given the absence of a legally established right to refuse to give evidence, which is an impediment to the relationship of trust with the persons affected and makes co-operation between the investigating authorities and the counselling services difficult. The co-operation agreements are meant to create clear separation between investigation and the provision of assistance and care.

The document also establishes a set of criteria for the in- or exclusion of victims from a witness protection programme, with due deference to the opinion of the public prosecutor, these being: victim/witness status, indispensability of statement, risk involved, and

victim volition. As well as outlining measures law enforcement officials are to undertake in human trafficking cases, with special attention given to the needs of the victims and the subsequent necessity to co-operate with counseling services. Further more the concept describes the steps to be undertaken by the counseling service in the course of assisting the victim, with special attention given to the relevant data protection issues and personal security issues.

The document concludes by recommending that the federal states regularly evaluate existing co-operation agreements and establish clearinghouses, which would resolve issues arising between the co-operation partners relevant to the practical implementation of the agreements.

Implementation of the law/policies

Coordination – The Federal Criminal Police Office and the individual State Investigation Bureaus

Identification of victims/offenders – Law enforcement agencies and NGOs

Assistance to victims – NGOs

Protection of victims – State Investigation Bureaus

Repatriation – Immigration services and the Federal Criminal Police Office

National data on trafficking in human beings

GERMANY	2000	2001	2002	2003	2004	2005	2006	2007
Overall number of identified victims of sexual exploitation (a)	926	987	811	1235	972	642	775	689
Out of the identified victims of sexual exploitation: minors (a)	31	30	38	59	78	51	62	83
CC investigated for sexual exploitation (a)	321	273	289	431	370	317	353	454
CC investigated for labour exploitation (a)							78	92
Persons suspected of human trafficking for the purpose of sexual exploitation (b)				1110	777	683	664	714
Persons convicted of trafficking in persons in the former Republic of Germany (West Germany) and East Berlin (males/females) (c)				152 (112/40)	141 (112/29)	136 (107/29)	140 (121/29)	
Sanctions imposed on persons convicted of trafficking in persons in the former Republic of Germany (West Germany) and East Berlin (non-custodial/ custodial) (c)				152 (8/152)	141 (4/137)	136 (9/127)	150 (19/131)	

GERMANY	2000	2001	2002	2003	2004	2005	2006	2007
Victims of trafficking in persons identified by State authorities (total adults/total children/unknown) (d)				1235 (1175/60/-)	972 (893/79/-)	642 (591/51/-)	775 (713/62/-)	689 (585/81/23)

Sources of data:

- (a) Bundeskriminalamt Kurzfassung des Bundeslagebildes Menschenhandel, BKA Wiesbaden: <http://www.bka.de/lageberichte/mh.html>
- (b) Bundeskriminalamt Trafficking in Human Beings qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 252
- (c) Federal Statistical Office, Conviction Statistics qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 252
- (d) Bundeskriminalamt Trafficking in Human Beings qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 253

Other relevant information

Good Practices

The co-operation agreements promoted by the Federal Ministry for Family, Seniors, Women and Youths form a legitimate basis for NGO – police co-operation, and seem to be widely implemented. The involvement of NGOs stretches from identification to return.

The Federal Criminal Police Office of Germany compiles comprehensive and detailed annual reports on trends in trafficking in human beings.

The legalisation of prostitution in Germany has afforded law enforcement agencies increased contact with potential victims of trafficking for the purpose of sexual exploitation. This access has been used to step up preventative measures and the dissemination of information concerning the relevant counselling among the potential victims. This strategy is carried out hand in hand with NGOs.

Significant bilateral or regional co-operation schemes

The Federal Criminal Police Office provides training courses for police officers on THB related topics. These courses include modules dealing with intercultural communication, the questioning of traumatised victims, information concerning co-operation with NGOs, presentations by the legal counsel of victims etc... Police officers from other German speaking countries (Austria, Switzerland, and Luxembourg) regularly participate in these courses.

Most German NGOs either directly co-operate with the international La Strada network or liaise through the Koordinierungskreis gegen Frauenhandel und Gewalt an Frauen im Migrationsprozess (Coordination Group against Trafficking in Women and Violence against Migrant Women). This significantly facilitates the establishment of pre-return risk assessments and the return process itself.

Modi operandi of organised crime reported in expert interviews

Perpetrators are generally loosely organised into groups which lack centralised coordination and prolonged cooperation, therefore they cannot be considered criminal organisations.

Traffickers attempt to convince victims that police is corrupt, which complicates investigation. This is especially pronounced in 'ethnic prostitution', i.e. in closed systems when the pimp, prostitute and client come from the same community. Trafficking in human beings is most prevalent in 'ethnic prostitution'. Ethnic prostitution rings involved in trafficking in human beings have been uncovered in the Turkish community, where the victims were Turkish Bulgarian, and among Romanians. 'Ethnic prostitution' takes place usually in off-street settings.

Street prostitution remains a mainly domestic prostitution phenomenon (German prostitutes), 2006 was the first year there were more German prostitutes than foreign, with German prostitutes remaining in that line of work for much longer periods of time.

Trends in trafficking in human beings reported in expert interviews

During 1990s most victims were from Russian, Belarus and Ukraine, today most victims of trafficking are still from Eastern Europe but often from Bulgaria and Romania. It seems that victims of trafficking from Eastern Europe are replacing victims of trafficking from Asia and Latin America, but currently also the number of victims from Nigeria is on the rise.

Most frequent means of recruitment are advertised positions and personal recruitment, mostly under the pretext of a paid position in the entertainment industry, resulting in a gross deception of the victim.

According to one expert the level and modes of violence/coercion have remained constant, other expert reported that the modes of violence and coercion different for German victims and foreign victims: German victims have been exposed to a low and constant level of violence, whereas foreign victims especially those from Bulgaria and Romania are exposed to a higher, but decreasing level of violence and coercion. They are less likely to report these abuses. Violence also seems to be strongly correlated with the ethnicity of the victims. Civil society organisation has reported that the level of violence is changing from physical to psychological and economic coercion and physical violence is supplanted by threats. *"As the current victims come from EU Member States they are less prone to threats based on their illegal status since they are entitled to freedom of movement within the EU, accordingly the level of violence endemic in THB for the purpose of sexual exploitation has reduced sharply. Now most victims seeking the assistance have been denied their wages, whereas prior to the EU accession of the Baltic nations and Bulgaria and Romania abuse was the main motivation in seeking the NGOs support."*

Italy

Basic Country Facts

Population 2007: 59,131,287
Surface: 301,230 sq km (includes Sardinia and Sicily)
GDP per capita in PPP Euro (2008): 25,419.13
Date of accession to the EU: 1957 (founder member)

International law⁴⁴⁶

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 18 January 1980 (R)

1950 European Convention on Human Rights: 26 October 1955 (R)

1966 UN International Covenant on Economic, Social and Cultural Rights: 15 December 1978 (R), see reservations⁴⁴⁷

1996 European Social Charter: 5 July 1999 (R), see reservations⁴⁴⁸

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 2 August 2006 (R)

Domestic law

Trafficking in Human Beings

Law no. 228/2003 "Measures against trafficking in persons"

Article 600 "Placing or holding a person in conditions of slavery and servitude" of the Criminal Code

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

Article 601 "Trafficking in persons" of the Criminal Code

Whoever carries out trafficking in persons who are in the conditions referred to in article 600, that is, with a view to perpetrating the crimes referred to in the first paragraph of said article; or whoever leads any of the aforesaid persons through deceit or obliges such person by making use of violence, threats, or abuse of power; by taking advantage of a situation of physical or mental inferiority, and poverty; or by promising money or making

⁴⁴⁶ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴⁴⁷ http://www.unhcr.ch/html/menu3/b/treaty4_asp.htm

⁴⁴⁸

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=8&DF=11/23/2008&CL=ENG&VL=1>

payments or granting other kinds of benefits to those who are responsible for the person in question, to enter the national territory, stay, leave it or migrate to said territory, shall be punished with imprisonment from eight to twenty years.

Furthermore, the Law 228/2003 also includes a provision for the creation of a short-term protection programme for trafficked persons aiming at “temporarily guaranteeing adequate accommodation, food and healthcare conditions to the (...) victims” (**Art. 13**).

Legislative decree 286/1998 “Immigration law” (as modified by succeeding laws)

Art. 18 “Residence permits for social protection”

It provides for a residence permit for humanitarian reasons and a comprehensive programme of social assistance and integration for trafficked persons, regardless of their co-operation with the competent authority:

“1. Whenever police operations, investigations or court proceedings involving any of the offences set out in art. 3 of Law 75/1958,⁴⁴⁹ or in art. 380 of the Code of Criminal Procedure,⁴⁵⁰ or whenever the social services of a local administration,⁴⁵¹ in the performance of their social assistance work, identify situations of abuse or severe exploitation of a foreign citizen, and whenever the safety of the said foreign citizen has been seen to be endangered as a consequence of attempts to escape from the conditioning of a criminal organisation which engages in one of the afore-cited offences, or as a consequence of statements made during preliminary investigations or in the course of court proceedings, then the chief of police, also acting on the proposal of the Public Prosecutor, or with the favorable opinion of the same Public Prosecutor, may grant a special residence permit enabling the foreign citizen to escape from the situation of abuse and conditioning perpetrated by the criminal organisation and to participate in a social assistance and integration program.”

Prostitution

Law no. 75/1958 “Cancellation of regulations on prostitution and fight against exploitation of prostitution”

Article 3 comprises a series of crimes aimed at sanctioning all activities, which in any way would facilitate, abet and procure prostitution. All offences, even though differing in terms of gravity, are punished with imprisonment from 2 to 6 years and a fine ranging from five hundred thousand to twenty million *lire*. Para. 2, no. 6 envisages the offence of “inducement to move to a given location or place to carry out prostitution” providing for penalties for those who induce another person to move from one place to another, within the same country or to another country, in order to engage in prostitution; while no. 7 punishes the activity of national or foreign “associations and organisations dedicated to the recruitment and exploitation of prostitutes, and the aiding and abetting by said organisations or associations.

Pimping

Law no. 75/1958 “Cancellation of regulations on prostitution and fight against exploitation of prostitution”

No full translation of law available.

⁴⁴⁹ The law on exploitation of prostitution of others

⁴⁵⁰ Cases in which the police must arrest the offender

⁴⁵¹ City Councils or Regions

Art. 3: 2 – 6 years in prison, and a fine of 500,000 and 20,000,000 lire (€250 – 10,000).

Child prostitution

Criminal Code

Article 600-bis “Child prostitution”

The provision sanctions with imprisonment from six to twelve years and a fine from 15,493 to 154,937 Euros anyone inducing a person under 18 years of age to prostitute him/herself, namely anyone abetting or procuring prostitution involving a minor. Unless the deed constitutes a more serious crime, whoever performs sexual acts with a minor between 14 and 18 years old, in exchange of money or other economic gain, shall be punished with imprisonment of six months to three years and a fine not less than 5.164 Euros. If the injured party is less than 14 years old, the offender shall be punished with imprisonment of two to five years. In case the offender is a minor, the punishment shall be decreased between one and two thirds.

Use of sexual services

The law does not define the use of sexual services. There are no sentences under the Italian legislation for use of sexual services unless a minor is involved.

Policies on trafficking in human beings and their implementation

Italy has not developed and enacted an action plan or a strategy to combat trafficking in human beings so far. The agency tasked with tackling the phenomenon is the Department for Equal Opportunities at the Presidency of the Council of Ministers. The Department is responsible for the following areas: leading the Inter-ministerial Commission for Support to the victims of trafficking, violence and grave suffering; being in charge of the committee for co-ordination of government actions against trafficking in human beings and of the data-collection institutions; collecting data in field of trafficking in human beings.

Since the late 90's, Italy has developed a comprehensive anti-trafficking system to provide assistance and protection to trafficked persons. The Italian protection system provides for two special programmes for trafficked persons:

- a short-term programme: “Article 13 Programme”, envisaged by Art. 13 of the anti-trafficking law;
- a long-term programme: “Programme of social assistance and integration” known as “Article 18 Programme”, envisaged by the Legislative Decree 286/98.

The “Art. 13 Programme” is a three-month programme that, when applicable, may be extended for other three months. The public or private accredited organisations will offer a set of protection and first assistance measures (accommodation, social and legal assistance, and health care services) to victims of slavery, servitude and trafficking. Once the programme is over, foreign victims can continue to be assisted under the so-called “Article 18 programme”.

The “Art. 18 Programme” provides for a wide range of protection and assistance measures: accommodation, psychological support, health care services, legal consultancy and assistance, education, vocational guidance and training activities and support for the reintegration into the labour market. The Article 18 of the Legislative Decree 286/1998 establishes that a temporary residence permit for humanitarian reasons may be issued

to foreigners who find themselves in situations of abuse or severe exploitation and need protection and assistance. The residence permit for humanitarian reasons does not require the victim's mandatory co-operation with the competent authorities but it obliges them to participate into the Art. 18 Programme. Such residence permit is renewable and it can be converted into a residence permit for education or for work, allowing the foreigner to remain in Italy in accordance with the regulations governing the presence of non-European Community foreigners.

The Article 13 and Article 18 programmes are funded by the Inter-ministerial Committee for the Support to Victims of Trafficking, Violence and Serious Exploitation and are run by registered NGOs⁴⁵² and local authorities (Municipalities, Provinces, and Regions), which have to yearly submit their project proposal to the Department for Rights and Equal Opportunities, which leads the Committee. Each grant – by law – is co-financed by the Department for Rights and Equal Opportunities and by local authorities.

From 2000 to 2008, 533 Art. 18 projects have been funded, through which 13,517 persons have been assisted and supported to complete the programme of social assistance and integration. From 2006 to 2008, 72 Art. 13 projects have been funded, but no official number is available on how many persons have been assisted.

Since 2000, the abovementioned Inter-ministerial Committee also funds a National Toll-Free Hotline against Trafficking (*Numero Verde contro la Tratta* 800-290.290) that offers a wide range of information in the main languages spoken by the victims, who can be referred to a service provider through such a hotline.

Since 2001, the voluntary assisted return programme – funded by the Ministry of the Interior and managed by IOM Italy – is also offered to trafficked persons who wish to return to their home countries.

In Italy, no official comprehensive database on trafficking in human beings has been in place up to January 2009, when the government funded the first Italian Observatory on Trafficking, which is based on the three year-experience and no know-how developed by Osservatorio Tratta⁴⁵³. Since the newly established observatory has not issued any official report yet, data on trafficking in Italy still relies on the current data sources on victims and on data sources on offenders that are separately collected by national and institutional actors.

National data on trafficking in human beings

ITALY	2000	2001	2002	2003	2004	2005	2006	2007
CC investigated (a)								1.311
Arrests for sexual exploitation (a)								784

⁴⁵² The NGOs applying for the funding must be enrolled in a special register and must involve a local authority as a project partner.

⁴⁵³ *Osservatorio Tratta* (Observatory and Resource Centre on Trafficking in Human Beings), a three-year Equal project, designed and implemented new methodological and operational tools to positively influence the systems of investigation, intervention, monitoring, and networking in Italy. Led by the Associazione On the Road and implemented by 11 non-profit private and public agencies with an extensive experience in providing services directly to victims of trafficking or in studying the phenomenon.

ITALY	2000	2001	2002	2003	2004	2005	2006	2007
Arrests for sexual violence, corruption of minors, sexual violence in groups, prostitution of minors, trafficking, slavery (a)								107
Accusations for the above (a)								172
Repatriations (b)						160		
Residence permits to victims (c)		833	1062	962	927	942	927	1009
Persons arrested for "trafficking in persons" (§601) (d)					130	157	140	167
Persons against whom prosecutions were initiated for "trafficking in persons" (§601) (e)				111 (f)	119	297	217	148
Persons against whom prosecutions were initiated for "slavery" (§600) (e)				178	625	554	580	360
Persons against whom prosecutions were initiated for "trade of slaves" (Art. 602) (e)				44	44	98	49	33
Victims of trafficking in persons identified by law enforcement authorities (adults/children) (e)				34 (32/2)	120 (115/5)	208 (197/11)	178 (160/18)	70 (69/1)

Sources of data:

(a) Polizia di Stato. (2007). http://www.governo.it/GovernoInforma/Dossier/156anniversario_polizia/Compendio_2007.pdf, accessed on 17 November 2008.

(b) Data collected between 2001 and 2005 by Barberi (2008).

(c) Barberi.(2008). The report does not specify if the residency is permanent or temporary.

(d) Direzione Centrale Polizia Criminale qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 258

(e) National Anti-Mafia Bureau qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 258

Comments:

(f) from September 2003

Other relevant information

Trends in trafficking reported in official documents

In May 2008, the Department for Equal Opportunities published its findings regarding the trends in trafficking in a report which reviews the projects funded within the framework of the Social Assistance and Integration Programme (the so-called Art. 18

Programme) aimed at trafficked persons.⁴⁵⁴ According to this report, during 2000-2007, some 54,559 persons were identified and referred to the private and public organisations that provide a wide range of support and assistance measures through the Art. 18 projects. Of those referred, 13,517 joined the above mentioned projects.

Throughout the years, the states of origin have tended to remain relatively constant – Nigeria, Romania, Ukraine, Albania, the rest of Eastern Europe and former USSR–, even though their respective shares as to their presence in the territory have changed. For instance, the number of victims from Romania grew, while the number of victims from Albania and Eastern Europe has decreased. Overall, Nigerian victims represent the highest percentage, a constant 32-40% since 2001, after an initial decline in 2000. Victims originating in Nigeria also predominate in the government-sponsored social projects (more than 4,000 persons), closely followed by Romanian victims. It is also noted that Nigerian victims of trafficking for sexual exploitation tend to mainly be engaged in street prostitution, while Eastern European victims work both in indoor and outdoor prostitution.

Trends in trafficking in human beings reported in expert interviews

In terms of information on the countries of origin, the experts interviewed for this study depict a similar picture as the one reflected by the official statistics. Three distinct phases are identified: in 1990s most victims came from Albania; since the end of 1990s a growing number of victims from sub-Saharan Africa, predominantly from Nigeria have started to arrive. They currently form the largest proportion of the victims of trafficking for sexual exploitation. Since early 2000s there is an increase in victims from Eastern Europe – Moldova, Romania, Ukraine and Belarus. There are also victims from South America, who are mostly exploited in sexual entertainment business.

Depending on their origin, the victims tend to be exposed to pressure from different sources, which ultimately leads them to experience different recruitment patterns. For instance, some experts noted that in the case of Nigerian victims, the highest degree of pressure comes from their families. They are using the services of former trafficked victims and incur exorbitant debts in order to facilitate the travel. In some cases, after a victim re-pays the debt, she may in turn become a 'madam' facilitating the recruitment of new victims. In case of East European victims, recruitment it is mainly done through abuse of confidence and subsequent physical or psychological violence to force them into prostitution.

Prostitution practiced indoors is more hidden and therefore it is also more likely to induce psychological dependencies of the victim on the trafficker. Often clients are found through advertisements in local newspapers, which sometimes is also the only way in which social workers can get in touch with this category of women.

Modi operandi of organised crime reported in expert interviews

In recent years, in addition to street prostitution, which remains the most visible phenomenon, prostitution is increasingly practiced indoors in a semi-clandestine or even fully concealed manner. Thus we can talk about the emergence of new trafficking

⁴⁵⁴ Dati e riflessioni sui progetti di protezione sociale ex art. 18 D.lgs 286/98 ed art. 13 Legge 228/2003 Dal 2000 al 2007, *cura della segreteria tecnica della Commissione Interministeriale per il sostegno alle vittime di tratta, violenza e grave sfruttamento*, Maggio 2008.

models concerning commercial sexual exploitation, illustrated for instance by the fact that groups that used to send women on the street are now making more and more use of apartments, hotels, nightspots etc. This change has been brought about by a variety of factors, such as the increase of the police roundups; the consolidated presence of social assistance projects (Art. 18 projects) throughout the territory, which are perceived by traffickers as a threat; the latest policies on prostitution;⁴⁵⁵ the employment of new modalities of exploitation, including transferring women often from one city to another and making use of controlled and confined exploitation conditions.

⁴⁵⁵ Legge n. 1079/2008 “ Misure contro la prostituzione”

Latvia

Basic Country Facts

Population 2007: 2,272,000
Surface: 64,589 sq km
GDP per capita in PPP Euro (2008): 15,104.42
Date of accession to the EU: May 1, 2004

International law⁴⁵⁶

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 13 July 1992 (R), no reservations

1950 European Convention on Human Rights: 27 June 1997 (R), no reservations

1966 UN International Covenant on Economic, Social and Cultural Rights: 14 July 1992 (R), no reservations

1996 European Social Charter: 31 January 2002 (R), no reservations

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 24 June 2004 (R), no reservations

Domestic law

Trafficking in human beings

Chapter XV Criminal Offences against Personal Liberty, Honour and Dignity. Section 154. Meaning of Human Trafficking

1) Human trafficking is the recruitment, conveyance, transfer, concealment or reception of persons for the purpose of exploitation, committed by using violence or threats or by means of fraud, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness, or by the giving or obtaining of material benefits or benefits of another nature in order to procure the consent of such person, upon which the victim is dependent.

(2) The recruitment, conveyance, transfer, concealment or reception of minor persons for the purpose of exploitation shall be recognised as human trafficking also in such cases, if it is not connected with the utilisation of any of the means referred to in the Paragraph one of this Section.

(3) Within the meaning of this Section, exploitation is the involvement of a person in prostitution or in other kinds of sexual exploitation, the compulsion of a person to perform activities or to provide services, the holding of a person in slavery or other similar forms thereof (debt slavery, serfdom or the compulsory transfer of a person into dependence upon another person), and the holding a person in servitude or also the unlawful removal of a person's tissues or organs.

⁴⁵⁶ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

154-1

(1) For a person who commits human trafficking, the applicable sentence is deprivation of liberty for a term of not less than three years and not exceeding eight years, with or without confiscation of property.

(2) For a person who commits the same acts if commission thereof is with respect to a minor, or if commission thereof is by a group of persons pursuant to prior agreement, or if commission thereof is repeated,

the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding twelve years, with confiscation of property.

(3) For a person who commits the same acts, if serious consequences are caused thereby or if commission thereof is with respect to a juvenile, or by an organised group of persons,

the applicable sentence is deprivation of liberty for a term of not less than ten years and not exceeding fifteen years, with confiscation of property, and with or without police supervision for a term not exceeding three years.

[25 April 2002; 16 December 2004; 13 December 2007/2]

Chapter XVI Criminal Offences against Morals, and Sexual Inviolability Section 165.1 "Sending a Person for Sexual Exploitation"

(1) For a person who commits sending a person with his or her consent for sexual exploitation,

the applicable sentence is deprivation of liberty for a term not exceeding six years.

(2) For a person who commits the same acts, if commission thereof is for purposes of enrichment or if commission thereof is by a group of persons pursuant to prior agreement, or if commission thereof is repeated,

the applicable sentence is deprivation of liberty for a term not exceeding ten years, with or without confiscation of property.

(3) For a person who commits the acts provided for in Paragraphs one or two of this Section, if commission thereof is by an organised group,

the applicable sentence is deprivation of liberty for a term of not less than eight years and not exceeding fifteen years, with confiscation of property, and with police supervision for a term not exceeding three years.

[18 May 2000; 16 December 2004; 13 December 2007/2]

Section 165.2 "Sending to a Foreign State"

Within the meaning of Section 165.1 of this Law, sending shall be construed as any action that encourages legal or illegal departure from the State or entry into the State, transit or residence in a foreign state.

[18 May 2000; 25 April 2002]

Chapter XVI

Criminal Offences against Morals, and Sexual Inviolability Section 164 "Compelling Engaging in Prostitution"

(1) For a person who commits compelling the engaging in of prostitution,

the applicable sentence is deprivation of liberty for a term not exceeding three years, or custodial arrest, or community service, or a fine not exceeding sixty times the minimum monthly wage, with or without confiscation of property.

(2) For a person who commits procurement of persons for prostitution, using their trust in bad faith, or by means of fraud, or by taking advantage of the dependence of the person on the offender or of his or her state of helplessness, the applicable sentence is deprivation of liberty for a term not exceeding five years, or a fine not exceeding one hundred and twenty times the minimum monthly wage, with or without confiscation of property.

(3) For a person who commits inducing or compelling a minor to engage in prostitution, or commits providing premises to minors for purposes of prostitution, the applicable sentence is deprivation of liberty for a term not exceeding six years, with or without confiscation of property.

(4) For a person who commits inducing or compelling a juvenile to engage in prostitution, the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding twelve years, with or without confiscation of property.

(5) For a person who commits the acts provided for in this Section, if commission thereof is by an organised group, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding fifteen years, with confiscation of property, and with police supervision for a term not exceeding three years.

[18 May 2000; 12 February 2004]

Chapter XVI, Criminal Offences against Morals, and Sexual Inviolability, Section 165. "Living on the Avails of Prostitution"

(1) For a person who commits taking advantage, for purposes of enrichment, of a person who is engaged in prostitution, the applicable sentence is deprivation of liberty for a term not exceeding four years, with confiscation of property or without confiscation of property.

(2) For a person who commits the same acts if commission thereof is by a group of persons pursuant to prior agreement, or with respect to minors, the applicable sentence is deprivation of liberty for a term not exceeding eight years, with confiscation of property.

(3) For a person who commits the same acts if commission thereof is by an organised group or if commission thereof is with respect to juveniles, the applicable sentence is deprivation of liberty for a term of not less than five years and not exceeding fifteen years, with confiscation of property, and with police supervision for a term not exceeding three years.

[18 May 2000; 13 December 2007/2]

Chapter XVI, Criminal Offences against Morals, and Sexual Inviolability, Section 163, "Violation of Provisions Restrictive of Prostitution"

For a person who commits a violation of provisions restrictive of prostitution, if commission thereof is repeated within a one-year period, the applicable sentence is custodial arrest, or community service, or a fine not exceeding fifty times the minimum monthly wage.

Policies on trafficking in human beings and their implementation

Policy documents

In 2004 Latvia approved the National Programme for Prevention of Human Trafficking 2004 –2008 with the objective of promoting the prevention and suppression of human trafficking by implementing targeted preventive, educational and support activities for the trafficked persons. NGOs as well as the competent state institutions shall be involved in its implementation, for which the Ministry of the Interior shall be responsible jointly with the Ministry of Welfare and the Ministry of Education and Science. The Ministry of Interior is to submit a yearly informative report on the status of implementation to the Cabinet.

The 209-2013 Program for Combating trafficking in human beings is currently under preparation with the Ministries of Interior, Welfare, Children and Family Affairs Education and Science, Foreign Affairs, as well as the Prosecutor General's Office and relevant NGOs.

Implementation of the law/policies:

Coordination – Ministry of Interior; Ministry of Welfare.

Identification of victims/offenders – The State Police; Resource Centre for Women "Marta" and Shelter "Safe House" also identify victims. A special division was established within the State Police to fight trafficking in human beings. The data collection on trafficking in human beings is the responsibility of the Information Centre and the State Police in the Ministry of Interior.

Assistance to victims – Resource Centre for Women "Marta"; Shelter "Safe House". Service providers for trafficked persons are subject to the Regulations No. 291 of the Cabinet of Ministers on Requirements for Social service providers.

Protection of victims - Ministry of Interior⁴⁵⁷; Resource Centre for Women "Marta"; Shelter "Safe House".

Repatriation – Office of Citizenship and Migration Affairs; the State Border Guard.

National data on trafficking in human beings

LATVIA	2000	2001	2002	2003	2004	2005	2006	2007
CC investigated under article 154 ¹ Criminal Code (trafficking in human beings) (a)	-	-	-	3	4	8	8	9
Number of persons convicted under article 154 ¹ Criminal Code (trafficking in human beings) (a)						1	0	21

⁴⁵⁷ Special protection can be granted to witnesses as well as to collaborators and informants who are no direct witnesses. In cases of serious and very serious crimes, eyewitnesses, victims and collaborators can be granted protection by the Prosecutor General or a Judge. If necessary, the Chief of Police can grant protection to persons who are no direct witnesses. Victims in rehabilitation programmes of relevant NGOs are accommodated in confidential flats and are being offered police protection in emergency situations.

LATVIA	2000	2001	2002	2003	2004	2005	2006	2007
CC investigated under article 165 ¹ Criminal Code (sending a person for sexual exploitation) (a)	1	12	13	13	26	17	22	12
Number of persons convicted under article 165 ¹ Criminal Code (sending a person for sexual exploitation) (a)						31	36	7
Convicted persons (CC 154 ¹ and 165 ¹) (a)					23	22	40	
Trafficked persons assisted by NGO Marta (a)			1	7	13	22	13	
Trafficked persons assisted by IOM (a)			1	7	26	14	6	
Victims of trafficking in persons sheltered in Latvia (women/girls) (b)					13 (10/3)	21 (18/3)	13 (12/1)	
Victims of trafficking in persons sheltered in Latvia who have been repatriated (b)					12	18	9	

Sources of data:

- (a) Information from the Resource Centre for Women "Marta" (www.marta.lv) and by the Ministry of Interior of the Republic of Latvia
(b) Ministry of Welfare qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 261

Other relevant information

The interactive internet portal www.cilvektirdznieciba.lv provides publicly available information on the topic of trafficking in human beings. It was created under the Open labour market for Women project, which operated with the support of the EU initiative EQUAL.

In order to improve cooperation among state institutions the State Police takes part in annual trainings of personnel of the Consular Department of the Ministry of Foreign Affairs (information provided by the Latvian Mol).

Significant bilateral or regional co-operation schemes

For information on the Council of the Baltic Sea States Task Force against Trafficking in Human Beings please refer to the country fact sheet on Denmark.

Trends in trafficking in human beings reported in expert interviews

Some of the information provided by the state authorities claims that trafficking in human beings has been eliminated in Latvia, but representatives of civil society strongly disagree and maintain that it is hidden, latent, including cases of trafficking in human beings in minors and of internal trafficking.

In 2007, foreign nationals were identified for the first time as possible victims of trafficking (but their status of victims of trafficking was not confirmed by the state authorities).

Most of the clients of the Resource Centre "Marta" are Latvian nationals trafficked abroad, mainly for the purpose of sexual exploitation (expert interview). However, during the last years women have not been openly recruited for prostitution abroad.

Some groups of trafficked persons, in particular homosexual men, face high stigmatisation.

Modi operandi of organised crime reported in expert interviews

According to both the Latvian Mol and civil society, the level of violence applied by traffickers went down in 2000s, when compared to 1990s and traffickers try to avoid violence in the process of recruitment. Experts have also mentioned a "second wave of trafficking" when a former victim of trafficking/prostitute, usually a women, turns in to a trafficker herself.

Netherlands

Basic Country Facts

Population 2008: 16,404,282
Surface: 41,526 sq km
GDP per capita in PPP Euro (2008): 33,609.29
Date of accession to the EU: 1957 (founder member)

International law⁴⁵⁸

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: N/a

1950 Council of Europe European Convention on Human Rights: 31 August 1954 (R), see reservations⁴⁵⁹

1966 UN International Covenant on Economic, Social and Cultural Rights: 11 December 1978 (R), see reservations⁴⁶⁰

1996 European Social Charter: 3 May 2006 (R), see reservations⁴⁶¹

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 27 July 2005 (R), see reservations.⁴⁶²

Domestic law

Trafficking in Human Beings

Dutch Criminal Code (consolidated version, valid 3 November 2008), 273(f)

1. Any person 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 [a fine of maximum € 74,000], or either of these penalties, who:

(1) 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;

(2) 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;

⁴⁵⁸ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴⁵⁹ <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=11/23/2008&CL=ENG&VL=1>

⁴⁶⁰ http://www.unhchr.ch/html/menu3/b/treaty4_asp.htm

⁴⁶¹ <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=8&DF=11/23/2008&CL=ENG&VL=1>

⁴⁶² <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-traffickingprotocol.html#3>

- (3) 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;
 - (4) forces or induces another person by the means referred to under (1) 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 (1) which he knows or may reasonably be expected to know will result in that other person making himself/herself available for performing labour or services or making his/her organs available;
 - (5) 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;
 - (6) wilfully profits from the exploitation of another person;
 - (7) 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 (1);
 - (8) 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;
 - (9) forces or induces another person by the means referred to under (1) 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;
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*.

Municipalities Act (non-official translation), Article 151a , paragraph 1:

1. The city council may lay down regulations in a bye-law with regard to professionally providing the opportunity to perform sexual acts with or for a third on payment.

The Minister of Justice submitted a bill (draft Act) to Parliament to increase the maximum penalties. The proposed change will increase the maximum penalty for trafficking in human beings from 6 to 8 years of imprisonment. This will be increased to 12 years if two or more persons are acting in concert, to 15 years if serious bodily injury has been caused and to 18 years in case of death. Because of the higher penalties, preparations for the crime will also be punishable (article 46). The new bill has been approved by Parliament and will soon enter into force.

Policies on trafficking in human beings and their implementation

Policy documents

National Action Plan on (Combating) Human Trafficking [Nationaal Actieplan Mensenhandel (NAM)] (December 2004)

The National Action Plan was submitted by the Cabinet to the Lower House as a reaction to the recommendations of the third report of the National Rapporteur (NRM 2007: 1f) and addresses legislation and regulations, the B9 regulation, victims of THB, victim support and the representation of victims' interests, research and registration, law enforcement in general (including prostitution), investigation and prosecution and her aspects of THB (NAP 2004: 2). In order to give an integral overview on the efforts being undertaken in this realm, it also indicates the status of measures provided for in other relevant policy documents, such as the *Action Plan on the Regulation and Protection of the Prostitution Industry* and the *Policy Document on Illegal Aliens* and can hence also be regarded as a progress report for these sources (ibid.: 2).

Supplementary measures for the National Action Plan against Trafficking in Human Beings (2006)

During the discussion of the National Action Plan in the House of Representatives the necessity of addressing certain issues, mainly prevention, reporting and registration, investigation and prosecution in a more detailed and comprehensive approach was recognised (Supplementary measures for the NAP 2006: 1). In response to the identified gaps this document was elaborated and submitted to the Lower House by the Ministry of Justice two years after the submission of the National Action Plan (NRM 2007: 1f). The appendix of this document reports on the progress of actions of the National Action Plan against THB.

Programme of Action to combat Organised Crime (2007)

In 2007, the ministry of Justice introduced a programme to intensify the fight against organised crime within society. Within this programme, 'trafficking in human beings' was chosen as one of three types of crime which lend themselves ideally to a programme-based approach, meaning a combined deployment of public authorities, the police, the Public Prosecution Service (PPS) and private parties. A substantive extra budget is allocated for the current term of the government (until 2012). In 2008 a Human Trafficking Task Force was created to identify bottlenecks in the methods of tackling human trafficking and to come up with solutions. The Task Force is chaired by a procurator-general and includes police officers, the National Rapporteur and representatives of local government and the ministries concerned. From now on the plan of action, as decided on by the members of the Task Force, is guiding in the combat against human trafficking. Next to prioritising the combating of trafficking the

programme makes it possible to try innovative approaches to enforcement and engage in bilateral assistance to other countries, such as Bulgaria, Romania and Nigeria.

Implementation of the law/policies

Coordination

- The Human Trafficking Task Force set up in 2008 identifies bottlenecks in the methods of tackling human trafficking and comes up with solutions.
- National co-ordination tasks in respect of the investigation and prosecution of THB are carried out by the National Public Prosecutor for THB and human smuggling (NAP 2004: 38).
- The various chain partners are responsible for the proper co-ordination of their individual approaches. In regular meetings, the chain partners are supposed to coordinate their approaches amongst each other and exchange information, facilitating the adoption of an integral approach (NAP 2004: 38f).
- The Expertise Centre on Human Trafficking and People Smuggling (EMM) of the National Crime Squad functions as a central information point in operational collaborations.
- A regular consultation between the different departments and non-governmental organisations (NGOs) that are active in the combating of human trafficking, and particularly the reception of and assistance to victims of human trafficking, was recently started up.
- THB Coordination Point in Amsterdam as part of the integral chain partners approach to prostitution and THB (NRM 2007: 66)

Identification of victims/offenders

- Police
- Aliens Police
- Royal Netherlands Marechaussee
- Social Information and Investigation Service (SIOD)
- Health and Safety Inspectorate (AI)
- Fiscal Information and Investigation Service/Economic Audit Service (FIOD/ECD)
- Immigration and Naturalisation Service (IND)
- Assistance organisations and interest groups (NGOs and trade unions)
- Private citizens (clients of prostitutes and others directly or indirectly involved) can report signs of coerced prostitution to the police. The campaign 'Schijn bedriegt' [*Appearances are deceptive*] raises awareness and disseminates information on signs of trafficking (NRM 2007: 89ff).

Assistance to victims

The Dutch Foundation against Trafficking in Women (STV) [note: STV changed its name into Coordination Centre Human Trafficking (CoMensha) in 2007] had initiated 15 regional assistance networks, supervised by a care coordinator or by the CoMensha. All relevant chain partners in Amsterdam are elaborating an integral chain partners approach to empower prostitutes and protect victims of THB (NRM 2007: 66). To date, the following are the main organisations providing services to victims of THB:

- Ministry of Social Affairs and Employment
- Ministry of Health, Welfare and Sports
- Ministry of Education, Culture and Science
- Bonded Labour in the Netherlands (BlinN)

- The International Organisation for Migration (IOM)
- La Strada International
- End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes (ECPAT)

So far, there are no reception centres for victims of trafficking, with female victims mainly being accommodated in centres for battered women. However, specialised centres for victims of trafficking will be established (expert interview).

Protection of victims

In case accommodation in a regular shelter facility is deemed too risky, female victims of trafficking who are sufficiently independent to cope with isolation may temporarily be accommodated in “safe houses” where the police protects them using a special alarm system and strictly ensuring anonymity. Since the end of 2008, 40 places are available in shelters in the four biggest cities in the Netherlands (Amsterdam, Den Haag, Rotterdam and Utrecht) for men that are severely threatened. These shelters are not exclusively for victims of trafficking, but also for victims of honour-related violence.

The CoMensha plays an intermediary role between police, victim support centres and reception centres and promotes collaboration between the police and women’s shelters on the issues of reception and protection of victims of trafficking (NAP 2004: 16).

The Ministry of Justice and the Ministry for Foreign Affairs are responsible for making arrangements with countries of origin on the protection of victims of THB upon their return (NAP 2004: 24).

Under-age victims of loverboys may be placed in judicial juvenile institutions for their own protection and with the purpose of detaching them from their loverboys (NRM 2007: 71).

Repatriation

Immigration services and the Aliens Police.

IOM, BLinN, SRTV, La Strada, STV/Comensha co-operate on providing victims of THB who are returning to their countries of origin with assistance (NRM 2007: 65f):

National data on trafficking in human beings

NETHERLANDS	2000	2001	2002	2003	2004	2005	2006	2007
Number of registered cases of trafficking in human beings (a)			200	156	220	138	201	
Out of which cases with minor victim (a)			27	41	32	36	24	
Sentences imposed after conviction for human trafficking (a)			68	80	116	81	70	
Persons prosecuted for trafficking in persons (males/females) (b)				155 (120/35)	217 (178/39)	138 (119/19)	199 (167/32)	
Sanctions for trafficking in persons (non-custodial/custodial) (b)				81 (15/66)	115 (13/102)	81 (6/75)	70 (7/63)	

NETHERLANDS	2000	2001	2002	2003	2004	2005	2006	2007
Victims (possible) registered with the Foundation against THB (STV) in the Netherlands (adult/children) (c)				257 (237/20)	403 (377/26)	424 (400/24)	580 -	

Sources of data:

- (a) Dutch National Rapporteur on THB (2008). Trafficking in Human Beings - Sixth report of the Dutch National Rapporteur. The Hague: Bureau NRM.
- (b) The Bureau Nationaal Rapporteur Mensenhandel (BNRM) qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 266
- (c) STV reports/The Bureau Nationaal Rapporteur Mensenhandel (BNRM) qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 267

Other relevant information

Identified good practices

The Office of the Dutch National Rapporteur on Trafficking in Human Beings, inaugurated in 2000, reports to the Dutch government in yearly, publicly available reports, monitoring the nature and extent of THB in the Netherlands as well as the effects of the Dutch anti-trafficking policy and pointing out specific policy recommendations to all parties involved. The government responds to the report to Parliament

A national consultative body dealing with THB, consisting of the various public prosecutors for THB and presided over by the procurator-general, was created by the PPS (NAP 2004: 38).

A chain oriented and integrated approach involves all relevant actors in the fight against THB. In 2005 a list of signs for THB was developed and made available to all chain partners and ways in which further chain partners, such as e.g. employer and employee organisations and Youth Care Agencies, can be more strongly involved in the fight against THB will be considered (Supplementary Measures to the NAP 2006: 10).

There is a good co-operation between law enforcement agencies and NGOs. For example, police conduct raids together with social workers in order to ensure that possible victims receive the assistance they need (expert interview).

The results of criminal investigations are used for a wider purpose than the investigation and prosecution of suspects. The information obtained can thus be used to make it less feasible to obtain permits to start new businesses that serve as cover for criminal activities. This is an effective way to hinder those who contribute to or are responsible for trafficking.

Trends in trafficking in human beings and modi operandi of organised crime

Out of all 55 different nationalities the Netherlands was with 25% the most common country of origin of (possible) victims of THB registered by COMENSHA in 2006 (NRM 2008: 8). In the same year the number of victims from Brazil, China, Nigeria and Poland increased. Although the total number of Bulgarian victims of trafficking was still high, their relative percentage had declined.⁴⁶³ As in the years before, most victims were aged

⁴⁶³ For a complete list of all nationalities please refer to the Sixth Report of the Dutch National Rapporteur on Trafficking in Human Beings (2008, p. 9).

between 18 and 30, with an observable increase in the number of under-age victims between 15 and 17 of age (ibid.: 10). 30 of 579 newly registered victims were males; five of them minors.

Most THB cases tried between 2002 and 2006 were cases of aggravated trafficking. These are cases in which “two or more persons act in concert or there is a victim who is younger than 16 years of age or serious physical injury is inflicted” (NRM 2008: 29).

Many victims came from Nigeria to the Netherlands and then moved on to Italy, Estonia and Denmark. When the police manages to get hold of such a ring of traffickers for the following two years there are less victims from these countries. However, it seems that the traffickers turn to other countries for this period of time. There is a trend of Roma from Bulgaria and Hungary.

Although some cases with very high levels of violence have been observed, in other cases traffickers have shown a more considerate modus operandi, in which they let the victims keep a little bit more money and do not abuse them so severely in order to reduce the risk of the victim reporting to the police. In other cases violence seems not to be needed as victims are intimidated with threats of denunciation to the authorities, with debts that were imposed on them or by threatening them to tell their families they worked as prostitutes. The modes of violence applied are rather of psychological than of physical nature and threats in the countries of origin. There are also cases of individual traffickers who seduce for example Moroccan girls, make a picture and threaten them to show the picture to their family, if they do not engage in prostitution.

Regarding patterns of recruitment, many victims were initially aware that they will work as prostitutes but they were deceived about the circumstances.

One expert also reported that some women, who used to be in a trafficking situation, are now working as independent prostitutes. There is also a notable change in the questions asked by women in prostitution who came to the Netherlands from Eastern Europe which suggests that this group is now in a better position than earlier.: *“when they first started to arrive they were far more in a dependent situation, those who are in the country for longer, become more independent, possibly because they have more info or because they see their Dutch counterparts, they do not tend to report to the police, they usually pay off their so-called debts and then they work independently.”* One of the reasons may be that *“most migrant sex workers in the Netherlands come from new EU countries, so they are working legally, most of them can be employed and some can be only self-employed.”*

Persons engaged in trafficking in human beings tend to be from Central Europe, Eastern Europe, African countries, China, Bulgaria and Romania.

Poland

Basic Country Facts

Population 2008: 38,115,641
Surface: 312,679 sq km
GDP per capita in PPP Euro (2008): 14,322.26
Date of accession to the EU: May 1, 2004

International law⁴⁶⁴

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 2 June 1952 (R)

1950 European Convention on Human Rights: 19 January 1993 (R)

1966 UN International Covenant on Economic, Social and Cultural Rights: 18 June 1977 (R)

1996 European Social Charter: 25 October 2005 (S)

2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 26 September 2003 (R)

Domestic law

Trafficking in Human Beings

Polish Criminal Code, Article 189

§ 1. Whoever deprives a human being of their liberty shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years.

§ 2. If the deprivation of liberty exceeded longer than seven days, or was coupled with special torment, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

Polish Criminal Code, Article 253

§ 1. Whoever performs trafficking in persons⁴⁶⁵ even with their consent, shall be subject to the penalty of the deprivation of liberty for no less than 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.

Polish Criminal Code, Article 204

§ 4. Whoever entices or abducts another person with the aim of having him/her engage in prostitution abroad shall be subject to penalty specified in § 3 (i.e. deprivation of liberty for a term of between 1 year and 10 years).

Pimping

Polish Criminal Code, Article 203

Whoever, by force, illegal threat or deceit, or by abusing a relationship of dependence or by taking advantage of a critical situation, subjects another person to practice

⁴⁶⁴ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴⁶⁵ Since 2004, Poland uses the definition of trafficking in persons from the Palermo Protocol.

prostitution shall be subject to the penalty of the deprivation of liberty for a term of between 1 and 10 years.

Criminal Code, Article 204

§ 1. Whoever, in order to gain material benefits, impels another person to prostitution or facilitates it, shall be subject to the penalty of deprivation of liberty for a term of up to 3 years.

§ 2. Whoever gains material benefits from prostitution of another person shall be subject to penalty specified in § 1.

§ 3. If a person specified in § 1 or § 2 is a minor, the offender shall be subject to penalty of deprivation of liberty for a term between 1 year and 10 years.

Policies on trafficking in human beings and their implementation

The National Programme for Combating and Preventing Trafficking in Human Beings (2007 – 2008), a continuation of the 2005 – 2006 National Programme Combating and Preventing Trafficking in Human Beings, aims at creating conditions needed for effective combating and prevention of trafficking in human beings in Poland. The Programme implementation is supervised by the Committee on Combating and Preventing Trafficking in Human Beings. The tasks ascribed to government agencies are financed from their respective budgets. The Ministry of Interior and Administration coordinates all the activities in the framework of the Team for Combating and Preventing Trafficking in Human Beings. The MOIA co-operates with non-governmental organisations.

In 2006, the Central Team for Combating Trafficking was established in Polish General Police Headquarters to coordinate and supervise the activities of the coordinators and teams created in provincial police headquarters, implement prevention activities, including training of police.

National data on trafficking in human beings

POLAND	2000	2001	2002	2003	2004	2005	2006	2007
Identified trafficked persons (a)						224	230	276
Out of identified trafficked persons: Victims protected by the police (a)			11	3	2	0	0	0
Out of identified trafficked persons: Victims under 15 years of age (a)			18	21	2		9	4
Number of victims supported by "La Strada" Foundation (a)						224 (d)	230 (e)	276 (f)
Completed THB cases (a)	43	49	19	45	25	31	26	48
Criminal cases with indictment for THB (a)	38	35	11	30	18	19	17	28

POLAND	2000	2001	2002	2003	2004	2005	2006	2007
Cases resulting in a discontinuance due to not detecting an offender (a)	1	6	4	4	2	2	-	1
Cases resulting in a discontinuance due to not pronouncing an offence (a)	4	8	4	11	5	10	9	19
Cases where Art. 316(3) of the Penal Procedure Code was applied (a)			13	16	10	10	0	2
Number of persons charged (a)	119	71	40	134	39	42	36	62
Number of persons aggrieved (a)	172	93	167	261	98	99	126	1021
Number of foreign nationals charged (a)		21 (g)	10 (h)	31 (i)	10 (j)	4 (k)	6 (l)	7 (m)
Victims of trafficking in persons identified by State authorities (adults/minors) (b)				261 (240/21)	98 (96/2)	99 (89/10)	126 (117/9)	102 (96/6)
Victims of trafficking in persons sheltered by La Strada (c)				28	27	25	35	22 (n)

Sources of data:

(a) Trafficking in Human Beings in Poland. Data of National Public Prosecutor's Office, no year of publication. Available at www.mswia.gov.pl/download.php?s=1&id=3311; accessed on 5 August 2008.

(b) National Public Prosecutor's Office qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 269

(c) La Strada qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 269.

Comments:

(d) Including 147 Polish women

(e) Including 198 Polish women

(f) Including 200 Polish women

(g) 16 Bulgarians, 3 Turks, 1 Albanian and 1 Spanish

(h) 7 Bulgarians and 3 Ukrainians

(i) 7 Bulgarians, 21 Ukrainians, 1 German, 1 Vietnamese and 1 Russian

(j) 5 Bulgarians, 1 Turk, 3 Vietnamese and 1 Romanian

(k) 2 Bulgarians and 2 Germans

(l) 4 Bulgarians and 2 Ukrainians

(m) 1 Bulgarian, 3 Ukrainians and 3 Moldavians

(n) Data for 2004-November 2008

Between 2005-2006, according to data from La Strada, 35 Polish, 6 Bulgarian, 6 other and 5

Ukrainian were sheltered by La Strada. (La Strada qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 269).

Between 1995 and 2007 there were 245 victims of trafficking from Belarus, 198 from Ukraine, 28 from Bulgaria, 18 from Kenya, 17 from Moldova, 12 from Russia.

Changes in patterns in trafficking in human beings

The main factors influencing trafficking in persons are unemployment and poverty (based on testimonies of "La Strada" Foundation clients). Prior to Poland EU entry, Polish

citizens, especially then women, wishing to work abroad frequently fell victim to organised crime groups. Following Poland's accession to the European Union and access of Poles to many EU MS labour markets the situation has improved significantly. At the same time, many continue to be exploited by rogue employers.

During the early 1990's Poland was mainly a country of origin of trafficked persons. Polish women were trafficked into prostitution in Germany, Netherlands, Belgium, Greece, Spain, Italy and also East Asia. The most common profile of victim of trafficking identified in Poland is a woman, 21 – 25 years of age, with an elementary or middle education, without children and unmarried. Next to Polish citizens, La Strada has assisted citizens of Ukraine, Belarus, Moldova, Bulgaria, Romania, Vietnam and Chechens.

In most cases identified in Poland traffickers were Polish, Russian, Bulgarian, Turkish, German, Albanian, Ukrainians and citizens of the former Yugoslavia republics. According to Police data, the Turkish minority in Germany is particularly involved in trafficking of women.

(Source: Human Rights and Trafficking in Women and Young People in Europe, Daphne Project, http://www.lastradainternational.org/lsidocs/653%20overview_en.pdf, accessed on 14 November 2008.)

Other relevant information

The definition of trafficking in human beings in Poland is not compliant with the EU definition (Cf: 2007 – 2008 National Programme for Combating and Preventing Trafficking In Human Beings, Part 2 "Changes in the Legislation").

International Cooperation

For information on the Council of the Baltic Sea States Task Force against Trafficking in Human Beings please refer to the country fact sheet on Denmark.

Trends in trafficking in human beings and modi operandi of organised crime

In mid 1990s, Poland was mainly a country of origin for victims of trafficking and a country of transit for women from CIS and CEE countries Bulgaria, Ukraine, Romania trafficked to Western Europe for exploitation in street (highways) prostitution. After 1998, the majority of trafficking continued to be into sex industry, but increasingly there was trafficking in women and girls as au-pairs and malafide marriages. From 2002 onwards, more attention and information is available about other purposes of trafficking and cases of trafficking for organised begging for which whole Moldovan families were trafficked. for organised begging.

The situation has changed significantly in 2004, when Poland accessed the EU and Poles started to go abroad for labour en masse. There was a large labour migration, it is estimated that between 2004 until now more than 2 million Poles migrated mainly to the UK, Ireland, and also Italy and Spain. Despite a growing number of legal provisions [against trafficking], many people are traveling without basic knowledge, money information and easily exploitable.

As of 2008, there is also evidence of trafficking of migrants from Ukraine, Belarus (exploited in construction, agriculture), domestic workers – from Africa, Nigeria, Mali, there is evidence of trafficked women from Mongolia who were promised to work in cloth

production (sewing) and there is evidence of trafficking in men (1 Vietnamese) into Poland.

Modi operandi of organised crime reported in expert interviews

Over the time, recruitment became more and more sophisticated, the main aim is to win the trust, to bring the persons to the place of exploitation, traffickers/exploiters are not interested to use physical violence. They use rather blackmail, psychological violence (threats against families etc). Blackmail does not work so easily in case of trafficking into agriculture or construction, domestic – people are not ashamed to work in these industries, but people are threatened with denunciation to the authorities because of their irregular migration status. Methods of cheating and coercion are more and more developed to win the total trust of the exploited person.

Romania

Basic Country Facts

Population 2008: 21,528,627
Surface: 237,500 sq km
GDP per capita in PPP Euro (2008): 10,704.71
Date of accession to the EU: January 1, 2007

International law⁴⁶⁶

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 15 February 1955 (R)
1950 European Convention on Human Rights: 20 June 1994 (R)
1966 UN International Covenant on Economic, Social and Cultural Rights: 9 December 1974 (R)
1996 European Social Charter: 7 May 1999 (R), see reservations⁴⁶⁷
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 4 December 2002 (R)

Domestic law

Trafficking in human beings

Law 678/2001 on Preventing and Combating Trafficking in Human Beings amended and supplemented by GEO no. 143/2002, Law 39/2003, GEO no. 79/2005

Art.12 - (1) It is an offence for anyone who recruits, transports, transfers, harbors or receives a person, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or by taking advantage of that person's inability to defend him-/herself or to express his/her will, or by giving, offering or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Art.16 – Offenders are also liable to criminal charges in cases where victims of trafficking have consented.

Criminal Code Chap. III, Section I, Art. 12 Trafficking in human beings offences

Art. 2 – “exploitation of a person” shall mean:

- a) performing labour or services by force or by violating the legal norms regarding labour conditions, payment, health and security keeping such persons in a state of slavery or using other ways to deprive a person of his/her freedom or to force the person into submission;
- b) compelling a person to engage in prostitution, in pornographic performances for the production and distribution of pornographic material, or in other forms of sexual exploitation;

⁴⁶⁶ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴⁶⁷ <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=8&DF=11/23/2008&CL=ENG&VL=1>

- c) harvesting of human organs;
- d) engaging in other such activities that violate fundamental human rights and liberties.

International trafficking in human beings

Law 678/2001 on Preventing and Combating Trafficking in Human Beings amended and supplemented by GEO no. 143/2002, Law 39/2003, GEO no. 79/2005

Art. 17 - (1) The act of knowingly inducing or directly or indirectly facilitating, the entry or stay in the country's territory of a non-national in a trafficking situation as established in accordance with this law:

- a) by use of fraudulent means, violence or threats or other forms of coercion, or
- b) by the abuse of a position of vulnerability of a person due to his/her illegal entry or stay in Romania, pregnancy, disease and physical or mental disability, shall be regarded as a criminal offence and shall be punishable by sanctions as established for trafficking crime.

Sentences:

Law 678/2001 on Preventing and Combating Trafficking in Human Beings amended and supplemented by GEO no. 143/2002, Law 39/2003, GEO no. 79/2005

Art 12.1 - core crime of trafficking: imprisonment for 3 to 12 years and interdiction of certain rights

Art. 12.2 - under [standard] aggravating circumstances: imprisonment for 5 to 15 years and interdiction of certain rights.

Art. 12.3 - if it resulted in death or suicide of victim: 15 to 25 years imprisonment and interdiction of certain rights.

Art. 13.1 - child trafficking: imprisonment for 5 to 15 years and interdiction of certain rights

Art. 13.2 - child trafficking under threat, abuse of position, remuneration of guardians: imprisonment for 7 to 18 years and interdiction of certain rights.

Art. 13.3 - child trafficking under aggravating circumstances: imprisonment for 7 to 18 years and interdiction of certain rights

Art. 13.3 - child trafficking under threat, plus aggravating circumstances: 10 to 20 years imprisonment and interdiction of certain rights

Art. 13.4 - resulting in death or suicide: 15 to 25 years imprisonment and interdiction of certain rights.

Prostitution

Criminal Code, Art. 328. - The deed of the person who earns a living by sexual relations with different persons is punished by 3 months - 3 years jail.

Pimping

Criminal Code, Art. 329. - Encouragement or constraint to prostitution its facilitation or making profit out of it by a person, as well as recruitment of persons for prostitution or traffic with persons for prostitution, are punished by 2-7 years jail and interdiction of certain rights.

Policies on trafficking in human beings and their implementation

Policy documents

The National Strategy Against Trafficking in Persons 2006-2010 (Government Decision no. 1654/2006) and the National Action Plan 2006-2007 for the implementation of the National Strategy (Government Decision no. 1720/2006).

The National Strategy is a comprehensive policy document setting key anti-trafficking objectives that then are detailed into the Action Plan. Both the Strategy and the Action plan are the first documents of this kind adopted by Romania.

The National Strategy sets the following strategic objectives (SOs):

- Strategic Objective A: Improving the level of knowledge concerning the dimensions, characteristics and trends of the TIP affecting Romania;
- SO.B: Streamlining the institutional reaction in the field of combating the TIP;
- SO.C: Reducing the dimensions of trafficking in persons by strengthening the self-protection capacity of the citizens and the society as a whole towards the threats posed by this phenomenon;
- SO.D: Protection, assistance and social reintegration of the victims;
- SO.E: Combating trafficking in persons, investigation and prosecution of the traffickers;
- SO.F: Strengthening Romania 's status as a reliable partner in the overall effort to decrease the trafficking in persons phenomenon.

The Strategy for 2006-2010 aims at making effective the inter-institutional co-operation by strengthening the status of the National Agency against Trafficking in Persons as the national coordinator of the anti-trafficking policies and activities. Specifically, it was planned to develop the national referral mechanism, the National Victim Identification and Referral Mechanism was drafted in 2007 and submitted for government's review. The document is to be accepted in form of a Joint Order by relevant ministers. The draft was signed by the minister of the interior and administration reform and the minister of public health. The document is to be signed by all the other ministries involved.

Implementation of the law/policies

The state policies were developed to a large extent in response to calls of NGOs and some government agencies for better co-ordination among the government and also with the civil society. The draft NRM was submitted for review in 2007 and the decision is pending.

Civil society has repeatedly called upon the government to formalise the NRM from identification of victim to referral, protection and provision of social and other assistance. In 2005 (time the last comprehensive independent report is dated), specific problems were accented in securing education, vocational training and inclusion into labour market for the victims. There were suggestions to increase and define the role of non-state actors in areas such as social assistance, psychological counselling, and legal assistance. One of the key reasons was to achieve flexibility in providing such assistance – for instance, it was noted that victims often prefer group psychological counselling to individual one, etc. It was noted that the responsibility of health professionals to provide assistance should be stipulated clearly.

Distribution of responsibilities

Coordination – National Agency Against Trafficking in Persons (NAATIP) was created through the Governmental Decision no. 1584/2005 (published in the Official Gazette of Romania on 4 January 2006, amended and supplemented through the Governmental Decision no. 1083/2006, published 25 August 2006). NAATIP is responsible for all the trafficking in persons' fields

Identification of victims/offenders – The General Inspectorate of the Romanian Police and the General Inspectorate of Border Police are directly charged with victim identification and data collection.

Prevention – Ministry for Administration and Interior, Ministry of Public Health, Ministry for Education and Research, Ministry for Labour, Social Solidarity and Family, (NAPCR), National Agency for Employment, National Agency for Equal Opportunities between Women and Men (NAEO), Non-governmental organisations and international organisations.

Assistance to victims – Ministry of Public Health, Ministry for Education and Research (CSI, HTS), Ministry for Labour, Social Solidarity and Family, Ministry of Justice, MFA, Non-governmental organisations and international organisations. The Assistance to victims is monitored by National Agency Against Trafficking in Persons and the National Authority for the Protection of the Children's Rights.

National data on trafficking in human beings

ROMANIA	2003	2004	2005	2006	2007	2008
Overall number of identified victims	156 (a)	1740+393 (b)/146 (a)	2551 (c)	2285 (d)	1650 (c)	
Out of the overall number of identified victims: minors		217 (a)			266 (d)	
Overall number of victims of sexual exploitation	132 (a)	132 (a)	175 (a)		600 (d)	241 (e)
Overall number of victims of labour exploitation	21 (a)	10 (a)			713	
Overall number of other victims identified	3 (a)	4 (a)			281 (d)	
CC investigated (a)	488					
CC prosecuted for THB (a)	318					
CC investigated for sexual exploitation (a)		934 (f)	231	61 (g)	232 (g)	
CC with indictment for sexual exploitation (a)	187/146	162+130 (h)	124			
CC with indictment for trafficking offences (a)	658					
CC with conviction (a) (l)	49	103	235	187	188	
Persons convicted of trafficking in persons (males/females) (h)	49 (36/13)	103 (86/17)	146 (111/35)	187 (139/48)	188	
Victims of trafficking in persons identified by the police (women/men/girls/boys) (j)			2251 (1353/507 /341/50)	2285 (1427/542 /274/42)	2072 (960/820/ 255/37)	
Victims of trafficking in persons identified by the police (sexual exploitation/forced labour/begging/other) (j)			2551 (1764/541 /177/69)	2285 (1451/624 /183/27)	1781 (724/877/ 146/34)	

ROMANIA	2003	2004	2005	2006	2007	2008
Victims of trafficking in persons identified by State authorities (domestic trafficking/international trafficking) (j)					1818 (207/1611)	
Victims of trafficking in persons identified by the Public Ministry (women/girls/men/boys) (j)			1141 (743/231/ 146/21)	1336 (817/269/ 211/39)	1044 (542/217/ 258/27)	637 (m) (224/115/ 282/16)
Victims of trafficking in persons identified by the Public Ministry (sexual exploitation/forced labour/begging/other)(j)			1141 (951/113/ 37/40)	1336 (1011/213 /72/40)	1044 (658/328/ 37/21)	635 (m) (255/297/ 79/4)
Victims of trafficking returned to Romania by IOM (Romanian/foreign) (k)	159	154	100	143 (135/8)		

Sources of data:

- (a) OIM statistics, concerns only victims assisted by the organisation. Quoted on government website: http://www.antitrafic.ro/sections/sdfnsf/srjnj/adsbn/?t_id=0p15p7p3
- (b) http://www.antitrafic.ro/sections/sdfnsf/srjnj/adsd/?t_id=0p15p7p0 (1740 victims identified in the first 9 months of the year and 393 Romanian victims identified as part of an international operation called Mirage that started in September)
- (c) Report of Romanian National Agency against THB for the Feedback Conference, 31 January 2008
- (d) http://anitp.mai.gov.ro/ro/docs/studiu_final_2_IULIE.pdf
- (e) Border Police Data for first half of 2008: http://www.politiadefrontiera.ro/comunicat.php?id_com=226
- (f) number for the year 2004, up until September
- (g) US report quoted on ro gov. website
- (h) Resource Centre for Combating Trafficking in Persons of the Inspectorate General of Romanian Police and Directorate for the Investigation of Organized Crime and Terrorism qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 272
- (i) Resource Centre for Combating Trafficking in Persons of the Inspectorate General of Romanian Police qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 272
- (j) Directorate for the Investigation of Organized Crime and Terrorism qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 273
- (k) IOM qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 274

Comments:

- (l) 162 arrested + 130 as part of the international Mirage Operation
- (m) January-November 2008
- (n) 2005-2006

Sentences:

In 2005, 64 traffickers received between 1 and 5 years in jail and 64 traffickers received between 5 and 10 years in jail.

In 2003, 27 traffickers received between 1 and 10 years in jail and 22 traffickers received less than 1 year in jail.

Other relevant information

Romania is a country of origin, transit and to a lesser extent a country of destination for trafficked victims. There are concerns that Romania's accession to EU will attract more foreigners both en route to Western Europe and to Romania as economy improves and

tourism grows. The responsible agencies (first of all NAATP) call for strengthening of the institutional system to match up to the challenge of becoming a country of destination. The NAATP also points out in its 2006 and 2007 reports that trafficking into Romania for the purpose of forced labour may grow, assuming that while the Romanians will seek employment abroad, their places at home might be claimed by trafficking victims from poorer countries.

Special attention is given by NAATP, but also by NGOs to developing of data collection and analysis, as well as continuation of prevention campaigns and assistance programs targeting the social categories at high risk of becoming victims of trafficking.

Implementation of the legislation is considered a key challenge by NAATP, and is also mentioned as a problem in a report by NGO Nest International. Lack of co-ordination and the limited inter-institutional co-operation are mentioned as major obstacles in reducing trafficking.

NGO Nest international also states that the victim protection and assistance system is insufficiently developed and the services provided are not always consistent with the victims' needs. Therefore, the increase of NGOs contribution in this field was essential, even if, more than often, resources needed were inadequate.

Good practices:

- Reviewing of Law 678/2001 provisions concerning the time period for protection and assistance to trafficked victims and the conditions imposed while in specialised government centres;
- Training of the personnel directly involved in the social reintegration of trafficked victims, particularly minors and victims of exploitation for labour which represent the highest percentage of persons benefiting from social services;
- Development of programs of national interest aiming at providing the necessary resources to perform victims' assistance and re-integration activities and targeting NGOs support as well;
- Bringing the NRM into operation and developing standards of victims' protection and assistance in order to provide high quality services;
- Implementation of a national integrated system to account for and monitor victims of trafficking;
- Conducting research on the factors to determine victims' decisions to receive protection and assistance service;
- Development and publication of progress reports on the quality of assistance provided and its impact on victims' reintegration into society.

Modi operandi of organised crime reported in expert interviews

No new trends can be observed in organised crime. These criminal organisations are still larger hierarchical groups, mostly ethnically homogenous and from the same ethnicity as the victims. Organised crime networks run clubs and bar on the one hand, on the other hand they have been constantly expanding their reach, especially once it became clear that more money could be made abroad. Open borders remain a challenge for combating organised crime. With regard to the level of violence, however, criminal networks are more and more coercing violently as the awareness of the general

population is increasing. Recruitment remains a mixed phenomenon with OC and ad hoc exploitation.

Trends in trafficking in human beings reported in expert interviews

There is a change in the patterns of trafficking - in 2007 (includes some numbers from 2006) cases of labour exploitation exceeded sexual exploitation numbers and according to one expert, labour exploitation will become more and more prevalent.

The levels and modes of violence/coercion have evolved: The traffickers have struck a bargain with the victims, they have reduced the level of violence, and have given more money to them as well. Often times the relationship is such that the victim does not see themselves as exploited and therefore much less willing to testify against traffickers.

Spain

Basic Country Facts

Population 2008: 45,283,259
Surface: 504,782 sq km
GDP per capita in PPP Euro (2008): 26,251.4
Date of accession to the EU: January 1, 1986

International law⁴⁶⁸

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: 18 June 1962 (R)
1950 European Convention on Human Rights: 4 October 1979 (R), see reservations⁴⁶⁹
1966 UN International Covenant on Economic, Social and Cultural Rights: 27 July 1977 (R)
1996 European Social Charter: 23 October 2000 (S)
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 1 March 2002 (R)

Domestic law⁴⁷⁰

Trafficking in Human Beings

Penal Code (Organic Law 10/1995) modified by the Organic Law 4/2000 on the rights and freedoms of foreigners in Spain and their social integration, Art. 318 bis⁴⁷¹

1. A person who directly or indirectly promotes, encourages or facilitates the illegal trafficking in or the smuggling of persons from, in transit through, or with destination to Spain or another European Union country, will be punished with four to eight years imprisonment.

2. If the intention of the illegal trafficking or the smuggling of persons is the sexual exploitation of those persons, punishment will be ten years imprisonment.

3. Those who carry out the activities described in either of the previous two sections with the intention of making profit, or by using violence, intimidation, deceit, or by abusing a situation of superiority over, or the special vulnerability of, the victim, or if the victim is a minor or disabled, or by putting the lives, health or the integrity of those persons in danger, will be punished with the upper half of the range of penalties.

Pimping

Penal Code (Organic Law 10/1995) modified by the Organic Law 11/1999,

Art. 187

Those who induce, promote or facilitate the prostitution of a minor or an unfit person, will be punished with imprisonment from one to four years and a fine from 12 to 24 months.

⁴⁶⁸ The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴⁶⁹ <http://conventions.coe.int/treaty/Commun/ListeDeclarations.asp?NT=005&CM=8&DF=11/23/2008&CL=ENG&VL=1>

⁴⁷⁰ Please note that this section contains unofficial translation of legislation.

⁴⁷¹ In 2000, the Penal Code included a general offence of trafficking in human beings (Art. 318bis) and a specific offence of trafficking of human beings for the purpose of sexual exploitation (Art. 188.2). A reform enacted on 29th September 2003 integrates the two offences in the same article (318 bis).

Art. 188

1. Those who determine –by using violence, intimidation, deceit or by abusing a situation of superiority over, or the needs or a special vulnerability of, the victim– an adult person to engage in prostitution or to remain in it, will be punished with imprisonment of two to four years and a fine of 12 to 24 months. The same punishment will be received by those who exploit the prostitution of another person, even if it is done with their consent.

5. The above mentioned punishments will be applied in the respective cases without prejudice to what is due to the prostituted person for the aggressions or the sexual abuses she/he has suffered.

Other forms of sexual exploitation

Penal Code (Organic Law 10/1995), Art. 189

1. Shall be punished with imprisonment of one to four years:

a. those who use minors or unfit persons for exhibitionist or pornographic aims or shows, either public or private, or in order to produce any type of pornographic material, no matter the medium, or to fund any kind of such activities.

b. those who will produce, sell, distribute, exhibit or facilitate the production, sell, distribution or exhibition through any kind of means of pornographic material for the elaboration of which minors or unfit persons have been employed, even if the material originates abroad or from an unknown source.

2. Those who for their own use will possess pornographic material for which minors or unfit persons have been used, shall be punished with imprisonment from three months to one year and a fine of six months to two years.

Policies on trafficking in human beings and their implementation

Policy documents

The Council of Ministers approved on 12 December 2008 the National Integral Plan for Combating Trafficking in Human Beings for Sexual Exploitation 2009-2012, which entered into force on 1 January 2009. The plan, which has been allocated 44 million Euros, puts forward 61 measures on five main areas: prevention and awareness raising; education and training; assistance and victim protection; legislation and legal procedures; coordination and cooperation. effective fight against traffickers and exploiters. Cooperation with countries of origin, transit and destination is central to dealing with the causes of the phenomenon, while building partnerships with Non-Governmental Organisations is needed in order to ensure an integral approach to victim assistance and protection.

The plan introduces a reflection period of minimum 30 days, during which the victims are entitled to social and legal assistance, housing, and a subsidy to cover the subsistence needs or the return to the country of origin, if the victim requires it. Furthermore, the plan aims to improve the existing legal mechanisms for providing victims with immediate free legal assistance, as well as with specific information on their rights, the options they have, and the resources available for them. In addition, the plan also mentions the creation of mobile units to provide assistance to victims, as well as shelters with specific integral assistance programmes.

The NIP is complemented by the II Action Plan to combat the Sexual Exploitation of Children and Adolescents 2006– 2009.

Implementation of laws/policies

Coordination: There is currently no agency in charge of coordinating anti-trafficking efforts in Spain and no National Rapporteur either. Reports on trafficking in human beings are issued by the Parliament (last report dating 2007), the Ministry of Labour and Social Affairs (last report covering 2005-2006), and the police forces (for instance the Unidad Tecnica de la Guardia Civil, last report 2005).

Identification of victims/offenders: Identification of victims and data collection is not entrusted to one specific agency. In practice, this is mostly done by the various police services and the Guardia Civil, as well as by the border police. In fact it is increasingly common for police forces to set up specialised units on trafficking and sexual exploitation. NGOs also play an important role in victims' identification. There is no central database nor referral mechanism, nor guidelines for identification of victims. A network of NGOs specialised in victims' assistance (Red contra la trata) has published a guide to identification of victims.

Assistance to victims: According to Law 4/2000, Article 14, foreigners are entitled to basic social assistance regardless of their situation. In practice, victims are mostly assisted in Assistance Centres for Women, which receive funding from the Autonomous Governments. Moreover, the (Las Audiencias Tribuna Provinciales) also offer a service of assistance to victims of crime, which is further complemented by the Free Legal Counselling Services of the Bar Association. Both are also funded by the Autonomous Communities.

Protection of victims: In case of co-operation with law enforcement agencies or the judicial authorities, victims are entitled to police protection, which complements the social protection received in shelters and from NGOs, which are supported through governmental funding programmes.

Repatriation: In accordance with the Organic Law 4/2000, persons who are not charged with violation of immigration laws (which is the case of trafficked victims) may choose assisted repatriation.

National data on trafficking in human beings

SPAIN	2000	2001	2002	2003	2004	2005	2006	2007
Victims of sexual exploitation testifying to the Guardia Civil (a)	173	202	236	186	225 (c)	149		
Minor victims of sexual exploitation testifying to the Guardia Civil (a)						12		
CC investigated for crimes assimilated to THB (a)	204	329	299	278	294	244		
CC investigated for trafficking/illegal migration for sexual exploitation (a)					11	13		

SPAIN	2000	2001	2002	2003	2004	2005	2006	2007
Persons suspected of offences related to trafficking in persons (b)				1816	1445	1881	1618	1870
Persons arrested for offences related to trafficking in persons (b)				1286	1240	1172	1224	1204
Victims of trafficking in persons-related offences identified by State authorities (women/men/girls/boys) (b)				2549 (1714/8 27/8/-)	2768 (1948/7 97/23/-)	2174 (1476/6 86/12/-)	2464 (1985/4 62/16/1)	2521 (1258/1 258/5/-)
Victims of trafficking in persons-related offences identified by State authorities (sexual exploitation/forced labour) (b)						2167 (1486/6 81)	2464 (2002/4 62)	

Sources of data:

- (a) Unidad Tecnica de Policia Judicial de la Guardia Civil, Informe Criminal – Trata de Seres Humanos con fines de explotacion sexual, 2005
Ministerio de Trabajo y Asuntos Sociales, Estudio sobre la explotacion sexual de las mujeres, conferencia al trafico ilegal, 2005-2006
- (b) Centro de Inteligencia contra el Crimen Organizado qtd. in UNODC (2009) “Global Report on Trafficking in Persons”, p. 282

Comment:

- (c) The Ministry of Labour and Social Affairs estimates that there have been 90,000 victims of THB for sexual exploitation

Other relevant information

Modi operandi of organised crime reported in expert interviews

An increase in the phenomenon of organised crime has been noticed in Spain, especially from Eastern Europe. Both old and new organised crime groups are reported, the former previously engaged in dealing with drugs and now with TBH, the latter especially coming from Eastern Europe. Whereas some groups are physically violent, other groups engage less in violence, but make more use of threats against the victims’ families in the country of origin. Criminal networks from Eastern Europe and Latin America seem to be most violent.

Trends in trafficking in human beings reported in expert interviews

Spain is characterised by visible links between labour migration, labour exploitation and sexual exploitation. One of the observed patterns is that once those who have originally entered Spain for seasonal labour encounter difficult working conditions and insufficient wages, they might then be recruited for sexual exploitation. Trafficking for sexual exploitation may take place in open areas or in “night clubs.”

Three groups of victims were identified by the experts interviewed for the present study:

- Victims originating from Eastern Europe and the former Soviet Union (Romania, Bulgaria, Moldova, Ukraine, the Baltic States, Albania, Georgia). The criminal networks

in this case are reportedly relatively recent. Experts reported that use of threats and violence is more common for this group of victims.

- Victims originating from sub-Saharan Africa (Nigeria, Ghana, Sierra Leone, Liberia, Gambia), with specific means of coercion including responsibility towards the family, as well as animist and voodoo-like practices.]
- Victims originating from Latin America, who, according to experts, are mostly controlled through debt bondage. These victims are often controlled by Latin American networks only until their arrival to Spain, where they are transferred under the control of Spanish networks.

Several experts also noted a reconversion of some criminal groups from drugs trafficking to trafficking in human beings.

Sweden

Basic Country Facts

Population 2007: 9,182,927
Surface: 449,964 sq km
GDP per capita in PPP Euro (2008): 31,475.13
Date of accession to the EU: January 1, 1995

International law⁴⁷²

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: n/a
1950 European Convention on Human Rights: 4 February 1952 (R)
1966 UN International Covenant on Economic, Social and Cultural Rights: 3 January 1976 (R)
1996 European Social Charter: 29 May 1998 (R), see reservations⁴⁷³
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 1 July 2004 (R)

Domestic law

Trafficking in Human Beings

The Criminal (Penal) Code, Chapter 4, Section 1a

“A person who otherwise than as stated in Section 1, by use of unlawful coercion or deceit, by exploiting one’s vulnerable position or by some other similar improper means recruits, transports, accommodates, receives or takes some other such action against a person and thereby takes control of the person, with the aim that the person shall be

1. Exposed to crime according to Chapter 6, Section 1, 2, 3, 4, 5 or 6, exploited for casual sexual relations or in other way exploited for sexual purposes,
2. Exploited for military service, forced labour or other similar condition of restraint,
3. Exploited for removal of organs, or
4. In some other way exploited in a situation that implies distress for the exposed, shall be sentenced for trafficking in human beings to imprisonment for at least two and at most ten years.

The same applies to a person who for similar purpose as stated in the first paragraph

1. Hands over the control of a person to another, or
2. Takes over the control of a person from another.

A person who commits an act as stated in the first paragraph against a person under eighteen years of age shall be sentenced for trafficking in human beings even if some similar improper means as stated therein have not been used.

If the crime stated in the first to third paragraphs is less serious, imprisonment of at most four years shall be imposed.”

⁴⁷² The international conventions listed here are a selection on those conventions most relevant to the topic, the list is not exhaustive.

⁴⁷³ <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=163&CM=8&DF=11/23/2008&CL=ENG&VL=1>

Pimping

The Criminal (Penal) Code, Chapter 6, Section 12

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

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

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

Use of Sexual Services

The Criminal (Penal) Code, Chapter 6, Section 11

“A person who, otherwise than as previously provided in this Chapter, obtains a casual sexual relation in return for payment, shall be sentenced for purchase of sexual services to a fine or imprisonment for at most six months.

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

Policies on trafficking in human beings and their implementation

Policy documents

On 10 July 2008, the Government adopted an Action Plan for Combating Prostitution and Human Trafficking for Sexual Purposes. The plan covers five priority areas: greater protection and support for people at risk, more emphasis on preventive work, higher standards and greater efficiency in the justice system, increased national and international cooperation, and a higher level of knowledge and awareness. Altogether, the Government will be investing SEK 213 million in 36 measures up to the year 2010. The English translation of the NPA was not available at the time of writing this study.

Implementation of laws/policies

Coordination: Ministry of Integration and Gender Equality

Protection and assistance to victims: The responsibility for providing protection and assistance to victims of trafficking is, according to the Swedish law, the responsibility of local municipalities. The government reimburses the costs associated with the stay of victims of trafficking to the local authorities. (Summary of verbal submission to the OSCE by the National Rapporteur on Trafficking in Human Beings, Detective Inspector Kajsa Wahlberg, National Criminal Department, Sweden, in Vienna, Austria, 21 May 2007)

National data on trafficking in human beings

SWEDEN	2000	2001	2002	2003	2004	2005	2006	2007
Overall number of identified victims of sexual exploitation (a)				400-600				
CC investigated (a)				22	29	44	38	50
CC investigated for sexual exploitation (a)				22	29	44	27	15
CC investigated for other crimes (a)							11	35
CC with indictment (a)				6	1	15		5
CC with indictment for sexual exploitation (a)				6	1	15		3
CC with indictment for other crimes (a)								2
CC with conviction (a)				1		7	11	2
CC with conviction for sexual exploitation (a)				1				
Persons suspected of trafficking in persons (males/females/unknown) (b)				4 (3/1/-)	9 (6/1/2)	30 (25/5)	7 (6/1)	
Persons convicted of trafficking in persons (males/females) (b)				1 (1/-)	0	7 (7/-)	11 (8/3)	

Sources of data:

(a) Brå – Brottsförebyggande rådet (The Swedish National Council for Crime Prevention), <http://www.bra.se/Socialstyrelsen> (The National Board of Health and Welfare), Prostitution in Sweden 2003, Knowledge, Beliefs & Attitudes Of Key Informants, 2004, <http://www.socialstyrelsen.se>

(b) National Council for Crime Prevention qtd. in UNODC (2009) "Global Report on Trafficking in Persons", p. 284

Other relevant information

International Cooperation

For information on the Council of the Baltic Sea States Task Force against Trafficking in Human Beings please refer to the country fact sheet on Denmark.

Modi operandi of organised crime reported in expert interviews

The perpetrators of trafficking in human beings for sexual exploitation have become less violent, there is not so much violence and deceit involved anymore, they treat victims better and that makes the victims more loyal to the perpetrators. In these cases it is difficult to prosecute for THB, because the courts do not view the women and girls as victims of trafficking, rather victims of procuring.

Trends in trafficking in human beings reported in expert interviews

Sweden is a destination countries for victims from Russia, the Baltic countries, Poland, Slovakia, Slovenia, Romania, Thailand, Latin America and Nigeria. It is a transit county for victims coming from third counties destined for the Danish and Norwegian sex market,

possibly due to a less strict visa policy in Sweden than in Denmark and Norway. Recently, more women from Nigeria are in prostitution in Scandinavia. In 2000-2005, most victims of trafficking were from the Baltics, Russia, Poland, Slovakia and the Czech Republic. Now they come also from Thailand and Nigeria. There do not seem to be women from South America. Victims of trafficking are mainly in street or apartment or escort agencies market segment.

There were several investigations into other forms of exploitation than sexual exploitation including cases of labour exploitation of 'travellers', an ethnic or social group related to Roma, from UK and Ireland. The victims, all men mostly from the UK, were recruited as bricklayers, asphalt layers, but they were beaten, their passports confiscated, they did not get any money. The organisers were from UK, Ireland, from the same group; they recruit mentally handicapped, homeless, desperate people for work, always men. There are also some cases of trafficking in human beings, often children, for begging and stealing. It seems to be very well organised from Romania and Bulgaria and linked to persons belonging to the Roma minority.

United Kingdom

Basic Country Facts

Population 2007: 60,943,912
Surface: 244,820 sq km (includes Rockall and Shetland Islands)
GDP per capita in PPP Euro (2008): 29,845.70
Date of accession to the EU: 1957 (founder member)

International law

1949 UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others: N/a
1950 European Convention on Human Rights: 8. March 1951 (R)
1966 UN International Covenant on Economic, Social and Cultural Rights: 20. May 1976 (R)
1996 European Social Charter: 7. November 1997 (S)
2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the UN Convention against Transnational Organised Crime: 9. February 2006 (R)

Domestic law

Trafficking in Human Beings

Sexual Offences Act 2003, as amended by the UK Border Act 2007

Section 57, Trafficking into the UK for sexual exploitation

- (1) A person commits an offence if he intentionally arranges or facilitates the arrival in or the entry into the United Kingdom of another person (B) and either—
- (a) he intends to do anything to or in respect of B, after B's arrival or entry to but in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) he believes that another person is likely to do something to or in respect of B, after B's arrival or entry but in any part of the world, which if done will involve the commission of a relevant offence.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Section 58, Trafficking within the UK for sexual exploitation

- (1) A person commits an offence if he intentionally arranges or facilitates travel within the United Kingdom by another person (B) and either—
- (a) he intends to do anything to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence, or
 - (b) he believes that another person is likely to do something to or in respect of B, during or after the journey and in any part of the world, which if done will involve the commission of a relevant offence.
- (2) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Section 59, Trafficking out of the UK for sexual exploitation

(1) A person commits an offence if he intentionally arranges or facilitates the departure from the United Kingdom of another person (B) and either—

- (a) he intends to do anything to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence, or
- (b) he believes that another person is likely to do something to or in respect of B, after B's departure but in any part of the world, which if done will involve the commission of a relevant offence.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 14 years.

Asylum and Immigration (Treatment of Claimants) Act 2004 as amended by the UK Border Act 2007

Section 4 Trafficking of persons for exploitation

(1) A person commits an offence if he arranges or facilitates the arrival in or the entry into the United Kingdom of an individual (the "passenger") and—

- (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

(2) A person commits an offence if he arranges or facilitates travel within the United Kingdom by an individual (the "passenger") in respect of whom he believes that an offence under subsection (1) may have been committed and—

- (a) he intends to exploit the passenger in the United Kingdom or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in the United Kingdom or elsewhere.

(3) A person commits an offence if he arranges or facilitates the departure from the United Kingdom of an individual (the "passenger") and—

- (a) he intends to exploit the passenger outside the United Kingdom, or
- (b) he believes that another person is likely to exploit the passenger outside the United Kingdom.

(4) For the purposes of this section a person is exploited if (and only if)—

- (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),
- (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1989 (c. 31) or the Human Organ Transplants (Northern Ireland) Order 1989 (S.I. 1989/2408 (N.I. 21)),
- (c) he is subjected to force, threats or deception designed to induce him—
 - (i) to provide services of any kind,
 - (ii) to provide another person with benefits of any kind, or
 - (iii) to enable another person to acquire benefits of any kind, or
- (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—
 - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
 - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.

- (5) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding twelve months, to a fine not exceeding the statutory maximum or to both.

Prostitution⁴⁷⁴

Street Offences Act 1959 (subsequent amendments incorporated)

Section 1, Loitering or soliciting for purposes of prostitution

- (1) It shall be an offence for a common prostitute to loiter or solicit in a street or public place for the purpose of prostitution.
- (2) A person guilty of an offence under this section shall be liable on summary conviction to a fine of an amount not exceeding level 2 on the standard scale, or, for an offence committed after a previous conviction, to a fine of an amount not exceeding level 3 on that scale.
- (3) A constable may arrest without warrant anyone he finds in a street or public place and suspects, with reasonable cause, to be committing an offence under this section.
- (4) For the purposes of this section “street” includes any bridge, road, lane, footway, subway, square, court, alley or passage, whether a thoroughfare or not, which is for the time being open to the public; and the doorways and entrances of premises abutting on a street (as hereinbefore defined), and any ground adjoining and open to a street, shall be treated as forming part of the street.
- (5) repealed.

Section 2, Application to court by woman cautioned for loitering or soliciting

- (1) Where a woman is cautioned by a constable, in respect of her conduct in a street or public place, that if she persists in such conduct it may result in her being charged with an offence under section one of this Act, she may not later than fourteen clear days afterwards apply to a magistrates’ court for an order directing that there is to be no entry made in respect of that caution in any record maintained by the police of those so cautioned and that any such entry already made is to be expunged; and the court shall make the order unless satisfied that on the occasion when she was cautioned she was loitering or soliciting in a street or public place for the purpose of prostitution.
- (2) An application under this section shall be by way of complaint against the chief officer of police for the area in which the woman is cautioned or against such officer of police as he may designate for the purpose in relation to that area or any part of it; and, subject to any provision to the contrary in rules made under [section 144 of the Magistrates’ Courts Act 1980], on the hearing of any such complaint the procedure shall be the same as if it were a complaint by the police officer against the woman, except that this shall not affect the operation of [sections 55 to 57 of that Act] (which relate to the non-attendance of the parties to a complaint).
- (3) Unless the woman desires that the proceedings shall be conducted in public, an application under this section shall be heard and determined in camera.
- (4) In this section references to a street shall be construed in accordance with subsection (4) of section one of this Act.

⁴⁷⁴ NB: All offences are lifestyle offences for the purposes of Proceeds of Crime Act 2002.

Section 4, Punishment for living on earnings of prostitution

The maximum term of imprisonment to which a person is liable if convicted on indictment of an offence under section thirty of the Sexual Offences Act, 1956 (man living on earnings of prostitution), or under section thirty-one of that Act (woman exercising control over prostitute) shall, for offences committed after the commencement of this Act, be seven years; and accordingly, for offences so committed, in the Second Schedule to that Act, in items 30 and 31, "seven years" shall be substituted for "two years" in the third column.

Pimping⁴⁷⁵

Sexual Offences Act 2003

Section 52, Causing or inciting prostitution for gain

(1) A person commits an offence if—

(a) he intentionally causes or incites another person to become a prostitute in any part of the world, and

(b) he does so for or in the expectation of gain for himself or a third person.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

Section 53, Controlling prostitution for gain

(1) A person commits an offence if—

(a) he intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world, and

(b) he does so for or in the expectation of gain for himself or a third person.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.

Section 54, interpretation of Sections 52 and 53

(1) In sections 52 and 53, "gain" means—

(a) any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or

(b) the goodwill of any person which is or appears likely, in time, to bring financial advantage.

(2) In those sections "prostitute" and "prostitution" have the meaning given by section 51(2).⁴⁷⁶

Abuse of children through prostitution and pornography

Sexual Offences Act 2003

Section 47, Paying for sexual services of a child

(1) A person (A) commits an offence if—

⁴⁷⁵ In the United Kingdom the legal term used is "Exploitation of Prostitution".

⁴⁷⁶ See below, under "Abuse of children through prostitution and pornography".

- (a) he intentionally obtains for himself the sexual services of another person (B),
- (b) before obtaining those services, he has made or promised payment for those services to B or a third person, or knows that another person has made or promised such a payment, and
- (c) either—
 - (i) B is under 18, and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) In this section, “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.
- (3) A person guilty of an offence under this section against a person under 13 where subsection (6) applies, is liable on conviction on indictment to imprisonment for life.
- (4) Unless subsection (3) applies, a person guilty of an offence under this section against a person under 16 is liable—
 - (a) where subsection (6) applies, on conviction on indictment, to imprisonment for a term not exceeding 14 years;
 - (b) in any other case—
 - (i) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (ii) on conviction on indictment, to imprisonment for a term not exceeding 14 years.
- (5) Unless subsection (3) or (4) applies, a person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 7 years.
- (6) This subsection applies where the offence involved—
 - (a) penetration of B’s anus or vagina with a part of A’s body or anything else,
 - (b) penetration of B’s mouth with A’s penis,
 - (c) penetration of A’s anus or vagina with a part of B’s body or by B with anything else, or
 - (d) penetration of A’s mouth with B’s penis.

Section 48, Causing or inciting child prostitution or pornography

- (1) A person A commits an offence if
 - (a) he intentionally causes or incites another person B to become a prostitute, or to be involved in pornography, in any part of the world, and
 - (b) either:
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13.
- (2) a person guilty of an offence under this section is liable –
 - (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both
 - (b) on conviction on indictment to imprisonment for a term not exceeding 14 years

Section 49, Controlling a child prostitute or a child involved in pornography

- (1) A person A commits an offence if –
 - a) he intentionally controls any of the activities of another person B relating to B’s prostitution or involvement in pornography in any part of the world and

either

- (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
- (ii) B is under 13

(2) A person guilty under this offence is liable –

- a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both
- b) on conviction on indictment to imprisonment to a term not exceeding 14 years.

Section 50, Arranging or facilitating child prostitution or pornography

(1) A person A commits an offence if

- a) he intentionally arranges or facilitates the prostitution or involvement in pornography in any part of the world of another person B and
- b) either –
 - (i) B is under 18 and A does not reasonably believe that B is 18 or over, or
 - (ii) B is under 13

(2) A person guilty of an offence under this section is liable –

- (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both
- (b) on conviction on indictment to imprisonment to a term not exceeding 14 years.

Section 51, Interpretation of Sections 48 to 50

(...)

(2) In those sections “prostitute” means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and “prostitution” is to be interpreted accordingly.

(3) In subsection (2), “payment” means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

Policies on trafficking in human beings and their implementation

Policy documents

UK Action Plan on Tackling Human Trafficking was published in March 2007 following a year of national consultations. An updated version of the Action Plan was published in July 2008. The Action Plan defines necessary actions in the following key areas: Prevention; Investigation, Law enforcement and Prosecution; Providing Protection and Assistance to Adult Victims; Child Trafficking - Specific measures. The general coordinating role is played by the UK Human Trafficking Centre (UKHTC). Its key responsibilities are in fields of data collection and analysis.

Implementation of laws/policies

Prevention: UKHTC (data, analysis, intelligence collection), Home Office (campaigns, training programs), UK Border Agency (UKBA, training at entry points, identification of entry points), DfID (campaigns and communication with source countries), Scottish Government.

Investigation, Law enforcement and Prosecution: Crown Prosecution Service (CPS), Home Office, Attorney General’s Office, Scottish Government, Crown Office and Procura-

tor Fiscal Service, UKHTC (consolidating data from anti-trafficking operations, analysing lessons-learned, updating field manuals of the relevant services). HM Revenues and Customs (additional intelligence), Serious Organised Crime Agency (SOCA)

Providing Protection and Assistance to Adult Victims: UKHTC (through co-ordination efforts involving various stakeholders), Office for Criminal Justice Reform (at MoJ), Home Office, Ministry of Health, UKBA, Scottish Government, NGOs.

Child Trafficking - Specific measures: Department for Children, Schools and Families (DCSF), Home Office, UKBA, Scottish Government, National Police Improvement Agency (NPIA; training), Association of Chief Police Officers (ACPO; training, best practices).

National data on trafficking in human beings

UK	2000	2001	2002	2003	2004	2005	2006	2007	2008
Overall number of identified victims				47 (e)		169 (d)	188 (b)	259 (d)	209 (a)
CC with indictment					572 (d)	42 (e)	134 (c)	52 (d)	67 (a)
CC with conviction					66 (d)	21 (e)	32 (e)	23 (e)	25 (a)

Sources of data:

- (a) from the UKHTC, Statistical Quarterly Reports for Quarters 1, 2 and 3 of 2008 (NB: as the UKHTC began issuing said Statistical reports as of 01.04.08 and that they are based on financial quarters, the data from 01.01.08 – 31.03.2008 is lacking).
- (b) from the Operation Pentameter1 press release, this number represents only those victims identified in the course of Operation Pentameter1, exclusively in London.
- (c) from the Operation Pentameter1 press release, this number represents only those perpetrators that were arrested in the course of operation Pentameter1, exclusively in London.
- (d) from the *US State Department's 2004 - 2008 TIP report*.
- (e) UKHTC, quoted in the *UNODC 2009 Global report on Trafficking in Persons*.

Other relevant information

Observed trends (information from reports)

The UKHTC has the responsibility for data collection and it started to publish quarterly statistics on defendants and victims from April 1st, 2008. In 2009, the Centre is expected to also start publishing relevant victim data monthly, collated in respect of all victims referred to the competent authorities. The UKHTC is also working with other agencies to assess the scale of trafficking within the UK for all forms of trafficking, and this information will be available in 2010.

In addition, in order to gather further reliable data on the scale of trafficking and, more importantly, information on the underlying criminal networks, the Home Office and the ACPO have conducted the operation Pentameter 2 in October 2007, a large-scale intelligence and investigation effort. During the operation 822 premises were visited and 167 victims of sexual exploitation and 5 victims of labour exploitation were recovered. The operation confirmed that the trafficking activity is spread across the UK, both in major cities and less urbanised areas. It was also noted that much of sexual exploitation takes place in residential premises. According to the NAP, trafficking in human beings for sexual exploitation seems to be most widespread, while there is significantly less information about trafficking for labour exploitation. Most of the victims of THB for sexual exploitation identified during Pentameter 2 tend to be young women from Asia and

Eastern Europe. This information plays a key role in developing government's operational and institutional responses.

During 2008/9, a considerable amount of effort has been put into trafficking for labour exploitation and domestic servitude. This included a pilot operation in 2008 to identify good practice, improve knowledge and to pilot the NRM. There have been four successful convictions for forced labour and there are a number of pending prosecutions. There have been a number of multi-agency operations into labour trafficking with identified good practice, especially with regard to victim care, and these operations are on-going. It is also noted that determined progress is being made through training of the frontline services (police, border services, etc.) to fight the practice which treats the trafficked victims as offenders of the migration regime.

Trends in trafficking in human beings reported in expert interviews

In terms of the national debate regarding the regulatory framework, the interviewed experts have noted that there is a clear movement in the government towards criminalising buyers of the services (criminalising demand). Some civil society actors and experts are critical of this approach.

Interviewed experts also noted that the data is lacking. The credibility of the oft-quoted figure of 4000 victims of trafficking in the UK seems to be doubted. There are hopes that UKHTC research will help improve understanding of the scale of problem.

The interviewees noted significant improvement in understanding the trafficking phenomenon from 2000 to 2008. For instance, it appears that the tradition of understanding trafficking as immigration crime has been gradually replaced by a more complex approach. The public awareness to the problem and the government's strategic approach to it also seem to have improved. Several experts think that the perceived growth in the number of referrals is linked to better awareness rather than to an actual increase in the numbers of trafficked victims.

In terms of trafficking trends, it was observed that most victims are exploited off-street – in saunas, brothels and flats. A particular challenge is for the law enforcement to uncover exploitation within ethnic communities.

Modi operandi of organised crime reported in expert interviews

The interviewed agree that trafficking is linked with organised crime, but the structure and composition of the organised crime groups seems to be diverse – from loosely structured, to hierarchical and from the ones based on ethnic kinship to multi-ethnic. In terms of coercion of victims, an expert observed that physical violence against the victims has lessened, which is linked to harsher sentences. In general, identified victims of trafficking have urban background. Nigerian women tend to be trafficked by boyfriends with deception involved, i.e. there is a lower level of coordination and organisation than the eastern European women, who are trafficked through organised crime groups.

Annex II – Regulation of prostitution in 17 EU Member States

Austria

Prostitution is defined by Article 74(1)(9) of the CC: “Prostitution: the execution of sexual practices on one’s own body for money with the intention to ensure a continuous income for oneself or a third person by this recurrent execution or toleration.” It is however not punishable.

Pandering, defined as conducting another person to prostitute oneself, is punished by up to two years imprisonment (Art. 215 CC). Pandering of minors regardless of whether they were already engaged in prostitution, is punished with up to three years, and with one to ten years under aggravating circumstances (Art. 215a CC)

Article 216(1) of the CC criminalises **exploitation of others’ prostitution** defined as: “*procuring continuous income for oneself through the prostitution of another person with the intention to exploit this person*”. The sentence is imprisonment for up to one year. This offence is aggravated and punished with up to two years in case of coercion, by up to three years in case the offender commits the act as part of a criminal network or in case of forcing a person to remain in prostitution (Art. 216(2), 216(3), 216(4) CC). **Coercion into prostitution** is punished by six months to five years imprisonment (Art. 106(1) CC), with aggravating circumstances in case of suicide or death of the victim (Art. 106(2) CC), or if the victim is a child or a vulnerable person, or if extreme violence has been used (Art. 106(3)CC). The latter provision seems to overlap, to a certain extent, with following: exploitation of the prostitution of minors, defined as placement against payment for sexual exposure of minors, is punished with six months to five years imprisonment (Art. 214 CC).

Residence prohibition and expelling of foreigners are foreseen specifically for prostitution-related crimes (Art. 53.2 and 60(1) CC). This poses problems according to an expert: “*Many of the women in our care have been put under pressure by their bad legal position. If they see that their colleagues, who did not work as expected, are reported to police and then deported, this of course limits their possibilities.*” (Austria).

Vienna: Viennese Prostitution Act, Art. 2, **regulates prostitution** as a professional activity, with professional capacity regardless of whether or not prostitution is used as a continuous means of subsistence. It is forbidden for children (Art.3). Performing prostitution is subject to a registration (subject to legal residence), information to competent authorities in case of suspension or cessation of activity (Art. 8). Certain premises can be authorised as dedicated to this function (Art. 5). Fines of up to 3500 Euros and imprisonment of up to five weeks are foreseen in case of violation of regulations.

Salzburg: The Salzburger Prostitution Act **regulates prostitution** as a professional activity (Art. 1), only allowed in dedicated and licensed whorehouses (Art. 1.a) or in dedicated areas (Art. 2(1)). Obtaining a license is subject to clean criminal record from serious crimes, prostitution-related crimes or offences related to spreading of sexually transmissible diseases. Violations are punished by suspension or closure of premises.

Belgium

Prostitution is not defined, however it is regulated at local level.⁴⁷⁷

Soliciting, referred to as *"provoking a person into debauchery by gestures or speeches, into a public place"*, is forbidden by Article 380bis CC: *"Sera puni d'un emprisonnement de huit jours à trois mois et d'une amende de vingt-six francs à cinq cents francs, quiconque, dans un lieu public aura par paroles, gestes ou signes provoqué une personne à la débauche. La peine sera élevée au double si le délit a été commis envers un mineur."* As an expert confirmed: *"Prostitution in public places is not allowed, it is criminalised"*. (Belgium)

Pandering is treated in Article 380 CC punishes incitement into prostitution and **exploitation** of another person's prostitution with one to five years imprisonment and criminal fine. **Minors pandering** and exploitation of minors' prostitution are punished with ten to 15 years imprisonment and a criminal fine.

Under the same Article, **managing or exploiting premises** for prostitution is punished with one to five years imprisonment and criminal fine – ten to 15 years when it involves minors and 15 to 20 years if these minors are under 14.

Bulgaria

Prostitution as such is neither criminalised nor legalised.

Pandering, mentioned as inciting or procuring into prostitution is punished by up to three years imprisonment and a criminal fine, plus aggravating circumstances (up to six years imprisonment) when the act is committed for the purpose of financial gain (Art. 155 (1) and (3) CC).

Procuring premises for prostitution is punished by up to five years imprisonment and a criminal fine, plus aggravating circumstances (up to six years imprisonment) when the act is committed for financial gain (Art. 155 (2) and (3) CC).

Additional aggravating circumstances include perpetration within an organised criminal group, with regard to minors, against several persons, repeatedly (Art. 155 (5) CC).

Czech Republic

Prostitution as such is neither criminalised nor legalised. In practice, some articles of CC such as "Hooliganism", defined as *"grave impropriety, particularly by assaulting or by disturbing events"* and punished with up to two years imprisonment (Art. 202 CC) are used to to punish soliciting in public places.

⁴⁷⁷ *"In some cities there are municipal orders introducing zoning requirements."* (Belgium).

Pandering defined as inducing into prostitution or profiting from someone's prostitution, is punished with one to three years (Art. 204 CC). Aggravating circumstances include use of coercion or violence, perpetration against a vulnerable or dependant person (one to five years), considerable gain, perpetration within an organised criminal group or against a minor (two to eight years).

Endangering the moral standards of the youth, which seems to be used sometimes to prosecute pandering minors, is defined as "*enabling, even by negligence, a person under 18 to divert from a virtuous path by inducing or enabling him/her to lead a lazy or immoral lifestyle*", is punished by up to two years imprisonment. If performed for a benefit, this act is punished by six months to five years imprisonment (six months to five years under aggravating circumstances) (Art. 217 CC).

The same article defines inducing minors into sex as making a minor perform indecent acts against a pay or other benefits, as well as offering or promising or giving sex to a minor in against a pay or another benefit. This act is punished by a fine or imprisonment up to two years (six months to five years under aggravating circumstances). This provision may seemingly cover both use of minors' prostitution, or offering prostitution to a minor.

Denmark

Prostitution as such is neither criminalised nor legalised. It is referred to as "*sexual immorality as a profession*" or "*seeking profit by sexual immorality.*" "*In Denmark it is not illegal to buy or sell sex in Denmark. All income from prostitution should be taxed. But prostitution is not considered a legal trade or occupation, which means that persons in prostitution cannot be admitted in an unemployment fund nor can they receive sickness benefits*" (Denmark)

Pandering, defined as promoting sexual immorality by acting as an intermediary or deriving profit from another person's engagement in sexual immorality as a profession, is punished with up to three years imprisonment (Section 229 CC). The difference between this article and Section 228(1) CC, which punishes with four years imprisonment the act of **inducing or maintaining someone into prostitution**, is tenuous.

Using sexual services of minors is punished by a fine, detention, or up to two years imprisonment (Section 223a CC).

Estonia

Prostitution as such is neither criminalised nor legalised.

Pimping, named as such, as well as **provision of premises** for prostitution, is punished with a criminal fine or imprisonment up to five years, plus an confiscation of assets (Chapter 16, Division 1, Art, 259 CC).⁴⁷⁸

Minors pandering is defined through two different articles. Aiding prostitution involving minors by mediation, provision of premises or otherwise, is punished with a criminal fine

⁴⁷⁸ This offence is treated in a common article with providing premises for drug consumption or for organising illegal gambling, which is unusual. Prosecuting pandering is often difficult: "*The newest trend is that the girls themselves take the money from the clients, but in fact they have to pay "rent" for space that may be extremely high, again it is difficult to prove pimping*" (Estonia).

or up to five years imprisonment (Division 2, Art. 176). Disposing of minors for prostitution through inducement, threat or otherwise is punished with a fine or up to three years imprisonment (Division 2, Art. 175 CC). Legal persons are also liable under these articles.

Finland

Prostitution as such is neither criminalised nor legalised.⁴⁷⁹

Pandering, named as such and defined as mediating and procuring in prostitution, **supplying premises**, harbouring sex providers, taking advantage of someone's prostitution, or **forcing into prostitution**, is punished with a fine or up to three years imprisonment (Chapter 20 Section 9 CC). Aggravating circumstances, to which a sentence of four months to six years imprisonment is attached, include considerable financial gain, *"committing in a particularly methodical manner"*, causing grievous bodily harm, grave suffering or bodily harm, or committing the act with regard to a child. Attempted pandering is punishable (Chapter 20 Section 9a CC). Legal entities are criminally liable to pandering.

Using sexual services of minors is punished by fine or prison up to one year. Attempt to commit the act is punishable.

In Finland since 2006 the **use of services of procured and trafficked persons** is criminalised and liable to up to six months imprisonment (Chapter 20 Section 8 CC).⁴⁸⁰

A Finnish expert considered that some confusion existed in the understanding of the prostitution-related legal framework: *"It seems that both sex workers and customers don't quite understand what exactly is criminalised; there seem to be confusions between the provisions on trafficking and pandering – sex workers are not convinced how the new legislation could improve their position in Finland."*

An expert specified that *"the provision which criminalises the buying of sexual services from targets of pandering / THB view prostitutes as targets (because pandering is a victimless crime); the provision of the aliens act seem to have a more security-oriented approach, with the objective of not letting foreign prostitutes enter the country."* (Finland)

France

Prostitution is not defined. Since 2005, **soliciting**, defined as *"the fact, by any means including by an attitude even passive, to publicly perform soliciting of others with a view to incite them into sexual intercourse in exchange for remuneration or a promise of remuneration"*, is criminalised and punished with two months imprisonment, a fine and

⁴⁷⁹ Foreigners may be refused entry on the grounds of reasonable suspicion *"that s/he might be selling sexual services"* (Chapter 9 Section 148 Aliens Act).

⁴⁸⁰ A Finnish expert noted, as a background to this provision, that *"In 1990s number of prostitutes had augmented. Citizens' movements wanted to abolish prostitution to get them away from the streets. In 2003, the buying and selling of sex in public places was criminalised, which might be detrimental to the safety of prostitutes. Outside they are better able to thoroughly choose their clients whereas their situation inside is more difficult."* Another added that *"The framework for the new (2006) legislation on the partial criminalisation of buying sexual services was part of efforts to reduce the demand for prostitution. When the new provision was drafted the main influencing factors were pressure from outside Finland to adhere to the Swedish model, fight against organised crime and restrict migration. Also questions of gender equality were raised in the public debate concerning the legislation."* (Finland)

deprivation from certain rights including political, civil or family rights, professional ban (Art. 225.10 and 225.20CC). An attempt is likewise punishable (Art 225.11 CC).⁴⁸¹

Pandering, includes as aiding or protecting others' prostitution or making profit out of others' prostitution or inciting or recruiting into prostitution, as well as mediating or facilitating a pimp's money laundering, or living with a prostitute while not being able to justify revenues matching one's standards of living, or hindering law enforcement in relation with prostitution (Art.225.5 CC). It is punished with seven years imprisonment and a fine (Art. 225.5 CC), and deprivation from certain rights including political, civil or family rights, and professional ban (Art. 225.5 CC). Aggravated pandering (against minors or vulnerable persons, at international scale, against several persons, within family relations, with use of coercion, in a group, with advertisement through telecommunications) is punished with ten years and a fine (Art. 225.7 CC). Against a minor under 15, pandering is punished with 15 years imprisonment and a fine (Art 225.7.1 CC). Within an organised criminal group, it is punished with 20 years imprisonment and a fine (Art.225.8 CC).

Providing or managing premises is punished with ten years imprisonment, a fine (Art. 225.10 CC) and deprivation from certain rights including political, civil or family rights, and professional ban (Art. 225.10 and 225.20CC).

Use of sex services of a minor is punished with three years imprisonment, a fine (Art. 22.12.1 CC) and deprivation from certain rights including political, civil or family rights, and professional ban (Art. 225.10 and 225.20CC).

These offences are also punished with ban from territory for foreigners. Legal entities are also criminally liable to use of sex services of minors, pandering and procuring or managing premises.

Germany

Prostitution is authorised as a rule, but constitutes an offence when it is performed in places or at times where it is prohibited. Advertisement of prostitution services is prohibited. (Art. 120 Law on Public Order) Local authorities are competent to prohibit prostitution in certain places and at certain times (Art. 297 Introductory Law to the CC). As a rule, prostitution in the vicinity of establishments dedicated to minors (schools, residences...) is prohibited (Art. P184e CC).

Pandering, defined as running economic activity in which persons are engaged into prostitution, is punished with up to three years imprisonment (Art. 180a CC). **Exploitation of others' prostitution** and gaining profit from another person's prostitution is punished with six months to five years imprisonment (Art 181a CC). The same act committed within an organised criminal group exposes the perpetrator to assets seizure (Art. 181a CC)

The acts of **providing premises** for prostitution or **facilitation of minors' prostitution** (Art. 184f CC) are punishable with six months to five years imprisonment.

At the local level, prostitution is often regulated, as for instance in the case of Munich: *"In Munich the prostitution scene is fairly well regulated, owing to the fact that in most areas pros-*

⁴⁸¹ It should be noted that no specific clause lifting prostitution-related charges from trafficked persons was identified.

stitution is forbidden. This limits the area that must be patrolled, and there are regular controls of the brothels. There is a concept of agreements, which stipulates that prostitutes register voluntarily with the police, so that there is a familiarity with law enforcement agents. This all contributes to a general stabilisation of the red light environment. Every brothel is inspected twice per month. This makes infraction expensive difficult. Munich as a whole has 2,693 as of 2007, in 1999 there were 1,205 legally registered prostitutes. The largest jump was after 2003. This number is however much more reliable than all the estimates given by newspapers (400,000, this would mean that one in every 75 women is a prostitute). It should be noted that THB, especially for sexual exploitation, correlates with the number of prostitutes. The numbers that the police collect is exclusively legal, in Munich 800 women offer sexual service. Prostitutes rotate through cities, due to social stigma, demand for new girls and limiting contacts outside the red light environment. During Oktoberfest this number skyrockets, also during expositions. Street prostitution remains a mainly domestic prostitution phenomenon (German prostitutes), 2006 was the first year there were more German prostitutes than foreign, with German prostitutes remaining in that line of work for much longer periods of time." (Germany)

Italy

Prostitution as such is neither criminalised nor legalised.⁴⁸²

Various forms of **pandering, exploitation of others' prostitution** and facilitation of prostitution are defined by the 1958 Law on Cancellation of regulations on prostitution and fight against exploitation of prostitution including **providing premises**. Sentences range from two to six years, with criminal fines. **Forcing someone into prostitution** is criminalised by the same law. Aggravating circumstances include use of violence or threats, perpetration with regards to vulnerable persons or relatives, custodian, or if the victim was a domestic of the perpetrator, perpetration with regard to a group of victims, abuse of official position.

Minors pandering is more particularly addressed as a new form of slavery by the 1998 Act on Rules against the exploitation of prostitution, pornography, sex tourism to the detriment of minors, as new forms of enslavement.

A proposed bill is currently pending with the Parliament, which if adopted would criminalise prostitution in public places.

Latvia

Prostitution is regulated by the 26 January 2008 Provisions restricting prostitution, adopted by the Cabinet of Ministers.⁴⁸³ Buying and offering sexual services is punishable administratively if sexual services are provided outside the living premises that a person

⁴⁸² A draft bill for amendment of the 158 Law on Cancellation of regulations on prostitution and fight against exploitation of prostitution was, at the time of drafting this report, pending before the Italian Parliament. If adopted, this bill would criminalise soliciting.

⁴⁸³ One Latvian expert provided more insight about the evolution of this legislation: "Until beginning of 2008, there were other rules regarding prostitution. Previously, municipalities should have provided a place where these services can be provided. Now it is cancelled. Earlier, services could have been provided where persons wanted to offer them. Now services can be offered only in the premises where the person offering has a contract of rent etc. This was done in order to remove prostitution from streets" (Latvia)

offering sexual services owns or rents. There are also certain restrictions as to the proximity of educational institutions or churches, and as to other persons living in the premises: buying or offering sexual services is administratively punishable if a minor lives in these premises for instance. As an expert summarised, *“persons should not go to premises of clients to provide sexual services. If a client buys these services somewhere else than at the prostitutes premises, he as well as the prostitute can be administratively punished. There is a question how to control it of course.”* (Latvia) Another expert stated: *“Sex worker shouldn’t pay taxes and they are not involved in social insurance. Prostitution is regulated in aspects of place and health for public order and health, mainly in favor of customers but not prostitutes. What is special for Latvia is that persons in prostitution should have medical card. This is against the Convention 1949 but we still have this requirement.”* (Latvia) *“The support system for prostitutes is very poor. There is no outreach work with sex workers on streets or in-door, and prostitutes don’t approach Municipality social services. Some years ago NGO “Genders” provided outreach work, but now how far I know they have stopped their activities.”* (Latvia)

Chapter XVI Section 164 CC punishes **pandering** defined as compelling someone's engagement into prostitution with detention or community service or fine or imprisonment for up to three years, as well as procurement into prostitution with, fine or imprisonment for up to five years. The same acts committed within organised crime, the term is five to 15 years. Section 165 of the same Chapter of the CC punishes "living on the avails of prostitution" with up to four years imprisonment and a fine – if committed in an organised group, up to eight years.⁴⁸⁴

Compelling minors' engagement into prostitution is punished with up to six years imprisonment and a fine. In the case of juveniles, the term is five to 12 years (Chapter XVI Section 164 CC).

Netherlands

Since 2000, **prostitution** is neither defined nor regulated by the CC.

As a result of the Law on the Ban of Brothels, sexual services are equivalent of any other form of work. Self-employed prostitute, which constitute the majority, have no entitlement to social benefits unless they have insured themselves privately, like any other self-employed person. Prostitute who work for a boss fall under regular employment regulations. The same law delegates further regulation to local governance bodies. The latter regulate prostitution in varying manners. For more details, please refer to chapter 6.2.2 Regulation of Prostitution in the Netherlands.

Municipalities may regulate the conditions under which prostitution may be performed.

The use of sex services from minors as well as **exploitation of minors' prostitution** is punished with up to four years and a fine (Art. 248a and 248b CC).

⁴⁸⁴ According to the Latvian Ministry of Interior, the Criminal Code should be amended in 2009 in order to punish sustaining, managing or intentionally financing a brothel, participating in the financing of a brothel, intentionally hiring out a building or another place or part of it for the purpose of the prostitution of other persons. These new articles, foreseen by the 2004-2008 National Programme for the Prevention of Human Trafficking, are currently examined by the Latvian Parliament.

Poland

Prostitution is regulated only with regard to the type of location where it may take place – while soliciting is not criminalised.

Pandering (without any form of coercion) and **providing premises** for prostitution are not regulated under the national level domestic legislation.

Pandering is defined by Art. 204 CC as impelling someone into prostitution for material gain, encouraging prostitution for benefits, or deriving benefits from someone's prostitution. The sentence is imprisonment up to three years.

Art. 203 CC criminalises luring into prostitution or **coercion into prostitution** with one to ten years imprisonment.

Minors pandering is punished by the same Article with one to ten years imprisonment. If the minor is under 15 the sentence is higher (Art. 204 CC).

Romania

Prostitution, defined as "*the deed of a person who earns a living by sexual relations with different persons*" is punished with three months to three years imprisonment (Art. 328 CC).

Pandering, defined as encouragement in prostitution for making profit, as well as **coercion into prostitution for material gain**, are punished with two to seven years imprisonment and deprivation from certain rights. If committed **against a minor**, the acts are punished with three to ten years imprisonment. Attempt to commit these acts is punishable. (Art. 329 CC)

Spain

Prostitution as such is neither criminalised nor legalised under national legislation. It is regulated at the level of the provinces. Typically, the Province Government would issue framework regulations, which may be completed by municipal level regulations. For instance, the Decree 217/2000 of the Generalidad de Catalunya of 1st of August 2000 Regulating the public locations where prostitution may be exerted, was completed by the Order PRE/335/2003 of the Generalidad de Catalunya of 14 July 2003 Approving the Standard Municipal Ordinance regarding the public locations where prostitution is exercised, and transposed by the Local Ordinance of the Municipality of Bilbao of 29 December 2005 regarding the public establishments dedicated to prostitution. The latter Ordinance sets the minimum distances between to whorehouses, the sanitary requirements, and the licensing regime for performing prostitution. The Ordinance of the Municipality of Barcelona of 23 December 2005 On measures to strengthen and guaranteeing public order contains measures which limit prostitution with a view to ensuring "civism and public order."

Article 188 of the Criminal Code defines **forcing into prostitution** and punishes it with two to four years of imprisonment.

Facilitating minors' prostitution is punished with detention of 12 to 24 months.

Soliciting sexual services is defined as "*soliciting sexual gratifications, for oneself or for a third person, within the scope of a labour, contractual or continuous relation, and who with*

such behaviour places the victim in an objectifying, gravely intimidating, hostile or humiliating situation" is punished with detention sentences under six months (Art. 184 CC). Prosecution is subject to denunciation by the victim or seizure of court by the prosecution (Art. 191 CC).

The offences are usually aggravated by family relationships with the victim, grievous bodily injuries, perpetration against a minor or an vulnerable person, abuse of an official or dominant position.

Sweden

Prostitution as such is neither criminalised nor legalised. "Prostitute" is defined by Section 48 of the Sexual Offences Act as "a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provide sexual services to another person in return for payment or a promise of payment to A or a third person; and "prostitution" is to be interpreted accordingly." According to one expert, "It is possible for a person offering sexual services to be registered as self-employed and be a part of the welfare system." (Sweden), but according to other expert from Sweden, this is not possible.

Pandering, exploiting of others' prostitution and providing premises for prostitution are punished, under Chapter 6 Section 12 CC with up to four years imprisonment (two to eight years under aggravating circumstances).

Coercing into prostitution is punished under Chapter 6 Section 3 with up to two years (six months to four years under aggravating circumstances).

Use of sexual services is punished with a fine or imprisonment up to six months.

United Kingdom

Prostitute according to the Sexual Offences Act 2003, Section 51, Interpretation of Sections 48 to 50:

(2) In those sections "prostitute" means a person (A) who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to A or a third person; and "prostitution" is to be interpreted accordingly.

(3) In subsection (2), "payment" means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

Prostitution as such is not criminalised, but **prostitution in public places** is criminalised as loitering or soliciting for purposes of prostitution and punished with a fine (Street Offences Act 1959, Section 1). **Living on earnings of prostitution** or **exercising control over prostitute** is also punishable with up to seven years of imprisonment (Street Offences Act 1959, Section 4). Moreover, **causing, inciting or controlling prostitution** for gain are all punishable with up to seven years imprisonment (Sexual Offences Act 2003, Section 52). According to one of the experts interviewed, "in the UK at the moment we have a mixed policy, the act of prostitution is legal but many surrounding circumstances are not legal. It would not be possible to register as a self employed prostitute in the UK today, there is no regulation in place." (UK)

Keeping, managing, or acting or assisting in the management of a brothel to which people resort for practices involving prostitution is punished with up to seven years imprisonment (Section 33A, Sexual Offences Act 1956 as amended by the Sexual Offences Act 2003). However, the term "brothel" is not defined: *"What is a brothel in the UK context? At the moment this is not clearly defined. Massage parlours and saunas would be included because they very often sell sex on the premises. Any premises where two women work together could be considered a brothel at the moment."* (UK)

With regard to abuse of minors, **paying for sexual services of a child** is punished with imprisonment of up to seven years, or up to 14 years if the child is under 16 and to life sentence if the child is under 13 (Sexual Offences Act, Section 47). Moreover, **causing, inciting, controlling, arranging or facilitating child prostitution or pornography** are all punishable with up to 14 years of imprisonment (Sexual Offences Act, Sections 48 to 50).

Annex III – Excerpts from Expert Interviews

National data collection mechanisms

Belgium: *“Different instances collecting data, quite fragmented, there may be double counting and gaps. ... There was a data collection from the three NGOs in Belgium and it was coordinated by the Centre for Equal Opportunities and Opposition to Racism. Now this system is not functioning any more. I know from Heidi de Pauw that they are trying to set up a new data collection system on assisted victims known to the centres. Again the Centre for Equal Opportunities and Opposition to Racism will try to coordinate the data collection.”*

“So far there is nothing in practice, but we have a very good model in place conceptually. There is an Information and Analysis Centre for trafficking in human beings and smuggling – established by a Royal decree. It is a brilliant idea conceptually, it is compulsory that all actors that have some data must share it (including the police, prosecutors, NGOs, reception centres, surveys, child focus, labour inspections, tax administration), the list of actors is impressive, probably the most advanced design of data collection model in the EU. Now there is also a bureau for the data collection mechanism. In the bureau there is a representative of the Centre for Equal Opportunities and Opposition to Racism. The Royal decree phrased that data should be given fully anonymised, but you cannot then work with the data, the data needs to be depersonalised (along the lines of SIAMSECT). There is specific data for trafficking in human beings with the police; it allows inputting many cases of other offences linked to trafficking.”

“At the Ministry of Justice, we have the data on sentencing and prosecution. 2005 – For the moment this database is not yet updated, this has been done for the prosecution data. There is not always systematic analysis of the data. For example, we can conclude that in various geographical areas prosecutions vary. When we do the evaluation of the directive, we also ask how the Ministries assess the phenomenon and based on this, new policies are being developed; this is also quantitative assessment. In other areas we make more qualitative assessment. The police has to prepare every two years a local implementation plan with priorities.”

Bulgaria: *“There are national statistics on the type of exploitation, data on children, and the victims of trafficking. Prosecution has a database of traffickers. We are working on a procedure of data collection so that we would avoid double or triple entry.”*

“So far we do not have representative statistics.”

“No good data, we know nothing.”

“The Prosecution Office collects the data of traffickers; the National Commission collects the data of victims. Based on the regular analysis of data collections, new branches of the National Committee for Counter Trafficking in Human Beings (NCCTHB) have been established in different regions of the country.”

Czech Republic: *"In practice, almost any combination of data overlap is possible: a person can be registered by the police, the Program and the NGO, or only by two of these or only by the police or the NGO (a victim can join the program only via NGO or police, thus a person registered in the program is always also registered either at the NGO, or the police or both)."*

"NGOs do not have the same criteria for establishing who is a victim of trafficking – they have "softer" criteria than the police (or law enforcement agencies) – the police must usually have proves regarding trafficking in human beings cases, NGOs just have to trust the potential victim of trafficking in human beings."

Denmark: *"At the moment we [the Danish Centre Against Human Trafficking] are working on a framework for data collection. We are still in the process of developing schemes for the data gathering actors to fill in. The schemes will be available to fill in from our website, but it is not yet functioning. We do have a lot of registration on the actions set in motion under the Danish plan of action. We do have registration of how many women are identified as victims of trafficking, what kind of support they are having, what their backgrounds and trafficking-stories are. The police are doing their own data gathering."*

Finland: *"The National Bureau of Investigation collects information regarding trafficking."*

"Still there are centres for asylum seekers and the National Bureau of Investigation. In 2009 the Ombudsman for Minorities will be appointed National Rapporteur and take on the task of data collection (it is not clear yet what will the National Rapporteur's role and position be)."

"There is little data available on trafficking in human beings; there is no agency responsible for data collection on trafficking in human beings. From the beginning of 2009, the National Rapporteur will probably start collecting data."

France: *"L'Office Central pour la Répression de la Traite des Etres Humains, Ministère de l'Intérieur (OCRTEH) est chargé de la collecte des données liées à la répression (nombre d'affaires, de victimes et de proxénètes). Tous les services de police communiquent ces données à l'OCRTEH, qui les centralise et les analyse pour relier des affaires, identifier de nouvelles menaces, et informer le cas échéant les services de police concernés ainsi qu'Europol, Eurojust, Interpol. Elles sont intégrées au rapport annuel de l'OCRTEH au Ministère. Les données sont donc utilisées uniquement à des fins policières, et ne sont donc pas publiées. Elles doivent de plus être interprétées avec une grande rigueur ; elles sont aussi difficilement comparables avec les données des autres pays membres de l'UE, du fait des différences de définitions et de provisions des codes pénaux, ainsi que des disparités dans les procédures. Par exemple, le terme « victime » a des significations différentes selon les codes pénaux."*

"We recommend creating a specialised agency for co-ordination and policy proposals on trafficking in the field of human beings, in addition to a national rapporteur on the issue."

Italy: *"A l'heure actuelle, les sources de données les plus fiables restent les ONGs sous contrat avec l'Etat pour l'application des Articles 13 et 18. Leurs données concernent les victimes ayant bénéficié d'assistance. A ce jour, 11 000 personnes ont reçu un titre de séjour aux termes de ces Articles, et 5 000 victimes ont été aidées directement. Le Département des Droits et de l'Egalité des Chances est chargé de collecter ces données. Les données judiciaires ou policières sont collectées par la Justice et les services de police. Restent des estimations établies par les chercheurs universitaires, mais l'évaluation chiffrée du phénomène de TEH à des fins d'exploitation sexuelle reste très partielle."*

"As a follow up to the Equal project, the Torino University, the Rights and Equal Opportunity Department and other partners have started a process to create a permanent Observatory on trafficking in human beings. It would be tasked with centralising relevant data and conducting research necessary to a better informed public policy."

Latvia: *"Data collection is one of the main problems. There is no one responsible for trafficking in human beings. As a consequence, nobody has a good overview."*

Romania: *"The National Agency collects this information in their database, in cooperation with the police. The regional centres of the agency are responsible for filling in data on child victims."*

Spain: *"Different actors have some data; due to legal confusions you have different police forces, not one database. CICO [Organized Crime Intelligence Centre] may become a central office for data collection. Statistics – we do not have them yet, we did not treat them as real victims. They were victims and all police officers knew it, but we did not have a legal way, so there are no statistics. We will have a data collection plan (2009) that will be collecting data from all the police forces."*

"Son datos muy variables durante las diferentes épocas del año. No conozco ninguna base de datos que se pueda calificar de fiable, y menos pública. Ya que la prostitución es un negocio mal visto para quién lo usa y para quién lo ejerce."

United Kingdom: *"I cannot tell you whether there are more victims than earlier, the only figure ever produced – 2005, 4000 victims of trafficking, I do not know how credible it is. Unless you have a research over a period of time and benchmarks, you cannot tell much. Also, when you raise awareness, the figure goes up."* (From 1 April the Human Trafficking Centre (UKHTC) is responsible for data collection.)

Trends in trafficking in human beings

Austria: According to some experts, the overall number of recorded trafficked persons is on the rise, however this is mostly attributable to better awareness among the practitioners: *"There is more awareness, and more victims of trafficking are identified now than in the beginning of the 1990ies."*

The type of coercion that is used by the traffickers has switched from physical violence to less obvious forms of coercion: *"Over the past 15 years traffickers have adapted very well to the legal framework. Physical violence is less used now than 15 years ago, they have more subtle ways of putting trafficked women under pressure. For instance, instead of locking the person up they use mobile phones and the like, to totally control the movements of trafficked person."* *"In 2002 – 2003 there was a peak in trafficking in human beings, many cases were linked to migration from the Balkans (Romania, Bulgaria especially) and Moldova (sometimes it is difficult to distinguish between Moldova and Romania). In 2003 – 2004 we see that the new legislation has had an impact, we are noticing that the recruitment is not violent, but rather more subtle forms of coercion are applied (including of economic nature). Still the number of victims of trafficking is relatively high."*

Belgium: *"Labour exploitation was found in meat processing plants, before it was more in the construction sector, the restaurants sector, the agriculture (seasonal work, fruit picking)."*

"This does not mean there is no sex exploitation any more, girls working in massage salons, escort services, [but it is] more hidden than earlier."

"Concerning sexual exploitation, traffickers use more internet and they go more to private places, prostitution is more hidden and therefore the Ministry has to change the way of combating it."

One service provider (Pag Asa) reported that increasingly private persons, medical staff and lawyers approach them with information about various forms of exploitation. There is also a change in the countries of origin.

Bulgaria: There seems to be a rapid growth in trafficked persons from Bulgaria, who are then exploited in Belgium, the Netherlands, Germany, Austria, Italy, Spain and Poland. The majority of recorded cases are of sexual exploitation, but labour exploitation of Bulgarian citizens has been reported in Spain and Greece. According to some experts, there are much more persons subjected to labour exploitation (*"more than 3000 in Greece, we have some real cases, people die of diseases, they do not have normal food, but nobody talks about this"*) than to sexual exploitation. In 2008, more Roma women were recorded as trafficked persons than in the past. A high percentage of trafficked persons is from the north, they are trafficked to the Black Sea region (Varna, Burgas), where there is a demand due to tourism. In Bulgaria, trafficked persons from Ukraine, Moldova, Russia and sometimes Romania were identified. For many foreign victims, Bulgaria is a country of transit on their way to Western Europe. There are recognisable links between specific areas in Bulgaria and destination countries in Western Europe (Sliven – Belgium and Holland; Pazardjik – Italy, Austria, Spain; Kurstandil – Italy, Germany, and Plovdiv – Greece, Austria, Belgium). There is a connection with criminals in these countries; sometimes it is organised through the Turkish minority (especially in Germany, Austria, and France). When Roma persons are trafficked, often they are exposed to a higher degree of coercion than other groups and they are exploited in the lowest segment of the market – street prostitution.

Czech Republic: *"at the beginning (prior to 1989) trade in human beings meant only export of women for abroad with the purpose of sexual exploitation. Later the definition was widened."* *"During the 1990s, Czech women were trafficked to Western Europe, but also to the US and Japan. In 1997, we had the first case of a foreign victim in the Czech Republic."* According to one of the major service providers, in the late 1990s - early 2000s there were many victims from Moldova, Ukraine and Bulgaria, but also from the Czech Republic. Between 2003 and 2007, the share of trafficked persons from the Czech Republic among all assisted persons declined significantly. Currently (2007 – 2008) there are again many Czech victims forced to prostitution in the Czech Republic. These persons are not recorded by the Ministry of the Interior's statistics as trafficked persons because they do not need the residence permit and because their cases would be prosecuted under pimping.

There are some cases of labour exploitation, but there are difficulties to prosecute them since some of the terms were not sufficiently defined in the legislation. *"Earlier there was a lively discussion between NGOs and state authorities regarding what is trafficking in human beings and how to decide in practical cases. Then a consensus was found for sexual exploitation and the system was formalised. Today we are back to the stage of discussion, because our understanding of what is trafficking in human beings is more problematised: what is forced labour? What is labour exploitation? What are other forms of exploitation than*

sexual exploitation? The opinions of NGOs and the police are significantly diverging. The police do not want to use at all the notions of slavery and servitude."

Denmark: "We do see an increase in foreign women in street prostitution, but we do also believe that more and more are moving from the streets to other more hidden forms like escort or private based prostitution, but we do not have any documentation on this. In recent years we did see an increase in women from Nigeria and Eastern Europe, primarily Romania. These are all numbers from the social organisation that operate in the field."

Estonia: A rise in trafficking in human beings was expected in connection with the EU accession, but according to information from a variety of NGO sources, this did not occur. "Today, trafficking in human beings is not limited to the Russian ethnicity population; there are Estonian victims as well. The recruitment of victims of trafficking has become more clandestine. Often women are recruited through promises of legitimate employment outside the sex business. Methods have become more deceptive. The customers are also from both ethnic groups [Russian and Estonian], and there seems to be an even distribution between foreign and local customers. After the introduction of the Swedish laws on prostitution there was an initial increase in the number of Scandinavian customers. Now, Scandinavian and British tourists are the most common foreign customers."

Finland: "The trafficking in human beings phenomenon is quite recent; it has been paid attention only from 2005. In the 1990s and early 2000's, there had been quite grave procuring cases when women prostitutes were subjected to threats and sometimes even violence and debt bondages. But these cases were considered procuring since there was only legislation on procuring and not trafficking in human beings. So far, we have had only two trafficking cases in court of law, one about sexual exploitation, and one about labour exploitation. This forced labour case was not successful; a sentence was given only in the sex exploitation case. According to the Finnish police, the pandering organisations in Finland have been Estonian and Russian led."

In **France:** "Les évolutions sont rapides. Au début des années 90', à Nice et Strasbourg est apparu le phénomène de ce qui était alors nommé la prostitution migrante. Ailleurs en France, la prostitution stagnait voire régressait. Mi-99, le phénomène explosa en effet. Les victimes provenaient en majorité de l'ex bloc de l'Est: explosion – Roumanie, Bulgarie, Russie, Ukraine – mais aussi déjà, quoique dans une moindre mesure, d'Afrique (Ouest de la France)." (France) "L'immense majorité des prostituées étrangères sont victimes d'exploitation, les bénéfices de leur activité sont perçus par des proxénètes dans leurs pays d'origine ou ailleurs. Les victimes sont de plus en plus transférées de pays en pays au sein de l'UE: les réseaux sont plus mouvants que par le passé."

"Jusqu'à la fin des années 80', la prostitution en France était surtout le fait de prostitué(e)s Français(es). Depuis la chute du mur de Berlin, le paysage s'est transformé et internationalisé. Depuis les années 90', la proportion de prostitué(e)s étrangères en provenance surtout d'Afrique et d'Europe de l'Est, a augmenté. Aujourd'hui, 80% de la prostitution est le fait de ressortissant(e)s d'Afrique (Nigéria surtout, suivi par le Cameroun), d'Europe de l'Est (Bulgarie surtout, suivie par la Roumanie), et dans une moindre proportion d'Amérique Centrale et du Sud (prostitution masculine en majorité, Equateur surtout) et d'Asie."

"Les modes de recrutement dans le pays d'origine influent beaucoup sur le profil des victimes. Les personnes en provenance d'Europe de l'Est sont souvent issues de milieux sociaux vul-

néralbles, sont des personnes endettées ou des personnes ayant déjà un projet d'expatriation. Le dernier cas est de plus en plus fréquent."

Italy: *"Depuis les années 1990, ce phénomène s'est présenté parallèlement à celui de l'immigration illégale vers l'Italie. On peut distinguer quatre phases dans l'évolution de cette forme de TEH:*

- *Phase 1: dans les années 1990, les victimes en provenance d'Albanie étaient les plus nombreuses, dans une période caractérisée par un afflux de migrants en provenance de ce pays. Cette vague semble aujourd'hui se tarir.*
- *Phase 2: vers la fin des années 1990 est apparu un nombre grandissant de victimes d'Afrique Sub-saharienne, en particulier du Nigéria. Elles constituent aujourd'hui encore une très forte proportion des victimes de THB à des fins d'exploitation sexuelle.*
- *Phase 3: la fin des années 1990 et le début des années 2000 ont vu l'arrivée de nombreuses victimes en provenance de l'Europe de l'Est, au premier chef de Moldavie, Roumanie, Ukraine et Biélorussie. Ces victimes sont à l'heure actuelle en majorité, conjointement avec les victimes Nigérianes.*

On observe par ailleurs la présence en nombre plus faible de victimes Sud Américaines, recrutées principalement par l'industrie du divertissement sexuel et qui tombent dans le piège de l'exploitation sexuelle."

Germany: *Following the EU accession, "the countries of origin have shifted from Russia, Ukraine and Belarus to Romania, Bulgaria and to a lesser degree Nigeria. The total number of victims has remained more or less constant." The Romanians and Bulgarians "have replaced victims from Asia and Latin America." One expert suggested that the fact that Romanian and Bulgarian victims of trafficking are now legally residing in Germany makes their extrication from an exploitative situation more difficult than earlier: "in the past they would be illegally in the country. This allowed the police to take them into custody and thus remove them from the control of the exploiter. Oftentimes traffickers convince their victims that the police are corrupt, during their time in custody this belief was proved wrong. All this has increased the burden of proof significantly, in that now investigations must be far more intensive for tactical reasons." However, another expert suggested that "as the current victims are from EU countries, they are less prone to threats based on their illegal status since they are entitled to freedom of movement within the EU. Accordingly the level of violence endemic in trafficking in human beings for the purpose of sexual exploitation has reduced sharply. Now most victims seeking the assistance of our NGOs have been denied their rightful wages, whereas prior to the EU accession of the Baltic nations, Bulgaria and Romania, abuse was the main motivator in seeking the NGOs support. The investigations of 'ethnic prostitution', where the pimp, the prostitute and the client are all of one community are especially difficult. "The problem is that the police cannot offer much of incentive to the victims, whereas the trafficker can threaten the family of the victim in the country of origin."*

Latvia: *The state authorities' representatives tended to maintain that trafficking in human beings has been eliminated and that it is not a real problem: "we are not thinking about it very much, we would think about it if it was a real problem. Now it is not." Civil society representatives strongly disagreed: "sometimes we see in official reports that trafficking in human beings has been eliminated, but I disagree. It is here, hidden, latent, we have internal trafficking in human beings, and we have come across cases with minor victims of trafficking. We see many Latvians going abroad, looking for better job offers. NGOs estimate that*

many of them become victims of trafficking. Most of our clients are Latvians trafficked abroad. We have as well several cases of internal trafficking, last year we had the first case with third country nationals (from Thailand, 3 women, possibly forced labour, the case was discontinued). The problem is old, [but] awareness is not."

Netherlands: "There is increasing awareness of the phenomena, more alertness. An increased number of victims of trafficking are recognised; there are more prosecutions."

"The number of cases of exploitation outside the sex industry is growing due to higher awareness. At the same time we have definition problems to decide what exploitation outside the sex industry is – where to draw the line between bad working conditions and trafficking in human beings. Not every situation of under-payment is trafficking in human beings. We have had a couple of court cases now and the judges are trying to find out where the line is."

"After the accession of Romania, Bulgaria and Poland, an increase of victims from these countries could be observed (both trafficking in human beings for sexual exploitation and for labour exploitation)." Roma from Bulgaria and Hungary come to the Netherlands "because their Human Rights are violated back home. They say – I have not made any money [in the Netherlands] but at least I have not been abused by the police, beaten up by the pimp and the clients were OK, unlike back home [in Bulgaria and Romania] where they were abused by the police, beaten by the pimp and so on. Police abuse and corruption is a big problem in Eastern Europe."

Regarding women from Eastern Europe, "we see change in the questions they ask. When they first started to arrive they were far more in a dependent situation. Those who are in the country for longer, become more independent, possibly because they have more information or because they see their Dutch counterparts. They do not tend to report to the police, they usually pay off their so-called debts and then they work independently. We also see women we know they have been in a trafficking situation and now they are in the business and do not use middlemen any more."

Poland: "After 1998, the majority of trafficking continued to be into sex industry, but increasingly there was trafficking in women and girls as au-pairs and mala fide marriages. Starting from 2002, we started to have more information about other purposes of trafficking. The 2000 definition of trafficking, which is broader in its scope, enabled us to look for other forms of trafficking in human beings than sexual exploitation. There were cases of trafficking for begging. Whole Moldovan families were trafficked for organised begging. The situation has changed significantly in 2004, when Poland accessed the EU and Poles started to go abroad for labour en masse. There was a large labour migration, it is estimated that between 2004 until now more than 2 million Poles migrated mainly to the UK, Ireland, and also Italy and Spain. Despite a growing number of legal provisions [against trafficking] this huge wave had negative side effects – many people are travelling without basic knowledge, money or information. They are easily exploitable by bigger or smaller organised groups of recruiters and they become victims of trafficking. Now there is also evidence of trafficking of migrants into Poland for exploitation in agriculture, greenhouses, domestic work, construction workers, catering, and restaurants. They come from Ukraine, Belarus (construction, agriculture), domestic workers – from Africa, Nigeria, Mali, there is evidence of trafficked women from Mongolia who were promised to work in cloth production (sewing) and there is evidence of trafficking in men (1 case, from Vietnam). Regarding trafficking in human beings for sexual exploitation to Poland, 70% of clients are from sex industry – Ukraine, Moldova, Belarus."

There were some African women stuck in Poland, they were in transit, but remained in Poland. Polish women – still some who are exploited in other countries (Italy, Germany, Netherlands, and Belgium)."

Romania: Following the EU accession the recorded number of trafficking in human beings decreased. *"During 2007 Romania remains a country of origin; there is a downward trend in terms of victims (1780 victims of trafficking identified in 2007 vs. 2285 identified in 2006 and 2551 in 2005). This is linked to the increased freedom of movement. Romania is a country of destination for the last three to four years. Many people took advantage of the EU accession of Romania. This resulted in a spike in immigration, they being aware that it would be easier to travel and work in the EU. There are quite a few Egyptians working in Romania, some of them under inhumane conditions, these cases are currently pending. In Romania migrants are especially vulnerable. Many educated Romanians moved to the West with the EU accession, this has caused a labour shortage in agriculture and construction. Many migrants remain. In 2007 cases of labour exploitation exceeded sexual exploitation numbers and the trend is that labour exploitation will become more and more prevalent. Victims come from all over the country, but there are fewer victims from Bucharest. Bucharest is mainly a transit point. Trafficking in human beings is widespread and pervasive. The recruitment remains a mixed phenomenon with organised crime and ad hoc exploitation."*

Spain: *"We have been noticing an increase in the trafficking in human beings for sexual exploitation. The groups that have been traditionally dealing with trafficking of drugs or weapons are changing their field to trafficking in human beings, probably because our legislation is weaker in this field, punishment is low. We are still adapting to Palermo. The second reason is that it is becoming a very profitable business, maybe even more than drugs. Usually there are fewer problems if you are discovered by the police."*

"There are also cases of combination of various forms of exploitation, especially of women. There is sporadic information, women arriving with a contract to work in agriculture, once they are in Spain they are placed in clubs to work as prostitutes. Other cases are of women working in domestic service who were abused by their employers. Serious investigation/research is needed on this issue."

"Durante la campaña agrícola anual de la fresa y la naranja en Huelva, vienen contratada en origen unas 13.000 mujeres /trece mil/ de Marruecos, Ucrania principalmente. Muchas de estas mujeres reciben la información de que pueden ganar en 4 meses unos 3.000 euros como mínimo, pero para venir a España tienen que gastarse previamente entre 1.000 y 2.000 euros. Cuando están aquí, el clima, la demanda del mercado y otras variables, hacen que el sueño de los 3.000 euros se conviertan sólo en 1.000 euros de salario, con lo cual la economía familiar es destruida. Sabiendo esto, cientos de estas mujeres, se ven abocadas a acudir al mercado negro de trabajo y a su vez, saben que la forma de ganar mas dinero y mas rapido es vendiendo su cuerpo, tando a otros trabajadores agrarios temporeros, como en los clubs y locales de prostitución."

"Debemos de distinguir dos procesos, el relacionado con el turismo y los lugares de veraneo y descanso de la población española y europea principalmente, como es la Costa Mediterránea española y las Islas Canarias, que surgió desde los años 60 hasta la actualidad, y posteriormente, a partir de los años noventa apareció el inicio de la "trata de blancas" en un nuevo contexto de inmigración masiva, que resultó con la llegada de un gran número de mujeres extranjeras desde los países del este de Europa, Iberoamérica y el Africa Negra. El fenómeno

de la "trata de blancas" fue desarrollándose en conjunto con el Tráfico de Drogas y otros tipos de negocio del crimen organizado, como es el tráfico de migrantes laborales. Ahora muchas víctimas vienen de la ex-Unión Soviética, Rumania, Bulgaria, Moldova, Ucrania, países bálticos, y zonas de diásporas eslavas, tras el derrumbe general del Estado Soviético y sus países satélites. Las víctimas africanas son principalmente en la zona de suroccidental de España de origen en el África anglófono (Nigeria, Ghana, Sierra Leona, Liberia, Gambia.) y de zonas animistas y cristianas en general /Hay muy pocas mujeres musulmanas en la trata de la mujer negra/. Así que lo que en un principio viene a ser un trabajo agrario, por las obligaciones y otros motivos se convierte en un trabajo sexual, forzadas por la pobreza o por el dinero fácil."

Sweden - Denmark: *The trend is rather similar. Both countries have the same type of victims of trafficking coming from Russia, Baltic countries, Nigeria, Poland, Slovakia, Slovenia, Romania, Thailand and Latin America. It is difficult to say which countries dominate. Russian victims sometimes arrive via Finland. Baltic victims do not need visa, they come directly."*

Sweden: *"[This is a] difficult question to answer, as it is in many other countries in Europe, it is a hidden phenomenon as such and you could say that also in the context of the Sweden law criminalising the purchase of the of purchase. We have been able to make it more difficult for pimps and trafficker to work in open prostitution, which since 1999 has meant that the phenomenon has been in a sense that we are able to fight back. Because we have made the operations of pimps and traffickers more difficult, that means that street prostitution is more or less gone, they do not find it worth the investment required."*

"In 2000-2005, most victims of trafficking were from the Baltics, Russia, Poland, SK, CZ. Now they are also sent to Sweden from Thailand and Nigeria. Trafficking in human beings is a very small problem compared to other countries, but we see that Nigerians are trying to enter the market. Nowadays the victims of trafficking originate from more mixed countries – Eastern Europe, Nigeria and Thailand, but not from South America."

"Women from the Russian minority in the Baltic countries compared to Roma victims – Roma victims are worse treated than women from the Baltic countries (usually Russians). The girls from Baltic countries can stand up for themselves better. The exploiters of Roma women often are Bulgarian and Romanian citizens, but it is difficult to say anything authoritative because we do not have so many cases."

"Regarding number of victims of trafficking it is rather stable throughout the years, we estimate about hundreds. But we try not to mention too many figures. The numbers depend on how efficient the police are. If we want to find victims of trafficking, we will. If we prioritise drugs, robberies, we will not find any [victims of trafficking]. It depends on the prioritisation of the police, these women are seldom sold in the street."

"Victims of trafficking are mostly sold in indoors locations. The perpetrators [traffickers/pimps] need to move the victims of trafficking around, they cannot stay too long in one single apartment, advertise on the internet, they have to bring buyers to the women or the women to the buyers. This keeps the trafficker busier. Also the buyers are very afraid of getting caught. It is much more efficient for the traffickers to send the women to other countries where there is street prostitution. It is easier for them to operate there."

"There were some 6 – 7 investigations of cases of labour exploitation regarding 'travellers' [ethnic or social group related to Roma] from UK and Ireland. They victims, all men mostly

from the UK, were recruited as bricklayers, asphalt layers but they were beaten, their passports confiscated, they didn't get any money and so on. The organisers were from UK, Ireland, from the same group. They recruit mentally handicapped, homeless, desperate people for work, always men. These victims have turned to the UK Embassy in Stockholm and claimed that they are victims of trafficking. We have had joint investigation with Norway and UK, now the cases are in the UK for hopefully a trial."

"There are also some cases of trafficking in human beings, often children, for begging and stealing. It seems to be very well organised from Romania and Bulgaria and linked to Roma people."

United Kingdom: In 2000 trafficking was considered under the umbrella of immigration crime and serious and organised immigration crime. As one expert noted, in 2002, the "Secure borders, Safe haven" policy paper claimed that trafficking happens but not very often, but by 2007 "Enforcing the Rules" claimed that $\frac{3}{4}$ of immigrants are trafficked. Either this means that criminal organisations managed a huge coup or that there is a different framework within which the government understands illegal immigration." The second is more likely, as another expert said, "there was a slow start, and then over the last five years it picked up. In 2000 we knew nothing, in 2008 we know considerably more, and we are far more strategic." There is also higher public awareness: "the public visibility of trafficking in human beings has become far higher, therefore an increase in the number of referrals may actually not reflect statistical increase in the absolute number of victims, rather an increase in public awareness, especially among victims of trafficking." According to the expert assessment, "the majority of victims of trafficking for sexual exploitation are not on the street, street prostitution is predominantly done by UK nationals. The majority of trafficking is off-street, in brodels, saunas, and flats."

Methods of coercion

Belgium: "Ten years ago it was evident to prove trafficking in human beings for sexual exploitation, the networks have used a lot of violence, coercion was easier to prove."

"[Today] violence is not so systematic; they [trafficked persons] are not victims of physical violence. There is less violence, less coercion. Victims of trafficking are more reluctant to complain."

"Sometimes criminal organisations give the victims of trafficking more money than before, sometimes it is 50:50, the prostitute has to pay for the place they stay, etc."

"There is not so much coercion, violence, as it was the case in the 1990s. [There is] a sort of dissatisfaction with the situation in economic terms or they feel they are exploited, even when initially they were going to Belgium willingly. Usually they knew what sort of business they would end up in, but they had to work more, they were paid less, the conditions were bad. But real violence, forms of suppression, slavery like - we have not seen these."

"Still girls are working on the street, a lot of Bulgarian girls, they enter the territory, and they can stay for three months legally as tourists. This makes them less vulnerable to exploitation. A lot of them know that they will be working in prostitution, what they do not know sometimes are the conditions. In most cases - there is a settlement 50:50 or so and when it is respected, then the girl will make no problems, she is not ready to make a statement against

her pimp, certainly not if there is no violence, threats etc. . . . only when conditions are turning bad, some of them would [complain].”

Bulgaria: *“Victims of trafficking are recruited in a way that they cannot recognise trafficking in an early stage. Manipulation of victims is more widespread. Many are lured by visions of better life. Earlier, 15 years ago, many were kidnapped, this you do not see at all today. In the recruitment for sexual exploitation, there is less violence today, but violence (beatings, rapes) is the main tool to make victims of trafficking to comply with the exploitation.”*

“In 2000, there was more violence, drugs, kidnapping, beatings, since then, less violence.”

“There is a new, soft method of coercion, with loverboys. Pimps are marrying prostitutes. When we ask the prostitute ‘why do you give the money’ – she says it is my husband, my family, we have one budget. Lover boys – they have very good relationship [with the prostitute/trafficked person], they do not take all money; they protect their families in Bulgaria. This is something new, strange to prove, we do not get final conviction. According to the law it is very complicated to prove that we talk about case of trafficking in human beings and not voluntary prostitution. When we start investigation, the women exploited in prostitution talk about problems, but then the pimp pays them, first of all they cooperate, but then they say ‘I love him, he is my boyfriend, I do not want to cooperate with law enforcement’. The police involvement leads to a temporary improvement of the situation, and then later sometimes the prostitute/victim of trafficking comes back and asks for new investigation, this takes a lot of time.”

Czech Republic: *“During 1990s, the level of violence was in general higher and paradoxically, it was easier for the police to prove trafficking in human beings (trafficking in women at that time) than today. Today’s coercion methods are more sophisticated, “softer” and more difficult to prove – the victims are less motivated to testify against traffickers and to leave the business.”*

“The forms of trafficking in human beings are now less violent. The violence used is more subtle, which results in problems with proving the crime. A particular problem is how to prove threats and psychological violence – for example, when somebody from a group of trafficked persons gets lost.”

Estonia: *“There is a low level of violence, mainly there is economic coercion.”*

“Violence is becoming less prevalent, instead there are methods of psychological coercion, blackmailing, including general psychological abuse, sometimes in combination with rape. Drug and alcohol abuse are ubiquitous, and these weaknesses are exploited by the traffickers”

“Today, trafficking in human beings is not limited to the Russian ethnicity population; there are Estonian victims as well. The recruitment of victims of trafficking has become more clandestine. Often women are recruited through promises of legitimate employment outside the sex business. Methods have become more deceptive. The customers are also from both ethnic groups [Russian and Estonian], and there seems to be an even distribution between foreign and local customers. After the introduction of the Swedish laws on prostitution there was an initial increase in the number of Scandinavian customers. Now, Scandinavian and British tourists are the most common foreign customers.”

Finland: *“There is little coercion used. Victims are kept quiet and sent back if needed. There is no visible violence and [thus] no evidence.”*

France: *"Par le passé, les victimes aboutissaient de manières inopportune et non souhaitée dans l'expérience migratoire, enrôlés de force dans le système de la traite." (France) In the case of Eastern European victims in France, "on se trouve alors souvent face à une forme d'« exploitation négociée » avec de manière désormais fréquente un partage des produits de l'exploitation avec les victimes, et l'utilisation de certaines victimes pour surveiller/recruter/collecter les fonds. Les exploiters mutualisent ainsi les risques tout en ne se défaisant que d'une part infime des bénéfices: ce sont les victimes qui prennent les risques et sont souvent arrêtées. Dans le cas des victimes originaires d'Afrique, des pratiques rituelles se greffent à la dynamique du recrutement, le tableau est plus complexe." (France) "Les moyens coercitifs employés par les proxénètes à l'encontre des victimes tendent à être moins violents qu'au début des années 90' (traite caractérisée alors par la tromperie lors du recrutement, puis par les menaces envers la famille des victimes, et parfois des violences physiques). Aujourd'hui, il semble que la majorité des victimes des pays de l'Est arrivent en connaissance de cause; leurs proxénètes ont souvent avec elles des liens familiaux. La contrainte est surtout morale et économique (obligation d'envoyer de l'argent à la famille par exemple, dettes...) Les violences sont moins courantes."*

"Pour les victimes africaines, dont le nombre croît, l'envoûtement est le moyen de contrainte le plus fréquent. Des rites accomplis dans le pays d'origine lient les victimes à leurs proxénètes, qui sont d'ailleurs souvent d'anciennes prostituées. La croyance est si forte que la contrainte est réelle et très difficilement surmontable (par exemple les plaintes ou témoignages de victimes africaines sont très rares)."

Germany: *"As the current victims are from EU countries they are less prone to threats based on their illegal status since they are entitled to freedom of movement within the EU, accordingly the level of violence endemic in trafficking in human beings for the purpose of sexual exploitation has reduced sharply. Now most victims seeking the assistance of our NGO have been denied their rightful wages, whereas prior to the EU accession of the Baltic nations and Bulgaria and Romania, abuse was the main motivator in seeking the NGO's support."*

"The EU accession of Romania and Bulgaria [from where there are many prostitutes in Germany] has led to the lowering of the level of coercion. At the same time this has led to a reduced willingness of victims to testify as the relative gain in the right to remain in Germany and access its social services has diminished now that the threat of deportation has been removed. Thus it would seem that the more rights in terms of remaining in the country of destination a victim has, the lower the level of coercion that can be employed by the traffickers is."

"Violence is moving from physical to psychological and economic coercion. The traditional elements of physical violence are being supplanted by threats."

"The modes of violence and coercion reported are different for German victims and foreign victims: German victims have been exposed to a low and constant level of violence, whereas foreign victims especially those from Bulgaria and Romania are exposed to a higher, but decreasing level of violence and coercion, additionally they are less likely to report these abuses."

"Violence has diminished to more subtle forms. It is strongly dependant on the ethnicity of the victims, e.g. Nigerian traffickers use Voodoo. In some cases, relatives remaining in the country of origin are threatened."

Italy: *“Alors qu’auparavant les violences physiques et un fort degré de coercition prédominaient, les auteurs de TEH ont désormais tendance à utiliser des moyens différents tels la violence psychologique, la tromperie et les abus de confiance, ou le lien par la dette.*”

On distingue aussi différentes caractéristiques selon l’origine des victimes. Dans le cas des victimes Nigérianes, la coercition provient souvent de la famille même des victimes, qui les « confie » aux réseaux de TEH principalement gérés par des femmes elles-mêmes anciennes victimes. Une dette est alors encourue par la famille lors de la facilitation de la migration de la victime. Cette dette, souvent exorbitante et dépassant largement les attentes de la famille, est remboursée par l’exploitation sexuelle de la victime. Une fois la dette remboursée, la victime peut être affranchie et devient parfois une « madame » gérant l’exploitation de nouvelles victimes, ce qui contribue à reproduire et renforcer le phénomène. Dans le cas des victimes d’Europe de l’Est, ce sont les abus de confiance suivis de prostitution forcée avec violence physiques ou surtout psychologiques qui semblent prédominer.”

Latvia: *“We have seen that trafficking in human beings is changing, at the beginning (during 1990s) there was a lot of violence and forced movement, now traffickers use more subtle methods to trick their victims.”*

Netherlands: *“In some cases terrible violence is used. On the other hand, traffickers have become wise in the way that they let the victims of trafficking keep a little bit more money and do not abuse them so severely to reduce the chances that they will go to the police. In some cases, violence is not needed; threats of denunciation to the authorities, threats in the country of origin are enough.”*

“Traffickers often blackmail their victims with debts that were imposed on them or by threatening them to tell their families they worked as prostitutes. The modes of violence applied are rather of psychological than of physical nature. There are also cases of individual traffickers who seduce e.g. Moroccan girls, take a picture and threaten them to show the picture to their family if they don’t engage in prostitution.”

Poland: *“Over the time, recruitment became more and more sophisticated, the main aim is to win the trust, to bring the persons to the place of exploitation, traffickers/exploiters are not interested in using physical violence. They use rather blackmailing, psychological violence (threats against families etc). Blackmailing does not work so easily in case of trafficking into agriculture or construction, domestic – people are not ashamed to work in these industries, but people are threatened with denunciation to the authorities because of their irregular migration status. Methods of cheating and coercion are more and more developed to win the total trust of the exploited person.”*

Romania: *“The traffickers have struck a bargain with the victims; they have reduced the level of violence, and have given them more money as well. Oftentimes the relationship is such that the victims do not see themselves as exploited. This means that the victims are much less willing to testify against traffickers. From the beginning of the 1990’s onward traffickers were faced with an abundance of potential victims. Now the population is more educated so the traffickers have reduced the levels of coercion.”*

“With increasing awareness of the general population, it becomes more difficult for organised crime to coerce violently.”

Spain: *“The biggest change we saw is the increase in organised crime from Eastern Europe. Prostitution from South America is very traditional; we had this here for years. I speak also*

about voluntary prostitution. There we did not see many changes. These are probably the same groups, but we have discovered that Eastern European groups are new. They work differently than South American groups. They are more violent usually, they apply more violence not only against the victim but also against their families, and they control the process from the beginning till the end. The South American groups control [the person] only from the country of origin to Spain, then prostitution was organised by Spanish groups, not in such a violent way, usually less violence applied, South American women are exploited just until they pay their debts. This has been here for several years. Eastern European groups do not stop exploiting when the dues are paid, they change the women, take them home, then take new ones, they are very closed, and it is difficult for us to attack them because of the language barrier possibly, the lack of cultural links. Women from South America will find people to help them here in Spain, it is easier for them to get out and start a new life. Romanians are also different, they are luckier because once they leave the organisation they can move around. They have better conditions, they are luckier. Russians, Georgians, Ukrainians, Albanians – for them the situation is very difficult; we have even difficulties finding an interpreter. We cannot sometimes even talk to them. We arrest them because we do not have a plan to protect them yet, they are just illegal here and all what we can do is deport them.” “En general, los criminales consiguen controlar a las víctimas por medios de engaño, miedo, dependencia de cualquier clase: afectividad, emociones, drogas. Además las víctimas son amenazadas con represalias en contra a sus familias en el país de origen. Las víctimas son reclutadas por organizaciones que les ofrecen y les arreglan todo”, incluso el permiso de trabajo, el permiso de residencia, la habitación, el movimiento dentro de España, el dinero... Se amenaza a las víctimas para que no denuncien, con no te pagamos, te quitamos el permiso de residencia, te matamos, etc... Las víctimas, que suelen contraer deudas con sus “protectores” deben pagar por medio de la prostitución lo que deben y mucho mas, pues una buena productora de dinero no debe de escapar.” Regarding African victims: “Así, es cierto que las mujeres africanas animistas, cristianas y de otros grupos, con el sustrato o base cultural en la religión tradicional, son hechizadas a través de las artes mágicas secretas y ancestrales, como es el vudú y otras técnicas. A parte de esto se da también que las muchachas y mujeres esclavas sexuales que no rindan, no paguen o se escapen del control del Grupo mafioso, tienen la extorsión o la amenaza de ser asesinada, “embujada”, o que sus miembros familiares mas cercanos en su país de origen sean secuestrado, golpeados, injuriados, torturados o asesinados.” Regarding latin-American victims: “La mayoría de las víctimas /voluntarias y forzadas /Sur-Americanas padecen una gran presión familiar. Por otra parte, hay una una minoría de mujeres indígenas, caracterizadas por circunstancias muy particulares, ya que las culturas tradicionales indígenas controlan muchos a sus miembros, y sólo las mujeres que abandonan su lugar en la sociedad indígena, en caso de no encontrar suerte, se ven abocada por su falta de preparación cultural y social a la prostitución.”

Sweden: “Now the criminals in trafficking in human beings think that is it risky to work in Sweden, they keep their distance to the women who work for them. The women may send the money via internet, to the bank of the recruiter or to the person who helped to set up the web pages or so.”

“What we can see today regarding trafficking in human beings for sexual exploitation it that the perpetrators have become “nicer”, it is not so much violence and deceit involved anymore, they treat victims better and that makes the victims more loyal to the perpetrators. In these

cases it is difficult to prosecute, because the courts do not view the women and girls as victims of trafficking, rather victims of procuring."

United Kingdom: *"Violence has lessened. Traffickers know that the more violence you use the higher sentence you get."*

Patterns of organised crime

Belgium: *"Organised crime is more professional, we need to give enough research capacity to the police."*

"Within a criminal organisation it will be more difficult for the victim to break up all the contacts than if she was "just" a victim of one or two traffickers who are not part of organised crime."

Bulgaria: *"Traffickers are cleverer, they are getting very organised."*

Estonia: *"There is not a single identifiable organised crime group operating."*

"Trafficking in human beings seems to be less of an organised crime matter and more of a crime that is carried out by small ad hoc groups, not the traditional mafia style of organised crime."

"Organised crime does not play a very large role in trafficking in human beings in Estonia, in the sense that there is not a mafia, but there are small units of criminals. Trafficking in human beings is a big business nonetheless, but oftentimes it is more segmented, with different groups involved in each phase of the trafficking cycle. Organised crime is very good at transnational cooperation, if there is one sense in which the organised crime world could teach the counter-trafficking world it is the level of international cooperation, and the ease with which they move through the process"

Finland: *"According to the Finnish police, the pandering organisations in Finland have been Estonian and Russian led."*

France: *"Le crime organisé est certes un milieu très fermé. Il faut toutefois se garder d'imaginer des réseaux toujours très structurés et hiérarchisés comparables à la mafia. Il s'agit plutôt de réseaux d'inter-connaissance impliqués dans plusieurs trafics. Le proxénétisme avec quelques prostituées est parfois un moyen de s'étendre et d'établir ensuite un réseau plus vaste en investissant dans d'autres trafics, avec une plus grande prise de risques et des bénéfices plus importants. Ainsi les proxénètes évaluent les possibilités et la rentabilité offertes par les pays de destination, et cela influe sur leur choix. En un sens, « il y a toujours de l'argent à faire »."*

"Les filières ont évolué vers le tableau suivant:

- *Pays de l'Est: l'Albanie est une plaque tournante pour les victimes en provenance de Bulgarie, de Roumanie et autres pays d'origine. De fausses agences de voyages continuent de transporter en bus les victimes vers la France et les autres pays de destination, et de ramener l'argent au retour.*
- *Afrique: le Niger apparaît comme une plaque tournante pour la production de faux papier puis le transfert des victimes."*

Germany: *"The large organised crime syndicates are not active, rather smaller groups organised ad hoc, especially ethnic prostitution."*

"Perpetrators are loosely organised into groups which cannot be considered as criminal organisations, due to the lack of centralised coordination and prolonged cooperation."

"The phenomenon of ethnic prostitution has closed off systems from society and makes them extremely difficult to investigate."

Netherlands: *"Many victims came from Nigeria to the Netherlands and then moved on to Italy, Estonia and Denmark. When the police manages to get hold of such a ring of traffickers for the following two years there have been less victims from these countries. However, it seems that the traffickers turned to other countries for this period of time."*

Romania: *"No new trends in organised crime, still larger hierarchical groups with members with designated specific roles, mostly ethnically homogenous and from the same ethnicity as the victims. Organised crime networks run clubs and bars. These networks have been constantly expanding their reach, especially once it became clear that more money could be made abroad."*

Spain: *"We have both old and new organised crime groups, new organised crime groups in trafficking in human beings come especially from Eastern Europe, now we think that these groups are not established firmly yet, but they are working on it. The established groups in trafficking in human beings are old groups, known to us; they used to deal with drugs, now they increasingly deal with trafficking in human beings."*

United Kingdom: *"Different nationalities have differently organised criminality around it. On one side some are not an organised structure, it is loosely organised... not hierarchical, some, for example Lithuanians – are far more organised that we appreciate. There are mixed nationalities working together. In the most successful cases there is little evidence of UK criminality." "There is lower level of coordination and organisation [in case of Nigerian victims] than the Eastern European women, who are trafficked through organised crime syndicates."*

Factors impacting trafficking in human beings

Czech Republic: *"As a rule it can be anything."*

France: *"Dans le pays de destination, la coopération judiciaire, comme l'efficacité des poursuites judiciaires, est bien sûr un facteur déterminant."*

Latvia: *"Subjective reasons in individual cases."*

Netherlands: *"There is an unlimited possible source of victims of trafficking. Enforcement is the answer."*

"It could be you have very good relations with your relatives and you want to help them, provide for education etc, you take on an offer which is not safe."

"Media have a certain influence on the trafficking phenomenon. When there is much reporting on the police work against trafficking in human beings/organised criminality, traffickers seem to turn their attention to other countries."

Spain: *"The problem is that there are all these factors that you have mentioned. All of them are important when Anti-trafficking policies are formulated or implemented."*

"You have to amend the legal framework (solid and victim oriented) or you will have gaps used by traffickers."

“Protection for victims of trafficking is the key for combating trafficking in human beings. There is not enough immediate and effective response from the state, if the state does not change the policies, victims will not cooperate. Effective protection of victims is fundamental; otherwise they will just suffer and continue to bear the situation until they repay their debts or escape.”

“Como la trata de mujeres para la prostitución se basa en las leyes del mercado, es por esto que cuanto mas demanda hay de servicios sexuales, mas fuerte es la oferta de ganancias para estas mujeres, las cuales son atraídas con muchas estratagemas, falsedades y sueños de ganancia y riquezas, vida facil y divertida”

Sweden: *“Trafficking is the consequence of market forces; you will always find lower price segments where criminals are involved (drugs, pharmaceuticals, construction). There will always be a price segment dominated by crime, so will it be with prostitution as well as in other sectors such as drugs, pharmaceuticals and construction.”*

“In general, my view is that it is a complex phenomenon, you have push and pull factors.”

“The main reason, that women are made victims of trafficking into a country for sexual exploitation, is of course because men in the countries of destination demand to use these women – and girls for prostitution purposes.”

“You can also take preventive actions in order to reduce the demand. People in general should know more about women’s life in prostitution. What does prostitution do to women in the long run and what risks there are, what are the criminal activities that follow from prostitution such as drugs, violence, money laundering. In many countries prostitution is looked upon as a law and order problem, because so many other criminal activities follow the problem. We have reduced other criminal acts around prostitution to the minimum by criminalising the demand.”

Inequality between and within nations

Austria: *“Lack of economic opportunities in home countries” [is an intervening factor].*

Belgium: *“Root causes remain: poverty, discrimination, lack of employment, these are the main reasons why people decide to emigrate and then they meet traffickers who can exploit them. What are alternatives to migration to the EU? One of the possibilities to diminish trafficking is to address this.”*

“The situation in the countries of origin is the most decisive factor. That is why we have to work more on development cooperation with the countries of origin.”

“Bad social and economic circumstances in home countries and the view they have about the “good life” in Belgium.”

Bulgaria: *“Factors from the supply side – lack of money, not enough money or opportunities, combined with a lack of information and education. Today in Bulgaria education is not considered as a good investment, many do not wish to study but want to earn a lot of money. Additionally, the vision predominates that the West is the paradise.”*

“For a long time, in Bulgaria’s imagination, there was the idea that the West is the Eden on Earth, consequently many believed that a way to escape their difficult situation was to go

abroad. This was indeed the case for many and therefore it was easier to lure others into exploitation."

"In some areas of Bulgaria one prostitute is supporting her whole family; they try to collect some money to have a normal house, to buy some animals, to have more normal living conditions."

"Since 2000, I have talked to some 2000 prostitutes; some of them tell me, please give me another job where I can earn the same money. If I work as a prostitute I earn 500 – 1000 Euros per day as compared to 150Euros/month in Bulgaria. I am providing for my child. Many prostitutes support their families."

Czech Republic: *"Foreigners often lack information or have misinformation about the Czech Republic. There are myths about good life here, for example in Vietnam."*

Denmark: *"In my opinion we have a problem with inequality between states/countries, and this is the most influential factor on trafficking."*

"At the same time that potential victims of trafficking /women from poor countries do have very limited possibilities in their country of origin, many have an idea that working in countries like Denmark will help them earn a living /fulfil their dreams. This way they are most vulnerable to traffickers who 'help' them travelling to Denmark."

Finland: *"Prostitution is a choice mainly for women from lower economical background. There are inequalities between the living standards of Finland and former soviet countries and you can make more money here [in Finland] working as a prostitute than in your country of departure working in a "regular job."*

France: *"Les inégalités de développement jouent bien sûr un rôle important, mais il faut tenir compte des différences entre pays. Dans les pays les plus pauvres ce sont les classes moyennes qui partent (ayant les moyens de partir, pas de vivre sur place). Dans les pays d'Europe Centrale et Orientale, caractérisés surtout par des bouleversements profonds de la société ce sont des personnes jeunes surtout, d'un milieu social souvent déjà exclu (familles instables, scolarité faible, peu de formation et d'expérience professionnelle), pas tellement les classes moyennes. Des politiques de prévention dans les pays d'origine doivent en tenir compte."*

Germany: *Inequality – within society, between various states: "Push effect also increases the trafficking in human beings phenomenon in the country of origin."*

Italy: *"Les différences de développement entre les pays d'origine et le pays de destination sont un facteur très important. L'égalité des chances et les perspective d'emploi pour les jeunes dans les pays d'origine, en particulier pour les jeunes femmes, doit être considérée comme un facteur pertinent. De même, l'existence d'un régime efficace de protection des mineurs dans les pays d'origine a un impact sur le nombre de personnes qui sont « recrutées » pour la traite." "Le problème du trafic d'êtres humains doit être relié à la problématique des inégalités de développement et de l'exploitation en général (exploitation par le travail en particulier) dans un monde globalisé. Les politiques publiques, si l'on attend qu'elles soient efficaces, doivent se garder d'hypocrisie. Si l'on souhaite lutter contre le TEH, il n'est pas acceptable que soient tolérées l'exploitation par le travail de migrants illégaux et la dépendance de nos économies vis-à-vis de ce phénomène."*

Latvia: *"People in difficult financial situation are more vulnerable to trafficking in human beings, job offers."*

"Exploited persons are not aware of the legal system and the language and their employer could very easily abuse the fact that they are not competent. Employers can abuse the fact that foreigners may not have enough funds to return home and do not know anybody."

"Education policy – implementation of education policy is a disaster in the regions, poor education is another reason for trafficking in human beings, scale of naivity and unrealistic expectations are proving the lack of education."

"The main cause of trafficking in human beings here is failures in the economic regional development policies, social policy is more or less OK in terms of social transfers, but there is regional disparity and huge poverty (especially along the border with Russia and in some other regions)."

Netherlands:

"Definitely inequalities"

"Natural disasters, economic situation in countries of origin."

Spain: *"Los factores principales que afectan el TSH pertenecen a la situación en los países de origen: Pobreza, Miseria, analfabetismo, educación inexistente, desesperanza, corrupcion, amoralidad, no tener una meta digna en la vida, rupturas familiares y dificultades sociales en particular. Ayudar esos países en su desarrollo es importante para reducir la emigración, y los riesgos de caer en la prostitución – el TSH es una forma de prostitución forzada. En los países de destinación, hay que luchar contra los factores que hacen que las mujeres deben elegir venderse como modo de mantenerse: la educación de las mujeres, la corrupción, la ausencia de transparencia, la discriminación sexual..." "En el caso de las víctimas rumanas por ejemplo, la pobreza, la destrucción moral y cultural de la sociedad, son factores importantes que causan que por motivos familiares, pobreza y falta de recursos, las mujeres sean las pioneras en abandonar el hogar, sabiendo el riesgo de caer en manos de proxenetas y comerciantes de mujeres. Venta y abandono de la mujer son realidades frecuentes. A mas pobreza, falta de estado, miseria moral, destrucción de una esperanza por un futuro mejor, mas cerca estamos de la explotación de la mujer por parte del crimen local, nacional o internacional."*

Migration and lack of access to labour market

Austria: *"It is clear that when there are hardly any legal channels to work, one needs intermediaries – this is a risk of THB, as the dependence may be abused. Deregulation or lack of regulation (like in agriculture in Spain) is negative, then exploitative practices can take place."*

Belgium: *"Migration policies – even within the assistance program we work, we see that the Foreigners office is becoming more and more restrictive. Possible openings of the labour market for some groups of 3rd country nationals are discussed."*

"It is plausible that if we open the front door much more, then there would be less trafficking in human beings."

"In some cases victims of smuggling can also fall under assistance program here, we have now many Indians. For them, Belgium is mainly transit only, they are on their way to the UK, some of them stop in Belgium because they have no more money to continue, some are put here in safe houses waiting for the rest of the trip to the UK. A lot of Indians decide to stay

because we have here agriculture, fruit picking etc...there is a Sikh temple quite known in Belgium."

"Employment of third country nationals (make it easier), do not impose too many preconditions, open to employment of third country nationals."

Bulgaria: As one of the experts said: "Demand for sex services, cheap labour it is one of the main factors [contributing to trafficking in human beings]."

Finland: "Basically every case of smuggling can turn into trafficking in human beings."

"The provision of the Aliens act (148 §) seem to have a more security-oriented approach, with the objective of not letting foreign prostitutes enter the country. The Aliens Act states that foreigners can be refused entry if they are believed to sell sexual services. Hence prostitutes who are non-EU citizens are in many cases afraid to report crimes to the police, as they are afraid of being deported and banned from re-entry to the Schengen area."

"Suspected non-EU prostitutes are not allowed to enter the country, in some cases they revert to organised crime groups to facilitate their entry and accommodation, and are afraid of contacting the police even in emergency – the vulnerability of sex workers is partially due to legislation which pushes them underground."

"When there is the risk of deportation, the people working in prostitution do not want to contact the authorities even in the case of violence. This may lead to situations where sex workers are even more vulnerable and dependant on the criminal networks."

"Many women from Soviet Countries do not have the possibility to work in Finland in other sectors than prostitution. It is hard to find jobs for foreigners if they do not speak excellent Finnish. The attitudes towards migrants are quite harsh, and this concerns for example women coming from former soviet countries, who make the majority of migrant sex workers in Finland."

France: "Une politique publique migratoire complètement ouverte contribuerait à résorber la traite. Les réseaux exploitent les politiques migratoires restrictives." "Depuis l'entrée des nouveaux Etats Membres dans l'UE, le besoin de procurer aux victimes d'Europe de l'Est des faux papiers a disparu. Il est aussi très facile de déplacer les victimes à l'intérieur de la zone UE. Les politiques migratoires des Etats n'ont donc que peu d'influence sur les réseaux des pays de l'Est (Bulgarie et Roumaine). Dans le cas des victimes africaines, les faux papiers ne concernent qu'une partie des victimes. Les proxénètes utilisent aussi très efficacement les politiques d'asile des pays de destinations, en particulier la France (mais aussi les Pays-bas, la suisse). Ils sont au fait des priorités données aux différents pays africains pour l'asile du fait de guerres et autres troubles. La politique d'asile et d'immigration a donc une certaine influence sur le choix du pays de destination." "De manière générale, les politiques publiques sur la traite sont liées au durcissement de la politique migratoire. D'où la confusion maintenue entre victimes et migrants irréguliers. Il n'existe pas de personnes spécialisées ou qualifiées sur l'identification des victimes."

Germany: "Negative effect, in that it is too restrictive."

Latvia: "Now since it is easier to cross the borders, it will be more tempting to come here. Again traffickers could use this."

"After joining the EU and Schengen, for economic development it is very good, for detecting crime and crossing borders it is quite problematic."

"Many people look abroad for better opportunities, for sure trafficking in human beings is linked to migration policies. Since we have had these cases of 3rd country nationals, we have discussed cases of foreigners in Latvia; this is the first step to find some solutions in this field."

"Our labour market, our employers are lacking labour force due to outmigration of Latvians to Ireland and the UK, employers have hired more people not caring about proper ways to do so (legal ways)."

Poland: *"There should be more formal labour opportunities for foreigners, less space for illegal work."*

Romania: *"Already in 2007 the forced labour phenomenon has been increasing substantially, especially since the Romanian accession to the EU, especially from Romania to the Czech Republic, it does not seem to relate to migration issues. The time of the year strongly determines demand for labour exploitation victims."*

Spain: *"There are people in need of better life, which is normal, in need of job and trying to go to another country. The migration and labour access limitations force them to the illegal channels, illegal jobs, illegal entrance or just illegal labour sectors. If legal ways do not work because of restrictive migration policies, they are finding illegal ways. The state has to understand that limited legal migration channels are just doing a favor to traffickers and smugglers, they are creating clients for them."*

"There are several factors. For me the main thing is the policy of the state in order to protect the borders. More work and activity is guaranteed for traffickers and smugglers this way, the policies are creating vulnerabilities traffickers can use. On one hand the state is very restrictive in protecting the borders but it is simply impossible to deport all the illegal migrants, it is simply too expensive to do it."

United Kingdom: *"The issue of trafficking in human beings is used quite crudely by politicians to show that by controlling borders we are preventing trafficking in human beings, see for example "Enforcing rules" (2007, policy paper)."*

"The Government planned to regulate that domestic workers accompanying employers moving to the UK from abroad cannot change employers and they would be given only a 6-months visa. NGOs were saying this is effectively legalising trafficking because there is evidence which show that a large proportion of people entering on these visas were leaving due to violence, etc... The Home office's response was that they would stop them at the border; they would not allow the family or the domestic worker to enter the UK. So the government uses immigration control to tie workers to a particular employer but this is not seen as a mechanism to facilitate trafficking though it exacerbates the unequal power of employer and employee. The border is the point of intervention to turn people away rather than a mechanism that can facilitate trafficking. The outcome of the discussion was that for the next two years domestic workers will not be tied to their employers. Then the legislation will be reviewed. Interestingly, government has for a long time argued that the fact that domestic workers can change employer is a 'best practice'. This is an interesting case because of the publicity, the way immigration control facilitates illegality and bonded labour was put on the table."

"There is a great deal of UK nationals exercising great deal of control over non-nationals due to the immigration system (if you do not want to lose your job, if you want to get your visa renewed you have to be sexually available)..."

Lack of harmonisation of legal frameworks:

France: *"Il serait très utile d'uniformiser au niveau européen la législation sur le TEH et le proxénétisme. Le protocole de Palerme est un bon début, mais il laisse des disparités législatives trop nombreuses qu'exploitent les proxénètes. Europol offre certes des outils opérationnels pour identifier les auteurs, mais là encore les disparités dans la définition des crimes et de leurs auteurs sont un obstacle. Par exemple, la coopération internationale se heurte de manière grandissante à l'exploitation sexuelle sans usage de violences, comme dans le cas des envoûtements utilisés comme moyen de pressions sur les victimes Africaines. Des définitions communes des termes « victime », « exploitation sexuelle » sont donc par exemple indispensables. Cela suppose le choix clair d'un système et d'une politique publique à l'échelle européenne."*

Various forms of discrimination

Belgium: *"Change of mentality of people towards prostitutes and immigrants. We are very protectionist; generalised feeling to prefer our own workers."*

Bulgaria: *"Position of women in the labour market is important, it has to be considered that in Bulgaria women are not more unemployed than men, but the problem comes with a pay gap."*

Czech Republic: *"There is a clear discrimination. Our organisation has repeatedly come over cases when doctors have denied providing assistance to foreigners. It would be a reason for formal complaints, but we do not have the capacity."*

"Important are prejudices against prostitution. These can result in lower identification rate. Often I have heard the police saying: 'But it is only a prostitute. You are not to believe her.' A prostitute is not trustworthy. Similarly some social workers treat prostitutes with prejudices"

Estonia: *"Definitely, chauvinism is a very important push factor. In Estonia, it is still very difficult to discuss it openly, especially as an issue that also affects men. There have been several discussions, and there are now women in higher positions, but oftentimes they have to choose between family and business."*

Finland: *"The attitudes towards migrants are quite harsh, and this concerns for example women coming from former soviet countries, who make the majority of migrant sex workers in Finland."*

"There are hardly any victims of trafficking for sexual exploitation in the official assistance system as most victims of trafficking for sexual exploitation are considered procured prostitutes. This might have something to do with the ethnic origin of the women concerned; it may be that they would be treated differently if they were Finnish nationals."

"Gender inequalities in countries of departure are a big intervening factor. In Finland, gender issues should be more considered. Gender discrimination may influence for example the identification of prostitution related to trafficking. Although many trafficked women have initially consented to work in prostitution, unaware of the actual working conditions, this factor is not sufficiently considered in Finland. Sometimes it seems that a woman, as soon as she consented to work in prostitution, gave up all her rights. Also the fact that most prostitutes come from former Soviet countries seems to be a factor leading to discrimination. More awareness rising among the police and relevant authorities is needed. Also the gender system influences the

constitution of the phenomena – that it is the women who mainly work as prostitutes and become the victims of trafficking; when the demand for sexual services is mainly constituted by men. On the other hand, the number of male sex workers is probably highly underestimated.”

“The NGOs [service providers to prostitutes and victims of trafficking] were reported many incidents of bad behavior from authorities towards their clients.”

“Procured prostitutes are not directed to the system of victim assistance, although it would be possible. Discriminatory practices on the ground of sex, as most (or all) sexually exploited victims are women.”

“Suspected non-EU prostitutes are not allowed to enter the country, in some cases they revert to organised crime groups to facilitate their entry and accommodation, and are afraid of contacting the police even in emergency – the vulnerability of sex workers is partially due to legislation which pushes them underground.”

Germany: “The push effect [of gender discrimination] also increases the trafficking in human beings phenomenon in the countries of origin.”

Italy: “Dans le pays de destination, la coopération judiciaire, comme l’efficacité des poursuites judiciaires, sont bien sûr des facteurs déterminants.”

Latvia: “For sure we can speak about gender discrimination, but we have no cases, the responsible institutions are not sufficiently aware what gender discrimination is. Sometimes institutions are quite resistant to speak about it.”

Netherlands: difficult position of women [in countries of origin].

Spain: “The gender issue and the discrimination and all the cultural issues, these are in favor of traffickers again, it is easy to manipulate these women, easier to control for longer time, often with the help of debts mechanisms.” “Estos hechos produce una bipartición de la personalidad de las mujeres, dando una “doble moral”, hace que la situación económica contribuya al desarrollo del trafico de seres humanos.” “Es por esto que se tolera la existencia de los locales de prostitución, contrastando con la visión moral contra la prostitución, que ve las víctimas como personas pecadoras, perdidas, portadoras de enfermedades, destructuras de la familia, irregulares. Esa “doble moral” tiene un impacto negativo sobre la lucha contra la trata de mujeres, no se quiere que haya, pero donde hay una gran existencia de población masculina sin pareja estable, lo ven como única solución para luchar contra los abusos sexuales a la población nativa.”

United Kingdom: “Discrimination and stereotypes about foreign women – exoticism, that they are sexually available.”

“An obvious one would be the lack of legal access to the labour market particularly for foreign women; potentially the way the new immigration regime comes to discriminate against women (you have to have certain quantifiable skills, earn above a certain level).”

Organised crime and law enforcement

Austria: “There are huge profits for traffickers.”

Bulgaria: “Number one factor [contributing to trafficking in human beings] is the organised crime. Trafficking in human beings brings easy profits and it is less risky compared to some other crimes”

“The desire of traffickers to make a lot of money and the fact that they are well organised”

“Organised crime has recently become a factor that could be easily sharing the first place with inequality between various parts of the country and various states. In the past inequality was more important.”

France: *“L’existence de contacts, la connaissance de la « culture criminelle » dans le pays de destination est déterminante pour l’implantation d’un réseau. Ceci est valable non seulement pour le proxénétisme mais aussi pour d’autres crimes et trafics. Mais dans tous les cas, les proxénètes exploitent surtout toutes les failles juridiques et faiblesses ou retards des systèmes répressifs des pays de destination. En ce sens la France, dont le système répressif et la pénalisation d’un large panel de crimes liés au TEH découragent certains proxénètes, n’est pas un pays de choix pour ces derniers. La France est un pays moins prisé car plus répressif.”*

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“Le crime organisé est certes un milieu très fermé. Il faut toutefois se garder d’imaginer des réseaux toujours très structurés et hiérarchisés comparables à la mafia. Il s’agit plutôt de réseaux d’inter-connaissance impliqués dans plusieurs trafics. Le proxénétisme avec quelques prostituées est parfois un moyen de s’étendre et d’établir ensuite un réseau plus vaste en investissant dans d’autres trafics, avec une plus grande prise de risques et des bénéfices plus importants. Ainsi les proxénètes évaluent les possibilités et la rentabilité offertes par les pays de destination, et cela influe sur leur choix. En un sens, « il y a toujours de l’argent à faire. »”

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Germany: *“Prevention reduces the profitability of the crime, through regular inspections of the red light district.” “Profits that perpetrators gain are huge, and they are not confiscated, these laws should be revisited, to cut down the profit margins of the criminals.”*

Spain: *“El crimen organizado corrompe a las autoridades competentes, como policía, funcionarios, agentes de justicia, para silenciar o paralizar procesos que corten sus negocios. También el cuerpo mafioso trata de tener control sobre la policía, y tienta continuamente a los agentes, y entre miles de ellos siempre hay que caen por sus necesidades, bajo el control de las Mafias de la Prostitución.”*

Sweden: *“First of all you must make your country a bad market for trafficking activities. We have criminalised the demand (the buyers of sexual services). We take note that traffickers, during telephone interception, speak about Sweden as a bad market for these activities and that they prefer countries where they can send women out in street prostitution. Secondly, it is most important that law enforcement give enough priority to this type of crime. The criminals know if the police give priority to trafficking in human beings or not.”*

National debates on changes in regulatory framework on prostitution

Austria: *“In general, no matter how good regulation you will have, it will not solve the problem of trafficking in human beings.”*

"We are promoting more rights for sex workers, we believe part of the solution can be empowering those that are in the business. In a regulated sector more women can approach the authorities. Many of the women in our care have been put under pressure by their bad legal position. If they see that their colleagues, who did not work as expected, are reported to police and then deported, this of course limits their possibilities."

Belgium: *"There are discussions; there are projects to amend the law. The proposal may be in the parliament to criminalise the client, along the Swedish model. It was a proposal by one of the Members of Parliament; it does not come from the Government itself. There is always the discussion whether the Swedish model is a good way to fight trafficking in human beings, [with that model] prostitution would go underground and victims of trafficking would be more difficult to find."*

"For the moment to criminalise the client does not correspond to our approach. We are a country with abolitionist tradition; it is not in line with our tradition."

"For the moment [the change of regulation regime] is not really discussed, sometimes there have been discussions, now it is not a priority. The possibility of legalising prostitution may lead to more exploitation, so we do not want to take this road. This is under question mark."

"I have been advocating for distinguishing between bona-fide and mala-fide sex sectors. This is essential if we want to alter the system."

Bulgaria: *"About 18 months ago [in the second half of 2006] the Ministry of Interior initiated consultations on regulation of prostitution. The Ministry of Justice was against legalising prostitution, some NGOs too. I am of the same opinion – what happened in Holland, it did not stop trafficking in human beings."*

Denmark: *"Now there is a discussion in Denmark whether to implement the Swedish model, but at the moment it seems that the political parties are disagreeing on the topic, and it does look like that the parties are disagreeing internally. Right now there is no indication that it will go in that direction."*

Estonia: *"There have been several [discussions about prostitution policies]. Some people are writing about prostitution and about the commercial sex services in general quite frequently. The laws on pimping are problematic in that they require such a high burden of proof. I support the criminalisation of consumption of sexual services in principle. It sends a positive social message. But I doubt that it can be effectively implemented. In the general Estonian public, there is a perception that these women want to work in the sex industry, and that men buying sex is a normal social phenomenon. I do not feel that legalisation is the solution."*

Finland: *"The framework for the new (2006) legislation on the partial criminalisation of buying sexual services was part of the efforts to reduce the demand for prostitution. When the new provision was drafted, the main influencing factors were the pressure from outside Finland to adhere to the Swedish model, the fight against organised crime and the restriction of migration. Also questions of gender equality were raised in the public debate concerning the legislation."*

"In the 1990s the number of prostitutes had augmented. Citizens' movements wanted to abolish prostitution to get the prostitutes away from the streets. In 2003, the buying and selling of sex in public places was criminalised, which might be detrimental to the safety of prostitutes. Outside they are better able to thoroughly choose their clients, whereas their situation inside is more difficult."

France: *"Au-delà des raisons de son adoption et du débat suscité, la récente loi sur le racolage s'est avérée utile dans la lutte contre le trafic d'êtres humains car elle donne des outils d'identification des victimes – partant, d'identification des proxénètes. L'observation et l'identification des victimes, facilitées par cette loi, permettent en effet d'établir l'existence de réseau criminel. L'intérêt de cette loi est aussi de participer à l'identification de victimes d'exploitation sexuelle. Par ailleurs, cette loi, en augmentant la fréquence des contrôles, décourage l'implantation de certains réseaux. Ayant une logique de rendement, les proxénètes considèrent en effet souvent que le temps passé par les victimes en contrôles de police diminue d'autant le temps travaillé. En même temps, cela a aussi conduit les réseaux à rendre leurs victimes plus mobiles en développant l'utilisation de site internet."* *"En France, comme le montre l'inclusion de la prostitution dans la loi sécurité intérieure, la question est abordée sous l'angle de l'ordre public (prostitution de rue) et de l'immigration irrégulière. La prostitution de rue est devenue un délit même si la prostitution en tant que telle n'est pas punie. La position de la France est traditionnellement abolitionniste, mais une dynamique prohibitionniste s'installe. Cela reste ambigu, car en même temps la réouverture des maisons close est formulée dans le débat, en parallèle avec une demande de pénalisation du client. Il existe en conséquence une confusion, un manque de cohérence. Les réponses font suite à des problèmes d'ordre public, mais pas de réflexion de fond. Le législateur ne remplit pas à cet égard, sa mission de donner une orientation de fond. On note un double discours même si tout le monde s'accorde à vouloir protéger les victimes, quand les victimes se présentent on se demande surtout si elles le sont vraiment."*

Latvia: *"Motivation in Latvia for the Swedish project was again informed by radical feminists, who have done a respectful job, struggling with the issue, but they are absolutely anti-free choice. Any window of opportunity would be the combination of radical feminist and the religious Christian party. But both streams Christian and radical feminist are not so popular in Latvia. There is a hope that a more diverse portfolio on trafficking in human beings and prostitution will develop. For as long as there is political confusion, there are windows of opportunity and we can push forward also the more liberal pro-choice agenda. I am following my ethics of social work, I am thinking about the wellbeing of the persons involved."*

Italy: *"Ce débat se reproduit régulièrement selon les mêmes termes depuis l'adoption de la loi de 1958 qui a fermé les « maisons de complaisance ». Toutes les options possibles ont été et sont toujours représentées sur la scène politique Italienne, sans que le débat ait abouti à un quelconque changement. A l'heure actuelle la loi de 1958 sur la prostitution prévaut donc encore."*

Poland: *"Discussions on the regulation of prostitution come from time to time; they never finish with a clear cut decision. The issue is not going to be solved, some of the politicians are for legalisation, some for criminalisation, and some for letting it be as it is."*

Spain: *"En España, la prostitución no está regulada. Hay municipios que regulan parcialmente los lugares donde pueden estar las mujeres, pero no la prostitución en sí." "Hay debates sobre la esclavitud moderna, la situación de los inmigrantes irregulares, la violencia, pero no sobre la prostitución de forma general."*

"In 2007, there was a parliamentary debate on prostitution. At the end there was no clear recommendation in regard to prostitution, the abolitionist approach was kept, the majority who took active part in the debate were abolitionist, but clients and association of owners and clubs were invited too. They recommended several actions with regard to prostitution,

but they talked a lot about trafficking as well and how to have specific measures for trafficking in human beings. They considered there are 400 000 women in prostitution and more than half of them victims of trafficking. In the end, there was a set of recommendations dealing with awareness raising, legal aspects, training, coordination, etc.”

“The Government has been treating this phenomenon at the parliament as well, to try to punish the clients, along the lines of the Swedish legislation, or to legalise the prostitution (the more liberal political forces) - especially the Catholic institutions do not agree, because it would be against human dignity, immoral, it cannot be considered as work... this is the more conservative opinion. Some liberals believe that prosecution of clients would be the best solution to remove prostitution from the streets, it would in fact [support the] public order. It is difficult to legalise it and it is difficult to prosecute it. Possibly the things will remain the same, nothing will be decided about prostitution, but there will be changes in trafficking in human beings legislation. Free prostitution will not change most likely.”

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United Kingdom: *“At the moment there is an interest in criminalising buyers, taking the Swedish model. It is being quite heavily promoted. It is also quite popularly discussed, also in the newspapers, very much from the abolitionist perspective: The evil of prostitution and the need to protect trafficked people, the language of trafficking is used to clamp down on sex work.”*

“There are moves promoted in the UK concerning the criminalisation of demand, this is a small victory for the Poppy Project. This is at odds with a wide range of civil society actors, who wish to claim compensation for lost wages of migrant sex workers, whereas the Poppy Project feels compensation can be claimed on the basis of damages.”

Advantages and disadvantages of models regulating prostitution

There was a remarkable diversity in the opinions of interviewed experts regarding the advantages and disadvantages of the model criminalising demand and the legalisation models and the applicability of these models to their respective countries.

Some experts preferred criminalising demand. *“I am firmly for the criminalisation of the demand. I deeply support the Swedish model. The geographical situation of Bulgaria, the type of organised crime makes me think that the Swedish model is the better one. Having legalised prostitution [in Bulgaria] would not result in the decrease of organised crime activities. Bulgaria is not the Netherlands, neither economically, nor at the level of efficient work of the judiciary. The law enforcement institutions have not reached the necessary level of reform and efficiency and the country is not at the level of an old EU member state to allow itself the luxury of legalised prostitution. The system [legalised prostitution] needs a very good level of law enforcement, mentality and democratic values being established over longer time, it needs a certain economic level”* (Bulgaria).

Others voiced their support for criminalisation of demand in principle, but questioned how it can be implemented practically. *"I support the criminalisation of consumption of sexual services in principle. It sends a positive social message. But I doubt that it can be effectively implemented. In the general Estonian public, there is a perception that these women want to work in the sex industry, and that men buying sex is a normal social phenomenon. I do not feel that legalisation is the solution."* (Estonia). *"The demand for prostitution and trafficking should be decreased. Would criminalisation work really? Would it really decrease? I do not know really what is the situation in Sweden at the moment"* (Finland).

Some experts have voiced a clear preference for the legalisation model. *"The legalisation of prostitution and the subsequent regulation thereof are, in my opinion, the right way"* (Germany). *"Prostitution should be legal and exercised by willing women, but it must be stringently regulated, the rights of sex workers must be strengthened, this would also aid the fight against trafficking in human beings"* (Germany).

Some interviewed experts often stressed that both the 'Swedish' as well as the 'German and Dutch' models have negative sides to it (Netherlands, Latvia): *"trafficking in human beings in persons is a reality in Netherlands, Germany as well as in Sweden"* (Spain). Others pointed out that *"distinguishing between bona-fide and mala-fide sex sectors is essential if we want to alter the system"* (Belgium). *"We think that neither abolition nor the legalisation is able to solve the issue of trafficking in human beings. None of these positions is a solution. There are other issues that have to be taken into account"* (Spain). *"Regulation of prostitution as work may influence the situation but only represents one facet of a comprehensive response"* (Estonia).

Interviewed experts often felt that the current discussion focuses too much on the 'extreme cases' of regulation of prostitution. *"The discussion is only about extreme options – criminalisation or legalisation, I personally do not know what would make a difference"* (Bulgaria).

Some interviewed experts were of the opinion that there is a link between prostitution and trafficking: *"I think that we cannot deny the link between prostitution and trafficking. For sure I see minuses in the Swedish as well as the German and Netherlands model. We should start discussion about it. It is accepted that there may be cases of voluntary prostitution, there are then quite few controversies regarding the prostitution policy. The problems are deep ideological differences and gender discrimination"* (Latvia). Others questioned whether there is a linkage. The majority of experts believed that these two areas are linked, but they did not offer a clear opinion on the nature and relationship between these two phenomena.

Some experts believed that the way prostitution is regulated has no impact on the number of persons trafficked for sexual exploitation, but it negatively affects the level of access of the law enforcement and social services into the prostitution sector and thus limits their ability to monitor it (Germany, Finland, UK). Some experts also shared the opinion that restrictive prostitution regulations might in fact negatively affect the victims of trafficking in human beings: *"In the field of prostitution legislation, one could, at the limit, imagine that a model which would criminalise all forms of prostitution at all levels, if effectively implemented in a country, would simply suppress prostitution and would thus make traffickers choose other countries. However such a system would be impossible to enforce, and both prostitution and trafficking for sexual exploitation would orient towards"*

more hidden contexts. The impact of prostitution legislation is thus extremely difficult to anticipate. In reality, in such a system it is trafficked persons who would first suffer from criminalisation of prostitution: more coercion and lesser access to assistance mechanisms.” (Italy) Several experts have pointed out the practical difficulties in distinguishing between voluntary and involuntary prostitution (Finland, Latvia).

Overall, the experts felt uneasy that the discussions on the regulation of prostitution take place in an environment marked by an acute lack of reliable empirical evidence telling us what impact various regulatory regimes, or their modifications, have on prostitution. According to an expert from the Czech Republic *“it is problematic that there is no research on the impact of the proposed legislation”* (Czech Republic). *“We think that it is very important to clarify the differences and the links between prostitution and trafficking in human beings, we have reasons to believe that some of the arguments used in the current debates are not based on empirical evidence, but [are] rather a part of moral argumentation”* (Bulgaria). *“It is difficult to say, if there is a link between the way prostitution is regulated and the numbers of trafficking. We are keeping an eye on the Swedish model and the Dutch model, but at the time being we have no evidence that there is a link. The model of New Zealand⁴⁸⁵ is quite interesting, but we didn’t have the time to take a more thorough look”* (Denmark). *There hasn’t been any evidence-based research [on the effects of various regime regulating prostitution] made this far. There are multiple things that should be considered when making comparisons between different legislative models in different countries. When you don’t have any research made before some new law is implemented, it’s very hard to tell what the effects of the law have really been* (Finland). It is not always sufficiently recognised that prostitution is a multi-faceted, varied phenomenon. *“There is a huge hidden number of students looking for rich men. Women who use internet contact lists to earn a little extra money. It is very difficult to discern prostitution and casual sexual contact and trafficking in human beings in all of these variants”* (Germany).

Several experts mentioned international pressures to adopt one of the models. *“When the new provision was drafted the main influencing factors were pressure from outside Finland to adhere to the Swedish model, fight against organised crime and restrict migration. Also questions of gender equality were raised in the public debate concerning the legislation”* (Finland).

Several experts indicated that the highly politicised, value-based discussion of the Swedish and the Dutch models is not beneficial for an issue-based discussion and policy development on prostitution. *“Because there is already some other politics, there is no study which effects it [the regulation of prostitution] has on the victims [of trafficking] because there are no good evaluations. That is why we will for the time being not change our approach to regulating prostitution. There are different opinions – because the Swedish policy criminalises client, it can go underground, but there are different opinions. So every country can have its own policy”* (Belgium). *“I have a worry that debates about Swedish model are overshadowing some of the real problems of trafficking in human beings”* (UK).

⁴⁸⁵ [New Zealand adopted in 2003 the Prostitution Reform Act decriminalising prostitution and regulating certain aspects of it. The principal aims of the Prostitution Reform Act were: safeguarding the human rights of sex workers; protecting sex workers from exploitation; promoting the welfare and occupational safety and health of sex workers; creating an environment that is conducive to public health; protecting children from exploitation in relation to prostitution.]

Some experts volunteered information about an 'ideal' policy model regulating prostitution. An ideal legislation *"would take into account diversity of the market and there would be a diversity of services for all those who need them, not only for those who were identified as trafficked persons but also for others, prostitutes"* (Latvia). *"To tackle the issue, a holistic approach is required, combining interventions across many policy areas such as education, welfare, communication. To work to solve this problem one would have to think in the long run."* (Latvia).

Annex IV – Terms used to describe legal frameworks on prostitution

Prostitution policies and their implications

TERM	WHAT IS MEANT (Outshoorn, 2004, p.8)	WHAT IS MEANT (Transcrime, 2005, p.viii)
Abolition	Prostitution should be banned and third parties criminalised, with the prostitute herself not liable to state penalties. In this paradigm, the prostitute is always a woman (or a child).	'Old abolitionism': Outdoor and indoor prostitution is not prohibited, the state tolerates prostitution of adults but criminalises profiting from another person's prostitution.
		'New abolitionism': Outdoor and indoor prostitution are not prohibited, but the state explicitly prohibits the existence of brothels.
Prohibitionism	All prostitution is illegal and all parties are liable to penalties.	Outdoor and Indoor prostitution are prohibited and parties involved in prostitution can be liable to penalties.
Regulation	Regulation denotes state intervention in the prostitution industry. This may take various forms - allowing brothels or red light zones, various health requirements for prostitutes and various registration requirements.	Outdoor and indoor prostitution are regulated by the State. They are not prohibited when exercised according to this regulation

Prostitution Paradigms

Based on: Report on trafficking in women, women's migration and violence against women E/CN.4/2000/68 from 29 February 2000 (para. 21)	
PARADIGM	POSSIBLE CONNOTATIONS
Criminalisation	Prohibition Sex work is a social evil that should be subjected to penal measures for both the provider and buyer of sexual services.
	Toleration Sex work as a necessary evil. The legal framework is generally silent on the legality of prostitution itself and it refrains from specifically targeting the sex worker.
Decriminalisation	Sex work is a personal choice, and thus a private matter between consenting adults. Consensual relationships between sex workers and pimps, brothel owners, clients and landlords and the acts arising out of such relationships are viewed as outside the purview of criminal law, while non-consensual acts (forced prostitution) are punishable.
Legalisation/regulation	Seeks to address prostitution outside the purview of criminal law by regulating prostitution through zoning, licensing and, in some cases, mandatory health checks.
Decriminalisation + human rights approach	As for 'decriminalisation' plus calls for the protection of the legal rights of sex workers